



## Press Summary

14 February 2022

### **CIEL Ltd and another (Appellants) v Central Water Authority (Respondent) (Mauritius) [2022] UKPC 2 *On appeal from Supreme Court of Mauritius (Court of Civil Appeal)***

**Justices:** Lord Lloyd-Jones, Lady Arden, Lord Burrows, Lord Stephens, Lady Rose

#### **Background to the Appeal**

This case concerns rights to water in the River Tatamaka. Réunion owned land adjoining the River Tatamaka. Réunion was allocated a quantity of shares in the water rights in the river pursuant to an order of the Supreme Court of Mauritius in 1888 (“**the 1888 order**”). The original order is lost and no copies of it exist. Additional temporary rights were granted in 1939, although the Supreme Court then attached conditions. Réunion built a canal (“**the Réunion canal**”) by which it abstracted water from the River Tatamaka.

Réunion formed a partnership with another company, transferring its water rights to that partnership. Réunion sold part of its land to the first appellant, CIEL. The second appellant, TKL, has at all material times been a tenant on that land. TKL has used waters from the river, via the Réunion canal, to carry on its knitwear business, which involved dyeing.

The respondent, CWA, claims that it is entitled to payments for TKL’s use of water for industrial purposes. The appellants contend that these charges are not due because: (i) they owned the water pursuant to the 1888 order or by prescription; (ii) CWA did not supply the water for the purpose of its statutory powers to charge for water use; and (iii) CWA’s claim is barred by prescription.

#### **Judgment**

The Board unanimously dismisses this appeal.

#### **Reasons for the Judgment**

***Appellants’ rights to water pursuant to the 1888 order and by prescription***

The Board agrees with the Supreme Court of Mauritius (Court of Civil Appeal), which rejected the appellants' claims. ([30]) Water rights are governed by the Rivers and Canals Act 1863, which provides that rivers are public property while waters in a canal belong to those who paid for its construction (which in this case was Réunion). ([11]-[13])

The appellants could not invoke the rights granted in the 1888 order. They had not proved the terms of those rights, and the Board could not assume that the rights were unconditional simply because the 1888 Order had been lost. Since rivers are public property, Réunion's right to a share in the waters of the river was not a private right of property that it owned and could sell or transfer. The 1888 order merely conferred a right to use the water for irrigation and then return it to the river. TKL, however, used the water for industrial purposes rather than for irrigation. It did not help the appellants' case that TKL used waters from the Réunion canal, rather than the river itself. There was no distinction in Mauritian law between the waters abstracted from the river in the canal and the waters in the river itself. It still must be shown that the waters in the canal were lawfully obtained from the river. The appellants have failed to show this. ([15]-[26])

The waters of the river formed part of the public domain and could not be acquired by prescription under Mauritian law. ([27]-[30])

#### ***Entitlement of CWA to levy charges on TKL for the use of water from the River Tatamaka***

CWA was set up by the Central Water Authority Act 1971 ("the 1971 Act"). It has the power to levy charges for water supply but not in relation to existing water rights. The Board rejects the appellants' argument that CWA could not recover charges for the water used by TKL. Regulations made under the 1971 Act permit CWA to receive "any money properly accruing to the Authority from any other source". This constituted an independent source of power for the CWA to charge for the supply of water. The Board agrees with the Supreme Court of Mauritius (Court of Civil Appeal) that CWA is therefore entitled to charge TKL for its use of the waters. ([31]-[37])

#### ***Prescription period for the charges sought to be recovered by CWA***

CWA's claim for charges against TKL is not barred by prescription. The ordinary 10-year period under the Civil Code of Mauritius applies. The shorter three-year period, which applies to periodic payments payable in pre-agreed fixed amounts, is not applicable because there is no evidence of any such agreement. ([38]-[43])

*References in square brackets are to paragraphs in the judgment*

#### **NOTE:**

**This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: [Decided cases - Judicial Committee of the Privy Council](#)**