

THE EASTERN CARIBBEAN SUPREME COURT

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

Case Number: SLUHCV2023/0083

IN THE MATTER OF an application for declaratory relief
pursuant to section 105 of the Constitution of Saint Lucia

-and-

IN THE MATTER OF an application for declaratory relief
pursuant to breach by the Parliament of sections 40, 41
(6)(b), 41 (8), 41 (9), 41 (10) and 41 (11) of the Constitution
of Saint Lucia

-and-

IN THE MATTER OF The Constitution of Saint Lucia
(Amendment) Act No. 2 of 2023 and The Attorney General
(Constitutional Reference) Act No. 10 of 2005

BETWEEN:

[1] **YANN GUSTAVE**
[2] **FELIX DETERVILLE**

Claimants

-and-

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Before the Honourable Mr. Justice Alvin Shiva Pariagsingh

Appearances: Mrs. Wauneen Louis – Harris for the Claimants
Mr. Seryozha Cenac Solicitor General (Ag.) and Mrs. Rochelle John –
Charles for the Defendant

2024: November 12 – Trial
December 03 – Submissions
2025: January 20 – Decision

JUDGMENT

*"The Constitution is the supreme law of the land, and in its observance,
we find the great principles of justice and liberty." - Alexander Hamilton*

INTRODUCTION:

- [1] **PARIAGSINGH, J:** At the heart of this claim is an examination into whether the holding of a referendum was part of the correct procedure in amending §108 of the Constitution¹, to replace then final appellate court of Saint Lucia, the Judicial Committee of the Privy Council (JCPC), with the Caribbean Court of Justice (CCJ), through the Constitution of Saint Lucia (Amendment) Act No. 2 of 2023. As part of their challenge, the Claimants also question whether the enactment of the Attorney General (Constitutional Reference) Act No. 10 of 2005 (**the Act**) breached §40 of the Constitution by ousting the jurisdiction of the High Court under §§105 and 106 of the Constitution.

DISPOSITION:

- [2] The Court holds that, in enacting the Act, there was no breach of §40 of the Constitution, as the jurisdiction of the High Court under §§105 and 106 of the Constitution is not ousted.
- [3] The Court agrees, for the same reasons expressed, with the majority decision of Chief Justice Pereira and Blenman JA in **Attorney General's Reference –Questions relating to §§41(2), 41 (7), 107 and 108 of the Saint Lucia Constitution Order 1978**² that, *inter alia*, the reference to §107 in §41(7)(a) of the Constitution ought to be read and construed as a reference to §108 of the Constitution. Furthermore, the Caribbean Court of Justice (Agreement) Act, No. 34 of 2003 constitutes an international agreement to which Saint Lucia is a party for the purpose of the provisions of §41(7)(b).
- [4] The Court holds that the exemptions in both §41(7)(a) and §41(7)(b) apply, so there was no need for a referendum to be held before the Constitution was amended to replace Saint Lucia's final appellate court from the JCPC to the CCJ.
- [5] Accordingly, the Claimants' claim is dismissed, with no order as to costs, for the reasons set out below:

¹ Any reference to Constitution in this judgment refers to the Saint Lucia Constitution Order 1978.

² SLUHC VAP2012/0018 delivered on 24 May 2013.

PROCEDURAL HISTORY:

- [6] It is essential to outline the procedural history in order to understand and contextualise the apparent delay in the determination of this case. The issue of delay will also be discussed further in this judgment.
- [7] This claim was commenced on 3 March 2023 by the Claimants, (then three (3) individuals acting in person), along with an application for injunctive relief. The injunction sought to restrain the Defendants³ from amending §108 of the Constitution and replacing the final appellate court with the CCJ, pending the hearing and determination of this claim. Notably, the application was not filed with any certificate of urgency, nor was there any request for it to be heard on an emergent basis or for the time for hearing to be abridged.
- [8] At the time the application was filed, the Act effecting the impugned amendment to the Constitution had not been assented to by the Governor General (Ag.). By the time the application for injunctive relief was heard on 13 March 2023 before a judge, however, the Act had already been assented to. The judge hearing the application was of the view that, there was nothing left to restrain, and the application had become otiose. This position was explained to the Claimants on record by the judge, who subsequently granted the Claimants permission to withdraw the application with no order as to costs.
- [9] At the same hearing on 13 March 2023, the then Third Claimant (now removed) sought to make an oral application to be removed as a party to the claim. The judge did not entertain the oral application, instead directing that a written application be filed.
- [10] The judge directed that the substantive matter should proceed in accordance with the procedure set out in the Civil Procedure Rules 2000 as amended⁴, and that the claim should be listed for a first hearing by the Court Office.

³ Originally, there were three (3) named Defendants: The Speaker, the President of the Senate and the Attorney General.

⁴ The Civil Procedure Rules 2000 as amended were replaced with the Civil Procedure Rules (Revised Edition) 2023, in July 2023, shortly after the application for injunctive relief was heard.

[11] Some four months later, on 27 July 2023, the Attorney General filed an affidavit in opposition to the claim.

[12] Nothing happened in this matter between 27 July 2023 and 9 September 2024.

[13] On 9 September 2024, the Court Office listed this claim for a status hearing on 11 October 2024, as the claim was now docketed to this Court from the previous judge the claim was assigned to. The claim was listed as a pending claim due to non-compliance with the order made on 13 March 2023.

[14] On 8 October 2024, three (3) days before the status hearing to explain non-compliance and why any consequential orders ought not to be made against them, the Claimants filed an application for the Third Claimant to be removed as a party and for directions to be given. By this time, the Claimants were represented by the present counsel.

[15] On 11 October 2024, the claim came before this Court for the first time for a status hearing. At this hearing, permission was granted to the Third Claimant to withdraw his claim, with no order as to costs. Permission was also granted for the remaining two Claimants to withdraw the claim against the named First and Second Defendants, again with no order as to costs. Directions were given for the filing of an affidavit in reply by the Claimants, and for the parties to file any notice to cross-examine at the trial. The trial of the matter was fixed for 12 November 2024.

[16] I felt it necessary to set out the above to emphasise that the delay in the hearing of this claim was due to the Claimants' failure to comply with the order made by the judge on 13 March 2023. Further, the Claimants did not seek to move the Court despite a considerable amount of time passing. It was only when this matter was on the verge of being struck out for non-compliance or failure to prosecute that the order of 13 March 2023 was eventually complied with, some one year, six months, and twenty-five days after the original deadline.

[17] The onus is, and remains on the Claimants, to move their action to trial in a timely manner. There is no reciprocal obligation on a Defendant; see **Allen v Sir Alfred McAlpine and Sons Ltd**⁵. The resolution of this matter was significantly delayed due to the non-compliance by the Claimants or any attempts by them to agitate to have the matter listed for further directions.

[18] By the time the status hearing was held, the amendment to the Constitution had been proclaimed, Saint Lucia had delinked from the JCPC, and appeals had been filed from decisions of the Court of Appeal to the CCJ, both with and without leave.

[19] On 11 October 2024, I also directed the parties to file and exchange their written submissions on or before 8 November 2024. Submissions were filed by both parties in compliance with this order. In addition, the Claimants filed an amended claim raising another aspect of the procedural history of this claim. I will treat with the amendment below.

THE AMENDMENT:

[20] On 8 November 2024, the Claimants filed an amended fixed date claim form without leave, in addition to their submissions. No additional evidence was filed by the Claimants. The amended claim introduced reliefs in the form of declarations that the Constitution of Saint Lucia (Amendment) Act No. 2 of 2023, the Caribbean Court of Justice (Agreement) Act No. 34 of 2003, and the Caribbean Court of Justice (Agreement) Act Commencement Order Statutory Instrument No. 85 of 2023 are all null, void, and of no effect.

[21] These amendments were resisted by the Defendant at trial. The main objection was that the Claimants had not sought or obtained leave in accordance with CPR 20.1. Given that the new relief arose out of the evidence already before the Court, that the Defendant indicated no further evidence was necessary to address the new relief sought, and that

⁵ [1968] 2 QB 229

any prejudice caused by the lateness of the amendment could be cured by allowing the Defendant the opportunity to make further written submissions, which was afforded to the parties, I allowed the amendment to stand. My reasons for so doing are as follows:

[22] In permitting the amendment, I did not agree with the submission of Counsel for the Claimants that leave was not required to amend. Leave was required to amend the claim. With respect to administrative claims, guidance can be found in the words of Jamadar JA (as he then was) in **Ayers- Caesar v The Judicial and Legal Service Commission**⁶ at paragraphs 30 to 34 stated:

- “30. **...Hence the desirability and statutory basis for permitting amendments to grounds, given that an important public policy objective of judicial review is good public administration.**
- 31. However, if a judicial review challenge is legitimately commenced, and subsequent to doing so, new or nuanced decisions that are relevant to the action are communicated for the first time to an applicant, the due consideration of a rules compliant application to amend to include such decisions, would not generally be contrary to the overriding objective of the CPR 1998. The principles of dealing justly (Rule 1.1 (1)) and equality (Rule 1.1 (2) (a)) are apposite. As is the duty of parties to assist in furthering the overriding objective.
- 32. In addition, the CPR 1998 expressly provides that in the management of an administrative claim (which includes both judicial and constitutional review), a judge in furtherance of the overriding objective, may give any such directions as are required to “ensure the ... just trial of the claim”, and allow any amendments to an existing claim or even substitute “another form of application for that originally made.” **In the context of judicial and constitutional review, these are intended to be permissively broad and wide, though not unlimited, powers. The constitutional imperative of a rights based approach to public law litigation, makes this demand particularly of judges sitting in constitutional review matters. This is especially so, given that the main public policy objective of constitutional review is the upholding of the rule of law, and in particular, the generous fulfilment of the intent, benefits and promises of the fundamental rights and freedoms that are declared and guaranteed.**

⁶ Civil Appeal No. S 046 of 2019 (Trinidad and Tobago) (unreported).

33. Significantly, Rule 56.12 (1) expressly provides that Parts 24 to 27 CPR 1998 apply, but is silent on whether Part 20, CPR 1998 (Amendments to Statements of Case) applies. **In our opinion the threshold and hierarchical requirements of Rule 20.1 have no formal applicability to applications under Part 56, CPR 1998, particularly in relation to amendments to applications for judicial and constitutional review. Such applications are to be dealt with on general principles, bearing in mind the overriding objective, as well as the principles and processes in Parts 24 to 27, CPR 1998, and through the lenses of relevant public law principles.**" Emphasis mine.

[23] In resisting the amendments, Counsel for the Defendant referred to and relied on the decision of the Court of Appeal in **The Attorney General of Saint Lucia v Darrel Montrope**⁷. This authority expresses the view that once the first case management conference has passed, a party needs leave to amend their pleadings **in accordance with CPR 20.1** (see paragraphs 20 and 21). This approach differs from the view expressed in **Ayers-Caesar (supra)** regarding the applicability of CPR 20.1 to administrative claims.

[24] In resolving whether leave had to be obtained in accordance with CPR 20.1, I am mindful that the appeal to the Judicial Committee of the Privy Council from the decision of Jamadar JA (as he then was) in **Ayers-Caesar** was heard, and an oral decision was delivered on 13 November 2019 (14 days before the decision in **Montrope**⁸). As such, it may not have been brought to the Court's attention or considered. In that oral decision, the Board dismissed the appeal against the decision of Jamadar JA and affirmed his judgment *inter alia* that the hierarchical requirements set out in CPR 20.1 for obtaining leave to amend does not apply to administrative claims. In this regard, I consider **Ayers-Caesar** to be binding.

[25] For the reasons outlined above, I granted leave to the Claimants to amend their claim in terms of the amended fixed-date claim form filed on 8 November 2024. This decision was made taking into account the general principles of fairness and the public interest,

⁷ SLUHCVP2019/0021 delivered on 27 November 2019.

⁸ At the time Montrope was determined, the Judicial Committee of the Privy Council was the apex Court for Saint Lucia and there has been no different decision from the CCJ to date on this point.

and bearing in mind the overriding objective. The parties were permitted to supplement their written submissions to address any prejudice caused by the late amendment.

THE ISSUES:

[26] The issues for determination in this claim can be summarised as follows:

1. Whether the Defendant, in enacting the Act, breached § 40 of the Constitution by ousting the jurisdiction of the High Court under §105 and §106 of the Constitution?
2. Whether a referendum was required before the Saint Lucia Constitution was amended to replace its apex from the JCPC to the CCJ ?

RESOLUTION OF ISSUE 1 - Whether the Defendant, in enacting the Act, breached § 40 of the Constitution by ousting the jurisdiction of the High Court under § 105 and §106 of the Constitution?

[27] Lord Pearce in **Liyanage v R**⁹ expressed the view that constitutional supremacy necessitates that the legislative powers of Parliament, “must be exercised in accordance with the terms of the Constitution from which the power derives”.

[28] The power of the Parliament of Saint Lucia to make laws is expressed in §40 of the Constitution which provides as follows:

“40. Power to make laws

Subject to the provisions of this Constitution Parliament may make laws for the peace, order and good government of Saint Lucia.”

[29] §§105 and 105 of the Constitution provides as follows:

“105. Original Jurisdiction of High Court in constitutional questions

- (1) Subject to the provisions of sections 22(2), 37(6), 41(11), 58(7), 117(8), 121(3) and 124(10), any person who alleges that any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened

⁹ [1966] 1 All ER 60.

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 Chapter I thereof) 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 any law in proceedings in the High Court.
- (4) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on the Court by or under this section, including provision with respect to the time within which any application under this section may be made.
- (5) A person shall be regarded as having a relevant interest for the purpose of an application under this section only if the contravention of this Constitution alleged by him or her is such as to affect his or her interests.
- (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 law.
- (7) Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in section 39.

106. Reference of constitutional questions to High Court

- (1) Where any question as to the interpretation of this Constitution arises in any court of law established for Saint Lucia (other than the Court of Appeal, the High Court or a court martial) and the court is of opinion that the question involves a substantial question of law, the court shall refer the question to the High Court.
- (2) Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of an appeal to the Court of Appeal or Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, Her Majesty in Council."

[30] The Claimants contend that § 40 of the Constitution was contravened by the enacting of the Act. The argument advanced is that the Act ousts the authority/jurisdiction of the High Court under §105 and §106 of the Constitution to deal with constitutional questions. In looking at whether the Act does oust the Court's jurisdiction, regard must first be had to the nature of the Attorney General's references and its difference from a constitutional claim.

[31] The practice of Attorney General's references originates in common law. It was used in England to resolve matters requiring judicial interpretation and has been integrated into the legal systems of former British colonies. In **Re References by the Governor-General in Council**¹⁰, the Chief Justice stated at page 547:

“In England the practice of calling on the judges for their opinion as to existing law is well established. Evidence of its existence will be found as far back as history and tradition throws any light on British legal institutions”.

[32] On the applicability of the common-law concept of the Attorney General's reference to other Commonwealth jurisdictions, **Attorney General for the Province of Ontario and others v Attorney General for the Dominion of Canada and others**¹¹ (appeal from the Supreme Court of Canada of **Re References**), is instructive. Earl Loreburn L.C., considered a similar question; whether an Act of the Dominion Parliament authorising questions either of law or of fact to be put to the Supreme Court and requiring the judges of that Court to answer them on the request of the Governor in Council is a valid enactment within the powers of that Parliament (at page 581).

[33] The learned judge at page 585 analogised between the judges of the JCPC and those of the Supreme Court of Canada, that:

“...in as much as this Committee, exercising most important judicial functions, is undoubtedly liable to be asked questions of any kind by the authority of the Crown, and the procedure is used from time to time, though rarely and with a careful regard to the nature of the reference. On the other hand, it must be remembered that the

¹⁰ (1910) 43 SCR 536, 1910 CanLII 29 (SCC).

¹¹ [1912] AC 571.

members of the Judicial Committee are all Privy Councillors, bound as such to advise the Crown when so required in that capacity. Upon the whole, it does seem strange that a Court, for such in effect this is, should have been for three-quarters of a century liable to answer questions put by the Crown, and should have done it without the least suggestion of inconvenience or impropriety, if the same thing when attempted in Canada deserves to be stigmatized as subversive of the judicial functions.”

[34] Even after drawing this analogy, Earl Loreburn L.C., was slow to automatically apply the common-law doctrine to Canada and instead recognised that the “needs of one country may differ from those of another, and Canada must judge of Canadian requirements” (at page 587). In so doing, regard was had to the 1875, 1891 and 1906 Acts of Parliament, which provided for questions to be put to the Supreme Court. “Great weight was also attached to nearly all the provinces having themselves passed provincial laws requiring their own Courts to answer questions not in litigation” (at page 588). The Court recognised that the answers provided by the Supreme Court was only advisory and had “**no more effect that the opinions of the law officers**” (at page 589).

[35] In dismissing the appeal, the Lordships refused to pronounce upon the policy of the Canadian Parliament, which they described as “exclusively the business of the Canadian people” and stated that:

“...the mischief and inconvenience which might arise from an indiscriminate and injudicious use of the Act, [should be left] to the consideration of those who alone are lawfully and constitutionally entitled to decide upon such a matter” (at page 589).

[36] These authorities demonstrate that the Attorney General’s reference is an English common law concept, which Saint Lucia inherited during its colonial period under British rule. Even if one were not to find favour with this position, Saint Lucia has validly passed the Act, thereby enabling the Attorney General to refer questions related to the interpretation of the Constitution or other significant legal matters to the Court of Appeal.

[37] A further point to note is that identical acts have been passed in the region, in some jurisdictions which contain similar provisions in their Constitutions to §§ 105 and 106¹², again bringing into focus the *dicta* of Earl Loreburn L.C., at page 589.

SECTION 105 EXAMINED:

[38] §105 (1) provides that any person who alleges that any provision of the Constitution has been (past) or is being (present) contravened may apply to the High Court for relief. Subsection (1) also sets out the exceptions to apply for relief under the Constitution. The subsection excludes alleged breaches of Chapter I and sets out seven (7) exceptions. They are:

1. §22 (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 judgment, 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.

2. §37(6) - The question whether the Chief Elections Officer has acted in accordance with the directions of the Electoral Commission shall not be enquired into in any court of law.
3. §41 (11)- (a) A bill to alter any of the provisions of this Constitution or the Supreme Court Order shall not be submitted to the Governor General for his or her assent unless it is accompanied by a certificate under the hand of the Speaker that the provisions of subsection (2), (3), (4) or (5), as the case may

¹² Antigua and Barbuda Attorney General's Reference (Constitutional Questions) Act, No. 10 of 2009: sections 119 and 120 of the Antigua and Barbuda Constitution respectively. St. Christopher and Nevis Attorney-General's Reference (Constitutional Questions) Act, Cap. 3.23: sections 96 and 97 of the Saint Christopher and Nevis Constitution respectively.

be, have been complied with and, where a referendum has been held in pursuance of subsection (6)(b), by a certificate under the hand of the Chief Elections Officer stating the results of the referendum.

(b) The certificate of the Speaker under this subsection shall be conclusive that the provisions of subsection (2), (3), (4) or (5), as the case may be, have been complied with and shall not be enquired into in any court of law.

(c) In this subsection references to the Speaker shall, if the person holding the office of Speaker is for any reason unable to perform the functions of his or her office and no other.

4. §58 (7) - The question of the validity of any order by the Governor General purporting to be made under this section and reciting that a draft thereof has been approved by resolution of the House shall not be enquired into in any court of law.
5. 117 (8) – No proceedings of the Parliamentary Commissioner may be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be liable to be challenged, reviewed, quashed or called in question in any court of law.
6. §121 (3) - Where by this Constitution the Governor General is required to perform any function in accordance with the advice of, or after consultation with, any person or authority, the question whether the Governor General has so exercised that function shall not be enquired into in any court of law.
7. §124 (10) - Where this Constitution vests in any person or authority the power to appoint any person to act in or to exercise the functions of any office if the holder thereof is himself or herself unable to exercise those functions, no such

appointment shall be called in question on the grounds that the holder of the office was not unable to exercise those functions.

[39] In addition to the exceptions above, subsection (1) sets out that the person must have a legitimate interest in the issue to make such a claim.

[40] Subsection (2) provides that the High Court is responsible for deciding whether a constitutional provision (again, excluding Chapter I) has been violated. If the court finds a violation, it can issue a declaration confirming the breach.

[41] Subsection (3) provides that if the High Court declares that a constitutional provision has been violated, and if the person who filed the application also asks for relief, the court can provide the appropriate remedy. The remedy could be any legal remedy available in the High Court.

[42] Subsection (4) provides that the Chief Justice has the authority to set rules regarding the practice and procedures of the High Court for cases brought under this section. This includes determining timelines for when applications can be made.

[43] Subsection (5) provides that a person can only apply for relief if the violation of the Constitution directly affects their personal interests. They must show that they are impacted by the breach in some way.

[44] Subsection (6) provides that the ability to apply to the High Court for a declaration and relief does not limit or replace other legal actions that may be available under different laws related to the same issue.

[45] Subsection (7) provides that that the High Court does not have the authority to hear or decide on matters covered by section 39 of the Constitution. This excludes certain types of cases from the court's jurisdiction.

[46] In summary, §105 outlines the right of and process for individuals to apply to the High Court if they believe a part of the Constitution (excluding Chapter I) has been violated. To make such an application, the person must have a direct interest in the issue. The High Court can declare whether a constitutional breach has occurred and may provide appropriate remedies. The Chief Justice has the power to set rules and timelines for these applications. The right to seek relief is in addition to other legal actions available. However, the High Court cannot hear cases covered by section 39 of the Constitution.

HAS THE SECTION 105 POWER OF THE COURT BEEN OUSTED BY THE ACT?

[47] The Claimant contends that §105 of the Constitution is breached by the Act, which ousts the jurisdiction of the High Court.

[48] §105 of the Constitution vests original jurisdiction in the High Court to determine any alleged past or present breach of any provision of the Constitution by a person. The Act creates no such parallel. The scope of the Act is to permit the Attorney General to obtain an advisory opinion on the interpretation of the Constitution and an opinion on the constitutionality or interpretation of any legislation enacted by Parliament, as well as any matter ancillary to those two issues.

[49] §105 of the Constitution permits "any person" with the relevant interest to bring a claim before the High Court where there is an alleged breach of the Constitution. This section does not confine the Applicant to being the Attorney General, as the Act does. A decision of the High Court given pursuant to §105 of is binding and is appealable up to the apex Court.

[50] An Attorney General's reference is not a claim. There are no parties with a *lis* between them to be determined by the Court. It is simply an advisory opinion of the Court, at the request of the Attorney General, on limited issues of interpretation of the Constitution and legislation enacted by Parliament and matters ancillary thereto. Though not binding, it may be persuasive, but that does not change the nature of the proceedings or bring it into the realm of a claim.

[51] The original jurisdiction of the High Court to hear and determine claims for breaches of any provision of the Constitution of Saint Lucia remains vested in the High Court. It has not been moved to the Court of Appeal or ousted by the Act. To suggest otherwise would conflate a claim for relief under the Constitution with a request for an advisory opinion by the Attorney General.

[52] In my view, the Claimants have conflated the process of a Constitutional claim and an Attorney General's reference. They are two very different species. One is a claim where there is a *lis* between the citizen and the State. The other is the advice of the Court of Appeal given to the Attorney General on his/her request on a limited scope of matters stated in the Act. The Act does not in any way interfere with the §105 jurisdiction of the Court. The Act does not remove the power of the High Court to determine claims for relief under the Constitution and vest it in the Court of Appeal.

SECTION 106 EXAMINED:

[53] This section outlines the procedure for referring constitutional questions to the High Court. If a lower court (except the Court of Appeal, the High Court, or a court martial) faces a significant constitutional question, it must refer the question to the High Court for interpretation. Once the High Court provides its decision, the referring court give its decision upon the question referred in accordance with that decision. If the High Court's decision is appealed to the Court of Appeal or to Her Majesty in Council, the referring court must follow the ruling of the higher court.

HAS THE SECTION 106 POWER OF THE COURT BEEN OUSTED BY THE ACT?

[54] §106 speaks to circumstances in which a constitutional question "arises in any court of law established for Saint Lucia (other than the Court of Appeal, the High Court or a court martial... the court shall refer the question to the High Court". From a reading of this section, two things are obvious. Firstly, a §106 reference can only arise in a court of law in Saint Lucia other than the Court of Appeal, High Court or court martial. The subject matter or facts which give rise to the constitutional question must arise during court

proceedings. Secondly, the reference to the High Court is not by the Attorney General or a party. This type of reference is made by a Court.

[55] The ambit of the Act is set out in § 3 which states:

“3. Referring questions for opinion

- (1) The Attorney General may, with the approval of Cabinet, refer to the Court for hearing and consideration, important questions of law (or fact) concerning—
 - a. the interpretation of the Constitution;
 - b. the constitutionality or interpretation of any legislation enacted by Parliament;
 - c. any matter, whether or not in the opinion of the Court *ejusdem generis* with the matters contained in paragraphs (a) and (b) submitted by the Attorney General as an important question.”

[56] The type of questions referred must relate to the interpretation of the Constitution, the constitutionality of any legislation enacted by Parliament, or any matter ancillary to these two categories of questions.

[57] It is noteworthy that, unlike §106 of the Constitution references, where the opinion given by the High Court (or the Court of Appeal or the CCJ, as the case may be) must be considered by the referring court and a decision given in accordance with the opinion of the High Court, there is no such parallel in the Act.

[58] There is no requirement in the Act that any court must give its decision in accordance with the opinion of the Court of Appeal in an Attorney General's reference. The short title of the Act states: “An Act to provide for the referral of important questions of interpretation of the Constitution and the constitutionality of legislation enacted by Parliament.” From this, it is clear that the opinion of the Court of Appeal on an Attorney General's reference is only advisory in nature. It is not binding. Put simply, it does not form part of binding precedent under the doctrine of *stare decisis*. The Act does not provide a right of appeal from an Attorney General's reference, nor does it fall within the category of a final decision in a civil claim to which a statutory right of appeal exists.

[59] A good example of the nature of an Attorney General's reference being different from a constitutional claim is the **Attorney General Reference – Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order**¹³, delivered by Lord Neuberger of Abbotsbury, JA (Ag.) on 22 September 2010. In this Attorney General's reference, several questions relating to the terms and conditions of judges were answered in an opinion of the Court of Appeal. The advisory opinion concluded that Barrow JA (as he then was) had not retired in "pensionable circumstances". Following this opinion, Barrow JA (as he then was) filed separate proceedings challenging the Government's decision not to pay him his pension benefits as a retired judge. In this challenge, the Claimant contended that the advisory opinion given in the Attorney General's reference was seriously flawed.

[60] This claim was determined in the first instance by Wilkinson J (as she then was) and was appealed to the Court of Appeal. The appeal was resolved by a decision given on 27 October 2014 by Baptiste JA, Thom JA, and Kentish-Egan QC, JA (Ag.) (as they then were). The Court of Appeal's decision was further appealed to the JCPC, which delivered its decision on 13 October 2016, dismissing the appeal. The point to note is that the advisory opinion was not challenged by appeal to the JCPC. A separate challenge was made in separate proceedings commencing in the High Court, from which the right of appeal was exercised all the way to the then-final appellate court.

[61] Another distinguishing feature between the Act and a §106 reference is who can make the respective references. A §106 reference can only be made by a court established in Saint Lucia, except the High Court or the Court of Appeal, whereas an Attorney General's reference can only be made by the Attorney General, with the approval of Cabinet.

[62] Additionally, a §106 reference is broader in scope, as the court can refer "any question as to the interpretation of the Constitution arising during proceedings," whereas, in an

¹³ SLUHCVP1020/0009

Attorney General's reference, the Attorney General can only refer the above-mentioned specific categories of questions.

[63] In summary, the answer to the question is no. A §106 reference and an Attorney General's reference are not the same. They are two distinct processes to obtain the court's opinion on constitutional questions. They do not intersect but rather coexist independently. The Act does not oust the jurisdiction of the High Court to answer constitutional questions referred by a court arising during proceedings. All the Act does is codify the common law process by which the Attorney General may approach the court for an opinion.

CONCLUSION ON ISSUE 1

[64] In conclusion, I hold that there has been no breach of §40 of the Constitution. The Act does not oust the jurisdiction of the High Court under §105 or §106 of the Constitution. As such this limb of the claim fails and must be dismissed.

RESOLUTION OF ISSUE 2- Whether a referendum was required before the Saint Lucia Constitution was amended to replace its apex court from the JCPC to the CCJ?

[65] It is clear from § 40 (supra), that Parliament has the power to make laws for the peace, order and good government of Saint Lucia. Whilst the Constitution confers upon Parliament this power, it is not unfettered. Section 41(1) empowers Parliament to alter any of the provisions of the Saint Lucia Constitution in the manner specified in the following provisions of that section. As such, alterations to many provisions of the constitution require special procedures, referred to as "entrenchment".

[66] Of entrenchment, Lord Diplock in **Hinds v R**¹⁴ stated:

"One final general observation: where, as in the instant case, a constitution on the Westminster Model represents the final step in the attainment of full independence by the peoples of a former colony or protectorate, the constitution provides machinery whereby any of its provisions, whether relating to fundamental rights and

¹⁴(1975) 24 WIR 326 at page 333.

freedoms or to the structure of government and the allocation to its various organs of legislative, executive or judicial powers, may be altered by those peoples through their elected representatives in the Parliament acting by specified majorities, which is generally all that is required, though exceptionally as respects some provisions the alteration may be subject also to confirmation by a direct vote of the majority of the peoples themselves. The purpose served by this machinery for “entrenchment” is to ensure that those provisions which were regarded as important safeguards by the political parties in Jamaica, minority and majority alike, who took part in the negotiations which led up to the constitution, should not be altered without mature consideration by the Parliament and the consent of a larger proportion of its members than the bare majority required for ordinary laws. So in deciding whether any provisions of a law passed by the Parliament of Jamaica as an ordinary law are inconsistent with the Constitution of Jamaica, neither the courts of Jamaica nor their Lordships' Board are concerned with the propriety or expediency of the law impugned. They are concerned solely with whether those provisions, however reasonable and expedient, are of such a character that they conflict with an entrenched provision of the Constitution and so can be validly passed only after the Constitution has been amended by the method laid down by it for altering that entrenched provision.”

[67] As can be garnered from the words of Lord Diplock, the purpose of entrenchment is to safeguard important rights or values that society wants to preserve, regardless of any changes in government or political circumstances. Entrenchment renders certain provisions of the Constitution more difficult to change or remove than others depending on the level of entrenchment, as there are low and deeper levels of entrenchment.

[68] Dr. Francis Alexis, KC in this book **Changing Caribbean Constitutions**¹⁵ states:

“3.25 Entrenchment devices, the elements of entrenchment, in Caribbean Constitutions vary greatly in complexity. They range from special formulae and delaying procedures, through larger parliamentary majorities than are needed for the passage of ordinary bills, Senate vetoes, over to referendum requirements. Their objective is the maintenance or safeguarding of the Constitution itself. Provisions of the Constitution whose alteration requires the votes of less than two-thirds of all the members of the House, and not needing approval by the people in referendum, have been described by the UKPC as 'semi-entrenched', rather than fully entrenched as 'neither deeply entrenched nor entrenched' but enjoying 'some special protection'.¹⁶ Such formulations are not felicitous, and are apt to engender confusion as to what entrenchment entails. It is better to define entrenchment to

¹⁵ Second Edition published in 2015

¹⁶ Respectively *Mitchell v DPP* (1985) 32 WIR 241, 241j (Lord Diplock for UKPC)[Gda]; *Jamaica Council for Human Rights v Marshal – Burnett* (2005) 65 WIR 268, 275d- i (Lord Bingham for UKPC)[Jam] as to alterations requiring an absolute majority vote.

include whatever requirement which is stipulated for changing a provision of a Constitution which is not needed for the enactment of an ordinary Act; any such requirement is an entrenchment device; as elaborated on above. There is no one and only way of categorising Caribbean entrenchment devices. These may easily be given different names. There is, therefore, no suggestion that the classifications used here are the only ones possible.”

[69] Provisions that are deeply entrenched usually require a more complicated process for alterations. For example, changing them might require an absolute majority vote of all members of each House, and/or approval from the public through a referendum, and/or a delay mechanism. These “interlocking of entrenching devices”¹⁷ ensure that only significant, widely supported changes can be made to these laws.

[70] Entrenchment protects basic rights, such as freedom of speech or the right to a fair trial. They are made difficult to change so that essential freedoms are safe from being altered by temporary political shifts. By making these laws harder to alter, they protect people’s freedoms and help maintain stability in the country over time.

[71] In the agreement establishing the Caribbean Court of Justice signed on 14 February 2001 in St. Michael, Barbados, by then Prime Minister Dr. Kenny D. Anthony on behalf of Saint Lucia¹⁸, the declaration of intent states, “CONVINCED ALSO of **the desirability of entrenching the Court in their national constitutions**;” This agreement was made pursuant to the Treaty establishing the Caribbean Community, signed at Chaguaramas on 4 July 1973.

[72] There is no dispute that the provisions of Chapter VIII of the Constitution are entrenched provisions, as alterations to this Chapter require Parliament to comply with the requisite subsections of §41. The crux of the dispute in this claim lies in the advisory opinion given in the **Attorney General’s Reference – Questions relating to § 41(2), §41(7), §107, and §108 of the Saint Lucia Constitution Order 1978**¹⁹. The Claimants contend that the majority decision of Pereira CJ and Blenman JA (as they then were) is incorrect, and

¹⁷ Dr. Francis Alexis, *Changing Caribbean Constitutions* first published in 1984 at page 12

¹⁸ Available on the CCJ website – www.ccj.org

¹⁹ SLUHCVP2012/0018 delivered on 24 May 2013.

that the minority decision of Mitchell JA (Ag) (as he then was) is correct and should be followed.

THE ADVISORY OPINION CONSIDERED:

[73] The key issue considered was whether the reference to §107 in §41(7)(a) of the Constitution was an error that should have instead referred to §108. §107 governs appeals from the High Court to the Court of Appeal, while §108 deals with appeals from the Court of Appeal to the Privy Council. This distinction had a direct impact on whether replacing the Privy Council with the Caribbean Court of Justice (CCJ) as Saint Lucia's final appellate court would require a referendum. Another issue considered was whether the CCJ agreement falls into the agreements contemplated in §41(7)(b) of the Constitution. The majority opined that it does.

Chief Justice Pereira's Opinion:

[74] Chief Justice Pereira (with whom Blenman JA concurred) concluded that the mention of §107 in §41(7)(a) was a drafting error. She reasoned that §107, which pertains to appeals from the High Court to the Court of Appeal, has no logical connection to appeals to the Privy Council. In contrast, §108 explicitly governs appeals to the JCPC. For § 41(7)(a) (which provides that § 41(6)(b), the holding of a referendum, is inapplicable) to make sense, it must logically refer to §108, which would be directly impacted by any constitutional change replacing the JCPC.

[75] Chief Justice Pereira applied a purposive approach to interpret the Constitution. This method seeks to give effect to the intention of the framers by avoiding absurd or irrational results. She explained that interpreting §41(7)(a) as written (with a reference to §107) would lead to an outcome that undermines the clear purpose of the provision. Pereira CJ opined that courts have the authority to correct obvious drafting errors to ensure that laws align with their intended purpose. Therefore, she concluded that §41(7)(a) should be read as referring to §108, which would allow for judicial correction of the error without requiring a referendum.

Justice Mitchell JA (Ag)'s Opinion:

[76] Justice Mitchell JA (Ag) disagreed with Chief Justice Pereira's conclusion. He maintained that the reference to §107 was not a drafting error but an intentional choice by the framers of the Constitution. In his view, §41(7)(a) was deliberately crafted to address specific situations, and altering its language would go beyond the judiciary's interpretative role.

[77] Mitchell JA (Ag) advocated for a literal and textual approach to constitutional interpretation. He emphasised that courts should not rewrite the Constitution, even if certain provisions appear ambiguous or inconvenient. He pointed out that §107 governs appeals from the High Court to the Court of Appeal, which could involve constitutional matters or issues of significant importance. As such, he was of the view that the framers may have deliberately included §107 in §41(7)(a) to allow flexibility in addressing agreements concerning appeals from the High Court.

[78] Justice Mitchell JA (Ag.) also rejected the idea that the Constitution allows courts to assume an error simply because a provision appears unusual or unexpected. He stressed the importance of respecting the language of the Constitution as written, even if this interpretation means that changes affecting appeals to the Privy Council require a referendum.

The Court's view: Section 41(7)(a):

[79] This Court agrees with the majority opinion of Chief Justice Pereira and Blenman JA for the same reasons set out in the majority opinion. Adopting Chief Justice Pereira's reasoning in my view ensures that the Constitution is interpreted in a manner that is both logical and aligned with its intended purpose. §41(7)(a) is concerned with appeals to the JCPC, and yet the reference to §107, which deals exclusively with appeals from the High Court to the Court of Appeal, is plainly incongruous. In contrast, §108 explicitly governs appeals to the JCPC. Chief Justice Pereira's conclusion that the reference to §107 is a drafting error in my view is the only logical conclusion to avoid an absurd result.

[80] It is my view also that one of the most persuasive aspects of the majority's reasoning is the focus on the framers' intent. It is evident that §41(7)(a) was designed to facilitate changes to appeals to the JCPC under specific circumstances without requiring a referendum. By referring to §107, which has no relevance to appeals to the JCPC, the provision fails to fulfill this purpose. In my view the majority correctly determined that substituting §108 for §107 aligns the provision with its intended function, ensuring the Constitution operates coherently and effectively.

[81] The authorities also recommend a broad and purposive approach to the interpretation to the Constitution; see **Suratt v Attorney General**²⁰ and **Minister of Home Affairs v Fisher**²¹. In my view the majority opinion in using a purpose approach correctly held that the only logical interpretation to give effect to the purpose and intention of §41(7)(a) is that the reference to §107 in §41(7)(a) had to be a drafting error.

[82] Further, the majority opinion underscores the judiciary's responsibility to address drafting errors that impede the proper operation of constitutional provisions. Courts have long been recognised as having the authority to correct clear textual mistakes where doing so ensures that the law achieves its intended objective; See **Inco Europe Ltd v First Choice Distribution**²². The substitution of §108 for §107 is in my view a measured and appropriate correction that respects the framework of the Constitution and does not amount to judicial overreach.

[83] Furthermore, this interpretation harmonizes §41(7)(a) with the broader constitutional structure, including §108 and related instruments such as the Appeals to the Privy Council Order. §108 serves as the sole constitutional provision governing appeals to the JCPC, and its inclusion in §41(7)(a) ensures consistency and avoids an absurd reading of the Constitution.

²⁰ [2008] AC 655

²¹ [1980] AC 319

²² [2000] 2 All ER 109

[84] Constitutions are not ordinary statutes and must be interpreted in a manner that gives effect to their overarching objectives while avoiding absurdities. The reasoning of the majority respects this principle, ensuring that the provision is interpreted in a way that is both functional and faithful to its purpose. I wholly adopt it

[85] I am also of the view that the majority's interpretation is pragmatic. Requiring a referendum to correct an evident drafting error would impose unnecessary procedural burdens, particularly when the error can be addressed through judicial interpretation. The majority's decision provides an efficient solution that avoids these burdens while upholding constitutional safeguards.

[86] In my view, the majority's opinion is legally sound and consistent with constitutional principles. By correcting the reference in § 41(7)(a) from §107 to §108, the Court ensures that the provision fulfills its intended role, respects the framers' intent, and maintains the coherence of the Constitution while maintaining the careful balance between judicial interpretation and constitutional integrity.

The Court's view: Section 41(7)(b):

[87] In my view Chief Justice Pereira's reasoning gives full effect to both §41(7)(a) and §41(7)(b) of the Constitution, ensuring they operate together as a cohesive framework. § 41(7)(b) is particularly important because it allows Saint Lucia to make changes to its Constitution in order to implement international agreements establishing courts shared with other countries. This flexibility is crucial in the context of regional integration, particularly with respect to the CCJ. Chief Justice Pereira concluded that the CCJ Agreement, signed and ratified by Saint Lucia, falls squarely within the scope of § 41(7)(b). I can do nothing more than to fully agree and adopt her reasons. This provision ensures that Saint Lucia can adapt its judicial framework to accommodate shared institutions without requiring a referendum.

[88] The interaction between §41(7)(a) and §41(7)(b) is key to understanding their purpose. §41(7)(a) addresses bilateral agreements with the United Kingdom, such as those

concerning appeals to the JCPC. On the other hand, §41(7)(b) expands the scope by addressing international agreements involving courts shared among multiple countries. Together, these provisions allow for procedural flexibility in transitioning from appeals to the JCPC to shared appellate courts like the CCJ.

[89] The practical significance of the majority's approach cannot be overlooked. The CCJ Agreement is a prime example of an agreement that strengthens Saint Lucia's judicial framework while fostering regional integration. The majority's reasoning ensures that the Constitution is applied pragmatically, allowing Saint Lucia to meet its international obligations while upholding constitutional principles.

[90] In conclusion, the majority's interpretation of §41(7)(b) is not only logical but also consistent with the broader goals of the Constitution. The reasoning harmonises the provisions of §41(7), respects the framers' intent, and provides a practical solution for transitioning to the CCJ. By validating the use of § 41(7)(b) to implement the CCJ Agreement, the majority ensures that Saint Lucia can modernise its judicial system in a way that is both efficient and constitutionally sound.

The Court's View: Decision of Mitchell JA (Ag.):

[91] In my view there is a fundamental difference between §107 and §108. §107 deals specifically with the appellate jurisdiction from the High Court to the Court of Appeal, limited to final decisions on constitutional interpretation, matters of fundamental rights and freedoms under §16, and other cases as prescribed by Parliament. In contrast, §108 defines appeals from the Court of Appeal to the JCPC, establishing the constitutional framework for such appeals. This distinction is critical and, in my view, does not support the suggestion in the minority opinion that that amendments to §107 would affect appeals to the JCPC, a matter governed entirely by §108.

[92] The historical context and legislative precedent do not support the minority opinion. The framers of the Constitution borrowed heavily from the Dominican Constitution, including

the wording of §41(7)(a)²³. In Dominica's Constitution, this section explicitly references the equivalent of §108²⁴, not §107. This fact is critical in my view. The framers of the Constitution intended to facilitate the eventual repatriation of Saint Lucia's final appellate jurisdiction from the JCPC without requiring a referendum, consistent with a broader regional push toward judicial independence. The suggestion that the provisions provide for a deeper entrenchment of the JCPC than the Supreme Court, runs counter to this historical trajectory and the intent of the framers.

[93] The minority's opinion regarding the entrenchment and amendment of constitutional provisions, if correct, would lead to confusion in my assessment. That is, the suggestion that Parliament could amend the Supreme Court's jurisdiction without a referendum while maintaining stringent requirements for altering provisions related to the JCPC. However, §41(7) permits amendments to the Supreme Court Order only in limited circumstances, such as to implement international agreements. It does not enable Parliament to unilaterally diminish the Court's jurisdiction or establish new courts without adhering to constitutional safeguards. I do not agree with the reliance on §107 as a basis for such hypothetical changes advanced in the minority view as the section merely governs appellate processes within the domestic judiciary and does not confer general jurisdiction on the High Court.

[94] Respectfully, the minority's hypothetical scenarios, such as creating specialised courts like a mental health court or a gun court, further illustrate the weaknesses in the advanced reasoning. The minority's view was that, such changes would require amendments to §107, but this misinterprets the section's limited scope. §107 does not address the broad jurisdiction of the High Court or the establishment of new courts; rather, it focuses on specific appellate rights in final decisions in any civil or criminal proceedings on questions as to the interpretation of the Constitution, constitutional and fundamental rights cases and such other cases as may be prescribed by Parliament.

²³ §42 (4)(a) of the Constitution of the Commonwealth of Dominica

²⁴ §106 of the Constitution of the Commonwealth of Dominica

[95] The Constitution, as it stands, reflects a careful balance between facilitating eventual delinking from the JCPC and preserving the Supreme Court's role as the cornerstone of the judicial system. Correctly interpreting §41(7)(a) to reference section 108 ensures that this balance is maintained, in line with both the framers' intent and the constitutional principles underpinning Saint Lucia's legal system. As a result, adopting the reasoning of Mitchell JA (Ag) would risk undermining the constitutional framework and creating unnecessary obstacles to judicial independence.

The applicability of Independent Jamaica Council for Human Rights (1998) Ltd & Ors v Hon. Syringa Marshall – Burnett and the Attorney General of Jamaica

[96] The Claimant submits that the decision of the Board in **Independent Jamaica Council for Human Rights (1998) Ltd & Ors v Hon. Syringa Marshall – Burnett and the Attorney General of Jamaica**²⁵ serves as an authority supporting the proposition that §108 of the Constitution cannot be amended without, *inter alia*, the holding of the referendum. In my view, there is no contention regarding the principle established in this authority and this case.

[97] §110 of the Jamaican Constitution, which provides for appeals to the JCPC does not require the holding of a referendum to effect change as the requisite majority is sufficient. Rather, the argument before the Board was that the officers of the CCJ would not have enjoyed the same constitutionally entrenched benefits as the judicial officers of the Court of Appeal and the High Court, since the agreement of the CCJ could have been amended by the governments to weaken its independence. In looking at the "substance and not the form", the Board held that the Acts were unconstitutional, even though they were constitutionally passed, because the three acts taken together gave rise to a risk which did not exist in the same way before.

[98] Lord Bingham stated:

"The risk that the governments of the contracting states might amend the CCJ Agreement so as to weaken its independence is, it may be hoped, fanciful. But

²⁵ [2005] UKPC 3.

an important function of a constitution is to give protection against governmental misbehaviour, and the three Acts give rise to a risk which did not exist in the same way before. The Board is driven to conclude that the three Acts, taken together, do have the effect of undermining the protection given to the people of Jamaica by entrenched provisions of Chapter VII of the Constitution. From this it follows that the procedure appropriate for amendment of an entrenched provision should have been followed.

[99] In this case, the Claimants' arguments were focused on the lack of the referendum prior to the accession to the CCJ. The grounds pursued in this claim were not suggesting that the Act or the Agreement weakened the independence of the final appellate court or that the combined effect was that the Act undermined the protection given to the people of Saint Lucia by the entrenched provisions of their Constitution.

[100] Accordingly, it is difficult to accept the argument of the Claimants that this authority is similar to the case at bar.

CONCLUSION ON ISSUE 2

[101] For the reasons set out above, it is my view that the majority opinion was sound and correct. §41(7)(a) of the Constitution is to read as if the reference to §107 is deleted and replaced with §108. The CCJ Agreement falls within the category of agreement contemplated by §41 (7) (b) of the Constitution. The result being, in both cases, that no referendum was needed to amend the Constitution to change the final appellate Court.

[102] This limb of the Claimants case also fails and must also be dismissed.

DELAY

[103] The Court invited the parties to make submissions on the issue of delay in the context of this matter now being academic. The Court invited the parties to consider the authority of **Maharaj v National Energy Corporation**²⁶ and make their submissions in writing.

²⁶ [2019] UKPC 5

[104] On 17 July, 2023, the Governments of the United Kingdom and Saint Lucia entered into an agreement for the termination of the jurisdiction of the JCPC as the final appellate Court in Saint Lucia. During the pendency of this matter, appeals have been heard and determined by the CCJ.

[105] The Claimants submitted at the close of the trial that the Court ought to declare that the accession to the CCJ was unconstitutional and as such the final appellate Court for Saint Lucia is not the CCJ but rather the JCPC. When pressed by the Court, Counsel for the Claimants quite admirably accepted that it was not as simple as that. The fact is that Saint Lucia has fully delinked from the JCPC and has now accepted the CCJ. Though much was said and suggested by the Claimants about the refusal of the interim injunction sought, the fact remains that there was no appeal of the judge's order refusing the injunction or no subsequent application for interim injunctive relief.

[106] Additionally, I must agree with the learned Solicitor General (Ag.) in his submission that the Attorney General's participation at the injunctive hearing was minimal. The Claimants have exhibited a transcript to their supplemental affidavit which shows that the majority of the hearing was exchanges between the Court and the Claimants. No position was advanced by the Defendant on giving an undertaking as there was no such request or invitation. In my view, therefore, the Claimants cannot seek to lay blame at the feet of the Defendant or the Court for the Act being assented or given effect to. The analogy to the position in **Independent Jamaica Council for Human Rights (1998) Ltd & Ors** of an undertaking not to give effect to the impugned Acts until the claim was heard and determined simply did not arise in this case as regrettable as that may have been.

[107] In my view, even if successful in their case, which they have not been, the Claimants would not be able to obtain the relief sought as it relates to setting aside the delinking and restoring the JCPC as Saint Lucia's apex court. That is simply not an order that is open to this Court to make given the delay and intervening events.

COSTS:

[108] The general rule is set out in **CPR 56.11 (6)** which provides that

“The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application”

[109] There is no suggestion of any unreasonableness in making this application or in its conduct. The Defendant at paragraph 30 of their submissions advances the position that there should be no order as to costs. I agree.

ORDERS:

[110] For the reasons set out in this judgment, I make the following orders:

1. The Claimants claim filed on 3 March 2023, as amended on 8 November 2024, is dismissed.
2. There be no order as to costs.



Alvin Shiva Pariagsingh
High Court Judge

By the Court,

Registrar

Assisted by: Ms. Yeeveda Guinness
Judicial Research Assistant