

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

SAINT LUCIA

SLUHCVP2021/0015

**IN THE MATTER of the Attorney General's
Reference (Constitutional Questions) Act Cap.
17.18 of the Revised Laws of Saint Lucia 2006**

**AND IN THE MATTER of the Attorney General
referring to the court for hearing and
consideration, important questions relating to
section 35 and instruments 35 and 36 and
section 16 of the Stamp Duty Act, Cap.15.11 of
the Revised Laws of Saint Lucia 2006**

**AND IN THE MATTER of the decision of Her
Ladyship Cadie St. Rose Albertini in the case
of SLUHCV2020/0030 Republic Bank vs The
Director of Finance and The Accountant
General**

**AND IN THE MATTER of Part 61.1 (1) (a) (ii) of
the Civil Procedure Rules 2000**

Before:

The Hon. Mr. Trevor M. Ward
The Hon. Mr. Gerard St. C. Farara
The Hon. Mr. Eddy D. Ventose

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

Appearances:

Mr. Seryozha Cenac, Mrs. Rochelle John-Charles and Ms. Tia Austin for the
Attorney General of Saint Lucia
Mr. Fyard Hosein S.C., Ms. Sasha Bridgemohansingh and Mr. Geoffrey Du Boulay
for the First Interested Party - Republic Bank (EC) Limited
Mr. Deale Lee for the Second Interested party - 1st National Bank Saint Lucia
Limited and the Third Interested Party - Royal Bank of Canada

2023: November 10;
2024: January 31.

OPINION OF THE COURT OF APPEAL

[1] **VENTOSE JA [AG.]:** On 24th November 2021, the Attorney General of Saint Lucia, pursuant to section 3 of the **Attorney General's Reference (Constitutional Questions) Act**¹ ("**Reference Act**"), referred to the Court of Appeal the following three (3) questions for hearing and consideration ("**Reference**"):

- "1. Whether the assessment of stamp duty under section 35 of the Stamp Duty Act and instruments numbers 35 and 36 of the schedule is to be based on the value of the consideration stated in the instrument of transfer or whether it is to be based on the chargeable value of the assets transferred [(**"Question One"**)];
2. If the answer to question 1 is found to be on the consideration (which is denied), whether the net asset value approach has any applicability on such a conveyance, whether as to a banking business vesting order or any other conveyance of a going concern or other asset [(**"Question Two"**)];
3. Whether a decision of the judge is final under section 16 of the Stamp Duty Act, where the matter concerns the interpretation of the statute and not merely the assessment of stamp duty [(**"Question Three"**)]."

[2] The questions posed in this Reference do not involve any abuse of process because, as the paragraphs below make clear, the legislative provisions relating to stamp duty in Saint Lucia do not provide the usual certainty and clarity that usually characterises tax legislation. It was therefore a proper exercise of the power granted to the Attorney General under the Reference Act to seek an opinion from this Court concerning the matters raised by the questions in the Reference.

The Relevant Statutory Provisions

[3] The provisions of the **Stamp Duty Act**² (the "**SDA**") that are relevant to this Opinion are as follows:

"12. FACTS AND CIRCUMSTANCES AFFECTING DUTY TO BE SET OUT IN INSTRUMENTS

¹ CAP 17.18 of the Revised Laws of Saint Lucia 2021.

² CAP 15.11 of the Revised Laws of Saint Lucia 2021.

All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set out in the instrument; and every person who, with intent to defraud Her Majesty—

- (a) executes any instrument in which all the said facts and circumstances are not fully and truly set out; or
 - (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set out therein all the said facts and circumstances,
- shall incur a fine not exceeding \$50.

16. APPEAL FROM ASSESSMENT OF STAMP DUTY

(1) A person dissatisfied with any assessment of stamp duty made by the Accountant General on any instrument liable to stamp duty may within 7 days of the date of the assessment by notice in writing appeal against the assessment to a judge in chambers and the judge shall have power to hear the appeal in a summary manner and assess the duty if any payable on such instrument.

(2) The decision of the judge under the provisions of the preceding subsection is final.

35. MEANING OF “CONVEYANCE ON SALE”

For the purposes of this Act the expression “conveyance on sale” includes every instrument whereby any property or any estate or interest in any property upon the sale thereof is transferred to or vested in a purchaser or any other person on his or her behalf or by his or her direction.

36. CALCULATION OF DUTY IN RESPECT OF STOCK AND SECURITIES

(1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any stock or marketable security, the conveyance is to be charged with ad valorem duty in respect of the value of the stock or security.

(2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of any security not being a marketable security, the conveyance is to be charged with ad valorem duty in respect of the amount due on the day of the date thereof for principal and interest upon the security.

37. CALCULATION OF DUTY IN RESPECT OF PERIODICAL PAYMENTS

(1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period not exceeding 20 years, so that the total amount to be paid can be previously ascertained, the conveyance is to be charged in respect of that consideration with ad valorem duty on such total amount.

(2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period exceeding 20 years or in perpetuity, or for any indefinite period not terminable with life, the conveyance is to be charged in respect of that consideration with ad valorem duty on the total amount which will or may, according to the terms of sale, be payable during the period of 20 years next after the day of the date of the instrument.

(3) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically during any life or lives, the conveyance is to be charged in respect of that consideration with ad valorem, duty on the amount which will or may, according to the terms of sale, be payable during the period of 12 years next after the day of the date of the instrument.

(4) However, no conveyance on sale chargeable with ad valorem duty in respect of any periodical payments, and containing also provision for securing the payments, is to be charged with any duty in respect of such provision, and no separate instrument made in that case for securing the payments is to be charged with any higher duty than \$1.20.

38. DUTY CHARGEABLE ON CONVEYANCE IN CONSIDERATION OF DEBT, ETC

Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him or her, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a privilege, charge or incumbrance upon the property or not, the debt money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with ad valorem duty.

39. DUTY CHARGEABLE ON CONVEYANCE IN PART CONSIDERATION OF IMPROVEMENTS

A conveyance on sale made for any consideration in respect whereof it is chargeable with ad valorem duty, and in further consideration of a covenant by the purchaser to make, or of his or her having previously made, any substantial improvement of or addition to the property conveyed to him or her, or of any covenant relating to the subject matter of the conveyance, is not chargeable with any duty in respect of such further consideration.

40. DIRECTION AS TO DUTY IN CERTAIN CASES

(1) Where property contracted to be sold for one consideration for the whole is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration is to be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set out in the conveyance relating thereto, and such conveyance

is to be charged with ad valorem duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole by 2 or more persons jointly, or by any person for himself or herself and others, or wholly for others, is conveyed in parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel is to be charged with ad valorem duty in respect of the distinct part of the consideration therein specified.

(3) Where there are several instruments of conveyance for completing the purchaser's title to property sold, the principal instrument of conveyance only is to be charged with ad valorem duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but the last mentioned duty shall not exceed the ad valorem duty payable in respect of the principal instrument; in any such case the parties may determine for themselves which of several instruments is to be deemed the principal instrument and may pay the ad valorem duty thereon accordingly.

(4) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance is to be charged with ad valorem duty in respect of the consideration moving from the sub-purchaser.

(5) Where a person having contracted for the purchase of any property, but not having obtained a conveyance, contracts to sell the whole or any part or parts thereof to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel is to be charged with ad valorem duty in respect only of the consideration moving from the sub-purchaser thereof, without regard to the amount or value of the original consideration.

(6) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him or her, which is chargeable with ad valorem duty in respect of the consideration moving from him or her, and is duly stamped accordingly, any conveyance to be afterwards made to him or her of the same property by the original seller shall be chargeable only with such other duty as it may be liable to, but the last-mentioned duty shall not exceed the ad valorem duty.

41. SALE OF ANNUITY OR RIGHT NOT BEFORE IN EXISTENCE

Where upon the sale of any annuity or other right not before in existence such annuity or other right is not created by actual grant or conveyance, but is only secured by bond, warrant of attorney, covenant, contract or otherwise, the bond or other instrument, or some one of such instruments,

if there be more than one, is to be charged with the same duty as an actual grant or conveyance, and is for the purposes of this Act to be deemed an instrument of conveyance on sale.”

Attorney General’s Reference – Question One (Ad Valorem)

[4] As mentioned above, Question One is as follows:

1. Whether the assessment of stamp duty under section 35 of the Stamp Duty Act and instruments numbers 35 and 36 of the schedule is to be based on the value of the consideration stated in the instrument of transfer or whether it is to be based on the chargeable value of the assets transferred.

[5] Question One brings into sharp focus a proper interpretation of section 35 of the **SDA** and Instruments 35 and 36, so it is necessary to restate section 35 and state the provisions of both Instruments as follows:

35. MEANING OF “CONVEYANCE ON SALE”

For the purposes of this Act the expression “conveyance on sale” includes every instrument whereby any property or any estate or interest in any property upon the sale thereof is transferred to or vested in a purchaser or any other person on his or her behalf or by his or her direction.

SCHEDULE

No. of Instrument	Nature of Instrument	Stamp Duty Payable \$ c.
35	Conveyance or transfer or sale of any moveable property (See sections 35-41)	2% ad valorem
36	Conveyance or transfer or sale	
	(a) Conveyance or transfer on sale of any immovable property such duty to be paid by the purchaser	2% ad valorem

	(b) Conveyance or transfer on sale of any immovable property such duty to be paid by the vendor:	
	(i) where the vendor is not a citizen of Saint Lucia or is a foreign company	10% ad valorem
	(ii) where the vendor is a citizen of Saint Lucia or is a local company	(a) 2 1/2% ad valorem from \$50,000 to \$75,000; (b) 3 1/2% ad valorem from \$75,001 to \$150,000; (c) 5% ad valorem from \$150,001 and over.;

[6] But for the addition of the words 'ad valorem' in the third column of Instruments 35 and 36, Question One would have been unnecessary. In submissions filed on 14th April 2023, the Attorney General interprets those words literally to mean 'to the value' or 'according to value' or 'in proportion to its value'. If that were true, the words ad valorem would have the same meaning wherever used in the **SDA**. The Attorney General has since resiled from that position and now accepts in submissions filed on 4th August 2023 that the value exchanged to effect the conveyance is not based on the value of the property transferred alone. However, the Attorney General contends that this concession does not mean that the value of the transfer is to be based on the transfer consideration alone. The First Interested Party submits that the **SDA** read as a whole, shows clearly, even if implicitly, that the stamp duty charged on a

conveyance or transfer on sale, is to be based on 'the amount or value of the consideration' given for the sale of the property, by the purchaser to the vendor.

[7] Section 35 of the **SDA** defines a 'conveyance on sale' as including any instrument by which property is transferred from a seller to a purchaser. This is not controversial. The dispute arises as to the determination of the stamp duty that is payable on a conveyance on transfer or sale. Instrument 35 in the Schedule states that this is '2% ad valorem'. Neither section 35 nor Instrument 35 expressly states the basis for the calculation of the stamp duty that is payable on a conveyance on transfer or sale. For the following reasons, I agree with the First Interested Party that the **SDA** contemplates that the stamp duty payable on a conveyance or transfer on sale, is to be based on 'the amount or value of the consideration' given for the sale of the property, by the purchaser to the seller. Given the concession above, the reasons will only be in summary form.

[8] The first reason is that the third column in the Schedule is concerned with the **amount** of tax. This is done by way of fixed dollar amounts or a percentage. Section 5(1) of the **SDA** makes clear that the duties imposed are contained in the Schedule and in section 5(2) Cabinet may, among other things, increase or decrease the amounts of the duties or annul any of them. Second, a powerful indicator of the intention of Parliament is found in section 11, Instrument 39 and sections 36-40. Instrument 39 provides as follows:

SCHEDULE

No. of Instrument	Nature of Instrument	Stamp Duty Payable \$ c.
39	Conveyance or Transfer— operating as a voluntary disposition inter vivos.	Same duty as a conveyance or transfer on sale, with the substitution in each case of the value of the

		property conveyed or transferred for the amount or value of the consideration for sale.
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- [9] The effect of Instrument 39 is twofold. First, it indicates directly that the amount of stamp duty on *inter vivos* voluntary dispositions is the same as a conveyance or transfer on sale. Second, it proceeds to provide an alternative taxing basis for calculating the 2% ad valorem. It achieves this by stating that:

“Same duty as a conveyance or transfer on sale, with **the substitution** in each case of the value of the property conveyed or transferred for the amount or value of the consideration for sale.” (Emphasis added)

- [10] This means that the 2% ad valorem is to be calculated on ‘the value of the property conveyed or transferred’. This is expressly stated in the Instrument and is not in dispute. The third effect of Instrument 39 is to provide an indication of the taxing basis for a ‘conveyance or transfer on sale’. As mentioned above, section 35 defines a ‘conveyance or transfer on sale’ but does not state the taxing basis. Instrument 35 simply provides that it is to be 2% ad valorem. Instrument 39, by its wording, implicitly suggests that the taxing basis for a conveyance or transfer on sale is the ‘amount or value of the consideration for sale’. The Attorney General was correct to concede, as noted earlier, that the words ‘ad valorem’ in Instrument 35 does not mean that the taxing basis for a conveyance or transfer on sale is only the value of the property transferred. If that were true, there would be no reason to qualify the taxing basis in respect of *inter vivos* voluntary dispositions to be ‘the value of the property conveyed or transferred’. On the Attorney General’s earlier reasoning this is achieved by using the words ‘ad valorem’ in the table in the Schedule.

- [11] The second reason is that section 11 and sections 36-40 mention ‘consideration’ as the taxing basis for those sections. I agree with the submission of the First Interested Party that those sections focus on the ‘consideration’ as the relevant taxing basis for

sale instruments. Section 11 makes clear that where there is more than one consideration they are to be separately charged as a separate instrument 'in respect of each of the *considerations*'. Section 36 states that where the *consideration* for the conveyance on sale is stocks and securities, the ad valorem duty is payable on the 'value of the stock or security'. Section 37 states that where the *consideration*, or any part of the *consideration*, consists of periodical payments, the ad valorem duty is payable on the total amount paid. Section 38 states that where the *consideration* is a debt, the ad valorem duty is payable on the amount of the debt. Section 39 makes it clear that any *consideration* that includes past or future improvements is not to be subject to the ad valorem duty. Section 40 relates to the *consideration* on conveyances involving the transfer of property: in parts or parcels by way of different instruments, and from a purchaser to a sub-purchaser, and the way in which the ad valorem duty is to be calculated.

[12] It is clear by now that these sections relate to the 'consideration' as the focal point for determining the basis for the imposition of the ad valorem duty. Based on the implication above, the ad valorem duty on a conveyance or transfer on sale is to be based on 'the amount or value of the consideration'. In **Central and District Properties v Inland Revenue Commissioners**,³ Lord Reid accepted "that the natural meaning of "consideration for the acquisition" is the quid pro quo provided by or moving from the acquiring company". The taxing basis in relation to a conveyance or transfer on sale is either: (1) the amount of the consideration; or (2) the value of the consideration. The ad valorem duty is payable on either the *amount* or the *value* of the *consideration*. I agree with the First Interested Party that the word 'value' was included to cover cases where the money is only part of the consideration or not at all.

[13] The consideration for a sale can include things other than money. This was the case in **Oughtred v Inland Revenue Commissioners**⁴ where the House of Lords held

³ [1966] 1 WLR 1015 at p. 1035.

⁴ [1960] AC 206.

that the consideration for the transfer by a son of 200,000 shares to his mother included not just the stated consideration of 10 shillings but included the transfer by trustees of the mother's 72,000 shares to the son. The examination of sections 36-40 above shows that the **SDA** was careful to spell out the taxing bases in those specific examples covered by those sections. The consideration for a sale plainly cannot be the value of the subject matter of the sale itself. This therefore excludes giving any regard to the value of the property or assets transferred in the context of sections 35 and 36 of the **SDA**.

[14] To the extent to which the Attorney General concedes that the 'consideration' for the sale is not based only on the value of the property concerned but does not include the stated consideration in the instrument of transfer, it is not therefore necessary to address the arguments based on the definition of 'consideration' found in Article 917A of the **Civil Code**⁵,

[15] The answer to Question One is that the assessment of stamp duty under sections 35 and 36 of the **SDA** and Instruments 35 and 36 of the Schedule is based on the amount or value of the consideration for sale.

Attorney General's Reference - Question Two (Net Asset Value)

[16] Question Two seeks to determine the following:

“2. If the answer to question 1 is found to be on the consideration (which is denied), whether the net asset value approach has any applicability on such a conveyance, whether as to a banking business vesting order or any other conveyance of a going concern or other asset”.

[17] The answer to Question One is also applicable here. The assessment of ad valorem duty on a conveyance or transfer on sale is based on the amount or value of the consideration for the sale. The **SDA** is not concerned with the identification of the nature and way in which parties determine the consideration that is payable for any

⁵ CAP 4.01 of the Revised Laws of Saint Lucia 2021.

conveyance or transfer on sale. This is a commercial matter between the parties. The **SDA**, however, makes provision for the determination of the amount of stamp duty that must be paid on every instrument that is liable to stamp duty. Under section 35 of the **SDA**, one must first identify the instrument by which property is transferred from a seller to a purchaser. Second, one must then determine the amount or value of the consideration for the sale. Once the consideration is identified, its amount or value is then used in the assessment of the ad valorem duty that is payable. Section 12 makes clear that all the facts and circumstances affecting the stamp duty must be set out in the instrument.

[18] I agree with the submission of the First Interested Party that: (1) the consideration which is the contemplated basis for the assessment is not the value of the assets transferred to the purchaser, but what is the quid pro quo, or what is given by the purchaser to the seller, to induce the seller to part with its property; and (2) the quid pro quo will be determined between the vendor and purchaser typically on a commercial basis, and the Inland Revenue Department will be entitled to look at all relevant facts and documents to ensure that the full consideration for a sale is not understated.

[19] Sections 175(3) and 177 of the **Banking Act**⁶ states as follows:

PART 13 TRANSFER OF BANKING BUSINESS

“175. Banking business vesting order

...

(3) On completion of the investigation, the Central Bank may, if it thinks fit, make a recommendation to the Minister to make a Banking Business Vesting Order transferring to and vesting in the transferee financial institution the undertaking, as from the date specified therein, and on the making of such an order, all such existing property, rights, liabilities and obligations as are intended by the agreement to be transferred and vested shall, by virtue of this Act, and without further assurance be transferred to, and shall vest in, the transferee financial institution to the intent that the licensed financial

⁶ CAP 12.01 of the Revised Laws of Saint Lucia 2021.

institution shall succeed to the whole or such part of the undertaking of the transferor financial institution as is contemplated by the agreement.

177. Transfers to be subject to stamp duty

The transfer of, and vesting in, the transferee financial institution of an undertaking by a Banking Business Vesting Order shall, unless exempted, either generally or in some particular case, by the Banking Business Vesting Order, be subject to the provisions of the Stamp Duty Act as if the Banking Business Vesting Order was, in each of the cases in which the duty is imposed on the several instruments specified in the Schedule to the Act, an instrument between party and party within the contemplation of the Act.”

[20] Section 175(3) makes clear that it is the Banking Business Vesting Order (“BBVO”) by which the existing property, among other things, is transferred from one financial institution to another. Section 177 states that unless exempted, a BBVO shall be subject to the **SDA** as if the BBVO was an instrument within the contemplation of the **SDA**. The approach as outlined at paragraph [17] above would be applicable here. The net asset value approach has no applicability to the actual assessment of the ad valorem duty that is payable on a conveyance or transfer on sale. However, it may be relevant in respect of determining the amount or value of the consideration. As mentioned above, the **SDA** is not concerned with determining the types of consideration or the way in which parties have determined the consideration for the sale. However, as the decision of the House of Lords in **Oughtred** makes clear, the court has the power to determine whether the amount stated in the instrument for sale is the actual amount of consideration for the sale that is subject to stamp duty. In this respect, I agree with the First Interested Party that the court may have regard to all relevant documents and surrounding circumstances to enable it to determine the amount of the consideration for sale.

[21] The answer to Question Two is that the net asset value approach may be applicable in determining the consideration for a conveyance or transfer on sale, irrespective of whether this is achieved by a Banking Business Vesting Order or any other conveyance of a going concern or other asset. However, it is not relevant to the actual assessment to ad valorem duty under the **SDA**.

Attorney General's Reference - Question Three (Finality)

[22] Section 16(2) of the **SDA** states that the decision of the judge on an appeal from an assessment of stamp duty is final. Section 26(2)(d) of the **Supreme Court Order**⁷ states that no appeal shall lie from a decision of the High Court Judge or of any judge thereof where it is provided by any law that such decision is to be final. There is no question that section 16(2) of the **SDA** is such a law as contemplated by section 26(2)(d) of the **Supreme Court Order**. I agree with the First Interested Party that the decision of the House of Lords in **Re Racal Communications Ltd**⁸ is applicable here. The issue was whether section 441(3) of the United Kingdom Companies Act 1948 (the "UKCA 1948") which states that the decision of a judge of the High Court or of any of the Lords Commissioners of Justiciary on an application under this section shall not be appealable, meant that the Court of Appeal had no jurisdiction to entertain an appeal from a decision of a High Court judge under section 441(1) of the UKCA 1948. The relevant application under section 441(1) was by the director of public prosecutions for an order of a High Court judge, authorising the inspection of a company's documents, where there was reasonable cause to believe that an officer of the company had committed an offence in the management of the company's affairs.

[23] The Court of Appeal of England and Wales reversed the decision of the high court judge to make the order under section 441(1). Lord Diplock, writing for a unanimous House of Lords in reversing the Court of Appeal stated that:

"My Lords, with great respect, I think that this dictum on which counsel for the respondent strongly relied is wrong, but in any event it has no application to the instant case. The expression with which your Lordships are concerned instead of being "final and conclusive" is "not appealable," which perhaps makes the point even clearer, but I agree with counsel for the respondent that there is no relevant distinction between the two. The general jurisdiction of the Court of Appeal to hear and determine appeals from any order of the High Court is conferred by section 27 (1) of the Supreme Court of Judicature (Consolidation) Act 1925, but this is subject to the restrictions specified in section 31 (1) of which the relevant provision is:

⁷ CAP 2.01 of the Revised Laws of Saint Lucia 2021.

⁸ [1981] A.C. 374 at p. 381.

"No appeal shall lie ... (d) from the decision of the High Court or of any judge thereof where it is provided by any Act that the decision of any court or judge, the jurisdiction of which or of whom is now vested in the High Court, is to be final."

There is no room here for distinguishing between appeals on matters of fact and appeals on matters of law. I would, therefore, conclude that even if Vinelott J.'s decision were open to attack on judicial review, the Court of Appeal would have had no original jurisdiction to entertain it."

- [24] This passage is equally applicable to section 16(2) of the **SDA** and section 26(2)(d) of the **Supreme Court Order**. Any decision made by a High Court judge under section 16(2) concerning an appeal from an assessment of stamp duty is final and cannot be appealed to the Court of Appeal. Any assessment made by the High Court judge must be based on and include his or her interpretation of the provisions of the **SDA**. The decisions relied upon by the Attorney General in support of the contrary submission are not applicable as they relate to the original jurisdiction of the High Court to review decisions of inferior tribunals for error of law by way of judicial review.
- [25] The answer to Question Three is that any decision made by a High Court judge under section 16(2) concerning an appeal from an assessment of stamp duty (including any interpretation of the **SDA** on which the assessment is based) is final and cannot be appealed to the Court of Appeal.

Answers to Questions

- [26] I would accordingly answer the Questions as follows:

A. Reference Question One

Whether the assessment of stamp duty under section 35 of the Stamp Duty Act and instruments numbers 35 and 36 of the Schedule is to be based on the value of the consideration stated in the instrument of transfer or whether it is to be based on the chargeable value of the assets transferred.

Answer to Question One

The answer to Question One is that the assessment of stamp duty under sections 35 and 36 of the **SDA** and Instruments 35 and 36 of the Schedule is based on the amount or value of the consideration for sale.

B. Reference Question Two

If the answer to question 1 is found to be on the consideration (which is denied), whether the net asset value approach has any applicability on such a conveyance, whether as to a banking business vesting order or any other conveyance of a going concern or other asset.

Answer to Question Two

The answer to Question Two is that the net asset value approach may be applicable in determining the consideration for a conveyance or transfer on sale, irrespective of whether this is achieved by a Banking Business Vesting Order or any other conveyance of a going concern or other asset. However, it is not relevant to the actual assessment to ad valorem duty under the **SDA**.

C. Reference Question Three

Whether a decision of the judge is final under section 16 of the Stamp Duty Act, where the matter concerns the interpretation of the statute and not merely the assessment of stamp duty.

Answer to Question Three

The answer to Question Three is that any decision made by a High Court judge under section 16(2) concerning an appeal from an assessment of stamp duty (including any interpretation of the **SDA** on which the assessment is based) is final and cannot be appealed to the Court of Appeal.

[27] I am grateful for the assistance provided by counsel for the Attorney General and counsel for all the Interested Parties.

I concur.

Trevor M. Ward

Justice of Appeal

I concur.

Gerard St. C. Farara

Justice of Appeal [Ag.]

By the Court

Chief Registrar