

**IN THE EASTERN CARIBBEAN SUPREME COURT
GRENADA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO.: GDAHCV2024/0500

**IN THE MATTER OF THE WEST INDIES ASSOCIATED STATES SUPREME COURT
ORDER 1967
("THE COURTS ORDER")**

AND

**IN THE MATTER OF THE JUDICIAL AND LEGAL SERVICES COMMISSION
REGULATIONS
("THE JLSC REGULATIONS")**

AND

**IN THE MATTER OF THE APPOINTMENT OF EDDY VENTOSE AS A JUSTICE OF
APPEAL OF THE EASTERN CARIBBEAN SUPREME COURT
("THE APPOINTMENT")**

AND

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY WAY OF A WRIT
OF CERTIORARI**

BETWEEN:

JAMES A. L. BRISTOL KC

Claimant

AND

THE JUDICIAL AND LEGAL SERVICES COMMISSION

Defendant

AND

EDDY DAVID VENTOSE

Interested Party

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Mr. Sydney A. Bennett KC and Mr. Dylan Charles of counsel for the Claimant

Mr. B. Michael Hylton KC, Ms. Dia Forrester and Mr. Sundiata Gibbs of counsel for the Defendant

Mr. Anand Ramlogan SC and Mrs. Daniella Williams Mitchell of counsel for the Interested Party

2025: May 19th;
June 2nd, 18th, 24th; (Submissions)
September 30th; (Submissions)
December 12th.

DECISION ON APPLICATION DISPUTING JURISDICTION

- [1] **GLASGOW, J.:** To say that Mr. Justice of Appeal Eddy David Ventose (hereafter referred to as “Justice Ventose”) is an extraordinarily gifted legal mind and scholar may be considered crass euphemism to all who know him well. A cursory examination of his curriculum vitae bears out the veracity of this assertion. His academic qualifications include a doctorate from the University of Oxford, a master’s degree from the University of Cambridge, a bachelor’s degree from the University of the West Indies along with several other diplomas and certificates. Postgraduate admissions to practise law include admissions to the bar of England and Wales, Saint Lucia, Saint Kitts, Barbados, Guyana and Dominica. He has served in very senior posts as Dean of the Faculty of Law at the University of the West Indies, Senior Legal Consultant, Senior Legal Advisor, High Court judge, Court of Appeal judge and Professor of Law, among many other posts. Justice Ventose has also published many outstanding books, articles and papers touching a wide range of legal issues. His work has been widely recognised, and his accolades are way too many to list in this ruling.
- [2] Considering the foregoing, one could hardly be accused of proposing the implausible if it is suggested that Justice Ventose is a person who possesses qualities of a more than capable Justice of Appeal. I do not believe that anything contended by the claimant (hereafter referred to as “Mr. Bristol”) on this application disputes these views.
- [3] However, Mr. Bristol has an issue with Justice Ventose’s appointment to the post of judge of the Eastern Caribbean Supreme Court of Appeal (hereafter referred to as “the Court of Appeal”). Mr. Bristol’s complaint is that appointments to the Court of Appeal are to be made by the defendant, the Judicial and Legal Services Commission

(hereafter referred to as “JLSC”) in accordance with section 5 of the West Indies Associated States Supreme Court Order 1967 (hereafter referred to as “the Courts Order” and “section 5”). Mr. Bristol argues that section 5 circumscribes the manner in which the JLSC makes the appointments of Justices of Appeal in that, among other things, the section requires the JLSC to only appoint persons to the office of Justice of Appeal who hold the minimum qualifications and experience detailed in section 5. Mr. Bristol complains that, notwithstanding his impressive legal qualifications and experience, Justice Ventose does not possess the qualifications outlined in section 5. Accordingly, Mr. Bristol argues that when the JLSC appointed Justice Ventose to the Court of Appeal it acted without legal authority to do so. Justice Ventose, in Mr. Bristol’s view, should not be sitting as a judge of the Court of Appeal.

- [4] It might lend some insight into our discourse to say a word at this juncture about section 5 since it seems to be the fulcrum on which this entire dispute turns.

A word about section 5

- [5] Insofar as it is relevant to this ruling, I have found a succinct and eloquent account of the history of the Eastern Caribbean States Supreme Court (hereafter referred to as “ECSC”), the Courts Order and the JLSC in submissions filed on behalf of Justice Ventose on 17th June 2025. I trust that I am permitted to borrow and recite herein the well-expressed articulation of the history of the court. The following is extracted from paragraphs 19 to 22 of Justice Ventose’s 17th June 2025 submissions –

“19. The ECSC emerged from the constitutional developments of the 1960s when several British Caribbean territories sought new arrangements with the United Kingdom. While Trinidad and Tobago, Jamaica (1962), and Guyana (1966) achieved full independence, the territories that would become the Organization of Eastern Caribbean States - Antigua, Anguilla, Dominica, Grenada, Saint Vincent, Saint Kitts & Nevis, and Saint Lucia - adopted a distinct path. Following Constitutional Conferences in London in 1966, these territories entered into a novel “status of association” with the United Kingdom, formalised through the West Indies Act 1967.

20. Section 6 of the West Indies Act provided for Her Majesty by Order in Council to establish common courts for the associated states (section 6(1) and for a ‘commission’ to have ‘duties and powers’ in relation to any court

established under the Order in Council and any judges of such court (section 6(3)).

21. A few days after the West Indies Act 1967 came into force, Her Majesty approved the West Indies Associated States Supreme Court Order (SI 1967/223). The Courts Order has been recognised in the Associated State Constitution of 1967 and the Independence Constitutions of the respective States, including in section 105 of the Independence Constitution of Grenada in 1974.

22. The Courts Order established common courts for the Associated States (section 4) as well as the Judicial and Legal Services Commission (section 18).”

[6] Section 5 is the section which empowers the JLSC to make appointments to the office of Justice of Appeal. That section reads—

“5.—(1) The Chief Justice shall be appointed by Her Majesty by Letters Patent and the Justices of Appeal and the Puisne Judges shall be appointed on behalf of Her Majesty by the Judicial and Legal Services Commission.

(2) A person shall not be qualified to be appointed—

(a) as Chief Justice or a Justice of Appeal unless—

(i) **he has been for a period or periods amounting in the aggregate to not less than five years a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or**

(ii) **he is qualified to practise as an advocate in such a court, and has so practised, for a period of, or periods amounting in the aggregate to, not less than fifteen years;**

(b) as a Puisne Judge unless—

(i) **he is or has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or**

(ii) **he is qualified to practise as an advocate in such a court and has so practised, for a period of or periods amounting in the aggregate to not less than ten years.**

(3) For the purposes of subsection (2) of this section references in that subsection to a period or periods during which a person has practised as an advocate in any such court as is mentioned in that subsection shall be construed as including a period or periods during which a person—

(a) **has been serving in the office of judge of any such court; or**

(b) after having become qualified to practise as an advocate in any such court, has been serving in a public office in some part of the Commonwealth the functions of which include ‘appearing as an advocate in any such court or in the office of magistrate, or registrar of a court, in some part of the Commonwealth.’ (Bold emphasis mine)

The present ruling

- [7] The present ruling is not concerned with the merits of the complaints raised by Mr. Bristol about Justice Ventose’s appointment to the Court of Appeal by the JLSC. Rather, this ruling addresses a preliminary concern raised by Justice Ventose. In addition to disagreeing with Mr. Bristol’s complaint that he does not possess the section 5 qualifications to sit as a judge of the Court of Appeal, Justice Ventose has asked this court to consider whether it has the jurisdiction to even hear the complaint brought by Mr. Bristol about his appointment to the Court of Appeal.
- [8] Courts ought not to hear cases over which they have no jurisdiction, and as such the court must properly examine the jurisdictional challenge before proceeding to examine the merits of Mr. Bristol’s complaint.
- [9] The Eastern Caribbean Supreme Court **Civil Procedure Rules (Revised Edition) 2023** (hereafter referred to as “the CPR”) in Part 9.7 allows a party (in this case Justice Ventose) to file an application asserting that the court lacks jurisdiction to hear a claim. Alternatively, Justice Ventose asks that, even if the court satisfies itself that it has the jurisdiction to hear Mr. Bristol’s complaint, the court should not entertain it, or to put it in legalese, the court ought to stay its jurisdiction since it would be in the interest of justice to do so. **CPR 9.8** permits such a request to be made. In the further alternative, Justice Ventose asks the court to strike out Mr. Bristol’s claim as he asserts that the claim is an abuse of the court’s process. **CPR 26.3** permits such a strike out application to be made. These concerns will together be referred to in this ruling for convenience (hopefully not crudely) as the jurisdiction complaints.

- [10] In response to the jurisdiction complaints, Mr. Bristol roundly refutes Justice Ventose's assertions. His rebuttal is that this court does have the jurisdiction to hear his case and it ought not to stay its hand in doing so. He also asserts that his claim is meritorious and should not be struck out. Mr. Bristol also made a somewhat muted lament that Justice Ventose does not have standing to raise this jurisdiction complaint but I observe that he has not pressed the point in his closing submissions. I will not belabour that point either, other than to say that Mr. Bristol was correct not to contest Justice Ventose's standing to lodge the jurisdiction complaints.
- [11] **CPR 56.9** confers on a judge in administrative proceedings a broad discretion to give such directions as are necessary to ensure that any person with a sufficient interest in the subject matter of the claim may be heard, including by directing the filing of submissions or other participation in the proceedings as the court considers appropriate.
- [12] The court need look no further than its decision in **Grenada Land Actors v The Planning and Development Authority**¹ which addressed predecessor provisions, **CPR 56.11(2)(a) and (b)** of the **Civil Procedure Rules (Revised Edition) 2000**, now **CPR 56.9(2)(a) and (b)**:

“38. What then is the extent to which the applicants are to participate in these proceedings? GLA is of the opinion that the applicants may be allowed to make written or oral submissions. The applicants respond that they should be allowed to be joined as interested parties who are permitted to file evidence in addition to written submissions. I find some assistance in the approach adopted by our Court of Appeal in *Treasure Bay Limited* in similar circumstances where the court allowed *Cage (St. Lucia) Limited* to be joined as an interested party and ordered all previous documents in the proceedings to be served on *Cage*. *Cage* was allowed to file evidence and the other parties were given an opportunity to respond. The foregoing approach was also adopted by the high court in *Saint Vincent* in *Lavaggi v The Physical Planning and Development Board* where the court allowed *Wireless Ventures* to be joined as an interested party and ordered all previous documents in the proceedings to be served on *Wireless Ventures*.

39. I am minded to adopt the same approach in this case. For one thing I do not see **CPR 56.11(2)(a)** as being circumscribed by **CPR 56.11(2)(b)** in the manner relied on by GLA. **CPR 56.11(2)(a)** gives the court the discretion to

¹ [2021] ECSCJ No.708

hear anyone who has a sufficient interest. In that regard the rule itself does not delineate the manner in which the court is to exercise this discretion. CPR 56.11(2)(b) further gives the court the discretion to allow the person who has sufficient interest to make either oral or written submissions. Again, the rule does not mandate that this is the only manner in which the discretion to be heard must be exercised. Indeed the rule says the court “may” so proceed. I think that it is proper to so interpret this rule. If the court is to be allowed the power to permit the widest possible participation where warranted, there seems considerable wisdom in the rule permitting the court the latitude or more properly put, the discretion to craft the manner in which and the extent to which the interested party is to participate as may be necessary in all the circumstances. In this case for instance, there is substantial evidence of some engagement between the applicants, in particular, Range and GLA. Restricting Range to merely making written submissions may not allow Range to fully ventilate the concerns regarding the impact on their interests. Natural justice interests as I have found in this case will not be vindicated by restricting Range or Hartman to ventilating their concerns via evidence brought by the Planning Authority or if the Planning Authority chooses to call them as witnesses on its behalf.”

[13] It has therefore been the approach of this court that where an interested party stands to be adversely affected by the outcome of administrative proceedings, the discretion under **CPR 56.9** ought to be exercised in favour of ensuring broad and meaningful participation by that party. In the present case, Justice Ventose has been a named party to these proceedings from the inception and possesses a direct and substantial interest as the issues raised are focused on **his** judicial appointment. The circumstances therefore warrant his fullest participation in accordance with the principles outlined above.

[14] So how did we get here? Some background is necessary to understand the journey to the claim and to this ruling on the jurisdiction complaints.

The facts

[15] I take some of the history about the journey to this ruling from the facts recited in Mr. Bristol’s amended fixed date claim form filed on 2nd January 2025.

[16] In 2022, the ECSC began the search for a Chief Justice after the end of service on retirement of the distinguished Dame Janice Pereira DBE, LLD A Search Committee

was appointed by the Heads of Government of the Organisation of Eastern Caribbean States (hereinafter referred to as the “OECS”) who are tasked by the Courts Order with appointing a person to the office of Chief Justice by the unanimous vote of all of the OECS Heads of Government. The Search Committee was headed by an equally outstanding legal luminary, Sir Dennis Byron, former OECS Chief Justice and former President of the Caribbean Court of Justice (hereinafter referred to as the CCJ)

- [17] The Search Committee was tasked with, among other things, inviting applications for the post of Chief Justice, vetting applicants for suitability, interviewing suitable applicants and presenting a short list of qualified applicants to the Heads of Government for their approval of the candidate to fill the post of Chief Justice of the ECSC.
- [18] The post of Chief Justice was advertised and on 27th September 2022 Justice Ventose forwarded his application along with his qualifications and other information to the Search Committee. Subsequent to his application for the post of Chief Justice, Justice Ventose served as an acting Justice of Appeal from May to December 2023. He was fully appointed to the post of Justice of Appeal on 8th January 2024, the post which is the focus of the present dispute. He was also appointed chair of the Judicial Education Institute (hereinafter referred to as “the JEI”) of the ECSC, tasked with developing a strategic plan for judicial education and coordinating training activities.
- [19] On 10th February 2024, the Search Committee requested that Justice Ventose provide further information to the committee about his qualifications to be appointed to the post of Chief Justice. On 5th March 2024, Justice Ventose responded to the Search Committee’s request and provided further information.
- [20] The long and short of what transpired thereafter is that the Search Committee was not satisfied that the material presented by Justice Ventose met the qualifications required by section 5 to hold the office of Chief Justice. The Search Committee informed Justice Ventose that it had concluded that his qualifications did not meet the criteria to be appointed as Chief Justice. The Search Committee communicated this view to Justice Ventose by way of letter dated 30th April 2024. The 30th April 2024

letter stated a little more though. The 30th April 2024 letter also included the statement that the Search Committee believed that Justice Ventose's qualifications failed to satisfy the requirements to hold the office of a judge of the Court of Appeal, the office to which he was appointed on 8th January 2024.

- [21] Justice Ventose disagreed with the conclusion formed by the Search Committee both in reference to his application to be appointed as Chief Justice and his current appointment as a judge of the Court of Appeal. He stated his objections in a letter dated the very 30th April 2024 in response to the Search Committee's letter of even date. Thereafter a flurry of letters were exchanged between the Search Committee and Justice Ventose affirming their previously stated contentions on his qualifications to be appointed as Chief Justice and his holding office as Justice of Appeal.

- [22] The Search Committee's concerns about Justice Ventose's appointment to the post of Justice of Appeal were also raised with the JLSC, the defendant herein, since, as can be seen by section 5, the JLSC is the functionary tasked with appointing judges to the Court of Appeal. In its communication to the JLSC dated 30th April 2024, the Search Committee expressed the view that Justice Ventose's appointment to the Court of Appeal by the JLSC may have been done in violation of section 5(2) of the Courts Order. The Search Committee asked for the JLSC's attention to the matter.

- [23] The JLSC responded to the Search Committee by way of letter dated 3rd May 2024. In its response, the JLSC reiterated its constitutional role to make appointments of judges to the Court of Appeal and insisted that, in its opinion, Justice Ventose's qualifications met the criteria set out in section 5(2) and in particular, section 5(2)(a)(ii) of the Courts Order for his appointment as Court of Appeal judge. By letter dated 7th May 2024, the Search Committee responded to the JLSC indicating its disagreement with the JLSC assertions and thus matters rested; at least for a little while.

- [24] On 9th December 2024, the topic of Justice Ventose's appointment to the Court of Appeal moved to the courts. On that date, Mr. Bristol filed a fixed date claim form which was supported by an affidavit. A fixed date claim form is the procedure set out

in the CPR by which a person can file a complaint seeking a court's review of the exercise of the functions of public authorities such as the JLSC. **Part 56** of the **CPR 2023** refers to such proceedings as administrative claims. In these proceedings, Mr. Bristol asks the court to, among other things, review the process by which the JLSC appointed Justice Ventose and to find that the JLSC acted outside of the terms of section 5 and in particular section 5(2). Mr. Bristol asks the court not only to find that the JLSC acted improperly in appointing Justice Ventose to the Court of Appeal but to set aside (or to use legal terminology, quash) that allegedly improper decision. Mr. Bristol amended his claim form in January 2025 to seek relief pursuant to **section 101** of the **Grenada Constitution** to the effect that the JLSC's appointment of Justice Ventose as judge of the Court of Appeal is of no effect (null and void) since Justice Ventose did not meet the qualifications set out in section 5(2) of the Courts Order. Claims for constitutional relief are also brought by way of a fixed date claim form pursuant to the same **Part 56** of the **CPR**.

[25] Thereafter, Justice Ventose filed the present jurisdiction application on 3rd April 2025. Mr. Bristol responded by filing a 'Notice of Objection' on 14th April 2025. The application came on for hearing on 19th May 2025, where the court invited all parties to file written submissions in support of the application and objection, and also permitted the parties to respond to the submissions.

[26] As I have stated above, the application and objection touch and concern the questions of whether the court has jurisdiction to hear Mr. Bristol's claim, whether that jurisdiction should be exercised if it exists and whether, in any event, the claim amounts to an abuse of the court's process and should be struck out. All parties duly complied with the court's order.

Grounds of the Application/Notice of Objection

[27] The grounds of the application as raised by Justice Ventose may be summarised as follows:

- (1) The claim is an attempt to remove him from office as a Justice of Appeal of the ECSC by means other than permitted by section 8 of the Courts Order, and this court does not have jurisdiction to hear the claim.
- (2) Section 8 of the Courts Order provides exclusive mechanism for the removal of a judge of the Supreme Court of the Eastern Caribbean. Circumventing section 8 mechanisms constitutes an impermissible collateral attack on Justice Ventose's appointment and amounts to an abuse of the court's process.
- (3) Decisions including **Marcia Ayers-Caesar v The JLSC**², **Horace Fraser v Judicial and Legal Services Commission**³, **Thomas v Attorney-General of Trinidad and Tobago**⁴, and **Rees v Crane**⁵ emphasise that judicial removal procedures are exclusive and must be interpreted broadly.
- (4) Granting the relief sought would effectively remove Justice Ventose from office without following constitutionally prescribed procedure, undermining judicial independence and integrity.
- (5) The ECSC is a multi-jurisdictional court, and a removal initiated in one member state would interfere with regional judicial administration and bypass supra-national safeguards.
- (6) Even if the court has jurisdiction, it should refuse to exercise it to avoid destabilising the judiciary and setting a precedent for repeated challenges to judicial appointments by judicial review which undermines public confidence.

[28] In his notice of objection to Justice Ventose's application, Mr. Bristol indicates that he does not seek to terminate Justice Ventose's judicial appointment for any alleged 'inability' or 'misbehaviour' predating or relating to his appointment. His objections, both substantive and procedural, may be condensed as follows:

- (1) Standing (this ground has been addressed above in this ruling).

² [2025] 3 LRC 500

³ [2008] UKPC 25

⁴ [1982] AC 113

⁵ [1994] 2 AC 173

- (2) By participating in the first hearing and seeking permission to file an affidavit in response, Justice Ventose must be taken to have accepted the court's jurisdiction to hear the claim.
- (3) The High Court has jurisdiction to hear and determine the matter and should not abdicate its important function of constitutional adjudication.
- (4) That the instant proceedings pertain to the breach of constitutional requirements in the appointment process itself, not Justice Ventose's performance in office, and not the removal of a judge from office for disability or misconduct.

What are the jurisdiction complaints?

Mr. Bristol's arguments

[29] In written submissions filed on 2nd June 2025, Mr. Bristol frontally confronts Justice Ventose's jurisdiction complaints. As noted above, Mr. Bristol has reconsidered his first objection regarding Justice Ventose's standing to bring the jurisdiction application. With respect to the claim about this court's jurisdiction, Mr. Bristol makes the following points –

- (1) Contrary to Justice Ventose's contention, the Constitution of Grenada (hereafter referred to as "the Constitution") confers upon the High Court specific jurisdiction to deal with the matters raised in the claim brought against the JLSC;
- (2) The claim seeks judicial review of the JLSC's decision to appoint Justice Ventose to office on the basis of Mr. Bristol's allegation that by reason of the appointment a provision of the Constitution (other than a provision of Part I) i.e. section 5 (2) of the Courts Order 1967 has been or is being contravened. Justice Ventose or the JLSC have not contended that Mr. Bristol as a concerned citizen who has demonstrated a particular interest in the matter complained of does not have a relevant interest entitling him to do so. In those circumstances the Court has not only jurisdiction, but a duty to hear and determine the matter;
- (3) The claim is not about an attempt to remove a judge from office for inability or misbehaviour. Rather it concerns the lawfulness of the process by which the judge's appointment was made;

(4) The declaratory orders sought will not only address the removal of a judge but the validity of the appointment made by the Commission; and

(5) It is not improper for a judge sitting in one of the courts of the ECSC to adjudicate on the propriety of another judge, albeit a judge of the Court of Appeal.

Mr. Bristol's submissions on constitutional supremacy and the Courts Order

[30] On this score, Mr. Bristol makes the point that the Constitution is the supreme law⁶ and that the Courts Order is an entrenched part of that supreme law⁷. Mr. Bristol further points out that the Constitution gives the High Court the power to grant redress if any of the provisions of the Constitution are breached. **Section 101** of the Constitution is the relevant provision in this regard. It may serve this discourse well to recite the relevant parts of section 101 –

“101. Original jurisdiction of High Court in constitutional questions

(1) Subject to the provisions of sections 22(2), 39(8), 49(4), 56 and 108 of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Part I) has been or is being contravened may, if he or she has a relevant interest, apply to the High Court for a declaration and for relief under this section.

(2) The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Part I) has been or is being contravened and to make a declaration accordingly.

(3) Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the person on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under the law of Grenada in proceedings in the High Court.

(4)

(5) ...

⁶ See section 106

⁷ See section 105

(6) The right conferred on a person by this section to apply for a declaration and relief in respect of an alleged contravention of this Constitution shall be in addition to any other action in respect of the same matter that may be available to that person under any other enactment or any rule of law.”

Mr. Bristol’s submissions on Dumas and judicial review

[31] Mr. Bristol presents the case of **Attorney General v Dumas**⁸ and submits that –

“[A]n important aspect of the Court’s supervisory jurisdiction is its constitutional function of maintaining the rule of law.”⁹

[32] Applying that principle to the facts of this case, Mr. Bristol concludes that –

(a) The Courts Order 1967, an entrenched part of the Constitution of Grenada, provides in section 5 that “...the Justices of Appeal and the Puisne Judges shall be appointed on behalf of Her Majesty by the Judicial and Legal Services Commission”¹⁰.

(b) The rule of law requires that those exercising public power must act in accordance with the Constitution and other relevant law. This includes a duty imposed on the Commission responsible for judicial appointments to ensure that only persons with the required qualifications and experience are appointed.

(c) If the Constitution requires that a nominee for appointment to a particular public office must have specific formal qualifications or post qualification experience as a pre-requisite for such appointment, the appointment of such nominee without the mandated qualifications and/or experience would be unconstitutional and invalid, see: **Attorney General v Dumas** at **para. 31** per **Lord Reed**

(d) It is the task of the judiciary to uphold the supremacy of the Constitution and thereby the rule of law by making the appropriate declarations or granting additional or other relief where a breach of the Constitution is established.¹¹

The removal from office point

[33] The essence of Mr. Bristol’s views on this point is that section 5 sets out the qualifications and experience (post qualification) required of an applicant to fill the

⁸ [2017] UKPC 12

⁹ Submissions on behalf of Mr. Bristol filed 2nd June 2025, para 7.4

¹⁰ Ibid at para 7.9

¹¹ Ibid

post of judge of the Court of Appeal. The challenge on this claim is targeted at the JLSC's act of appointing Justice Ventose to the post of judge of the Court of Appeal given his qualifications and post-qualification experience or lack thereof. Mr. Bristol submits that such a challenge is quite different from the process of removal of a judge from office for misconduct or inability to perform the functions of the judge's office. What is in play, Mr. Bristol asserts, is the "lawfulness of the appointment process itself, rather than the mechanisms for removal..."¹² of the judge from office. The cases of **Reference re Supreme Court Act (Canada)**¹³, **Guðmundur Andri Ástráðsson v Iceland**¹⁴ and **Dolińska - Ficek and another v Poland**¹⁵ are presented as authority for this posture.

The *declaratory order* submissions

[34] Mr. Bristol's view is that an order quashing the JLSC's appointment of an unqualified judge to the Court of Appeal would not be tantamount to the removal from office of a judge for misconduct or inability. Rather, Mr. Bristol posits that:

"...it would be the consequence of a finding by the Court that the appointment had not been validly made because the Commission had purported to appoint a person without the constitutionally mandated qualifications and/or experience required for appointment to the relevant judicial office. The effect of a declaration by the Court, pursuant to **section 101** of the **Grenada Constitution Order 1973**, that by reason of the foregoing, the particular judicial appointment is unconstitutional, null, void and of no effect, would not be the removal of the appointee from judicial office by the Court. Rather it would amount to the making of a formal statement by the Court that the purported appointment had never been effectively made and that the appointee had never been validly appointed."¹⁶

[35] In the latter regard, Mr. Bristol disagrees with Justice Ventose's interpretation and application of the case of **Marcia Ayers-Caesar v The Judicial and Legal Service Commission (Trinidad and Tobago)**¹⁷ to this claim. Mr. Bristol makes the point that

¹² Supra note 9 at para 7.12

¹³ 2014 SCC 21

¹⁴ [2020] ECHR 26374/18

¹⁵ [2021] ECHR 49868/19

¹⁶ Supra note 9 at para 7.16

¹⁷ [2025] 3 LRC 500

Ayers-Caesar interrogated the question of removal of a judge from office for misconduct. The case did not investigate “...*whether the appointment is void due to the disqualification of the appointee...*”¹⁸

The single jurisdiction point

[36] On this score, Mr. Bristol notes Justice Ventose’s view that the ECSC is a unified institution with a single jurisdiction across its nine member states and that the appointment of a Justice of Appeal affects all the states. Mr. Bristol disagrees with the charge that “...*it would be constitutionally inappropriate and procedurally unsound for a judicial removal to be effected through a claim initiated in a single jurisdiction.*”¹⁹ Mr. Bristol argues in response that –

“It is difficult to see why that should be so. The instant proceedings (i) are not concerned with the removal of a judge from office for disability or misconduct, and (b) [sic] concern the constitutionality of the actions of the Judicial and Legal Services Commission, a sub-regional body established by the Courts Order, in its performance of its constitutional duty to appoint Justices of Appeal and Puisne Judges to the Eastern Caribbean Supreme Court. The Courts Order, being the Imperial legislation in which the relevant constitutional provisions are contained predates and is incorporated into the constitutions of all of the sovereign states and dependent territories which are served by the Court. Accordingly, all the Member States and Territories served by the Court will be affected in the same way by judicial decisions on the propriety or constitutionality of actions taken by the Commission.”²⁰

Justice Ventose’s views on the jurisdiction complaints

[37] For his part, Justice Ventose is resolute in his stance that Mr. Bristol’s claim is an impermissible attempt to remove him from office. Justice Ventose’s position is that the court does not have the jurisdiction to do so. His view is that there is only one means of removing a judge from office and it is in accordance with section 8 of the Court’s Order. Section 8 is therefore in sharp focus. As far as relevant to this discourse, this is what section 8 says –

¹⁸ Supra note 9 at para 7.25

¹⁹ Ibid, para 7.26

²⁰ ibid

"8 Tenure of office of judges

...

(3) A judge may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the following provisions of this section.

(4) The Chief Justice may be removed from office by order of Her Majesty and other judges of the Supreme Court shall be removed from office by order of the Judicial and Legal Services Commission if the question of the removal from office has, in pursuance of the next following subsection, been referred to the Judicial Committee of Her Majesty's Privy Council under any enactment enabling Her Majesty in that behalf and the Judicial Committee has advised Her Majesty that the Chief Justice or the judge, as the case may be, ought to be removed from office for inability as aforesaid or misbehaviour.

(5) If, in the case of the Chief Justice, the Premier of one of the States to which this Order applies represents to the Lord High Chancellor of Great Britain or if, in the case of any other judge of the Supreme Court, the Judicial and Legal Services Commission represents to the Chief Justice that the question of removing the Chief Justice or other judge, as the case may be, for inability as aforesaid or for misbehaviour ought to be investigated then—

(a) the Lord Chancellor or the Chief Justice, as the case may be, shall appoint a tribunal which shall consist of a Chairman and not less than two other members selected by the Lord Chancellor or the Chief Justice, as the case may be, from among persons who hold or have held office as a judge of a court of unlimited jurisdiction in criminal and civil matters in some part of the Commonwealth or as a judge of a court having jurisdiction in appeals from any such court; and

(b) that tribunal shall enquire into the matter and report on the facts thereof to the Lord Chancellor or the Chief Justice, as the case may be, and recommend whether the question of the removal of the Chief Justice or other judge, as the case may be, should be referred by Her Majesty to the judicial Committee.

(6) The provisions set out in schedule 2 to this Order shall apply in relation to tribunals appointed under the last foregoing subsection or to the members thereof.

(7) If the question of removing the Chief Justice or other judge of the Supreme Court has been referred to a tribunal under subsection (5) of this section the Lord Chancellor, in the case of the Chief Justice, or the Judicial and Legal Services Commission, in the case of any other judge of the court, may suspend the Chief Justice or other judge, as the case may be, from performing the functions of his office.

(8) Any such suspension may at any time be revoked by the Lord Chancellor or the Judicial and Legal Services Commission, as the case may be, and shall in any case cease to have effect—

- (a) if the tribunal recommends that the question of the removal of the judge from office should not be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises that the judge ought not to be removed from office.

(9) Any expenses, in connection with proceedings under this section, authorised by the Lord Chancellor or the Chief Justice, as the case may be, shall be regarded as part of the expenses of the Supreme Court.”

[38] Justice Ventose argues that section 8 is the “...*exclusive mechanism for the removal of a judge of the ECSC*.”²¹ He relies on the **Ayers-Caesar** case to posit that section 8 serves dual purposes. The first purpose of the section is that it:

“... protects judicial independence, by providing judges with security of tenure and thereby shielding the administration of justice from external influences.”

Secondly, *“it protects the administration of justice, and public confidence in the administration of justice, by enabling judges to be removed from office when they are unable to carry out the functions of their office, or when their remaining in office would otherwise bring the administration of justice into disrepute.”*²² (Italics not mine)

[39] For the foregoing listed purposes to be fulfilled, Justice Ventose maintains, a broad interpretation of the term “removal” is required, “...*such that it encompasses every euphemism for the termination of the Interested Party’s office (whether prospectively or retrospectively)*...”²³ The case of **Horace Fraser v Judicial and Legal Services Commission**²⁴ is presented as authority for this proposition.

²¹ Submissions on behalf of Justice Ventose filed 18th June 2025, para 38

²² Ibid, para 39

²³ Supra note 21 at para 40

²⁴ [2008] UKPC 25 at 15

- [40] The case of **Rees v Crane**²⁵ is presented as further authority for the view that section 8 is the exclusive means by which a judge can or ought to be removed from office. In that case, the Privy Council made the point that –

*“It is clear that section 137 of the Constitution provides a procedure and an exclusive procedure for such suspension and termination and, if judicial independence is to mean anything, a judge cannot be suspended nor can his appointment be terminated by others or in other ways.”*²⁶ (Italics and underline emphasis that of Justice Ventose)

- [41] Section 8 is in the same terms as section 137 of the Trinidad and Tobago Constitution which addresses removal of judges from office. Removal is removal, Justice Ventose submits, and what Mr. Bristol seeks to achieve is, in its effect, a removal of a judge from office.

- [42] Justice Ventose also goes on to explain that for the exclusivity of the removal process envisaged by section 8 to make sense, the terms “misbehaviour” and “inability” articulated in those sections must be given the broadest interpretation. Accordingly, *“[A]n alleged lack of relevant qualifications under section 5 of the Courts Order may well disqualify an applicant from serving as a Judge. It is therefore submitted that an alleged failure to meet statutory qualifications would fall under ‘inability’ pursuant to section 8.”*²⁷ The case of **Boyce & Ors v The Judicial and Legal Services Commission**²⁸ is proposed as authority for this view. Regarding “inability” the CCJ observed that –

“We consider that the concept of inability refers to the lack of capacity to perform the required judicial duties at the requisite level of competence and skill. The judge is simply unable, through no personal moral failing, to perform his judicial duties. Thus, a judge may be removed for inability if, demonstrably, he is technically incompetent to perform such requisite duties as concentrating, deliberating, reasoning and timely writing and delivery of judgments. Inability could also be evidenced by the fact that a significant majority of the judge’s decisions are consistently overturned by the appellate courts above him.

²⁵ [1994] 2 AC 173

²⁶ Supra note 21 at para 42

²⁷ Ibid at para 44

²⁸ [2018] CCJ 23 (AJ)

Evidently, such inability could arise, as section 102 (2) expressly provides, “from the infirmity of the body or mind...” Inability could also arise from “any other cause”; another cause could be a persistently demonstrated lack of the requisite judicial insight or acumen. The critical point is that there is no necessary moral turpitude that attaches to inability; a judge may be unable to perform the functions of the office at one level of the judiciary but be perfectly capable of performing the functions of the office at another level of the judiciary.”²⁹

- [43] Of particular note is the contention by Justice Ventose that **Ayers–Caesar** is authority for the posture that pre-appointment lack of qualification may form a basis for asserting “inability” and may then found the basis for the invocation of the section 8 removal process. In essence therefore, section 8 is all encompassing and contemplates removal of a judge from office in all circumstances which may be considered misbehavior and/or inability. Justice Ventose concludes that, based on the foregoing, Mr. Bristol’s assertion that lack of qualification is not a basis on which a judge can be removed from office is patently incorrect.

Public policy points away from jurisdiction or the exercise of jurisdiction

- [44] Justice Ventose argues that the safeguarding of the process by which judges are removed from office is sacrosanct for public policy reasons. He explains that –

(1) The present proceedings are a collateral challenge to the process for removal of judges from office. To permit the same to proceed “fails to ‘shield’ the administration of justice from external influences and undermines the principle of judicial independence and the integrity of the judicial appointment process.”³⁰

(2) “...the ECSC serves as a unified judicial body across multiple sovereign states within the Eastern Caribbean region. The Interested Party’s appointment as Justice of Appeal affects the administration of justice throughout all member jurisdictions, not merely Grenada. It would be constitutionally inappropriate and procedurally unsound for a removal to be effected through a claim initiated in a single jurisdiction, rather than through the comprehensive supra-national process deliberately established by section 8 of the Courts Order.”³¹

²⁹ [2018] CCJ 23 (AJ) 50

³⁰ Supra note 21 at para 50

³¹ Supra note 21 at para 51

[45] Justice Ventose also finds Mr. Bristol's reliance on **Dumas** to be misplaced for the following reasons –

(1) Section 101 of the Constitution is a general provision dealing with breaches of the Constitution. Section 8 of the Courts Order is specific. It addresses the removal of judges from office. The provisions of section 101 which are geared to redress breaches of the Constitution generally cannot be utilised to override or circumvent section 8 which deals with the question of removal in specific terms;

(2) The framers of the constitution could not have “... *intended regular judicial review to apply to sitting judges...*”³² If they did, they would not have deliberately included the section 8 process and entrenched it to clothe the process of removal of judges from office with protection;

(3) Section 8 of the Courts Order is incorporated into the Constitution by section 105 of the Constitution and as such has “...*constitutional status and protection equivalent to the Constitution itself.*”³³

(4) The relational connection between the Courts Order and the Constitution operates as a limitation whereby the specific regime in section 8 limits the application of the general terms of Section 101 of the Constitution. The contrary of this posture “...*would render the constitutional protections of judicial independence incoherent and contradictory.*”³⁴

(5) Mr. Bristol may seek declaratory orders with respect to the interpretation of section 5. However, he seeks relief which is excluded by the terms of section 8.

The discretion to stay jurisdiction ought to be deployed

[46] Justice Ventose submits that, even if the court finds that it has jurisdiction to hear the claim, it ought to stay its hand and refuse to hear the claim. The substance of the previous submissions is repeated but with the caution that, if jurisdiction was asserted and the claim brought by Mr. Bristol was entertained, it would challenge judicial independence. Judicial independence seeks to secure judicial tenure. Even more

³² Supra note 21 at para 53(b)

³³ Ibid, para 53(c)

³⁴ Ibid, para 53(d)

significantly, Justice Ventose argues, judges may exert their authority with less fearlessness because (especially in controversial cases) they may be burdened with the caution that their appointment to office may be challenged by way of judicial review proceedings and the ruling of a single judge of the ECSC. The section 8 removal process was designed to insulate judges from such eventualities.

- [47] In closing, Justice Ventose addressed Mr. Bristol's reliance on the cases of **Reference re Supreme Court Act (Canada)**³⁵, **Guðmundur Andri Ástráðsson v Iceland**³⁶, and **Dolińska - Ficek and another v Poland**³⁷. Justice Ventose views these cases as restricted to their circumstances and not addressing the central issue in this case, that is to say, the proper process by which a judge is removed from office.

Submissions in response

- [48] On 24th June 2025, Mr. Bristol responded to Justice Ventose's arguments. In his reply, Mr. Bristol agrees that judges should not be removed from office except for misbehaviour or inability. He also agrees that these terms should be interpreted broadly. However, Mr. Bristol maintains that the removal process extends only to those judges who have been validly appointed by the JLSC to hold office. In his words "*... 'removal' from office typically involves a lawful appointment followed by a process to terminate that appointment. The statutory protections and procedures for removal presuppose a valid appointment.*"³⁸ Accordingly, Mr. Bristol argues, if the Constitution stipulates qualification and experience criteria for appointment, any appointment that does not meet those constitutional requirements would be unconstitutional and invalid. Judicial review would then be available since any such decision would be void from the instance of its making (ab initio).

- [49] Mr. Bristol insists on the relevance of **Reference re Supreme Court Act (Canada)** since, in his view, that case aptly reflects his contention that, as was found in that

³⁵ 2014 SCC 21

³⁶ [2020] ECHR 26374/18

³⁷ [2021] ECHR 49868/19

³⁸ Submissions on behalf of Mr. Bristol filed 24th June 2025, para 2.1

case, an appointment of a judge who did not fit the qualifications terms of the legislation in question was void ab initio and as such there was no need for a removal process. Mr. Bristol argues that the same logic applies to this case.

[50] Mr. Bristol also agrees with Justice Ventose that the case of **Ayers-Caesar** is authority for the proposition that pre appointment conduct of a judge ought to be relevant to the question of whether a judge should be removed from office for misbehaviour or inability. However, this is where consensus ends. Mr. Bristol contends that, unlike the view taken by Justice Ventose, misbehaviour and inability relate to or are concerned with the judge's conduct both in and out of office "*... whether demonstrated by way of deficient performance of his judicial function, or by way of behavior on his part which is likely to bring the office itself into disrepute and to undermine public confidence in the justice system.*"³⁹ Mr. Bristol does not agree that lack of qualification fits this criterion. Lack of qualification refers to "*... the candidate's satisfaction of the eligibility criterion set out in section 5 of the Courts Order.*"⁴⁰ The person may very well be competent, Mr. Bristol states, but he or she may be not be qualified by virtue of the qualifications criteria listed in section 5.

[51] The case of **Boyce & Ors v The Judicial and Legal Services Commission**⁴¹ is also distinguished by Mr. Bristol. Mr. Bristol points out that the inability described in **Boyce** related to the "*...judge's demonstrated lack of capacity to perform the functions of the judicial office to which he has been appointed rather than on his eligibility for appointment.*"⁴²

[52] With respect to the section 8 exclusivity contention, Mr. Bristol departs from Justice Ventose's position once again. Mr. Bristol reiterates the stance that what is at stake is not Justice Ventose's personal conduct but the validity of the JLSC's decision to appoint him as a judge of the Court of Appeal in purported violation of section 5.

³⁹ Supra note 38 at para 3

⁴⁰ Ibid, para 3.3

⁴¹ [2018] CCJ 23 (AJ)

⁴² Supra note 38 at para 3.5

[53] With respect to the public policy arguments, Mr. Bristol finds the propositions “startling”. Mr. Bristol’s reply is that if Justice Ventose is correct –

“...the Court would have no jurisdiction to inquire into the appointment process to determine whether section 5 (2) of the Courts Order 1967, being a provision of the Constitution (other than a provision of Part I) has been or is being contravened. Thus even if the JLSC misconstrued the eligibility requirements set by section 5 (2) (a) and appointed an ineligible person to office, the fact that by section 8 of the Courts Order the appointee could be removed only on the grounds of inability or misbehavior would effectively exempt the decision of the JLSC from judicial scrutiny on the basis that review of the appointment would amount to a collateral attack of the Judge’s security of tenure.”⁴³

[54] Mr. Bristol further finds the public policy arguments “startling” since, he opines that, “...there are a number of public offices from which holders may not be removed except on grounds of inability or misbehavior, and then only by specified processes.”⁴⁴ These offices include the office of Director of Public Prosecutions (section 86(4) and 58(7) et seq of the Constitution), the Director of Audit (sections 86(6) and 87(7) to 87(9) of the Constitution), and members of the Public Service Commission (sections 83(2), 83(5), 83(6) to 83(8) of the Constitution). Mr. Bristol reasons that if Justice Ventose is correct, any person may be appointed to these offices without the requisite qualifications. Judicial review would then not be available to challenge these appointments. The persons so appointed would only be removable from office for reasons of misbehavior or inability. Mr. Bristol finds such an approach untenable and says in response that –

“...the correct view is that Judicial review is available to challenge decisions of public authorities, including appointments, where the decision is unlawful, irrational, or procedurally improper. If the appointing authority misconstrued the requirements for qualification, this could form the basis for a judicial review claim. There is nothing in the Constitution which shields the decisions or conduct of any public body which exercises the power to appoint, or the appointment process itself from review by the Courts. A successful judicial review could result in a quashing order, which would render the appointment

⁴³ Supra note 38 at para 5

⁴⁴ Ibid, para 5.1

ineffective and require the appointing authority to reconsider the decision in accordance with the law as pronounced by the court.”⁴⁵

[55] Mr. Bristol also responds to Justice Ventose’s *lex specialis derogat legi generali* argument, the argument that the general provisions of section 101 of the Constitution which deals with breaches of the Constitution generally cannot be used to override or avoid the requirements of section 8 of the Courts Order which deals with removing a judge from office. Mr. Bristol scotches this reasoning as untenable. Mr. Bristol’s response is that section 8 of the Courts Order is not meant to limit the court’s supervisory jurisdiction over the exercise of constitutional powers. More particularly, section 8 is not to exclude the court’s power to determine whether the JLSC’s exercise of its functions contravenes any of the provisions of the Constitution. There is no such bar in this case. Rather, section 101 of the Constitution “...is drafted in the widest terms and its scope cannot be cut down by a side wind such as a strained interpretation of section 8 of the Court’s Order.”⁴⁶

[56] In respect of Justice Ventose’s request that if the court finds that it has jurisdiction that it should stay its hand and not hear the claim for fear of its impact on the exercise of judicial functions, Mr. Bristol charges in response that the case is not about the judge’s execution of his duties but about the exercise of the JLSC’s functions.

[57] With respect to Justice Ventose’s complaint that Mr. Bristol should have limited his request for relief to a declaration as to the meaning of section 5 of the Court’s Order, Mr. Bristol repeats his view that section 101 is the proper procedure for his claim. He asserts that there was no need to write to the JLSC to complain about Justice Ventose’s ability to perform his duties since, again, the claim was not about Justice Ventose’s performance but about the JLSC’s lack of authority to appoint him in alleged violation of section 5 of the Courts Order. In any event, Mr. Bristol submits, the Search Committee did write to the JLSC about the purportedly improper appointment and the JLSC responded with an affirmation of the validity of its actions. The practical result

⁴⁵ Supra note 38 at para 5.2

⁴⁶ Ibid, para 5.5

of Justice Ventose's approach, Mr. Bristol suggests, would be to terminate any inquiry into the propriety of the JLSC's action in appointing him to office. Mr. Bristol then concludes with a reiteration of the applicability of **Guðmundur Andri Ástráðsson v Iceland** to the facts of this case.

The JLSC's position on the jurisdiction complaints

[58] The JLSC filed submissions on 2nd June 2025 in which it took "*no position on the Interested Party's Application filed 3rd April 2025...*" The JLSC argued nonetheless that Justice Ventose is quite well placed to make this application and thus has standing. As indicated above, Mr. Bristol has not pursued this question beyond the discussion at the hearing and as such the point is now largely moot.

Closing submissions

[59] After hearing from Justice Ventose, Mr. Bristol and the JLSC, further submissions in closing were filed by Justice Ventose and Mr. Bristol. Those submissions reiterated their earlier views. I will highlight some of what they stated therein to supplement what they have previously presented.

Mr. Bristol

[60] Mr. Bristol makes the following additional points –

(1) Justice Ventose's argument that the general terms of section 101 of the Constitution cannot be used to override the specific term of section 8 of the Courts Order overlooks the "...*fundamental presumption against ousting the supervisory role of the High Court over other public bodies and organs, and that any ouster or limitation must be explicitly stated.*"⁴⁷ The cases of **Brantley and others v Constituency Boundaries Commission and others**⁴⁸ and **R (on the application of Privacy International) v Investigatory Powers Tribunal and others**⁴⁹ per Lord Carnwath are relied on in support of this argument.

(2) Applied to this case, it would mean that unlike in the cases of ordinary statutory interpretation, the court must have regard to the principle that it would require specific and clear words to oust the application of section 101 of the

⁴⁷ Submissions on behalf of Mr. Bristol filed 2nd September 2025, para 4.6

⁴⁸ [2015] UKPC 21

⁴⁹ [2019] UKSC 22

Constitution by the terms of section 8 of the Courts Order. The only limitations expressly stated in section 101 are sections 22(2), 39(8), 49(4), 56 and 108 of the Constitution.

(3) Justice Ventose fails to indicate any provision of the Constitution that would have the effect of expressly limiting the court's supervisory role set out in section 101. He has only indicated that it does so implicitly.

(4) With respect to Justice Ventose's argument that the grant of the relief that Mr. Bristol seeks would amount to the removal of a judge from office, Mr. Bristol makes the further point that "...'*removal*' from office typically involves a lawful appointment followed by a process to terminate that appointment. The statutory protections and procedures for removal presuppose a valid appointment."⁵⁰ The cases of **Buckley v Edwards**⁵¹ and **Reference re Supreme Court Act (Canada)**,⁵² are presented in support of this view.

(5) With respect to Justice Ventose's point that the court ought to approach inability with an expansive definition to include lack of qualifications, Mr. Bristol insists in additional arguments that –

“...there is an important distinction to be made between the concepts of inability to perform the functions of the office, as measured by the candidate's lack of capacity to perform the required judicial duties at the requisite level of competence and skill on the one hand, and the candidate's qualification for appointment to judicial office which is demonstrated by the candidate's satisfaction of the eligibility criterion set out in section 5 of the Courts Order on the other hand. Lack of qualification for appointment does not automatically constitute "inability" for removal purposes. "Inability" typically refers to the incapacity to perform judicial duties due to reasons such as ill health or other impairments, rather than to a failure to meet the initial eligibility criteria.”⁵³ **Attorney General v Dumas** (Trinidad and Tobago)⁵⁴ is repeated as authority for this view.

Justice Ventose's closing views

[61] As with Mr. Bristol's further arguments, much of what is said in Justice Ventose's closing submissions is a repetition and reiteration of his previously stated views. Just as with Mr. Bristol, I will only highlight a few of the additional points as relevant –

⁵⁰ Supra note 47 at para 6.1

⁵¹ (1892) AC 387

⁵² 2014 SCC 21

⁵³ [2019] UKSC 22, para 8.13

⁵⁴ [2017] UKPC 12

- (1) Justice Ventose disagrees that the removal process for the offices of DPP and Director of Audit ought to be applied as relevant to these circumstances. His response is that –

“...In the case of a judge, the removal is ultimately done by the JCPC, so there would never be the possibility of judicial review of the decision of the JCPC to remove a judge from office. This procedure requires the final court, the JCPC, to decide whether the judge should be removed or not. This strengthens the argument that a judge can only be removed in accordance with the removal process set out in section 8 of the Courts Order.”⁵⁵

- (2) Once the judge is appointed, it must be assumed that the judge is properly appointed and afforded the protection of section 8. The converse of that reasoning

“...would be to allow persons to file applications in the High Court challenging the appointment of judicial officers and by virtue simply of that allegation means that the judicial officers would be deprived of the protections that section 8 of the Courts Order was intended to provide. That could not have been the intention of the framers of the Courts Order.”⁵⁶

- (3) Any doubt about the applicability of section 8 should be resolved in favour of section 8 since to do otherwise may expose a sitting judge to removal from office by a process outside of the section 8 stipulations. *“If the framers of the Constitution wanted any lack of qualifications to be a ground for removal of a judge in a manner other than the section 8 procedure, the Constitution would have had to say so expressly.”*⁵⁷

- (4) The fact that the different constituent courts of the ECSC have different final courts of appeal which may lead to different interpretative approaches to section 8 may be another valid reason why a single judge in an individual member court should not determine the question of a judge’s removal. It is preferable to have the removal conducted and concluded through the *“...comprehensive supranational process deliberately established by the section 8 procedure.”*⁵⁸

- (5) Some additional points are addressed –

⁵⁵ Submissions on behalf of Justice Ventose filed 30th September 2025, para 24

⁵⁶ Ibid, para 25

⁵⁷ Ibid, para 33

⁵⁸ Supra note 55 at para 36

- (a) Mr. Bristol's letter to the JLSC was premised on the qualifying requirement of section 5 of the Courts order and not the section 8 removal process. JLSC was right to respond in the way that it did since it was not asked to invoke the section 8 removal process.
- (b) No point was taken in **Reference Re Supreme Court Act (Canada)** about the courts' power to remove a judge from office. It was a direct reference to the apex court in Canada and did not involve questions of judicial review. Additionally, the reference was not conducted by a judge of inferior status;
- (c) **Guðmundur Andri Ástráðsson v Iceland** and **Dolińska - Ficek and another v Poland** are also distinguished. Justice Ventose explains that in **Guðmundur Andri Ástráðsson v Iceland**, the ECHR addressed questions of "...the fairness of proceedings and the right to a *"tribunal established by law"*"⁵⁹ and not the extant question of the removal of a judge. Regarding **Dolińska - Ficek and another v Poland**, Justice Ventose finds this case inapplicable for the fact that the case concerned challenges by applicants who were not appointed. Justice Ventose notes that Mr. Bristol has recourse to ample remedy "...preserved by (i) the ability for the Claimant to seek declarations as to the correct interpretation of section 5 of the Courts Order, or (ii) writing to the Defendant seeking an investigation under section 8 of the Courts Order."⁶⁰
- (d) Finally, it is argued that Mr. Bristol delayed in bringing this claim. Justice Ventose asks the court to find that this delay counts against Mr. Bristol and that, in the circumstances, the court should exercise its jurisdiction against hearing the claim. This is since Mr. Bristol was a member of Search Committee which knew of Justice Ventose's application for the post of Chief Justice in 2022 and his appointment to act on seven different occasions as Justice of Appeal before his substantive appointment in January 2024 as Justice of Appeal.

My thoughts

[62] In his 18th June 2025 submissions, Justice Ventose observes that: "...the Claimant seeks to challenge the appointment of the Interested Party as a Justice of Appeal of the ECSC through a combination of judicial review and (following an amendment to the claim) a constitutional motion." The submissions and arguments on the jurisdiction complaints focused mainly on the issues related to the constitutionality aspect and

⁵⁹ Ibid, para 58

⁶⁰ Ibid, para 61

not on general judicial review principles and, as such, this ruling will address the substance of the submissions and arguments as presented.

- [63] I start this part of the discourse with the almost trite confession that there are no simplistic answers to the questions posed by the contestations raised on this application. In my opinion, it is by design that this should be the case. I say this because, for one thing, it is clear from all that has been said and acknowledged by the parties on this application in their pleadings and arguments that a judge's tenure in office is a matter which the framers of our constitutional structure regarded as sufficiently important to clothe with added security from all sorts of interference including removal without cause. In a word, the parties are all agreed, that the office of judge is one that should not be lightly tampered with. I repeat, for emphasis, the admonishment of their Lordships in **Rees v Crane** that with respect to the removal of a judge from office –

*"It is clear that section 137 of the Constitution provides a procedure and an exclusive procedure for such suspension and termination and, if judicial independence is to mean anything, a judge cannot be suspended nor can his appointment be terminated by others or in other ways."*⁶¹

- [64] However, while it may be correct to accept the foregoing postulation as a matter of constitutional pragmatism, to leave the issue there without further scrutiny would, in my opinion, present an imperfect and, some might say, inadequate response to the matter. This is since, as is apparent from the terms of both section 5 and section 8 of the Courts Order and the Constitution itself (see section 105 discussed below), the question of the appointment and removal of judges falls squarely within the terms of the Constitution. Consequently, the Constitution and what it says about how it operates or ought to operate with respect to the extant debate are also matters of equal and, as may appear from what I have to say below, even greater consequence.

Supremacy of the constitution

⁶¹ [1994] 2 AC 173

[65] So what are the applicable constitutional principles at play? The first seems to be the supremacy of Grenada's Constitution which is declared in section 106 thereof –

“This Constitution is the supreme law of Grenada and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.”

[66] It is of note that the supremacy clause, which exists in a number of Caribbean Constitutions like the Grenada Constitution “...confers on these Caribbean Constitutions, the highest legal authority in the legal system and overriding force. They are imperative and provide clear instructions on the implications of inconsistency with the constitutions.”⁶²

[67] Further expanding on the point, it is also observed that –

“The constitution is an overarching legal regime limiting the exercise of governmental powers. It is an attempt “to keep government in order”, a mechanism of constitutionalism. Constitutional supremacy is an authoritative statement that both ordinary laws and the administration of government must be subordinated to the rules and principles of the constitution. The constitution does not only control what the law may provide, its functions includes placing limits on what the state can do. In this way...the constitution provides a safeguard against dictatorship and **arbitrary exercise of power** and disregard of human rights. **The obligation to conform to the constitution, and the amenability of state actors to enforcement proceedings for failure to so conform, extends to public authorities exercising key public functions that are not part of the central government.**”⁶³ (Bold emphasis mine)

[68] Other eminent thinkers on the issue express the same view –

“The Constitution can be defined as a body of law containing the rules which determine the structure of the State and its principal organs. It establishes the fundamental principles according to which the State is governed. It is the authority base from which a rule of law originates and derives its validity and further validates other sources. It may thus be described as the

⁶² Dr. Arif Bulkan, The Hon. Mr Justice Adrian Saunders, Tracy Robinson: Fundamentals of Caribbean Constitutional Law (2nd edn., Sweet & Maxwell) at page 175

⁶³ Ibid at page 177

grundnorm or basic norm of the society from which all other norms emanate. The Constitution is parent law by which all other laws are measured, or the supreme law of the land. This latter description of the Constitution is found in the celebrated case of *Collymore v AG*: ‘**No one, not even Parliament, can disobey the Constitution with impunity.**’ **The Constitution is therefore the ultimate source of power and authority.** All other sources of law are measured against the Constitution. It is thus a yardstick by which the validity and authority of law in general are measured. **It also governs the exercise of power or authority in the State.**”⁶⁴ (Bold emphasis mine)

[69] Beyond the above-cited powerful pronouncements on the supremacy of the Constitution, authoritative rulings from various courts and esteemed jurists have also explored the matter. In **Hinds v the Queen**⁶⁵, the Privy Council observed that written constitutions such as the Grenada Constitution –

“...embody what is in substance an agreement reached between representatives of the various shades of political opinion in the State, as to the structure and organisation of government through which the plenitude of the sovereign power of the State is to be exercised in future.”⁶⁶

[70] In **Dumas**, relied on by Mr. Bristol, the Privy Council discussed the supremacy of the constitution and its primacy in Trinidad and Tobago’s “parliamentary democracy.” See also **Bahamas District of the Methodist Church v Symonette**⁶⁷, where their Lordships highlighted, in the context of the Bahamas Constitution, certain distinctions between parliamentary supremacy and constitutional supremacy to the effect that –

“The first general principle, long established in relation to the unwritten constitution of the United Kingdom, is that the Parliament of the United Kingdom is sovereign. This means that, in respect of statute law of the United Kingdom, the role of the courts is confined to interpreting and applying what Parliament has enacted. It is the function of the courts to administer the laws enacted by Parliament. When an enactment is passed there is finality unless and until it is amended or repealed by Parliament...”⁶⁸

⁶⁴ Rose Marie Bell Antoine, *Commonwealth Caribbean Law and legal Systems*, 2nd edn, page 97

⁶⁵ [1977] AC 195

⁶⁶ *Ibid* at page 212

⁶⁷ (2000) 59 WIR 1 at 13

⁶⁸ (2000) 59 WIR 1 at 13

[71] However, where written constitutions like that of the Bahamas and more particularly, Grenada, are involved, their Lordship observed that –

“That is the basic position in the United Kingdom. In other common law countries their written constitutions, not Parliament, are supreme. The Bahamas is an example of this. Article 2 of its Constitution provided that ‘This Constitution is the supreme law of the Commonwealth of The Bahamas’. Article 2 further provided that, subject to the provisions of the Constitution, if any other law is inconsistent with the Constitution, the Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void. Chapter V of the Constitution made provision for a Parliament of The Bahamas, comprising Her Majesty, a Senate and a House of Assembly. Article 52 provided that ‘subject to the provisions of this Constitution’ Parliament may make laws for the peace, order and good government of The Bahamas. Thus, in The Bahamas, the first general principle mentioned above is displaced to the extent necessary to give effect to the supremacy of the Constitution. The courts have the right and duty to interpret and apply the Constitution as the supreme law of the Bahamas. In discharging that function the courts will, if necessary, declare that an Act of Parliament inconsistent with a constitutional provision is, to the extent of the inconsistency, void. That function apart, the duty of the courts is to administer Acts of Parliament, not to question them.”⁶⁹

[72] Other high authorities such as **Boyce and Joseph v R**⁷⁰ articulate the principle that written constitutions such as the Grenada Constitution form the foundation on which the State is structured, ordered and governed.

[73] More importantly for the purposes of this discourse, the principle that, like as Wooding CJ made plain in **Collymore v AG**⁷¹, the constitution is the ultimate source of power, that all must conform to its dictates and that no one can disobey its mandates with impunity, is reinforced and “policed” in section 101 of the Grenada Constitution which stipulates that -

“(1) Subject to the provisions of sections 22(2), 39(8), 49(4), 56 and 108 of this Constitution, **any person who alleges that any provision of this Constitution** (other than a provision of Part I) **has been or is being contravened may**, if he or she has a relevant interest, **apply to the High**

⁶⁹ (2000) 59 WIR 1 at 13 and 14

⁷⁰ (2004) 64 WIR 37

⁷¹ (1967) 12 WIR 5

Court for a declaration and for relief under this section. (Bold emphasis mine).

- [74] Part 1 of the Constitution of Grenada addresses what is labeled the “Fundamental Rights and Freedoms” secured to the citizens of Grenada and that part of the Constitution has its own prescriptions for failure to adhere to its decrees. Part 1 includes sections 1 to 18 of the Constitution. The specific rights are listed at sections 2 to 15 of Part 1. Redress for breaches of those rights is secured by section 16 which provides –

“(1) If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.”

- [75] This discourse is not concerned with section 16 but with section 101 of the Constitution since the reference to the Courts Order is set out, not in Part 1, but at section 105 of the Constitution which reads “... *references to this Constitution shall be construed as including references to the Courts Order, which, subject to any provision made by Parliament under section 39 of this Constitution, shall continue to have effect as part of the law of Grenada...*”.

- [76] I have, above, recited Justice Ventose’s helpful presentation on the history of the Courts Order. The effect of section 105 of the Constitution, therefore, is to entrench the Courts Order as part of the supreme law of Grenada and, for the purposes of this case, it can be said that section 101 applies with equal force to the ordering of all affairs governed by the Courts Order.

Maintaining the supremacy of the Constitution

- [77] It goes without saying then that, by virtue of what is articulated in both section 16 and section 101 of the Constitution, the High Court plays a pivotal role in the maintenance and enforcement of the constitutional dictates set out firstly in Part 1 of the

Constitution and secondly, elsewhere in the Constitution. The court's role in ensuring and enforcing conformity with the Constitution often referred to as judicial review is elucidated thusly by the authors of **Fundamentals of Caribbean Constitutional Law**

—

“A written constitution that is supreme invariably produces an expansion in the role of the judiciary. Constitutional supremacy is predicated on an institution that is empowered authoritatively to interpret the constitution, resolve conflicts between branches of government, assess the constitutionality of governmental acts, and safeguard the constitutional rights of the individual prescribed by the constitutions. Judicial review is the power and duty given to superior courts to review laws and governmental actions to determine their consistency with the constitution.”⁷²

- [78] As I have discussed above, this judicial review power or otherwise labelled a “supervisory power” is specifically enacted in section 16 with respect to the fundamental rights provisions or what are otherwise termed the bill of rights provisions, and in section 101 regarding what is usually referred to as the non-bill of rights provisions. It is also said that:

“Judicial review is an incident of the supremacy of the constitution and in turn it anchors the supremacy of the constitution. It is often described as a responsibility placed on the court to ensure that the constitution is not infringed and ‘to preserve it inviolate.’ Most constitutions give the superior courts the power to invalidate laws and state actions to the extent of their inconsistency. Modern scholars also conceptualize judicial review as a means of ensuring constitutional efficacy and delimiting state action. In its role as a guardian of the constitution, the judiciary promotes constitutional efficacy by ensuring that the text is respected and upheld, thereby minimizing the distance between text and reality.”⁷³

- [79] Speaking of the role of the court in upholding the supremacy of the Constitution and in particular, laws that may infringe, abridge or abrogate the protection of the rights guaranteed to the citizen, Wooding CJ in **Collymore** makes the following declaration

—

⁷² Supra note 62 at page 178

⁷³ Ibid at page 211

“I am accordingly in no doubt that our Supreme Court has been constituted, and is, the guardian of the Constitution, so it is not only within its competence but also its right and duty to make binding declarations, if and whenever warranted, that an enactment passed by Parliament is *ultra vires* and therefore void and of no effect because it abrogates, abridges or infringes or authorises the abrogation, abridgment or infringement of one or more of the rights and freedoms recognised and declared by s 1 of the chapter. I so hold.”⁷⁴

[80] In **AG v Whiteman**⁷⁵, the courts are referred to as “...*the guardians and interpreters of the Constitution...*”⁷⁶

[81] In **Thornhill v AG**⁷⁷, the Court of Appeal’s decision was reversed by the Privy Council but Rees JA in the Court of Appeal noted with regard to the court’s role in interpreting and upholding the fundamental rights secured by the constitution –

“...if section 2 of the 1962 Constitution confers certain rights on individuals and lays down certain prohibitions on the legislature, it is the duty of this court... to decide whether any of those rights has been violated by the legislature in relation to an individual seeking redress under section 6 of the 1962 Constitution.”⁷⁸

[82] Section 6 of the then 1962 Constitution of Trinidad and Tobago was in similar terms to section 16 of the Grenada Constitution.

[83] In **Harrikisson v AG**⁷⁹, Lord Diplock in the Privy Council declared the remit of the judicial review powers of the court in fundamental rights cases “... **as an important safeguard...**”⁸⁰ while expressing that the judicial review power in the constitution operates within limits, that, for instance, restricts its use as a “...*substitute for the*

⁷⁴ (1967) 12 WIR 5 at 9

⁷⁵ (1990) 39 WIR 397

⁷⁶ (1990) 39 WIR 397 at 402

⁷⁷ (1976) 31 WIR 498

⁷⁸ (1976) 31 WIR 498 at 506

⁷⁹ [1980] AC 265

⁸⁰ [1980] AC 265 at 268

*normal procedure for invoking judicial control of administrative action.”*⁸¹ (Bold emphasis mine)

[84] In the Guyanese case of **Jaundoo v AG**⁸², their Lordships in the Privy Council opined that “...*Cap II of the Constitution of Guyana will have a hollow ring unless the fundamental rights which it bestows upon “every person in Guyana” are buttressed by an effective legal remedy.*”⁸³

[85] Cap II of the-then 1966 Constitution of Guyana contained the fundamental rights provisions.

[86] That the court is given wide powers to craft and grant redress for interference with these rights was extensively discussed in the case of **Jaundoo** and see also the case of **Ramesh Lawrence Maharaj v the Attorney General of Trinidad and Tobago (No.2)**⁸⁴.

[87] Of significance to this case are the non-bill of rights provisions and specifically, the remit of the court outlined in section 101 which is a non-bill of rights provision. Much has been also said about the court’s supervisory or judicial review role in respect of those provisions. Recital of a few judicial pronouncements will suffice for the sake of this discussion. In **Bahamas District of the Methodist Church v Symonette**, among other things, the court was asked to assess whether the constitutional jurisdiction of the Bahamian court could be invoked in circumstances where a bill was introduced but not yet passed into law by the parliament. This query interrogated questions of the right of parliament to exercise its constitutional mandate free from judicial interference in the process. In the context of the issues under consideration in this claim, the Privy Council observed, as indicated above, that the courts have “...the

⁸¹ Ibid

⁸² [1971] AC 972

⁸³ [1971] AC 972 at 978

⁸⁴ [1979] AC 385; CJ Sykes also presents an expansive and illuminating discussion on this issue in the Jamaican Full Court decision of *Julian Robinson v AG of Jamaica* [2019] JMFC Full 04

*right and duty to interpret and apply the Constitution as the supreme law of The Bahamas.*⁸⁵

[88] The court's supervisory role was however constrained by the principle that the responsibility of courts are to "...administer Acts of Parliament, not to question them."⁸⁶

[89] In **Hinds v the Queen**, the Jamaican court's supervisory role was invoked in circumstances where Parliament wished to pass laws that conferred part of the Supreme Court's jurisdiction on inferior courts. In **BCB Holdings Ltd and Another v Attorney General**⁸⁷, the focus of the deliberations, which eventually reached Belize's apex court, the CCJ, centered on the prerogative powers of the State to enter agreements with respect to taxes to be paid by a taxpayer. Among other things, it was found that the State acted impermissibly with respect to an agreement with a tax payer which agreement included matters that fell exclusively within the remit of Parliament.

[90] It should then by this juncture in our discourse follow as a matter of logical deduction and without contention that the exercise of the constitutional remit of the JLSC, particularly its appointing power set out in section 5 of the Courts Order is, without more, subject to the court's supervisory jurisdiction. Great support for this view is found for instance in **Rees v Crane** where the Trinidad and Tobago JLSC's role in the process for the removal of a judge from office was considered. The Privy Council concluded, unanimously, that the Trinidad and Tobago JLSC erred when it recommended to the President of Trinidad and Tobago that a tribunal ought to be set up to consider the fitness of a judge to continue to hold office and the question of his possible removal from office. The referral was set aside on the ground that it was done without regard to the judge's right to be heard before the referral was made to

⁸⁵ (2000) 59 WIR 1 at 14

⁸⁶(2000) 59 WIR 1 at 14

⁸⁷ [2013] CCJ 5 (AJ)

the President. There was no question of the court's jurisdiction over the conduct of the JLSC in that case.

- [91] Similarly, the exercise of the functions of the Trinidad and Tobago JLSC was under scrutiny in the **Ayers-Caesar** case. In that case, the acting Chief Magistrate had been appointed by the JLSC to the office of judge. Subsequently it emerged that the judge had not cleared a backlog of cases part-heard by her before leaving the office of Chief Magistrate to take up the office of judge. Questions arose as to whether her representations about her case backlog were accurate. Thereafter ensued a flurry of events involving the Chief Justice, the judge and the Trinidad and Tobago JLSC which resulted in Ms. Ayers-Caesar tendering her resignation as judge. The **Ayers-Caesar** case focused on the Commission's obligation to afford the judge a hearing before it made "...a decision that the circumstances merit a representation to the President..."⁸⁸ that a tribunal ought to be set up to consider the judge's removal from office. The Privy Council also ruled that circumstances existing before a judge's appointment to office by the JLSC may be relevant and may form part of the deliberations on whether he or she ought to be removed from office for inability or misconduct.

The jurisdiction complaints and the Constitution

- [92] Simply put, the case for Mr. Bristol is the concatenation of all the foregoing principles. That is to say, his case appears to be that the Constitution is supreme; the appointing power exercised by the JLSC forms part of that constitutional construct and is subject to the supervisory or review mechanism designed by the Constitution. This review or supervisory jurisdiction (that is, review by the High Court pursuant to section 101) is to ensure that, like with all powers subject to the Constitution, the JLSC exercises its responsibility in accordance with the letter and spirit of the Constitution. In a word, jurisdiction is made out simpliciter.

⁸⁸ [2025] 3 LRC 500 at 516

[93] Justice Ventose contends the opposite. While he is not disputing the foregoing propositions of law, his view (at the risk of condensing them too finely) is that what is in play is not the appointing powers of the JLSC. He argues, in essence, that what Mr. Bristol has set out to do on his claim is to invoke the process outlined in section 8 (recited above) for the removal of a judge from his office.

[94] Notwithstanding the erudition and lucidity with which he has presented his various views on the jurisdiction complaints, for all the reasons to follow I am unable to agree with Justice Ventose.

[95] The first point of my departure is the question of what is engaged on Mr. Bristol's claim. Mr. Bristol submits that what is in play is the appointing powers of the JLSC. I cannot see how this can be a contentious proposition. Section 5, to borrow words from Wooding CJ in **Collymore**, "says what it says." The power to appoint is granted to the JLSC. Unless it can be shown that these powers are somehow exempt from the supervisory scrutiny set out in section 101, then the High Court is duty bound to examine whether they are exercised consistently with the terms set out in that section.

[96] Section 101 of the Constitution, the judicial review section relevant to this discourse, begins with the words "Subject to the provisions of sections 22(2), 39(8), 49(4), 56 and 108 of this Constitution..." Simply put, this means that the constitutional scrutiny recited in section 101 is subject to what is recited as being excepted by the terms of that section. For instance, section 22(2) –

“(2) The power and authority of the Governor-General shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and, subject to the provisions of this Constitution, a deputy shall conform to and observe all instructions that the Governor-General, acting in his or her own deliberate judgement, may from time to time address to him or her: **Provided that the question whether or not a deputy has conformed to and observed any such instructions shall not be enquired into by any court of law.** (Bold emphasis mine)

[97] It is immediately apparent that what is envisaged by section 22(2) is to remove the exercise of the deputy's instructions given to him or her in accordance with section 22(1) from the section 101 review powers conferred on the High Court. Similar

formulations are found in section 39(8) which addresses the certificate of the Speaker or Deputy Speaker of the House of Parliament that the requirements of section 39 have been met. Sections 49(4), 56 and 108 include similar language in respect of the matters therein addressed.

- [98] How courts have approached the construction and application of these preclusive provisions that seek to “oust” the jurisdiction of the court is not the subject of this hearing. Bulkan, Robinson and Saunders present helpful discussion on the topic in their treatise, **Fundamentals of Caribbean Constitutions** at paragraphs 5-018 et seq. For present purposes it suffices to note that courts have long taken the stance that it would require specific language to achieve such exclusionary purposes. See the cases of **Brantley and others v Constituency Boundaries Commission and others**⁸⁹ and **R (on the application of Privacy International) v Investigatory Powers Tribunal and others**⁹⁰ presented by Mr. Bristol on this score. In the latter case, Lord Carnwarth noted that “*Judicial review can only be excluded by ‘the most clear and explicit words...’*.”⁹¹
- [99] An instructive extraction is also taken from **Supperstone, Goudie and Walker on Judicial Review** which elucidates that –

“... the rigour of the court’s approach to ouster clauses is a function of the rule of law; the vindication of the rule of law is the constitutional right of every citizen. **So if it is to be breached by Parliament or with Parliament’s permission, the High Court will require express words to be used.** Here is the true place of the idea of legislative intention. **Parliament may override the rule of law, but only where it is shown, on the face of the statute, that it actually intended to do so.** In other words, the statute would have to provide that the decision of the body in question could not be reviewed for any failure to comply with the principles of public law; it would be tantamount to a provision to the effect that the decision-maker was not obliged to be reasonable, or to be fair, or to act within the confines of the Act’s purpose, or according to its correct construction, and so forth.”⁹² (Emphasis mine)

⁸⁹ [2015] UKPC 21

⁹⁰ [2019] UKSC 22

⁹¹ **R (on the application of Privacy International) v Investigatory Powers Tribunal and others** [2019] UKSC 22 at para 111

⁹² Supperstone, Goudie and Walker on Judicial Review (7th edn., LNUK) at para.6.40

[100] It would seem to me that the foregoing applies with equal force to the arguments raised about the applicability of section 101 to the appointing powers exercised by the JLSC pursuant to section 5 of the Courts Order. Conspicuously, it is nowhere articulated in section 101 or elsewhere in the Constitution that the appointing powers of the JLSC set out in section 5 of the Courts Order are immunized from the scrutiny recited in section 101. Without more therefore, the exercise of the JLSC's appointing powers are like any powers exercised in accordance with the Constitution, that is to say, they are to be exercised in accordance with the terms on which they are imposed and are open to challenge and judicial review for noncompliance.

Jurisdiction affected or adjusted by section 8?

[101] Justice Ventose argues though that the general terms of section 101 cannot be used to override the specific terms of section 8 of the Courts Order. Section 101 must thus be read subject to section 8 of the Courts Order (or what is in section 101 is limited or excluded by what is stated in section 8) since what is at stake is the judge's removal from office. This argument is, respectfully, displaced by the foregoing since it must be the case that if the framers of the Constitution intended to exempt the JLSC's appointing powers set out in section 101 from judicial examination they would have said so.

[102] The argument is also, with respect, somewhat misleading since it seems to be overlook the central place that section 5 plays in the invocation of section 8 (or the relational connection between the two sections).

[103] With specific regard to the appointing process in section 5, the deliberate and elaborate construct set out in section 5 of the Courts Order has very significant meaning. It seems to me that the framers intended that the person to hold office as a judge or who can argue that he or she properly holds office as a judge must be the person who bears the qualifications set out in section 5 and only that person. That is the person who is eligible to be appointed to the office and to be conferred with the

rights and protection of the same including the security against removal except in accordance with the section 8 procedure. Up until this is done, the holder of the office cannot be said to be appointed in accordance with section 5 and by extension cannot be said to be clothed with the rights and attendant protections afforded by the Courts Order to that office. As was stated in **Guðmundur Andri Ástráðsson v Iceland** –

“In order to perform the judicial functions legitimised by the constitution, each judge needs to be appointed and thus become part of the judiciary. **Each individual judge who is appointed in accordance with the constitution and other applicable rules thereby obtains his or her constitutional authority and legitimacy. It is implicit in this appointment in accordance with constitutional and legal rules that individual judges are thereby given the authority and appropriate powers to apply the law as created by the legislature or as formulated by other judges. The legitimacy conferred on an individual judge by his appointment in accordance with the constitution and other legal rules of a particular state constitutes an individual judge's 'constitutional or formal legitimacy'.**”⁹³

...

“...[e]ach individual judge who is appointed in accordance with the constitution and other applicable rules thereby obtains his or her constitutional authority and legitimacy” ... therefore suggesting that a judge appointed in contravention of the relevant rules may lack the legitimacy to serve as a judge.⁹⁴ (Bold, underline mine)

[104] There seems to be, in my view, no other logical or rational conclusion to be drawn for the deliberate or elaborate appointing scheme set up by section 5 of the Courts Order. To argue the contrary would render the appointing scheme set up by the framers of the Constitution in section 5 otiose, impotent, insignificant and/or superfluous.

[105] Viewed through this lens, it has to be the case that the argument that any appointment made by the JLSC with or without regard to the qualification criteria set out in section 5 would not be amenable to judicial review by the court for the simple reason that, as Justice Ventose claims, querying the validity of the appointment would involve the question of the judge's removal from office in accordance with the section 8 of the

⁹³ [2020] ECHR 26374/18 at 126

⁹⁴ **Guðmundur Andri Ástráðsson v Iceland** [2020] ECHR 26374/18 at 227

Courts Order is a discomfiting exercise in conflating section 5 and 8 of the Courts Order or worse, as I have stated above, render the mandatory provisions of section 5 insignificant.

[106] In addition and more importantly I believe that, with respect, the approach suggested by Justice Ventose would implicitly confer the JLSC with the extraordinary powers of appointing whomever it sees fit to the office of a judge without regard to the section 5 prescriptions. That person would then hold office and could only be removed therefrom by the complex removal process set out in section 8. With respect, I am unable to see that the framers of section 5 of the Courts Order intended such an outcome. What seems clear to me is that the framers intended to enact a specific regime to be scrupulously followed by the JLSC and the deployment of which would be amenable to the judicial review jurisdiction of the High Court pursuant to section 101 of the Constitution like any other non-bill of rights powers exercised pursuant to the Constitution. And as I have said above, it would require express language in the Courts Orders or elsewhere in the Constitution to arrive at the conclusion suggested by Justice Ventose. In any event such an approach would be pointless since, to repeat, it would have the extraordinary result of permitting the JLSC to exercise constitutionally imposed appointing obligations in disregard of the stipulated criteria.

[107] If the constitutional construct governing the functioning of the JLSC and by extension, any institution or person exercising powers conferred by the Constitution is to mean anything then it must mean that each and every entity or person required to act by any provision of the Constitution is duty bound to do so not only in accordance with the letter but also with the spirit of the provision(s) governing such action. Where they fail to do so, except where it can be shown that the failure is clearly excused from judicial review, the exercise of the power is subject to judicial review for thus the orderly functioning of the State is secured against the arbitrary, excessive and/or abusive exercise of power. To say otherwise would run a horse and carriage through the notion that the State and all who are its subjects are governed by the constitutional framework. This is how the Constitution makes sense and is functional as the

supreme law; its stipulations must be followed with scrupulous deference and adherence to its dictates.

Qualifications and section 8

[108] Now, I sense that the next tranche of the arguments made by Justice Ventose assumes and addresses some of the difficulties that I just outlined. For he posits that reading the section 8 removal process in the manner that he suggests is made seamless if a judge's lack of the qualifying criteria is seen as a ground of removal pursuant to section 8. As skillful and attractive as this proposition appears, I find, again respectfully, that I disagree with it. The force of the argument is immediately lost if one looks at it through the lens that I have just discussed above that the framers could not have intended such a seemingly contorted approach to the matter.

[109] More substantively, Justice Ventose is correct that none of the cases presented by Mr. Bristol frontally addresses this issue, that is to say, in cases where a court is interrogating the question of whether a judge possesses the requisite qualifications to hold office that exercise equates to the constitutionally mandated process for removing the judge from office. In **Buckley v Edwards**⁹⁵, the court deliberated on whether a proper appointment was made in circumstances where the judge was appointed without adherence to certain specified matters such as allocation of salary to the post. The Privy Council ultimately held that the appointment was invalid. Similarly in **Reference re Supreme Court Act (Canada)**⁹⁶, like in this case, the question was whether the judge met the qualifications in law to hold the office. The court found that the judge did not meet the legislated criteria and as such ruled that his appointment was invalid. In **Guðmundur Andri Ástráðsson v Iceland**⁹⁷, the applicant to the ECHR asserted that his right to be tried by a tribunal established by law and fairness of proceedings were breached by irregularity in, among other things, the appointment of one of the judges of the Court of Appeal. The ECHR found that the appointment of the judge in question was indeed improperly done and as a

⁹⁵ (1892) AC 387

⁹⁶ 2014 SCC 21

⁹⁷ 2014 SCC 21

consequence the applicant's right to a tribunal established by law was breached. The judge's appointment was not invalidated by the ECHR which had no jurisdiction on the matter before it to do so but eventually the matter was addressed by the Icelandic government and matters were set right by the judge's appointment in a procedurally sound manner.

[110] I believe though that Mr. Bristol was correct to accept that these cases stand as propositions that courts are prepared to pronounce on whether a judge possesses the requisite qualifications to hold office and that courts are equally prepared to make declarations and orders where they do not.

[111] But I would also say that none of the cases presented by Justice Ventose assist the venture on which he embarks on this issue. Justice Ventose presents **Ayers-Caesar** and **Boyce & Ors v The Judicial and Legal Services Commission**⁹⁸. A synopsis of **Ayers-Caesar** has been set out above. In **Boyce**, the question of the judge's ability to hold office due to conduct involving, among other things, excessive and unexplained delay in producing judgments was explored. I have also set out above the pronouncements in that case relied on by Justice Ventose. The opening lines of the quote from the decision in **Boyce** makes the point –

“We consider that the concept of inability refers to **the lack of capacity to perform the required judicial duties at the requisite level of competence and skill**. The judge is simply unable, through no personal moral failing, to perform his judicial duties...”⁹⁹ (Bold emphasis mine).

[112] At a glance, the lack of competence and skill are evidently a separate enumeration of criteria than qualifications and, for that matter, experience. One can certainly possess a number of scholastic qualifications and have acquired tremendous experience but lack the competence to do the job. No one in **Boyce** or **Ayers-Caesar** suggested that either person lacked the qualifications or experience to perform the functions of the office of a judge. Rather, whether it was by omission or commission, whether it was before being appointed to office (in the case of **Ayers-Caesar**) or after (in the case of

⁹⁸ [2018] CCJ 23 (AJ)

⁹⁹ [2018] CCJ 23 (AJ); [2018] 5 LRC 636 at 655

Boyce), the discussion was focused not on the judge's qualifications and experience but on the judge's conduct. Even though **Dumas** was a case that addressed the provisions of the Trinidad and Tobago Constitution regarding the appointing powers of the Police Service Commission in Trinidad and Tobago, I have no hesitation in finding, and I so find, that what is said in that case is apposite to the standard required of the JLSC in its execution of its appointing duties set out in section 5 of the Courts Order –

“...But if the phrase “qualified and experienced” requires a nominee to have a formal qualification in one or more of the specified fields and confines the requisite experience to post-qualifying experience, it cannot lie in the hands of the President or the House of Representatives to waive those requirements. **Appointment of persons without the required qualifications and experience would be unconstitutional**, and the President's nomination and appointment of such persons would be invalid...”¹⁰⁰ (Bold emphasis mine).

[113] Section 5 is focused on setting the minimum standards (qualifications and experience) necessary to be appointed to the office of a judge. Section 8, in turn, outlines in broad terms, the standards in terms of conduct required of the judge to remain in that office to which he or she is appointed, whether that conduct occurred before or after being appointed to the office.

[114] The facts of this case are a graphic exemplification of the distinction between sections 5 and 8, since as I stated at the top of this discourse, no one disputes that Justice Ventose is quite impressively well lettered, competent and skillful in the legal craft. In this regard, no complaints have been presented to this court about his extensive legal qualifications, prodigious abilities and outstanding achievements. But these are not the matters in contention or under scrutiny. The question is being asked, like in **Reference re Supreme Court Act (Canada)** and to some extent in **Guðmundur Andri Ástráðsson v Iceland**, has Justice Ventose met the stipulated standard to be appointed to office? This is a section 5 appointing power issue solely and, for the reasons set out above, I do not agree that the standards set out in that section have

¹⁰⁰ [2017] UKPC 12 at para 31

much to do with the conduct of the applicant which is a matter separately addressed in section 8. As such this argument does not avail Justice Ventose.

The redress question

[115] But what if I am wrong about all this? What if it is the case that section 101 must be read with section 8 in mind or subject to section 8 or is excluded by it? Justice Ventose reasons that if the court hears Mr. Bristol's request and grants the redress that he seeks, it would be tantamount to an order removing a judge from office. Justice Ventose submits, for all the reasons that he has presented, that the court has no jurisdiction to grant an order that, in essence, would amount to a removal of a judge from office. Mr. Bristol, Justice Ventose opines, may ask the court for an order interpreting section 5 or approach the JLSC with a request that it consider the invocation of the elaborate section 8 removal process. The court is not permitted to sit as a body deliberating on and deciding the tenure of a judge. Again, these are all reasonable and forceful arguments with appealing deductions. But these arguments engage an erroneous premise or, maybe premises, which lead to the incorrect, even though attractive conclusion. The main fallacy in this argument is that the court on hearing the section 101 claim is duty bound to give Mr. Bristol what he seeks, if indeed what he seeks is an order invoking section 8 or anything that approximates to it. The issue is therefore one of remedies.

[116] It is by now well accepted that sections 101(2) and (3) of the Constitution or provisions similar give the court a broad discretion to craft remedies appropriate to redress the breach of the Constitution. As indicated above, in **Jaundoo** and **Maharaj**, both cases dealing with redress in fundamental rights cases, the Privy Council referred to the wide powers to craft redress that is conferred on the courts by sections similar to section 16 of the Constitution. In **Maharaj**, the Privy Council noted that the redress provision evinced a "...clear intention to create a new remedy whether there was already some other existing remedy or not¹⁰¹". **Gairy v AG**¹⁰² scotched the notion that

¹⁰¹ [1979] AC 385 at 398

¹⁰² [2001] UKPC 30

the court could not craft and issue coercive orders against the Crown for breaches of constitutional rights. In **Methodist Church of the Bahamas v Symonette**¹⁰³, the court addressed the approach to be taken in cases where constitutional challenges are made to the manner in which parliament is exercising its power to make laws. While the court is to take a cautionary approach to intervening in the legislative exercise, the Privy Council opined that

“...so far as possible, the courts of The Bahamas should avoid interfering in the legislative process. The primary and normal remedy in respect of a statutory provision whose content contravenes the Constitution is a declaration, made after the enactment has been passed, that the offending provision is void. This may be coupled with any necessary, consequential relief...”¹⁰⁴

[117] The authors of **Fundamentals of Caribbean Constitutions** put the matter more succinctly –

“The powers of the court where judicial review is successful are explicitly outlined in both types of redress provisions. The bill of rights redress clause enables the High/Supreme Court to “make such orders, issue such writs and give such directions as it may consider appropriate. The other general enforcement section in the OECS constitutions is more tersely worded, conferring power on the court to grant “such remedy as it considers appropriate”. **These broad formulations would suggest that courts possess considerable discretion regarding the types of remedies they may grant...**”¹⁰⁵ (bold emphasis mine)

[118] The totality of the foregoing is to the effect that the court is granted expansive discretion to grant appropriate and adequate remedy to meet the breach of the constitutional right. With regards to this case, it would mean that the court is not constrained in the types of remedies that it may grant if it finds that the JLSC did in fact exceed the powers granted to it by section 5 when it made the appointment. Certainly a declaration to that effect would not have the effect that Justice Ventose fears. If this analysis of the law is correct, there is nothing precluding this court from

¹⁰³ (2000) 59 WIR 1

¹⁰⁴ (2000) 59 WIR 1 at 14

¹⁰⁵ Supra note 62 at page 228

making such a declaration with appropriate orders that, among other things, the JLSC reconsider its decision to appoint Justice Ventose. **CPR 56.11(3)** states that *“The judge may grant any relief that appears to be justified by the facts proved before the judge, whether or not such relief should have been sought by an application for an administrative order.”*

[119] The long and short of all the foregoing is that for the reasons that I have stated above, it is difficult for me to see how the section 8 process is being invoked by these proceedings. As I have stated above, the only person who may invoke the protection afforded by section 8 is the person who is appointed in accordance with section 5 of the Court’s Order. Accordingly, an order quashing the decision to so appoint a person not qualified would not amount to a removal from office in accordance with section 8. But in the event that Justice Ventose is correct that the person appointed in violation of section 5 is clothed with the protection of the section 8 removal process, I still do not accept that this court lacks jurisdiction to hear the challenge to the improper appointment and to make orders that the JLSC acted in disregard of the prescriptions set out in section 5. In the event that it finds a violation of section 5, the court is granted wide powers of redress pursuant to section 101 of the Constitution to may make necessary orders without granting an order that would, in effect, remove the improperly appointed judge from office.

Staying the court’s jurisdiction

[120] A court has the power to stay proceedings over which it has jurisdiction, which power arises from its inherent jurisdiction, its case management powers under the CPR (**CPR 9.8 and 26.1(2)(q)**) or pursuant to statute (see, for instance, section 18 of the West Indies Associated States Supreme Court (Grenada) Act, Cap.336). The court’s jurisdiction to do so is discretionary and may be exercised “where it thinks fit to do so” or also put in the cases “in the interest of justice”. **Halsbury’s Laws of England**¹⁰⁶ explains –

¹⁰⁶ Vol 12A (2020) para 1028

“A stay of proceedings arises under an order of the court which puts a stop or 'stay' on the further conduct of the proceedings in that court at the stage which they have then reached, so that the parties are precluded thereafter from taking any further step in the proceedings. The object of the order is to avoid the trial or hearing of the claim taking place, where the court thinks it is just and convenient to make the order, to prevent undue prejudice being occasioned to the opposite party or to prevent the abuse of process. The court's power to stay proceedings may be exercised under particular statutory provisions, or under the Civil Procedure Rules or under the court's inherent jurisdiction, or under one or all of these powers, since they are cumulative, not exclusive, in their operation.”

[121] Lord Justice Males in **Athena Capital Fund SICAV-FIS SCA and others v Secretariat of State for the Holy See**¹⁰⁷ explains that –

“The court has power to stay proceedings “where it thinks fit to do so”. This is part of its inherent jurisdiction, recognised by section 49(3) of the Senior Courts Act 1981. The statute imposes no other express requirement which must be satisfied. This is a wide discretion. The test is simply what is required by the interests of justice in the particular case.

Such a stay may be permanent or temporary and may be imposed in a very wide variety of circumstances. Obvious examples include that proceedings may be stayed in order to await the decision of an appellate court in another case; or until a party complies with an order to provide security for costs; or to enable mediation to take place...”

[122] Section 49(3) of the Senior Courts Act 1981 includes the similar articulation in section 18 of the West Indies Associated States Supreme Court Act that the court may grant a stay “...if it thinks fit to do so”.

[123] In **Texan Management Ltd et al v Pacific Electric Wire & Cable Company Limited**¹⁰⁸, the Privy Council cautioned that –

“...although the inherent jurisdiction may supplement rules of court, it cannot be used to lay down procedure which is contrary to or inconsistent with them, and therefore where the subject matter of an application is governed by the

¹⁰⁷ [2022] EWCA Civ 1051 at para 48

¹⁰⁸ [2009] UKPC 46 at para 57

CPR it should be dealt with in accordance with them and not by exercising the court's inherent jurisdiction."

[124] Justice Ventose argues that the court ought to grant a stay in this case for the various reasons that he presented which I have recited above and I will not repeat.

[125] On the particular reasons that he presents I will unequivocally agree that judicial independence and security of judicial tenure are salutary and essential features of the constitutional regime that governs the functioning of our societies. More signally, the role of the judiciary in the separation of powers demands nothing less than the most rigorous and jealous protection from interference. See Lord Diplock's exposition on these matters in **Hinds. Rees and Crane** quoted above makes the point about judicial independence and security of tenure even more graphically.

[126] However, I do not believe that any of the fears about the impact that Mr. Bristol's claim may have on judicial independence or the security of their offices will be realised. This is principally because, for the reasons that I have expressed above in this ruling, I do not share Justice Ventose's views on the manner in which the appointing powers of the JLSC ought to be interpreted, applied and/or scrutinised. Further, also for the reasons that I have stated above, even if the appointing powers were to be interpreted in the manner in which he suggests, hearing this matter does not lead inevitably to the removal of a judge from office and as such, the dangers he perceives do not loom as ominously as he submits. For the same reasons, the fear that the judge will perform the functions of his or her office with the continuous fear of the institution of removal by judicial review is not also made out.

[127] Equally, I do not find that there is much in the submissions that the ultimate arbiter on the question of removal is the Judicial Committee of the Privy Council. On the view that I have taken of the claim, the issue simply does not arise or may only arise if the JLSC acts on an order that it ought to reconsider the appointment of the judge or initiate a removal of the judge who has been improperly appointed. In any of these scenarios the case for a stay is not made out or warranted.

[128] The argument that the courts of the ECSC are part of a sub-regional structure and that what is decided in one court of the ECSC impacts the other courts or that different judges may decide the same issues differently is also not, in my view, a sufficient basis on which to grant a stay. And thus goes the complaint that different courts of the ECSC have different final courts of appeal. As Mr. Bristol correctly points out, the sub-regional court is a structure that was a matter of considered deliberation. While the office of a judge is peculiar specie and is protected for all the reasons that Justice Ventose eloquently articulates, I do not believe that merely because the office of a judge is engaged those concerns ought to be elevated to a status that ought to excite a court against exercise of its constitutional duties imposed by section 101. On the contrary, I see the matter as one that is of almost, if not, existential significance to the sanctity of the judiciary that the courts of the ECSC ought to be energised to engage their jurisdiction, where available, to deliberate on the matter rather than be reticent, retreating or diffident to employ their judicial review powers due to the supposed offensive, negative or feared implications of such an exercise.

[129] So too goes the fear that an inferior court will be deciding the fate of a Court of Appeal judge. I need not remind the parties to this claim that section 101 of the Constitution gives the High Court original jurisdiction with respect to the deliberation of the claims which fall under the remit of that section. In its exercise of this jurisdiction the High Court is clothed with all the authority of the supreme law to investigate and decide whether all who are subject to the Constitution have comported themselves in compliance with the terms thereof. In this vein, allusions to hierarchical pre-eminence or otherwise cannot be used to displace or relegate or delimit the exercise of the original jurisdiction unless the same is shown to be a deliberate emanation from the Constitution itself. See for instance **Methodist Church of the Bahamas v Symonette**.

[130] In **Maharaj**, some arguments were made about the propriety of a judge of the High Court deliberating on whether another judge of the High Court had acted in breach of the fundamental rights of Mr. Maharaj. The view was canvassed that it was, among other things, improper for a judge to be deciding, except on appeal, the correctness

of another judge's orders. While the facts are dissimilar to the facts on this issue, the Privy Council's ruling on this issue are apposite to the concerns raised by Justice Ventose since they make the point about the judicial review role of the court in constitutional claims –

“Distasteful though the task may well appear to a fellow judge of equal rank, **the Constitution places the responsibility for undertaking the inquiry fairly and squarely on the High Court.**”¹⁰⁹ (Bold emphasis mine)

Public Policy

[131] Saunders J. writing in **BCB Holdings** said of public policy –

“Almost 200 years ago Burrough J in *Richardson v Mellish* (1824) 2 Bing 229 at 252 famously noted that ‘public policy’ is a very unruly horse. Once you get astride it, he warned, you never know where it will carry you. This admonition is especially prescient because the concept of public policy is fluid, open-textured, encompassing potentially a wide variety of acts. It is conditioned by time and place.”¹¹⁰

[132] A compendious description of the term is set out in the text “**Words and Phrases Legally Defined**” as meaning –

“...the ideas which for the time being prevail in a community as to the conditions necessary to ensure its welfare; so that anything is treated as against public policy if it is generally regarded as injurious to the public interest...Public policy is not, however, fixed and stable. From generation to generation ideas change as to what is necessary or injurious, so that “public policy” is a variable thing. It must fluctuate with the circumstances of the time...New heads of public policy come into being, and old heads undergo modification...”¹¹¹

[133] To put matters shortly, I do not find that any of the concerns raised under this head of complaint leads to the conclusion that the hearing of Mr. Bristol's claim would be so injurious to the public good that one can say that this court should not exercise its jurisdiction. Again, contrarily, I would surmise that the public interest would lie in

¹⁰⁹ [1979] AC 385 at page 394

¹¹⁰ [2013] CCJ 5 (AJ); [2014] 2 LRC 81 at page 92

¹¹¹ Words and Phrases Legally Defined (6th edn. LNUK)

assurances that the judiciary which the Constitution tasks with upholding its dictates and the rule of law is compliant with the Constitution and is properly constituted in accordance with the Constitution. The public good is also served by the judiciary ensuring that it does not recoil from the task of policing itself to ensure that the constitutional strictures about its composition are meticulously and faithfully followed. Public confidence in the judiciary can only be harmed and the public faith in the constitutional structure wane if the judiciary is seen as unmindful and careless about the matters, especially constitutional matters, that govern its functioning.

[134] For these reasons, I disagree that any of the public policy trepidations raised assist the application brought by Justice Ventose.

Striking out

[135] CPR 26.3 recites the court's power to strike out claims. It reads –

“(1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that

- (a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings;
- (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
- (c) **the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;** or
- (d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.” (Bold emphasis mine)

[136] Courts tend to use this rule with caution as its evident effect may be fatal to a party's case. As previously noted¹¹², courts exist to facilitate the just resolution of the claims brought before them by parties and should not turn away litigants from their doors without sound reasons. However, while the process is designed to accommodate the complaints raised by litigants, the court is equally concerned with ensuring that its resources are deployed solely to address meritorious concerns and not frivolous and

¹¹² Kenneth Griep et al v Marjorie Griep GDAHCV2019/0100

baseless claims or that litigants abuse its processes. As much as litigants are entitled to “have their day in court”, those against whom they bring claims are equally entitled not to be troubled by claims that have little chance of succeeding. Thus, the court retains the power to strike out those claims that are patently unsustainable and unquestionably incapable of succeeding. Courts are equally jealous to guard their processes to ensure that they are not abused.

[137] The approach to deploying the striking out power has been explained thusly –

“...The striking out of a party’s statement of case, or most of it, is a drastic step which is only to be taken in exceptional cases. The reason for proceeding cautiously has frequently been explained as that the exercise of this jurisdiction deprives a party of his right to a trial and of his ability to strengthen his case through the process of disclosure, and other procedures such as requests for further information. The court must therefore be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial. The proper approach to be taken in striking out a statement of case as disclosing no facts upon which the court can proceed has been described by Pereira CJ [Ag.], in her judgment in the interlocutory appeal in **Ian Peters v Robert George Spencer**, where she found that a statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be determined by hearing oral evidence. In that case she set aside the master’s order striking out the claimant’s claim as containing no allegations of fact which supported the claim.

Even under our old rules, the striking out of a claim was a jurisdiction which was to be exercised sparingly. In the words of Sir Dennis Byron in **Baldwin Spencer v The Attorney-General of Antigua and Barbuda et al**,

This summary procedure should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that the claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court. There is no reason to believe that this is not still good guidance under the new CPR.”¹¹³

Abuse of process and striking out

[138] Regarding abuse of the court’s process, **Halsbury’s** explains –

¹¹³ Tawney Assets Ltd v East Pine Management Ltd et al BVIHCVAP2012/007

“A pleading may be struck out under the Civil Procedure Rules if it appears to the court that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings, for example, where the claim is vexatious, scurrilous or obviously ill-founded. It is an abuse of process to misuse the court's processes to achieve something not properly available in the proceedings. However, there are no fixed categories of abuse.”¹¹⁴

[139] The term itself has been more explained than defined and it is therefore said that:

'Although the term “abuse of the court's process” is not defined in the rules or practice direction, it has been explained in another context as “using that process for a purpose or in a way significantly different from its ordinary and proper use” ([*A-G v Barker* [2000] 2 FCR 1], *per* Lord Bingham of Cornhill, Lord Chief Justice) . . .

The court has power to strike out a *prima facie* valid claim where there is abuse of process. But there has to be an abuse, and striking out has to be supportive of the overriding objective. It does not follow from this that in all cases of abuse the correct response is to strike out the claim. The striking out of a valid claim should be the last option. If the abuse can be addressed by a less draconian course, it should be.”¹¹⁵

[140] Lord Diplock opined in **Hunter v Chief Constable of West Midlands Police**¹¹⁶ about the court's power (or duty as he put it) in respect of the abuse of its process:

“[T]his is a case about abuse of the process of the High Court. It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied ... It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power.”

¹¹⁴ Vol 32 (2023) para 716

¹¹⁵ See *Hepworth Group Ltd v Stockley* [2006] EWHC 3626 (Ch). See also the Caribbean Civil Practice, 3rd edn at Note 23.34

¹¹⁶ [1981] 3 All ER 727 at 729, [1982] AC 529 at 536

[141] On this issue as well, I depart from Justice Ventose’s views. For one thing, I do not see any evidence that suggests that Mr. Bristol has brought this claim in an attempt to subvert the court’s process or otherwise engage it in an improper manner or with illegitimate or improper motives or that any of the issues that it entails ought to offend this court’s sense or any sense of justice at all or to the extent that the court ought to strike it out as abusive of its process. As far as I can see it, and I have said as much throughout this ruling, the issues that are at the core of this claim are of critical importance to the administration of justice and indeed the sanctity of our constitutional structure in Grenada and the wider ECSC. The application also fails on this ground.

Delay

[142] **CPR 56.4** addresses the procedure with respect to delay. It reads –

“(1) In addition to any time limit imposed by any enactment, the judge may refuse to grant relief in any case in which the judge considers that there has been unreasonable delay before making the application.”

(2) When considering whether to grant relief because of delay the judge must consider whether the granting of relief would be likely to –

(a) be detrimental to good administration; or

(b) cause substantial hardship to or substantially prejudice the rights of any person”

[143] The complaint on this issue is not too long and it is that Mr. Bristol, who was part of the Search Committee, was aware or ought to have been aware of his issues with Justice Ventose’s qualifications since 2022 when the Search Committee received his application for the post of Chief Justice. Justice Ventose states that Mr. Bristol did not take action until December 2024. During that time, Justice Ventose acted as Justice of Appeal on several occasions and was appointed to the post of Justice of Appeal in November 2023 with effect from January 2024.

[144] The foregoing conduct, Justice Ventose argues, is relevant to the issue of jurisdiction under section 101 of the Constitution. The point was not developed beyond this assertion and the assertion that “[D]elay is also important in the context of institutional and reputational harm. But by the time this case is over, the alleged deficiency of

*which the Claimant complains would have been eclipsed by a fluctuation of time, because the time spent on the bench count towards the qualification requirement in section 5 of the Courts Order.”*¹¹⁷

[145] If by “institutional and reputational harm”, Justice Ventose is referring to the Part 56.4(2) matters of detriment and prejudice where a court is considering whether an assertion of unreasonable delay is made out, then I agree with him that delay is certainly important in that context. But the point was never developed with evidence or submissions on the detriment or prejudice being asserted¹¹⁸. I am prepared to hold however that the public interest in certainty in cases of this nature is particularly important and as such issues of detriment to good administration are in central focus. See for instance the discussion by the court in **R v Dairy Produce Quota Tribunal for England and Wales Ex p. Caswell**¹¹⁹ where on the issue of detriment to good administration it was said that –

“Lord Diplock pointed out in *O'Reilly v. Mackman* [1983] 2 A.C. 237, 280-281:

"The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision."

I do not consider that it would be wise to attempt to formulate any precise definition or description of what constitutes detriment to good administration. This is because applications for judicial review may occur in many different situations, and the need for finality may be greater in one context than in another. But it is of importance to observe that section 31(6) recognises that there is an interest in good administration independently of hardship, or prejudice to the rights of third parties, and that the harm suffered by the applicant by reason of the decision which has been impugned is a matter which can be taken into account by the court when deciding whether or not to exercise its discretion under section 31(6) to refuse the relief sought by the applicant. In asking the question whether the grant of such relief would be detrimental to good administration, the court is at that stage looking at the interest in good administration independently of matters such as these. In the present context, that interest lies essentially in a regular flow of consistent decisions, made and

¹¹⁷ Submissions on behalf of Justice Ventose filed 30th September 2025, para 64

¹¹⁸ See *Maharaj v National Energy Corporation of Trinidad and Tobago* [2019] UPKC 5

¹¹⁹ [1990] 2AC 738 at 749 -750

published with reasonable dispatch; in citizens knowing where they stand, and how they can order their affairs in the light of the relevant decision.”

Section 31(6) of the Supreme Court Act (UK) contains similar descriptions of detriment and prejudice in the context of delay to the language in Part 56(4) of the ECSC’s CPR.

[146] The time between Justice Ventose’s application to be appointed as Chief Justice and the filing of these proceedings is more than 2 years. And as Justice Ventose points out, the Search Committee of which Mr. Bristol was a member was aware of the facts from that time. Without further explanation, it seems that there was substantial delay. There is a greater issue at play here though. **CPR 56.4** speaks of the court’s power to refuse relief due to delay. **CPR 56.4** therefore presumes that the court has jurisdiction to hear the claim and to grant relief but that it will not do so because the delay is unreasonable having regard to all the circumstances including that of detriment and prejudice. There is nothing in the rule suggesting and it has been shown how delay in this case is, as is submitted by Justice Ventose, “*relevant to the issue of jurisdiction under section 101 of the Constitution.*”¹²⁰ If by this it is meant that the issue of delay is a matter that the court ought to consider when exercising its jurisdiction then certainly this is the correct approach since delay cannot form a ground for saying that the court lacks jurisdiction.

[147] I would add further that the delay issue ought to be interrogated, not on an interlocutory application with respect to jurisdiction but at the substantive hearing. At a substantive hearing of the claim, the court will hear all the evidence pointing to whether or not there was delay, whether, if found, the delay was inordinate, whether there are any adequate or acceptable explanations for the delay and whether, in the round, considering all these matters including whether detriment and prejudice are shown, the court ought to grant or refuse relief. The delay issue has been raised prematurely at this stage. The parties may explore it at the substantive hearing.

Conclusion

¹²⁰ Supra note 117 at para 63

[148] Having considered the foregoing, I have concluded that (1) this court does have jurisdiction to deliberate on the questions raised by Mr. Bristol on his claim, (2) that there is no basis for the court to refuse to exercise that jurisdiction and (3) there is no basis to find that the claim ought to be struck out as an abuse of process. The application is thus refused. This is not the substantive hearing and as such, having disposed of the interlocutory challenge, the trial of the substantive hearing will proceed on 25th February 2026. The parties are to file written submissions and authorities on their various arguments on the substantive issues no later than 16th February 2026.

Costs

[149] Justice Ventose has not succeeded on his application. Applicants in claims for administrative orders are not generally ordered to pay costs of the application unless they have acted unreasonably in bringing the application (**CPR 56.11(6)**). There is nothing to suggest that Justice Ventose has acted unreasonably in bringing this application and as such, no order is made as to costs. I thank counsel for their able assistance and their patience in awaiting this ruling.

Raulston L. A. Glasgow

High Court Judge

By the Court

Registrar