

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

COMMONWEALTH OF DOMINICA

DOMHCVAP2020/0005

BETWEEN:

**[1] JHWANIE GAGE
[2] ARAH PAYLA CECIL DAVIS
[3] EDGAR AUGUSTUS PELTIER**

Applicants

and

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA

Respondent

Before:

The Hon. Mde. Vicki Ann Ellis
The Hon. Mr. Trevor Ward
The Hon. Mr. Gerard St. C Farara

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Douglas Mendes SC with him Ms. Gina Dyer-Munro for the Applicants
Ms. Tameka Burton for the Respondent

2023: May 11;
2024: April 15

Leave to appeal to the Caribbean Court of Justice - Section 106(2)(a) of the Constitution of the Commonwealth of Dominica – Whether intended appeal raises issue of great general or public importance or otherwise – Proceeds of Crime Act (“POCA”) Chap. 12:29 of Revised Laws of Dominica 1990 – Whether learned judge failed to give specific consideration to section 59BB(2) of POCA and failed to consider the effect of the respondent's non-compliance with section 59BB(1) and (2) of POCA

In December 2014, the respondent filed a fixed date claim seeking a recovery order against the applicants in respect of certain items of real and personal property under Part IIIA of the Proceeds of Crime Act (“POCA”) as amended by the Proceeds of Crime (Amendment) Act. The respondent also obtained an interim property freezing order (the “Freezing Order”)

against the applicants, which, *inter alia*, prohibited them from disposing of, tampering with, removing from the jurisdiction, or in any way diminishing the value of the property and assets set out in the Freezing Order including real property at Shawford Estate registered in the name of the 2nd applicant (“Shawford Estate Property”).

Subsequently, the applicants applied to discharge the Freezing Order, with such applications heard and dismissed by the lower court judge. Dissatisfied with the lower court judge’s ruling, the applicants appealed to this Court relying on 15 grounds of appeal and raising several issues. The Court considered and ruled on these issues, including the indefeasibility of the certificate of title to the Shawford Estate Property, the registration of charges, and the judge’s alleged failure to consider the submissions filed by the applicants in the court below. The Court delivered its judgment in June 2021, dismissing the applicants’ appeal against the lower court judge’s decision to dismiss their applications to discharge the Freezing Order.

Being dissatisfied with the Court’s judgment, the applicants sought leave to appeal to the Caribbean Court of Justice under the ‘or otherwise’ limb of section 106(2)(a) of the Constitution of the Commonwealth of Dominica (the “Constitution”), on the basis that, the Court gave no specific consideration to section 59BB(2) of POCA and failed to consider the effect of the respondent’s non-compliance with section 59BB(1) and (2) of POCA (the “Unregistered Freezing Order Issue”).

Held: granting the application for leave to appeal to the CCJ and making the orders in paragraph 56 of the judgment, that:

1. The phrase ‘or otherwise’ contained within section 106(2)(a) of the Constitution constitutes a separate limb under which an applicant can obtain leave to appeal to the Caribbean Court of Justice. Where a leave application does not meet the standard of being a matter of great general or public importance, the Court still has wide discretion to grant leave if it is satisfied that otherwise the appeal should be submitted to the Caribbean Court of Justice for guidance, for example where there is reasonable doubt as to the accuracy of its decision. However, when considering the accuracy of the decision of the Court of Appeal, the discretion should be exercised sparingly and with great care.

Emmerson International Corporation v Viktor Vekselberg et al BVIHCMAP2019/0020 (delivered 27th July 2023, unreported) followed.

2. Rule 62.4(1)(c) of the Civil Procedure Rules 2000 makes clear that it is incumbent on the parties to set out their grounds of appeal clearly and to point the court squarely towards the matters in dispute for determination. All the grounds of appeal that an appellant wishes to advance should be lodged with the appeal notice. This general rule is however mitigated by rule 62.4(9) which allows the court to consider grounds not set out in the notice of appeal if the respondent has been given sufficient opportunity to contest that ground. In this case, it is clear that while the applicants did not pursue the Unregistered Freezing Order Issue as a distinct ground of appeal, they posited the issue in such a way that it was subsumed under the indefeasibility of title ground of

appeal. What is quite clear is that given the way in which the parties treated with this issue in their written and oral submissions before the Court, the only logical conclusion which can be drawn is that the applicants wished to have the Court consider and address this issue.

Rules 62.4(1)(c), (5), (8) and (9) of the **Civil Procedure Rules 2000** applied; **Morgan-Rowe v Woodgate** [2023] EWHC 2375 (KB) applied.

3. A trial court does not have to rule on every submission that is made by counsel. A court is required to deal with those issues which are vital to the determination of the matter and give reasons for its decision. An appellate court has jurisdiction to reverse or affirm the findings of the trial court. An appellate court is therefore required to address itself to all the issues arising along with the contentions put forth and pressed by the parties for decision of the appellate court and record findings supported by reasons on all issues and contentions raised by the parties.

Emmerson International Corporation v Renova Industries Ltd et al BVIHCMAP2016/0029 (delivered 23rd March 2017, unreported) followed; **Julian Svirsky and another v Arman Oyekenov** BVIHCMAP2021/0040; BVIHCMAP2021/0046; BVIHCMAP2022/0005 (delivered 8th November 2023, unreported) followed.

4. Notwithstanding the decidedly oblique and belated way in which the applicants have treated with this Unregistered Freezing Order Issue both in the court below and on appeal, it was clearly an issue which was sufficiently pressed by the applicants both in written and oral submissions before the Court. It is also clear that the respondents confronted this issue in their submissions and in so doing made it incumbent on the Court to address the issue. Whether the Court chose to deal with this as a free-standing issue or as part of its reasoning under the indefeasibility of title ground or indeed whether it simply held that the issue did not fall to be determined by the Court, ought to have been addressed by the Court in its judgment
5. The resolution of the Unregistered Freezing Order Issue was clearly vital to the Court's conclusions and yet it has not been resolved definitively. This is enough to call into question the accuracy of the Court's judgment such as to satisfy the 'or otherwise' limb of section 106(2)(a) of the Constitution.

JUDGMENT

- [1] **ELLIS JA:** Before the Court was an application filed by the applicants on 23rd July 2021 for leave to appeal to the Caribbean Court of Justice ("CCJ") against the judgment of this Court dated 11th June 2021 and re-issued 15th June 2021 (the "COA

Judgment”). The COA Judgment dismissed the applicants’ appeal against the lower court judge’s decision to dismiss their applications to discharge an interim property freezing order obtained by the respondent on 23rd December 2014.

Background

- [2] A more detailed background of the facts leading up to the applicants’ appeal is set out in the COA Judgment and need not be recited for present purposes. Of relevance to the present application is the fact that in December 2014, the respondent filed a fixed date claim seeking a recovery order against the applicants in respect of certain items of real and personal property listed in the fixed date claim form. The respondent alleged that the property was “recoverable property” under Part IIIA of the **Proceeds of Crime Act**¹ (“**POCA**”) as amended by the **Proceeds of Crime (Amendment) Act**.²
- [3] On 23rd December 2014, the respondent obtained an interim property freezing order (the “Freezing Order”) against the applicants, which, *inter alia*, prohibited them from disposing of, tampering with, removing from the jurisdiction, or in any way diminishing the value of the property and assets set out in the Freezing Order. The applicants were also obliged to inform the Financial Intelligence Unit (the “FIU”) of all their assets whether inside or outside of the Commonwealth of Dominica (“Dominica”) and to give the location and details of such assets. Among the assets subject to the Freezing Order was a parcel of land, together with the dwelling house erected on it, at Shawford Estate and registered in the name of the 2nd applicant (the “Shawford Estate Property”).
- [4] On 27th January 2015, the first and second applicants jointly applied to discharge the Freezing Order whilst the third applicant filed a similar application on the same date (the “Discharge Applications”). The Discharge Applications were heard by the judge on 29th March 2019 and on 5th January 2020, they were dismissed. Being

¹ Chap. 12:29 of the Revised Laws of Dominica 1990.

² Act No. 7 of 2013.

dissatisfied with the judge's ruling, the applicants, by notice of appeal filed on 2nd June 2020, appealed to this Court citing 15 grounds of appeal including:

- "1. That the Learned Judge erred and was wrong in Law in failing to discharge the property freezing order of 23rd December 2014 as she failed to consider the submissions filed by the applicants dated December 13th, 2018, and in so doing failed to order that the freezing order should be discharged.
2. That the Learned Judge failed to consider the evidence in reply submitted by the applicants in their submissions of December 13th, 2018, as evidence in support of the application and the submission filed on December 13th 2018.
3. That the Learned Judge erred and was wrong in law as she failed to consider the applicants' submissions on risk of dissipation of assets as a basis for the applicant arguing that there was a failure by the respondents to make full and frank disclosure.
4. That the Learned Judge erred and was wrong in law in failing to discharge the Freezing Order as she failed to consider the applicants' legal arguments presented under the grounds that there was no good arguable case and wrongly ruled against the Applicants.
5. That the Learned Judge erred and was wrong in Law in failing to discharge the Freezing Order as she failed to properly consider Section 59 M (3) of the Proceeds of Crime (Amendment) Act 7 of 2013 of the Commonwealth of Dominica.
6. That the Leaned Judge erred and was wrong in law and she failed to consider all of the evidence presented on behalf of the 2nd and 3rd Respondents and in so doing erroneously treated the application as if the sole applicant was the 1st applicant Jhwanie Gage.
7. That the Learned Judge failed to consider that there was no evidence of unlawful conduct presented by the Claimant/Applicant/Respondent in respect of the 2nd and 3rd Applicants.
8. That the Learned Judge erred and was wrong in law as she failed to properly consider all legal issues as to whether a good arguable case had been presented by the Respondents.
9. The learned Judge erred and was wrong in law as she failed to consider that the 2nd Respondent held an Indefeasible Certificate of Title issued under the Title by Registration Act Chapter 56:50 of the 1990 Revised Laws of the Commonwealth of Dominica and as a consequence of the Title By Registration Act the Claimant/Applicant/Respondent could not

submit that a person other than the 2nd Respondent was the owner of the property for which the 2nd Respondent held a Certificate of Title unless the provisions of fraud or adverse possession were established under the Title By Registration Act Chapter 56:50 of the Revised Laws of Dominica.

10. The Learned Judge erred and was wrong in law in failing to discharge the Freezing Order on the ground of the privilege against self-incrimination as she failed to consider the applicants' submission as presented in their submission of 13th December 2018.
11. The Learned Judge failed to consider that the Proceeds of Crime Act Chapter 12:29 Revised Laws of the Commonwealth of Dominica as amended by the Proceeds of Crime (Amended) Act No. 7 of 2013 had no disclosure obligations except in relation to Income Tax and that the Proceeds of Crime Act of Dominica was unlike the Proceeds of Crime Act of the United Kingdom which latter Act had specific disclosure provisions and in so doing failed to discharge the Freezing Order.
12. The Learned Judge erred and was wrong in ruling that the undertaking by the Financial Intelligence Unit in its submission was sufficient to protect the applicants against the privilege against self-incrimination and by so doing failed to discharge the Freezing Order.
13. The Learned Judge erred and was wrong in law in ruling that there has been sufficient disclosure from the applicants and in doing so failed to consider that the 1st applicant had not complied with the disclosure order obligations.
14. The Learned Judge erred and was wrong in law in holding that Section 59 NNA (2) of the Proceeds of Crime Act of Dominica affords the Court powers to make disclosure orders regarding property outside of the Commonwealth of Dominica and failed to consider that before such order can be made and thus disclosure obligations obtained in respect of property outside of the Commonwealth of Dominica there must be evidence of a connection with the case and the Commonwealth of Dominica and that in the application by the Claimant/Applicant/Respondent no such connection was established.
15. The Learned Judge erred and was wrong in law in failing to discharge the property freezing order of December 23rd 2014 and in so doing was outside the ambit of reasonable disagreement and was wrong."

[5] In the COA Judgment delivered in June 2021, the grounds of appeal and the submissions (both oral and written) made on behalf of the parties, were distilled at paragraph 7 of the judgment into the following core issues:

“(1) Whether the learned judge erred in failing to consider the submissions filed by the appellants in the court below in reply to the respondent’s submissions?

(2) Whether the learned judge erred in that she failed to consider that the second appellant held an indefeasible certificate of title to the Shawford Estate land and that, in accordance with the Title by Registration Act (hereafter “the TRA”) it was not open to the respondent in this case to challenge the second appellant’s ownership of that property?

(3) Whether the property subject to the freezing order was recoverable property under POCA?

(4) Whether there was unlawful conduct on the part of the first appellant from which the property listed in the freezing order was derived?

(5) Whether there was a risk of dissipation by the appellants of the property listed in the freezing order, in respect of which the respondent was seeking a recovery order, so as to justify the grant of the freezing order in December 2014 and its continuation in January 2020?

6) Whether there had been material non-disclosure by the respondent in making the (sic) application to the court for the freezing order and, if so, whether the learned judge should have discharged the order?

(7) Whether the learned judge erred in not discharging the freezing order for breach of the appellants’ privilege against self-incrimination by virtue of the disclosure obligations under the order?

(8) Whether the freezing order should have applied to property outside of Dominica?”

[6] The written judgment reflects that the Court of Appeal dismissed the appeal with no order as to costs. Being dissatisfied with the Court’s judgment, the applicants sought leave pursuant to section 106(2)(a) of the **Constitution of the Commonwealth of**

Dominica³ as amended by the **Constitution of the Commonwealth of Dominica (Amendment) Act**⁴ (the “**Constitution**”) to appeal to the CCJ.

The law

[7] Section 106(2)(a) of the **Constitution** states:

“(2) An appeal shall lie from decisions of the Court of Appeal to the Caribbean Court of Justice with the leave of the Court of Appeal -

(a) in respect of decisions in any civil proceedings where in the opinion of the Court of Appeal, the question involved in the appeal is one that by reason of its great general or public importance or otherwise, ought to be submitted to the Caribbean Court of Justice;”

[8] The applicants had originally argued that the prospective appeal involved extremely important questions of property law and the interplay of the **Title by Registration Act**⁵ (the “**TRA**”) and **POCA** which were of great general or public importance and such, the prospective appeal ought to be submitted to the CCJ. However, by reply submissions filed on 26th April 2023, the applicants indicated that they were abandoning their application for leave in so far as it was based on the ground that the proposed appeal raised an issue of great general or public importance; namely whether **POCA** applied to registered property.

[9] Instead, the applicants elected to proceed with the application on the ground that leave ought to be granted under the ‘or otherwise’ limb of section 106(2)(a) on the basis that the respondent failed to comply with section 59BB(2) of **POCA**, with the result that the Freezing Order ought to be treated as being of no effect, the applicants contend that although the issue (the “Unregistered Freezing Order Issue”) had been raised before this Court, it was not determined.

³ Schedule 1 of the Commonwealth of Dominica Constitution Order Chap. 1:01.

⁴ Act. No. 4 of 2014.

⁵ Chap. 56:50 of the Revised Laws of Dominica 1990.

[10] In **Emmerson International Corporation v Viktor Vekselberg et al**,⁶ this Court confirmed that the phrase 'or otherwise' constituted a separate limb under which an applicant could obtain leave to appeal. Although the case dealt with an application for leave to appeal to His Majesty in Council, the wording of section 3(2)(a) of the **Virgin Islands (Appeals to the Privy Council) Order 1967** is identical to that of section 106(2)(a) of the Dominica **Constitution** and provides suitable guidance to the Court considering leave to appeal to the CCJ. At paragraph 12, the Court stated:

“The meaning of the expressions ‘great general or public importance’ and ‘or otherwise’ have been extensively litigated in the courts of the Commonwealth Caribbean. Each expression creates an independent basis for getting conditional leave to appeal and the applicant can succeed on either or both bases.” (Emphasis added)

[11] At paragraph 16, this Court continued that:

“...to qualify under the ‘or otherwise’ limb of the rule the matter in question must be one that could benefit from guidance by the Privy Council on the law. However, the regional cases have expanded the matters that can qualify under the ‘or otherwise’ limb to include matters that are not strictly on the law.”

[12] After reviewing several regional decisions,⁷ the Court in **Emmerson International Corporation** opined that:

“The cases suggest that even where the leave application does not meet the standard of being a matter of great general or public importance the Court still has wide discretion to grant leave if it is satisfied that otherwise the appeal should be submitted to the Privy Council for guidance, for example where there is reasonable doubt as to the accuracy of its decision. However, when considering the accuracy of the decision of the Court of Appeal the discretion should be exercised sparingly and with great care. It is not the function of the Court of Appeal to determine the correctness of the matters sought to be appealed. This is the function of the Privy Council.”

⁶ BVIHCMAP2019/0020 (delivered 27th July 2023, unreported).

⁷ See *Olasemo v Barnett Ltd* (1995) 51 WIR 191, *Pacific Wire & Cable Company Limited v Texan Management Limited et al* BVIHCVAP2006/0019 (delivered 6th October 2008, unreported) per Carrington JA [Ag.], *Attorney General of Trinidad and Tobago v Lennox Phillip et al* Civil Appeal No.155 of 2006 (delivered 6th June 2007) per Mendonça JA and *Renaissance Ventures Ltd et al v Comodo Holdings Limited* BVIHMCAP2018/0005 & BVIHMCAP2018/0008 (delivered 8th October 2018, unreported) per Mendes JA.

Substituting the reference to the Privy Council for a reference to the CCJ, it is evident that based on **Emmerson International Corporation**, for the applicants to succeed under the 'or otherwise' limb they would have to satisfy this Court that the appeal is one which ought to be submitted to the CCJ. The reason for the appeal's submission to the CCJ could include instances where guidance on the law is sought or there are doubts as to the accuracy of the Court of Appeal's decision. However, the caution in **Emmerson International Corporation** is to be kept in mind when considering the accuracy of this Court's decision.

Parties' submissions

- [13] The applicants submitted that one of the issues which fell to be determined in their appeal before the Court of Appeal was whether the respondent's failure to comply with section 59BB (1) and (2) of **POCA** should have resulted in the discharge of the Freezing Order. Section 59BB (1) and (2) of **POCA** states thus:

"59BB. (1) Where the Attorney General has applied for a property freezing order or an interim receiving order, he shall be treated for the purposes of section 114 of the Title by Registration Act, as a person entitled to stay the registration of dealing with land to which the application relates, or to which a property freezing order or an interim receiving order made on the application relates.

(2) A property freezing order or an interim receiving order is of no effect with respect to registered land unless it is registered as a charge under the Title by Registration Act." (Emphasis added)

- [14] The applicants describe this issue as being of central importance as there was no registration of the Freezing Order by the respondent against the Shawford Estate Property since 23rd December 2014 in accordance with **POCA**. The applicants submitted that the relevance of section 59BB(2) was raised in their submissions in support of the appeal filed on 3rd June 2020 and their submissions in reply filed on 23rd June 2020 at paragraphs 37 to 40 thereof. The applicants further contend that this issue was likewise raised by them in their submissions at first instance and yet not addressed by the trial judge.

- [15] The applicants point out that at paragraphs 14 through to 31 of the COA Judgment, the Court ruled on the indefeasibility of the certificate of title and registration of charges but failed to consider the effect of the respondent's non-compliance with section 59BB (1) and (2) of **POCA**. One sees that in the judgment of the Court of Appeal, no consideration was given to section 59BB(2) of **POCA**.
- [16] The applicants submitted that the respondent did not dispute the applicants' contention that: (i) the question of non-compliance with section 59BB(2) was one which the Court of Appeal was asked to determine; (ii) the Court of Appeal did not pronounce upon this issue; (iii) the Freezing Order was not registered as a charge under the **TRA**; and (iv) as a consequence the Freezing Order is deemed by section 59BB(2) to be of no effect.
- [17] They contended that they had been denied their right to be heard by the Court of Appeal, and in particular, to have all their issues of significance determined by the Court. They argued that they were entitled to a declaration that the Freezing Order was of no effect and this failure by the Court of Appeal therefore deprived them of their right to protection of law. They further posited that if they were denied an appeal to the CCJ, they would be saddled with a far-reaching Freezing Order, which under section 59BB(2) was of no effect. Finally, they asserted that to maintain the effectiveness of a Freezing Order which was not in compliance with section 59BB(2), simply due to the Court of Appeal's failure to treat with the Unregistered Freezing Order Issue on appeal, would undermine the rule of law and make a mockery of the applicants' rights to protection of the law.
- [18] In oral submissions, the respondent countered that there had been an amendment to **POCA** in 2022 which repealed the requirement for the Freezing Order to be registered. Section 7(b) of the **Proceeds of Crime (Amendment) Act, 2022**⁸ stated:

"7. Section 59BB of the Act is amended as follows:

⁸ Act. No. 4 of 2022.

(b) by deleting subsection (2) and substituting the following: “(2) The Registrar of Titles may, on an application made under subsection (1), order the entry of a caveat.”.

[19] The applicants, however, stated that this amendment came into effect in August 2022, more than a year after judgment had been rendered by the Court of Appeal and the amendment was not stated to have had retroactive effect. They asserted that the fact of the amendment was therefore no answer to the complaint raised by the applicants and the prospective appeal ought to be determined by the CCJ. I can find no basis on which to disagree with that submission.

[20] The respondent however, further asserted that the Unregistered Freezing Order Issue was not raised as a discrete ground of appeal before the Court of Appeal for its consideration. This issue was not stated in the notice of appeal and no declaration was sought by the applicants on the issue. The respondent further submitted that the applicants also have not taken issue with the Court’s statement of the issues for consideration in the appeal, at paragraph 7 of the COA Judgment. The respondent argued that the Unregistered Freezing Order Issue was raised only in the general context of the ‘Indefeasibility of Title’ ground of appeal (Ground 9 of the applicants’ grounds of appeal). The respondent made specific reference to the applicants’ reply submissions filed on 23rd June 2020 which were before the Court of Appeal. The respondent contended that the applicants’ submissions under the ground ‘Indefeasibility of Title’ began from paragraph 28 and on a reading of same, it was evident that the Unregistered Freezing Order Issue was raised within this context. The respondent argued that the Court of Appeal aptly dealt with the ‘Indefeasibility of Title’ issue in its decision (from paragraphs 14-26) and even went further at paragraphs 27-31 to deal with the registration of charges. Consequently, there was no omission by the Court.

[21] The respondent submitted that the way in which the Unregistered Freezing Order Issue was argued, in the context of the ‘Indefeasibility of Title’ ground of appeal, was insufficient to raise the matter as a live and distinct issue before the Court of

Appeal for determination. Learned counsel for the respondent further posited that, in the event that the Court found that the matter was sufficiently raised, the issue did not go to the correctness of the Court of Appeal's decision. Moreover, counsel for the respondent noted that the Freezing Order affected both real and personal property and the Shawford Estate Property was only one of the properties subject to the Freezing Order. Consequently, a failure to comply with section 59BB(2) would not be sufficient to discharge the entire Freezing Order and so the failure would only have an impact on the efficacy of the Order as it pertained to registered property.

[22] In oral submissions, counsel for the applicants conceded that the Unregistered Freezing Order Issue was not raised in the notice of appeal as a discrete ground of appeal. Counsel however pointed out that it was raised in oral submissions before the Court of Appeal.

[23] In light of counsel for the applicants' contentions, orders were made after the oral hearing of the application for the parties to furnish certain documents including the notice of appeal and the transcript of the proceedings before the Court of Appeal. These documents were filed together in a bundle on 17th May 2023. At page 1248 of the bundle, counsel for the applicants cited the specific references to the Unregistered Freezing Order Issue (the discrete point) which they rely on in support of their application.

Analysis

[24] The core issue which arises for determination before this Court is whether the application has traversed the threshold for the grant of leave to appeal to the CCJ under the 'or otherwise' limb of section 106(2)(a) of the **Constitution**. The applicants say that they have met the threshold because although the Court of Appeal ruled on the indefeasibility of the certificate of title and registration of charges, the Court gave no specific consideration to section 59BB(2) of **POCA** and failed to consider the effect of the respondent's non-compliance with section 59BB(1) and (2) of **POCA**. As a consequence, the applicants say that they have

been denied their right to be heard by the Court of Appeal and in particular, to have all of their issues of significance determined by the Court.

[25] In order to understand the issues arising in this application, it is important to trace how the Unregistered Freezing Order Issue was developed, pursued, and treated by the applicants in the court below and, thereafter, how the appeal was pursued when the applicants' notice and grounds of appeal in DOMHCVAP 2020/0005 were filed on 2nd June 2020.

[26] A review of the bundle documents filed in support of the appeal reveals that this issue was not frontally pursued by the applicants in the court below. The applicants assert that the issue was raised, not in their pleaded case, but rather in their written legal submissions at first instance. Indeed, it was only in legal submissions filed on 10th May 2019 after the trial (and following receipt of the respondent's speaking notes) that the matter was specifically raised (the "High Court Reply Submissions").

[27] The ethos of the High Court Reply Submissions was explained in paragraph 1. It appears that they were filed in accordance with the court order of 29th March 2019, apparently to respond to the respondent's unfiled speaking notes which contained new arguments and authorities which were not raised in prior submissions. At paragraph 13 of the applicants' High Court Reply Submissions, they contended:

"Public Interest

Public interest in the efficacy of legislation cannot override statute. In our case there can be no public interest in maintaining the "PFO" as the "PFO" is invalid. The respondent did not comply with section 59BB of POCA-Dominica (see paragraphs 17 through 30 below.)"

[28] In addition, at paragraphs 23 - 25 of the High Court Reply Submissions, the following submission was made:

"23. Most importantly the "PFO" is invalid as it has not been registered. Section 59BB (1) and (2) of POCA states thus:-

"(1). Where the Attorney General has applied for a property freezing order or an interim receiving order, he shall be treated for the purposes of section

114 of the Title by Registration Act, as a person entitled to stay the registration of dealing with land to which the application relates, or to which a property freezing order or an interim receiving order made on the application relates.”

“(2). A property freezing order or an interim receiving order is of no effect with respect to registered land unless it is registered as a charge under the Title by Registration Act.”

24. Consequently, the “PFO” in the case at bar, regarding the Shawford property is of no effect and must be discharged on a point of law. Continuing the “PFO” in these proceedings is therefore an abuse of process. The failure to register the “PFO” means that it cannot be relied on and the matter herein should be struck out.

25. Additionally, Section 59BB simply gives the respondent a right akin to that of a bank with a mortgage or caveat, but no right to challenge the registered owner under “TBR”. The applicants contend that there is no justification for the “PFO”. No irresistible inference can be drawn regarding this registered land.”

- [29] The applicants have contended that the Unregistered Freezing Order Issue was not addressed by the trial judge. While I agree that the learned judge in the court below may not have specifically addressed the provisions of section 59BB of the **POCA** in her written judgment, the applicants’ submissions as regards the validity of the Freezing Order were addressed at paragraph [60] of the judgment in the following general terms:

“This court does not accept and agree with the arguments raised by Learned Counsel Mrs Dyer Munro regarding the validity of the Freezing order herein and agrees with the learned Solicitor General that the public interest does lie in favour of maintaining the Freezing order until the determination of the civil recovery claim.”

- [30] This unequivocal ruling was clearly adverse to the applicants and if, (as they nevertheless contend), the learned judge did not consider or address their submissions on the Unregistered Freezing Order Issue, nor did she indicate her disposition, then this purported failure/basis for reversal should have featured in the grounds of appeal which they would have lodged in DOMHCVAP2020/0005. However, as learned counsel for the applicants conceded during the oral hearing, the notice of appeal filed on 2nd June 2020 disclosed no such ground of appeal.

Moreover, a review of the 15 grounds of appeal listed for the Court's consideration revealed that the trial judge's purported failure to address this issue was never expressly raised.

[31] I am obliged to consider the provisions of the **Civil Procedure Rules 2000** (the "**CPR**") which were inter alia intended to streamline the appeal process. **CPR** Part 62.4(1)(c) which makes that position clear, provides that "[a] Notice of appeal must be in Form 23 and must give details of –the grounds of the appeal". These Rules make clear that it is incumbent on the parties to set out their grounds of appeal clearly and to point the Court squarely towards the matters in dispute for determination. All the grounds of appeal that an appellant wishes to advance should be lodged with the appeal notice. Indeed, in the normal course, an appellant would be deemed to have waived any ground in favour of reversal by not raising that ground in its notice of appeal.

[32] It is important that an appellant set out grounds of appeal because it is in the grounds of appeal, not in the issues for determination that an appellant can complain about the conduct of the court below. It is the grounds of appeal that an appellant sets out his complaints of the lower court's errancy or truancy from evidence, fact, or law.

[33] **CPR** Part 62.4(5) further clarifies that:

“(5) The grounds of appeal under paragraph (1) (c) must set out –
(a) concisely;
(b) in consecutively numbered paragraphs; and
(c) under distinct heads;
the grounds on which the appellant relies, without any argument or narrative.”

[34] Critically, **CPR** Part 62.4(8) restricts an appellant from relying on a ground not mentioned in his notice of appeal without permission of the court. It follows that apart from the grounds in the notice of appeal, an appellant cannot argue any ground not listed therein. Any legal submissions advanced must therefore be based on the

grounds of appeal which are set out in the notice of appeal (or in any amended notice permitted by the court).

- [35] The general rule is however mitigated by **CPR** Part 62.4(9) which allows the court to consider grounds not set out in the notice of appeal, however, it makes clear that a court cannot make its decision on that ground without giving the respondent sufficient opportunity to contest that ground.
- [36] Interestingly, although at paragraph 16 of the applicants' notice of appeal, they stated that they "...would seek the Leave of this Honourable Court to file additional grounds of appeal when the notes of evidence in this matter are available", it has not been represented that the applicants ever sought or obtained the leave of the Court to argue additional grounds of appeal. Applying **CPR** Part 62.4 (8) the applicants would not in the ordinary course have been permitted to raise any challenge to the trial judge's finding on any issue if the matter had not been specifically raised in their grounds of appeal.
- [37] The most recent guidance as to the appropriate judicial approach to be adopted in such cases is set out in the English King's Bench Division's 2023 judgment in **Morgan-Rowe v Woodgate**.⁹ In that case, the defendant appealed a judgment on damages. The claimant had claimed for car hire and was allowed a higher rate on the grounds that she was impecunious. On appeal, there was a change of counsel. The new counsel's skeleton argued points that were not in the grounds of appeal and, indeed, were not argued below. The court dismissed a ground of appeal, concerning whether the period of repair should have been limited to two weeks and whether the respondent should have funded the repair costs herself, because: (i) the argument had emerged for the first time in counsel for the appellant's skeleton argument; (ii) it had not been contained in the grounds of appeal; (iii) no application had been made to amend those grounds; and (iv) the argument was fundamentally at odds with how the appellant had run the case at trial.

⁹ [2023] EWHC 2375 (KB).

[38] At paragraphs 49- 51 of the judgment, the court reasoned:

“49. As I have explained: (a) this argument emerged for the first time in Mr Roberts’ June 2022 Skeleton Argument; (b) it was not contained in his Grounds of Appeal; (c) no application was made to amend those Grounds; (d) it is fundamentally at odds with how the Defendant ran the case at trial.

50. I am quite clear that I should not permit this ground to be raised now. That is for the following reasons.

51. Firstly, by raising a wholly new argument in the Skeleton Argument without first seeking permission to amend the Grounds of Appeal, what the Defendant was doing, in effect (I do not say intentionally) was to circumvent CPR r 52.17, which provides that:

“An appeal notice may not be amended without the permission of the appeal court.”

[39] The court further observed at paragraphs 71-72:

“71. In the exercise of my case management powers, in particular under CPR r 3.1(2)(k) and (m), I decline to entertain this ground of appeal. In his opening remarks Mr Weir referred to the High Court not being ‘the Wild West’. Leaving aside the slightly emotive language, I take Mr Weir’s point. Proceedings in this Court are governed by detailed and carefully drafted rules. Those rules must be followed unless there is a reason not to do so, and the Court’s permission obtained. They require a party to present their case with clarity and precision. As Mr Weir said, and again I agree, ‘the rules are here for a reason, and they need to be respected.’

72. It therefore seems to me that it is not open to a litigant to ‘chop and change’ how they advance their case, certainly without good reason or explanation. Here, there is neither. A party is entitled to know how their opponent’s case is to going to be put, as is the court, otherwise the process of litigation and adjudication becomes very difficult. I regret to say that the way this appeal was presented did not always aid my ready comprehension of the issues arising in it.” (Emphasis added)

[40] It is however clear that during the course of the appeal proceedings the Court of Appeal did not adopt this approach. Instead, the parties were permitted to raise the Unregistered Freezing Order Issue and indeed there was extensive engagement with counsel for the parties on what has now become the fulcrum of this application. The relevance of section 59BB(2) was raised in the applicants’ submissions in

support of the appeal filed on 3rd June 2020 and in their submissions in reply filed on 23rd June 2020 at paragraphs 37 to 40 thereof.

[41] Framed under the heading 'Indefeasibility of Title - Ground of Appeal 9', the relevant paragraphs of the reply submissions read as follows:

"37. Without prejudice to the forgoing arguments, "POCA-Dominica". This provision is contained in section 59 BB (1) and (2) of "POCA" and was not adhered to by the Respondent.

38. "POCA-Dominica" section 59 BB (1) and (2) recognizes that a Property Freezing Order is of no effect until it is registered as a charge under the "TBR" [Title by Registration Act]

"59BB. (1) Where the Attorney General has applied for a property freezing order or an interim receiving order, he shall be treated for the purposes of section 114 of the Title by Registration Act, as a person entitled to stay the registration of dealing with land to which the application relates, or to which a property freezing order or an interim receiving order made on the application relates.

(2) A property freezing order or an interim receiving order is of no effect with respect to registered land unless it is registered as a charge under the Title by Registration Act."

39. Reference is made to the Appellants' arguments which are reproduced and found in paragraphs 19 through to 25 of the Appellants' Submission of May 10th 2019. The appellants have reproduced herein paragraphs 23 to 25 for the ease of the Court.

"23. Most importantly, the "PFO" is invalid as it has not been registered. Section 59BB(1) and (2) of "POCA-Dominica" provides:-

"59BB. (1) Where the Attorney General has applied for a property freezing order or an interim receiving order, he shall be treated for the purposes of section 114 of the Title by Registration Act, as a person entitled to stay the registration of dealing with land to which the application relates, or to which a property freezing order or an interim receiving order made on the application relates.

(2) A property freezing order or an interim receiving order is of no effect with respect to registered land unless it is registered as a charge under the Title by Registration Act."

24. Consequently, the “PFO” in the case at bar, regarding the Shawford property is of no effect and must be discharged on a point of law. Continuing the “PFO” in these proceedings [is] therefore an abuse of process. The failure to register the “PFO” means that it cannot be relied upon, and the matter herein should be struck out.

.....”

40. The Respondent has not registered the “PFO” in accordance with the “TBR”. The Appellants’ submission of May 10th 2019 (paragraphs 16 – 26) the issue was raised.

.....

48. The Appellants respectfully submit that the Appeal should be allowed on this ground as this issue was never considered by the Learned Judge in the Ruling.” (Emphasis added)

[42] Remarkably, ground 9 in the notice of appeal contends that the trial judge erred and was wrong in law as she failed to consider that the 2nd respondent (2nd appellant) held an indefeasible certificate of title and as a consequence of the **TRA**, the respondent could not submit that a person other than the 2nd respondent (2nd appellant) was the owner of the property unless fraud or adverse possession were established under the **TRA**.

[43] The applicants have argued that far from abandoning the issue the transcript of the proceedings before the Court of Appeal, reveals that the Unregistered Freezing Order Issue was raised several times. Pursuant to the order of the Court of Appeal and as part of the bundle of documents filed by the applicants on 17th May 2023, the applicants highlighted the specific references to the discrete point in the transcript of proceedings as being the following:

“MS. DYER-MUNRO: Yes, My Lord. I would say this, My Lords, that in addition to that argument, we raised the issue of Section 59-BB of POCA, providing that a property freezing order is of no effect with respect to registered land, unless it is registered as a charge on the [TBR].¹⁰

¹⁰ Page 15 of Transcript (page 1111 of PDF Bundle of documents filed 17th May 2023) – Lines 20-24.

.....
[We are] asking the Court to consider, and we said further, My Lords, for the consideration of this Court, that the POCA Dominica, Section 59-BB, expressly says in any event, and this argument is without prejudice to our indefeasibility argument, it says in any event for a freezing order to be considered or have an effect, it must be registered, and the registration is in recognition of the purport we submit of the [TBR], which deals with registration as conclusive. 59-BB, My Lord, has completely been ignored in the case at bar. There has been no registration, whatsoever, after nearly five years.¹¹

.....
JUSTICE WEBSTER: -- I want some clarification on 59-BB.¹²

.....
JUSTICE WEBSTER: The specific charge registered under Section, is it 59-BB?¹³

.....
MS. DYER-MUNRO: Because the [TBR], when it was enacted, did not contemplate and provide for a charge as is set out in POCA. The [TBR] --

JUSTICE WEBSTER: Right, and you're saying an amendment to [TBR] would have been necessary, but --

MS. DYER-MUNRO: This is precisely our point, My Lord.

JUSTICE WEBSTER: Okay.

MS. DYER-MUNRO: This is precisely our point.

JUSTICE MICHEL: And it doesn't matter whether one is talking about title in the name of the first or the second appellant, that argument would apply either way?¹⁴

.....
MS. DYER-MUNRO: Yes, My Lord. This doesn't apply, because in terms of enforcing that charge, one has to have specific provisions. So, for example, the registrar of titles under the [TBR], is given specific powers concomitant with what we call caveats, concomitant with what we call the mortgage or encumbrances, to carry through with the registration, so that it is a statutory

¹¹ Page 31 of Transcript (page 1127 of PDF Bundle of documents filed 17th May 2023) – Lines 3-13.

¹² Page 33 of Transcript (page 1129 of PDF Bundle of documents filed 17th May 2023) – Lines 7-8.

¹³ Page 34 of Transcript (page 1130 of PDF Bundle of documents filed 17th May 2023) – Lines 7-8.

¹⁴ Page 34 of Transcript (page 1130 of PDF Bundle of documents filed 17th May 2023) – Lines 11-22.

provision which is regulated by this specific statutory provisions of the [TBR], so it doesn't just exist in isolation, we submit."¹⁵

[44] It is clear from these excerpts that the issue was identified and that the Court was fully engaged both in written and oral submissions. It is also clear that far from declining to treat with the Unregistered Freezing Order Issue, the Court actively solicited clarification and submissions in relation to the same.

[45] Ms. Dyer-Munro's discussion with Webster JA [Ag.] from pages 31 – 35 of the transcript is of particular relevance. The excerpt reveals that Webster JA [Ag.] continued to seek clarification from learned counsel as to her argument on section 59BB. The following exchange is recorded:

“JUSTICE WEBSTER: What is the -- I ask, what is the effect of registering a property freezing order or an interim freezing order under this section?

MS. DYER-MUNRO: We would say that it would be in sync with the purports of the [TBR], which required that any dealing, anything affecting registered land in the Commonwealth of Dominica, any feature that has to affect registered land, must require registration. It --

JUSTICE WEBSTER: What is the effect of non-registration and is there a provision in the Act for applying for late registration?

MS. DYER-MUNRO: No there is not a provision for late registration, but the effect of registration and this provision is the legislation recognizes that the POCA Dominica must be in sync with the [TBR], but stops short --

JUSTICE WEBSTER: No, I appreciate that, but the effect of registration under 59-BB is that it creates a charge over the land --

MS. DYER-MUNRO: It --

JUSTICE WEBSTER: -- which is interest in the land, which seems to me and I have no clear view or firm view on this, but does that affect the issue of indefeasibility, because this is created on interest in the land?

MS. DYER-MUNRO: Yes, My Lord. It does create the issue of indefeasibility, because under the [TBR] that charge of POCA is not recognized. Under the [TBR], the only charge that is recognized by the legislatures is mortgages, encumbrances, and the like, so that when one

¹⁵ Page 35 of Transcript (page 1131 of PDF Bundle of documents filed 17th May 2023) – Lines 4-12.

seeks to provide legislative provisions, we submit, which have to touch and concern the [TBR], it becomes necessary to have these specific amendments, and all of this, we submit, arises, because the legislation in the U.K. does not consider, does not have, does not recognize, or does not know, of a concept of indefeasibility. Had the U.K. legislation been on par, we submit, with our legislation, then we would have no difficulty, and we would submit to the Court that the decision from the CCJ, where the issue of indefeasibility was addressed, recognized that we need clear and expressive language in the [TBR] to –

JUSTICE WEBSTER: Ms. Dyer-Munro, I appreciate that fine, but –

MS. DYER-MUNRO: Yes.

JUSTICE WEBSTER: -- I want some clarification on 59-BB.

MS. DYER-MUNRO: Yes, My Lord.

JUSTICE WEBSTER: It seems to me that a person, as in this case, that has a property freezing order or an interim receiving order –

MS. DYER-MUNRO: Yes.

JUSTICE WEBSTER: -- can't have that register, that charge, against the land. And, a person who has a charge against land, has an interest in the land, usually that charge can be exercised by selling the land, so I --

MS. DYER-MUNRO: Yes, My –

JUSTICE WEBSTER: -- see this, unless you -- and this is why I want an explanation, because I see this as creating an interest in the land, which goes against the concept of indefeasibility.

MS. DYER-MUNRO: But I would say this, My Lord, that when a charge is recognized against the land under the [TBR], the [TBR] has specific provisions in how one deals with the charge. So, for example, under the [TBR] of the Commonwealth of Dominica, mortgages and encumbrances are recognized. The legislation of the TBR goes further and it enacts specific provisions to deal with those instances. One, either sell by public auction under a mortgage. There –

JUSTICE WEBSTER: The specific charge registered under Section, is it 59-BB?

MS. DYER-MUNRO: No, My Lord, because --

JUSTICE WEBSTER: Why -- I don't -- why not?

MS. DYER-MUNRO: Because the [TBR], when it was enacted, did not contemplate and provide for a charge as is set out in POCA. The [TBR] --

JUSTICE WEBSTER: Right, and you're saying an amendment to [TBR] would have been necessary, but --

MS. DYER-MUNRO: This is precisely our point, My Lord."

[46] Learned counsel for the applicants then summed up her argument under this ground at page 35 of the transcript by saying:

"...And, all that we are saying in respect of this ground of appeal, My Lords, is that all that the respondent is seeking to now do, with respect to the second appellant, would have been possible, we submit, had there been an amendment to the [TBR] to incorporate, to facilitate, to enable, the carrying out of what POCA 2002 and 2013 seeks to do. But the [TBR] enacted several years ago from the old legislative provisions of Dominica, did not contemplate or provide and could not have provided for a scenario, as now exists, of civil recovery under POCA, because that was nonexistent at the time."

[47] The transcript of proceedings also reveals that the respondents were similarly engaged with this issue. Commencing at page 49 of the transcript of proceedings before the COA is the following exchange:

MS. BURTON: ...And, if My Lords were to recall, the definition of recoverable property also include -- I think it was that term at 59A -- of persons into whose hands the property may be followed. So that is also an indication that the -- if the property is regarded as unlawful property, as property obtained through unlawful conduct, it doesn't matter who is holding the property at the time that recovery order is sought, the Attorney General can chase the property into whoever's hands the property is once it can be proven that the property was obtained through unlawful conduct or the property is tainted property.

JUSTICE MICHEL: But would that apply to registered land?

MS. BURTON: It is our submission that it does, My Lord, which brings me to our response to the indefeasibility clause.

Firstly, we rely on our submissions in that regard. Secondly, the statement of recovery proceedings -- or the Proceeds of Crime Act, which provides for civil recovery, is essentially forfeiture proceedings. So what is happening is that the Attorney General is saying that, look, you have this property which we are saying was obtained through unlawful conduct. The ownership of

the property is not challenged in the sense that we're not saying that the certificate of title was obtained in error or that it should be in the name of X person or Y person instead. We're saying that, yes, we recognize that you on the face of it are the legal owner of that property, but that property was obtained through unlawful conduct or that property is tainted and, therefore, the state is entitled to go after that property to forfeit that property because of its provenance.

So even if the property is registered land, if it can be shown that the property was obtained through unlawful conduct, whether of the legal owner or some other person, then the Attorney General is entitled to seek to a recovery order of that property and, in the interim, a property freezing order to preserve those assets until a recovery order is obtained.

The purpose of the Proceeds of Crime Act is to deprive persons of the benefits or the proceeds of the criminal activity, that is the *raison d'être* of the Act; hence, the regime of going after property and not after the persons. It's not an in personam punishment, so to speak, it's really in rem to go after the property and not basically seek a conviction or charge of the persons into whose hands the property is. And another reason why it's our submission, My Lords, that the recovery proceedings or even the PFO applies to registered land would be Section 59(bb), which was relied on by my learned friend.

JUSTICE MICHEL: Section 59 what?

MS. BURTON: B-B. And that can be found at page 58 of the Record of Appeal Number 2.

Firstly, it is our submission that this section speaks to the enforcement of a property freezing order, it does not go to the grounds of the order. When one reads the section, one realizes that it speaks to how the order can be enforced because it is saying, when you apply for the order, you can state a registration (indiscernible) entitled to state a registration of her dealing in the land.

Now, this section specifically acknowledges Section 144 of the Title by Registration Act -- one one four, sorry -- 114 of the Title by Registration Act, which the Title by Registration Act is exclusively refers to land and it sets out how one would enforce a property freezing order against land which is registered.

So it is our submission that if registered land was somehow outside of the purview or outside of the power or the scope of the Proceeds of Crime Act, there would be -- this section would not exist; Parliament would not have inserted this section.

So, as I indicated, this section -- our submission of this section speaks to the enforcement of a PFO, it doesn't go to the grant of the PFO. So it's our submission that, irrespective or not of whether the Attorney General takes advantage of the entitlement that this section grants, it doesn't mean that the court was wrong in granting the PFO in the first place because this section speaks of how you would go ahead and make the PFO effective. But it's also our submission that this section does acknowledge that a PFO can be granted in respect of registered property.

I'm not sure if I answered My Lord's question satisfactorily.

JUSTICE MICHEL: Yes, you may proceed.

MS. BURTON: Okay, glad I did.

[48] Having reviewed the notice of appeal and the applicants' submissions before the Court of Appeal it is clear that while the applicants did not pursue the Unregistered Freezing Order Issue as a distinct ground of appeal, they posited the issue in such a way that it was subsumed under the indefeasibility of title ground of appeal. What is quite clear is that given the way in which the parties treated with this issue in their written and oral submissions before the Court, the only logical conclusion which can be drawn is that the applicants wished to have the Court consider and address this issue.

[49] However, having reviewed the COA judgment, it is clear that the Court's reasons do not address the Unregistered Freezing Order Issue – not as a discrete issue and not as an issue which was subsumed under ground 9 of the applicants' grounds of appeal. Given the fact that this issue was unequivocally raised in legal submissions before the Court for its consideration and that rather than declining to consider it, the Court fully engaged the parties on this issue and encouraged them to provide clarification and to make submissions, it is surprising that the COA's judgment is deafeningly silent on this issue.

[50] Appellate courts have repeatedly held that a trial court does not have to rule on every submission that is made by counsel. Instead, a court is required to deal with those issues which are vital to the determination of the matter and give reasons for

its decision.¹⁶ Curiously both Baptiste JA and Webster JA [Ag.] confirmed this legal principle in their judgments in **Jhawnie Gage et al v Attorney General of the Commonwealth of Dominica**.¹⁷ However, the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in the cause. An appellate court has jurisdiction to reverse or affirm the findings of the trial court. An appellate court is therefore required to address itself to all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court and record findings supported by reasons on all issues and contentions raised by the parties.

[51] I am satisfied that despite the decidedly oblique and belated way in which the applicants have treated with this Unregistered Freezing Order Issue both in the court below and on appeal, it was clearly an issue which was sufficiently pressed by the applicants both in written and oral submissions before the Court. It is also clear that the respondent confronted this issue in his submissions and in so doing made it incumbent on the Court to address the issue. Whether the Court chose to deal with this as a free-standing issue or as part of its reasoning under the 'Indefeasibility of Title' ground or indeed whether it simply held that the issue did not fall to be determined by the Court, it seems to me that the issue ought to have been addressed by the Court in its judgment.

[52] The applicants have now advanced the Unregistered Freezing Order Issue as the fulcrum of their application for leave to appeal to the CCJ, and they say that in ignoring this issue, they have been deprived of their right to have all their issues of significance determined by the Court. Given the way in which the applicants have dealt with the matter during the course of the appeal proceedings, in my judgment this argument has some force.

¹⁶ *Emmerson International Corporation v Renova Industries Ltd et al* BVIHCMAP2016/0029 (delivered 23rd March 2017, unreported); *Julian Svirsky and another v Arman Oyekenov* BVIHCMAP2021/0040; BVIHCMAP2021/0046; BVIHCMAP2022/0005 (delivered 8th November 2023, unreported).

¹⁷ *DOMHCVAP2020/0005* (delivered 15th June 2021, unreported).

[53] Moreover, the applicants' case appears to advance that the non-registration of the freezing order cuts across everything that was done in relation to the registered property and they say that the Court's failure to decide this issue leaves them restricted by a freezing order which should have no effect as against registered land and which therefore could not impact the indefeasibility of their title. The resolution of this issue was clearly vital to the Court's conclusions and yet it has not been resolved definitively. I am satisfied that this is enough to call into question the accuracy of the COA Judgment such as to satisfy the 'or otherwise' limb of section 106(2)(a) of the **Constitution**.

[54] Moreover, notwithstanding the recent legislative changes to the **POCA** which has repealed the requirement for the Freezing Order to be registered, it is apparent that the Unregistered Freezing Order Issue in the context of registered land raises a discrete novel point of law which has not been previously decided by the courts in the Eastern Caribbean or indeed further afield. It is also one that could benefit from guidance by the CCJ on the law.

[55] As to the issue of costs, I note that no such costs order was made at the stage of the Court of Appeal, and I therefore find it appropriate in the circumstances to make a similar order.

Order

[56] I would therefore order as follows:

- (i) The applicants are granted leave to appeal to the Caribbean Court of Justice pursuant to section 106(2)(a) of the Constitution of the Commonwealth of Dominica against the decision of the Court of Appeal rendered on 11th June 2021 and re-issued 15th June 2021, on the following conditions:

- (a) The applicants do lodge with the Registrar of the Supreme Court of the Commonwealth of Dominica, security for costs in the sum of EC \$10,000.00 within 90 days of the date hereof; and

- (b) The applicants within 90 days of the date hereof shall furnish the Registrar of the Supreme Court of the Commonwealth of Dominica, with a list of documents which they propose should be included in the Record of Appeal.
- (ii) Upon compliance with the conditions herein stated, the Registrar of the Supreme Court of the Commonwealth of Dominica shall issue a Certificate of Compliance in conformity with Form 2A, Schedule 3 of the **Caribbean Court of Justice (Appellate Jurisdiction Rules) 2021** and within 7 days of its issue serve copies of the said Certificate on the applicants and the intended respondent and shall notify the Registrar of the Caribbean Court of Justice.
- (iii) No order as to costs.

I concur.
Trevor Ward
Justice of Appeal

I concur.
Gerard St. C. Farara
Justice of Appeal [Ag.]

By the Court

Deputy Chief Registrar