

**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE****CIVIL JURISDICTION****BETWEEN:**

In the matter of an application by  
**EDWARD B. BEHARRY &  
COMPANY LIMITED** for Writs of  
Certiorari and Prohibition.

**Mr. R. Ramkarran for the Applicant.**

**Mr. Harnanan for the Respondents.**

**DECISION**

The Applicant on an originating notice of motion applied for and was granted the following nisi orders:-

Firstly, an Order or Rule Nisi of Mandamus directed to the Commissioner of Police to show cause why a Writ of Mandamus should not issue to the Commissioner of Police requiring him to exercise the jurisdiction conferred on him by section 61 of the Motor Vehicles and Road Traffic Act Chapter 51:02 to remove or cause to be removed hire cars parked on the western parapet at the northern end of the University Access Road, Turkeyen, East Coast Demerara, which is immediately west of the applicant's premises on the grounds that the Commissioner of Police has not by order appointed the said western parapet at the northern end of the University Access Road as a parking place for motor vehicles pursuant to section 52 of the said Motor Vehicles and Road Traffic Act Chapter 51:02, that the said hire cars are parked thereon in contravention of the said section 52 of the said Motor Vehicles and Road Traffic Act, Chapter 51:02, and that the said hire cars parked thereon are likely to cause danger to other persons using the

University Access Road and in the premises the parking of the said hire cars on the said western parapet of the southern end of the University Access Road, Turkeyen, East Coast Demerara is illegal and without lawful authority.

Secondly an Order or Rule Nisi of Prohibition directed to the Commissioner of Police to show cause why an Order or Writ of Prohibition should not issue directed to the said Commissioner of Police prohibiting him from allowing or permitting the existence of a hire car park on the western parapet at the northern end of the University Access Road, Turkeyen, East Coast Demerara.

Issue:

(1) Who has Legal Authority to establish a public hire car park?

(2) And whether a public hire car park can be established on a public parapet?

Orders nisi of Mandamus and prohibition were granted calling upon the Commissioner of Police to show cause why he should not exercise his jurisdiction conferred on him by section 61 of the Motor Vehicles and Road Traffic Act Chapter 51:02 to remove or cause to be removed hire cars parked on the western parapet of the northern end of Universal Access Road, Turkeyen, East Coast Demerara.

In this case the Commissioner of Police did not in the first place establish the said hire car park on the western parapet, but the applicant is contending that the Commissioner of Police has the authority to remove the said car park, since it was established without an order from the Commissioner of Police appointing the said hire car park pursuant to Section 52 of the Motor Vehicle and Road Traffic Act, Cap. 51: 02.

Section 52 however does not deal with what the applicant contends.

Section 51 however states

- (a) the Commissioner of Police may by order appoint parking places for motor and other vehicles...
- (b) prescribe the manner in which and the conditions under which such vehicles may park in such places.
- (c) prohibit or restrict the parking of vehicles in any road or in any part of a road.

The Honourable Chief Justice Chang in Action no. 133-M of 2009 dealt with the interpretation of this section and concluded that “clearly the Commissioner of Police has the Legal authority under section 51 of the Act to establish a public hire-car park by way of order. However, this does not mean that the Commissioner of Police can establish any car park on a parapet since a parapet does not fall within the definition of “road” as contained in section 2 of the Motor Vehicle and Road Traffic Act.

However under section 2 of the Roads Act Chapter 51:01 the definition of road includes “parapets” and under this Act the Chief Officer has the general care and supervision of the roads of Guyana, subject to the directions of the Minister, and the Chief Justice concluded that while the Chief Officer has been entrusted with the Responsibility “to repair, widen, alter, deviate, maintain and manage the public roads which include the parapets of such roads, the Minister has no power under section 5 (1) or any other provision of the roads Act to direct that a public hire car park be established on a parapet.

The Chief Justice concluded therefore that neither the Minister of Public Works nor the Commissioner of Police has the Legal authority to establish a public hire car park on a parapet.

In the case before us, the applicant is contending that since the Commissioner of Police had not issued an order establishing the said car park on the Western parapet, then the Commissioner of Police has the authority to remove the said car park therefrom.

However, based on the Chief Justice's ruling which I agree with, since the Commissioner of Police has no authority to establish a car park on a parapet and which he did not do then he cannot have the authority to remove same, since the establishment of a car park on a parapet does not fall within his jurisdiction or within his powers.

Therefore the Applicant cannot in this case call upon the Commissioner of Police to remove the said hire car park on the Western Parapet, since the Commissioner of Police does not have the authority to do so and did not by order establish such a park and therefore the Commissioner of Police did not commit any act or omission that was within his jurisdiction to do or not to do.

Section 51 (C) of the Motor Vehicle and Road Traffic Act states that the Commissioner of Police may prohibit or restrict the parking of vehicles in any road or in any part of a road..... and the definition of road does not include parapets under the Motor Vehicle and Road Traffic Act.

Parapet is included in the definition of roads under the Roads Act and it is the Chief Officer who has the general care and supervisions of the roads of Guyana, which in this case includes the parapets.

Therefore it is my view that the applicant has brought the wrong party to court and that it is not the Commissioner of Police who has the authority or the Jurisdiction

to remove the said hire car park situate on the western parapet of the northern end of the Universal Access Road, Turkeyen, East Coast Demerara.

In the circumstances the orders nisi of mandamus and prohibition are hereby discharged.

Costs in the sum of \$20, 000.00

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Diana F. Insanally

Dated this 11<sup>th</sup> day of, November, 2011