

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

IN THE MATTER of judicial review of the failure to perform a public duty by the Ministry of National Security of Saint Christopher and Nevis pursuant to Part 56 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (Revised Edition).

- AND -

IN THE MATTER of sections 15(2) and 92(1)(a) of the Constitution of Saint Christopher and Nevis.

SKBHCV2023/0187

BETWEEN:

MRS. SHIRMEL MICHELLE STEVENS	1 st Claimant
MR. DMITRY MORGAN	2 nd Claimant

and

MINISTER OF NATIONAL SECURITY OF SAINT CHRISTOPHER AND NEVIS	Defendant
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Appearances:

Mr. O’Grenville Browne for the Claimants
Mrs. Simone Bullen Thompson, Solicitor General for the Defendant

2024: June 13;
September 23.

JUDGMENT

- [1] **GILL, J:** A local woman and a Russian man seek constitutional redress for the decision of the Government of Saint Christopher and Nevis not to process his application for citizenship by marriage. The Government refuses to process the

application thus far by reason of its policy in respect of the Russian war of aggression against Ukraine.

The facts

- [2] The first claimant Shirmel Michelle Stevens (“Ms. Stevens”) of Stadium View, St. Anne Parish, Sandy Point, Saint Christopher, and the second claimant Dmitry Morgan (“Mr. Morgan”) of Flat 131, 24 Federativny Prospekt, Moscow 111399, Russia (together “the claimants”), seek judicial review of the failure by the defendant the Minister of National Security of Saint Christopher and Nevis (“the Minister”) to consider Mr. Morgan’s application for citizenship by marriage and to register him as a citizen of St. Christopher and Nevis (also called “St. Kitts and Nevis”).
- [3] On September 1, 2022, Mr. Morgan, a Russian national, and Ms. Stevens, a natural born citizen of the Federation of St. Kitts and Nevis were married. The marriage ceremony took place at the District C Magistrate’s Court, Charlestown, Nevis.
- [4] On October 26, 2022, on the instructions of Mr. Morgan, his then attorneys attempted to submit to the Ministry of National Security (“the Ministry”) an application for citizenship by marriage pursuant to section 92(1)(a) of the Constitution of St. Kitts and Nevis (“the Constitution”). The application was not accepted on the basis of an internal policy (“the policy”), effective March 8, 2022, of the Government of St. Kitts and Nevis not to process applications for citizenship by Russian nationals.
- [5] On April 14, 2023, Mr. Morgan spoke with Cecile Hull, the Permanent Secretary in the Ministry, when Ms. Hull orally confirmed the existence of the policy and that it applies to all Russian-born applicants. She also stated that even if Mr. Morgan’s application to be registered as a citizen of St. Kitts and Nevis was physically accepted, all applications from Russian-born nationals are currently on hold, and such applications will not be approved until the policy is abolished or otherwise amended.

- [6] On April 18, 2023, Mr. Morgan submitted another application for citizenship at the Ministry. This application was accepted by Chessy Allen, Administrative Assistant at the Ministry. However, the application was not processed.
- [7] On May 11 and 12, 2023, an employee of Counsel for the claimants attended the offices of the Ministry to enquire about the status of the citizenship registration application and he was told by the desk clerk that the application would need to be returned because “St. Kitts will not be processing applications from Russian nationals until their office receives instructions to accept Russian applications”. The Ministry refused to provide a written rejection letter or to confirm this reasoning in writing.
- [8] Through their Counsel, the claimants followed up with phone calls and a visit to the offices of the Ministry to ascertain the position of the application for citizenship by marriage and submitted a letter before claim dated May 25, 2023. There was no response to this letter.
- [9] On October 4, 2023, the claimants filed an originating motion with their affidavits in support (filed on October 4, 2023 and October 18, 2023 respectively) against the Minister seeking the following relief:
- i. An order of mandamus to compel the defendant to make an urgent determination in relation to the right of the 2nd claimant to be registered as a citizen of St. Christopher and Nevis;
 - ii. An order of mandamus to compel the defendant to urgently include the 2nd claimant in the list of candidates for citizenship to be approved by the Prime Minister of St. Christopher and Nevis, subject to the payment by the 2nd claimant of the applicable fees and complete other actions necessary and sufficient for registering the 2nd claimant as a citizen of St. Christopher and Nevis;
 - iii. An order of mandamus to compel the defendant to urgently determine and declare that any policies of the Government of St. Christopher and Nevis which fetter, limit or otherwise hinder applications for citizenship by marriage from Russian nationals and issue a public instrument

confirming that any such policy violates the Constitution of St. Christopher and Nevis and shall not be applied;

- iv. An order of mandamus to compel the defendant to urgently change any of its policies that may fetter, limit or otherwise hinder applications for citizenship by marriage of Russian nationals;
- v. Such further and/or other relief as this Court may think fit;
- vi. Damages;
- vii. Interest; and
- viii. Costs.

[10] The Minister's response comprises the affidavits of the Ministry's Permanent Secretary, Cecile Hull filed on November 11, 2023, and Assistant Secretary, Marva Pinney filed on November 29, 2023. The Minister explained that the policy was taken having regard to, inter alia, the following:

- i. On March 2, 2022, St. Kitts and Nevis voted in favour of the UN General Assembly Resolution No. ES-11/1 demanding Russia immediately end its military operations in Ukraine.
- ii. On March 8, 2022, the Cabinet of St. Kitts and Nevis publicly announced its decision to implement the sanctions imposed by the European Union, United States and United Kingdom against Russians and Belarusians for the Russian war of aggression against Ukraine.
- iii. As a result of the said decision made by the Cabinet, effective March 8, 2022, the Government of St. Kitts and Nevis suspended the processing of all applications for citizenship by Russians and Belarusians and the Ministry of National Security ceased processing applications for citizenship by Russian nationals.
- iv. St. Kitts and Nevis has diplomatic relations with European Union countries, the United States and the United Kingdom and works closely

with these countries on matters involving immigration and travel, national security, safety and defence.

- v. St. Kitts and Nevis has visa-free travel arrangements with the European Union countries and the United Kingdom, which allows citizens of St. Kitts and Nevis to travel freely to Europe and the United Kingdom.
- vi. To date, citizens of St. Kitts and Nevis have access to visa-free travel to approximately one hundred and fifty-seven countries, including the United Kingdom, and forty-seven countries in Europe.
- vii. St. Kitts and Nevis' continued participation in these visa-free travel arrangements is dependent on St. Kitts and Nevis continuing to satisfy its international partners that persons who are granted St. Kitts and Nevis' citizenship and passports are not persons engaged in criminal activity or acting contrary to their national or international interests.
- viii. The decision not to register Russian nationals as citizens of St. Kitts and Nevis, whether applicants by way of the CBI Program or otherwise, was made in the interests of defence, public safety, public order and national security of St. Kitts and Nevis and its international partners having regard to the ongoing war initiated by Russia against Ukraine to ensure that no action taken by St. Kitts and Nevis would have the effect of making the sanctions imposed by these countries of no effect.
- ix. The support for the decision is based on the proviso to section 92(1) of the Constitution of St. Kitts and Nevis and section 3(8) of the Saint Christopher and Nevis Citizenship Act Cap 1.05.
- x. There are numerous risks associated with allowing persons from countries involved in wars to be granted St. Kitts and Nevis citizenship, for example:
 - a citizen is entitled to be issued a passport, which allows that person to travel, without a visa, to many countries around the world. If that person is a financier or participant in war

activities, they can be a threat to the national security of such countries, including St. Kitts and Nevis;

- a citizen is also entitled, without even being issued a passport, to open bank accounts in St. Kitts and Nevis or other countries. If that person is a financier or participant in war activities, they can be a threat to the national security of such countries, including St. Kitts and Nevis, and could potentially be involved in war or terrorist financing;
- due diligence checks in countries involved in an on-going war are essentially impossible, even if the Government of St. Kitts and Nevis were to consider applicants on a case-by-case basis.

- xi. The grant of citizenship would make Mr. Morgan eligible for the grant of a St. Kitts and Nevis passport. This would allow him visa-free travel to all countries of the European Union in circumstances where, having regard to the ongoing war by Russia against Ukraine, it would be difficult, if not impossible to access information to investigate Mr. Morgan's conduct and activities vis a vis the sanctions imposed on Russia.

Issues

[11] The issues that arise for determination are:

- 1) Whether the defendant breached sections 15(2) and/or 92(1) of the Constitution or whether the policy was a policy the Government was entitled to apply;
- 2) Whether the claimants are entitled to the relief sought.

The Law

Citizenship by marriage

- [12] Mr. Morgan made his application pursuant to section 92(1)(a) of the Constitution. Section 92(1)(a) and the proviso to section 92(1) provide as follows:

92. (1) The following persons shall, if they do not already possess citizenship, be entitled, upon making application, to be registered as citizens—

(a) any person who is married to a citizen;

Provided that if it is so provided by Parliament an application for registration as a citizen under this subsection may, in such circumstances as may be prescribed by Parliament in the interests of defence, public safety or public order, be refused by the Minister responsible for the matter in any case in which he is satisfied that there are reasonable grounds for refusing the application.

- [13] Section 3(8) of the Saint Christopher and Nevis Citizenship Act¹ (“the Citizenship Act”) sets out the circumstances in which an application for registration pursuant to section 92(1) of the Constitution may be refused. Section 3(8) reads:

(8) The Minister may, if he or she is satisfied that there are reasonable grounds in the interests of defence, public safety or public order for so doing, refuse to register as a citizen of Saint Christopher and Nevis any person who-

(a) under section 92(1) of the Constitution or subsection (6) of this section, is entitled to be registered as a citizen of Saint Christopher and Nevis and applies to be so registered; or

(b) pursuant to subsection (2) or (3) of this section applies to be registered as a citizen of Saint Christopher and Nevis.

Section 3(9) and section 3(10) provide:

(9) In making a determination under subsection (8), the Minister may investigate whether or not the conditions specified under subsection (11) exist.

(10) Where the Minister decides to conduct an investigation under subsection (9), the determination under subsection (8) must be made

¹ Cap. 1.05 of the Laws of Saint Christopher and Nevis

within a period not exceeding two years from the date of receipt of the application.

[14] Further, section 3(11) outlines specific circumstances in which the Minister may refuse to register a person as a citizen of St. Christopher and Nevis. The circumstances stated in subsection 11 are without prejudice to the generality of the circumstances already outlined in sub-section (8).

[15] Section 15 of the Constitution provides for protection against discrimination. The relevant parts are as follows:

15.(1) Subject to subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect,

(2) Subject to subsections (6), (7), (8) and (9), a person shall not be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, birth out of wedlock, political opinions or affiliations, colour, sex or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

(4) Subsection (1) shall not apply to any law so far as that law makes provision—

(b) with respect to persons who are not citizens;

(c) for the application, in the case of persons of any such description as is mentioned in subsection (3) (or of persons connected with such persons) of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law of persons of that description; or

(d) whereby persons of any such description as is mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(6) Subsection (2) shall not apply to anything that is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5).

Claimants' submissions

[16] The claimants submit that the obstacles and delay created by the Ministry and the policy, and the Ministry in its inaction and refusal to engage in any discussions with the claimants, and not changing the policy, breached the following constitutional rights of the claimants:

- i. the right under section 15(4)(c) of the Constitution of Ms. Stevens to marry a person of her choice and enjoy free and unfettered access to her husband, who poses no threat to St. Kitts and Nevis, and reside with him permanently in St. Kitts and Nevis;
- ii. the right under section 92(1)(a) of the Constitution of Mr. Morgan to be registered as a citizen of St. Kitts and Nevis;
- iii. the right under section 15(2) of the Constitution of Mr. Morgan not to be discriminated on the basis of his race and place of origin, namely him being born in Russia and being a Russian national; and
- iv. the right under section 15(2) of the Constitution of Ms. Stevens not to be discriminated on the basis of her husband's race and place of origin.

Blanket Policy

[17] The claimants posit that the decision not to register Mr. Morgan (the Minister submitting that there has been no such decision) as a citizen of St. Kitts and Nevis cannot be based on the policy, which is arbitrary and frivolous, and is therefore an infringement of the claimants' constitutional rights. They point out that the policy is not published and therefore must not be applied because it does not represent a published, official Act of the Parliament of St. Kitts and Nevis.

[18] The claimants argue that since the policy is blanket and is not linked to any facts or character of the claimants, it cannot trump Ms. Stevens' constitutional right to marry Mr. Morgan and to have him become and get registered as a citizen of St Kitts and Nevis and reside with him here permanently.

Interests of defence, public safety, public order and national security of St. Kitts and Nevis

- [19] The claimants argue that section 3(8) of the Citizenship Act is not applicable here because that section requires the Minister to have “reasonable grounds” for forming his or her opinion, which involves making appropriate inquiries on a case-by-case basis and investigating the character, history and risks associated with each individual applicant.

Due diligence checks

- [20] The claimants posit that the Minister’s position that “due diligence checks in countries involved in an on-going war are essentially impossible, even if the Government of St. Kitts and Nevis were to consider applicants on a case-by-case basis” is simply not true and is not based on the facts and must operate within the proviso to section 92(1).
- [21] They allege that the Minister has made no attempt to run due diligence checks on Mr. Morgan and therefore has no grounds to make statements as to whether such checks are impossible. Further, since this matter relates to constitutional rights of the claimants, every attempt ought to be made to make the relevant inquiries and process such citizenship applications timeously.
- [22] The claimants aver that Mr. Morgan has a sound character, has never had any criminal record, has always been an exemplary member of society and has an unblemished reputation. Further, he is a member of a respectable profession and is a solicitor in England thereby abiding by the strictest standards imposed by the Law Society of England and Wales. However, the Minister has not even considered Mr. Morgan’s application on its merits, has not attempted to run any checks, has no proof that he is linked to any culpable conduct or that he may pose any threat to national interests or defence of St Kitts and Nevis, and therefore could not have been satisfied whether there were such reasonable grounds required for taking a decision under section 3(8) of the Citizenship Act.

Citizens of countries involved in war present a risk to national security

- [23] The claimants argue that the mere fact that a country is involved in a military conflict does not mean that each of its civilians is a threat to national security of all other countries worldwide and, in particular, to St Kitts and Nevis. Such approach would be discriminating, unconstitutional and not based on facts.
- [24] They point out that the Minister has failed to adopt a similar consistent approach to citizens of other countries who have been consistently involved in wars and other military conflicts worldwide throughout the years, such as the United States of America, the United Kingdom, France, China and others.
- [25] The claimants direct the court to the Minister's affidavit evidence where references are made to the national security of other countries. They submit that such concerns are beyond the Minister's powers and are not based on law since by virtue of section 3(8) of the Citizenship Act, the Minister should only have regard to the national security interests of St. Kitts and Nevis, and not other countries worldwide. Therefore, the claimants assert that any references to interests of other countries are irrelevant for this case.
- [26] The claimants further submit that the Minister's reference to national security threats resulting from visa-free travel following issue of St. Kitts and Nevis passports to Russian nationals is irrelevant and illogical because Russian nationals can travel to St. Kitts and Nevis without a visa anyway, which Mr. Morgan did during his visits to St. Kitts and Nevis where he used his Russian passport to enter.

Visa-free travel and ability to open bank accounts

- [27] The claimants refer to the Minister's affidavit evidence to the fact that "a citizen is entitled to be issued a passport, which allows that person to travel, without a visa, to many countries around the world. If that person is a financier or participant in war activities, they can be a threat to the national security of such countries, including St. Kitts". They submit that this is irrelevant in this case because Mr. Morgan is neither a financier nor a participant in war activities, which the Minister could have and had a statutory duty to be satisfied of, had

the application for citizenship been considered on its merits or indeed the Minister had engaged with the claimants, as required by the law. Further, they allege that the statement itself lacks logic because the mere fact that an individual holds a certain profession or skill does not automatically make him a threat to the national security of the countries he visits or of which he becomes a citizen.

[28] The claimants further refer to the Minister's affidavit evidence to the fact that "a citizen is also entitled, without even being issued a passport, to open bank accounts in St. Kitts and Nevis or other countries. If that person is a financier or participant in war activities, they can be a threat to the national security of such countries, including St. Kitts and Nevis, and could potentially be involved in war or terrorist financing". Again, they assert that this is irrelevant in this case because Mr. Morgan is neither a financier nor a participant in war activities, which the Minister could have and had a duty to satisfy himself of, had the application for citizenship been considered on its merits or indeed the claimants had been engaged with, as required by the law.

[29] Further, the claimants argue that being a citizen does not automatically entitle an individual to open a bank account because this is always based on the bank's discretion and will only be done if the individual in question passes the relevant bank's compliance and KYC checks, and the bank is satisfied that the individual does not pose any risk. In any event, as far as the claimants are concerned, the ability to open a bank account is irrelevant to the present issue.

Discrimination

[30] The claimants contend that the Minister's assertion, that the unpublished policy preventing Russian and Belarusian nationals from exercising their constitutional right to reside in St. Kitts and Nevis with their Kittitian spouses does not represent discrimination, is illogical and does not make sense. In particular, this is so because the Minister failed to establish how and why civilians of certain countries as a class can present a risk to national security of St. Kitts and Nevis, especially in light of the fact that these countries are enjoying visa-free travel to St. Kitts and Nevis.

- [31] The claimants allege that imposing prohibitions on a certain class of individuals based on their nationality, race or place of origin is by definition racial discrimination, which is exactly what the Government of St Kitts and Nevis is establishing by putting in place the unpublished policy in question. They submit that any policy adopted by the Government must be balanced with the rights enshrined in the Constitution and give way to the Constitution as it is the supreme law of the land, which the policy in question fails to do.

Defendant's submissions

- [32] The Minister submits that section 92(1)(a) of the Constitution confers on a person who is married to a citizen of St. Kitts and Nevis the right to apply to be registered as a citizen of St. Kitts and Nevis, and that Mr. Morgan exercised this right when his application was accepted by the Ministry, which is charged with receiving and processing applications for citizenship.

Discretion given to the Minister

- [33] It is further submitted that the Minister, who is charged with considering and granting applications for citizenship, has the discretion to determine whether an applicant may be granted citizenship.
- [34] The Minister emphasises that the proviso to section 92(1) of the Constitution authorises Parliament to make laws which allow him to refuse to grant citizenship in the interests of defence, public safety or public order if he is satisfied that there are reasonable grounds for refusing to grant the application. Parliament has by section 3(8) of the Citizenship Act conferred a discretion on the Minister to refuse to register a person as a citizen pursuant to section 92 “if he or she is satisfied that there are reasonable grounds in the interests of defence, public safety or public order for so doing” and in the further circumstances outlined in section 3(11).

Exercise of discretion

- [35] Relying on the proviso to section 92(1) of the Constitution and section 3(8) of the Citizenship Act, the Minister is adamant that matters which affect the public

interest and involve considerations of public policy determination lie with the Executive.

- [36] The Minister submits that the terms “interests of defence, public safety or public order” are wide and include national security considerations. In this case the Government of St. Kitts and Nevis implemented the policy in relation to the registration of Russian nationals as outlined in the Minister’s affidavit evidence.
- [37] The crux of the Minister’s defence is that the policy is one which the Government is entitled to make, and he contends that the policy is consistent with the provisions of the Constitution and the Citizenship Act which expressly indicate that the Minister may refuse to register a person as a citizen if there are reasonable grounds in the interests of defence, public safety or public order for so doing.
- [38] The Minister argues that the interests of defence are not limited to the physical defence of the country. It includes matters of national security. The policy decision taken in this case was taken following St. Kitts and Nevis’ vote at the United Nations demanding that Russia end its war of aggression against Ukraine. The policy sought to ensure that the sanctions imposed by St. Kitts and Nevis’ international partners are not circumvented or made of no effect.
- [39] The Minister contends that he has provided evidence which indicates that the policy was made having regard to legitimate national security issues. These matters include co-operation between St. Kitts and Nevis and its international partners on matters including immigration and travel, national security, safety and defence, St. Kitts and Nevis visa-free travel arrangements with its international partners, the Citizenship by Investment (CBI) Program and the risks associated with allowing persons from countries involved in wars to be granted St. Kitts and Nevis citizenship.
- [40] More specifically, in his affidavit evidence, the Minister highlights the risks involved in granting citizenship to Mr. Morgan.

[41] Given his position, the Minister maintains that the policy of the Government is one which he is entitled to implement as it is consistent with the provisions of the Constitution and section 3(8) of the Citizenship Act.

Discrimination

[42] Ms. Stevens asserts that it is her right pursuant to section 15(4)(c) of the Constitution to marry a person of her choice, enjoy free unfettered access to her husband who poses no threat to St. Kitts and Nevis and to reside with him permanently in St. Kitts and Nevis. Both claimants submit that their right not to be discriminated against under section 15(2) of the Constitution has been breached on account of discrimination against Mr. Morgan on the basis of his race and place of origin.

[43] The Minister submits that both section 3 (fundamental rights and freedoms) and the provisions of section 15 of the Constitution indicate that the rights guaranteed by section 15 are not absolute.²

[44] Section 92 of the Constitution and section 3 of the Citizenship Act provide for the registration of persons who are not citizens of St. Kitts and Nevis as citizens. These provisions of law expressly provide when the Minister may in his discretion refuse to register a person as a citizen. In this regard, the Minister submits that these provisions of law fall within the provisions of section 15(4)(b) and (c) of the Constitution, that is, laws relating to non-citizens and personal law in relation to a person's status respectively. Therefore, the Minister stands firm that the making of the policy by the Government and implementation of the policy is not in breach of section 15(2) of the Constitution.

[45] The Minister asserts that the policy pursues a legitimate aim. It was made in aid of the national security interests of St. Kitts and Nevis and its international partners and is aimed at ensuring that the sanctions implemented by St. Kitts and Nevis' international partners are not circumvented. Measures taken in the interests of national security, the interests of defence, public safety and public

² See *Quincy McEwan & Others v Attorney General of Guyana* CCJ Appeal No. GYCV2017/015 at para. 62; *Cheryl Bertrand and Another v The Attorney General* [2023] ECSCJ No.17 at paras. 127-129

order are measures taken in the public interest and are reasonably required in a democratic society. These are matters which the Minister may rightfully take into consideration in determining whether to register a person as a citizen.

[46] The rationale for the means used to achieve the objective of the policy is explained in the Minister's affidavit evidence that "Due diligence checks in countries involved in an on-going war are essentially impossible, even if the Government of St. Kitts and Nevis were to consider applicants on a case-by-case basis." The Minister submits that this indicates that consideration was given to treating with applicants who seek to be registered as citizens on a case-by-case basis, and explains why that approach was not adopted in this case.

[47] Specifically as it relates to Ms. Stevens, the Minister submits that she has contracted into marriage with Mr. Morgan without impediment from the State. Mr. Morgan is entitled to visit St. Kitts and Nevis without a visa pursuant to the visa waiver arrangements between St. Kitts and Nevis and Russia. The State has not breached the claimants' right to marry or fettered Ms. Stevens' access to her husband.

[48] The Minister maintains that the making of the policy by the Government and implementation of the policy by the Minister cannot be considered to be in breach of section 15(2) of the Constitution. He is of the firm view that the policy falls within the permitted exceptions to protection against discrimination outlined in section 15 of the Constitution.

Relief sought

[49] The claimants seek relief in the form of orders of mandamus. The Minister submits, for the reasons he has set out, that the claimants are not entitled to the orders of mandamus sought. He posits that if the court determines that the claimants are entitled to relief, it is sufficient to order that the Minister considers Mr. Morgan's application for registration as a citizen. The Minister advances that it is not for the court to determine and/or direct the internal processes of the Ministry for the processing of applications for citizenship by registration. Further, it is for the court to make declarations on the constitutionality of a Government

policy that has been challenged. It is not open to the court to make orders in relation to matters that are not before the court.

- [50] In summary, the Minister submits that the policy in issue is one that the Government is entitled to make. The policy is consistent with the discretion conferred on the Minister and is a policy which the Minister is entitled to apply. The Minister prays that the court dismisses the claimants' claim.

Court's analysis

Interpretation of section 92(1)(a) of the Constitution

- [51] The court finds useful guidance in the case of **Emmanuel Johnson Chijioke v The Commissioner of Police of Saint Vincent and the Grenadines and others; Benjamin Fiifi Danquah v The Commissioner of Police of Saint Vincent and the Grenadines and others**.³ The High Court considered section 93 of the Constitution of St. Vincent and the Grenadines which is similar to section 92(1) of the Constitution of St. Kitts and Nevis. At paragraphs 68 to 72 of the judgment, Monica Joseph J set out her analysis of the provision as follows:

"[68] The Constitution provides the route of registration as a citizen for an individual who marries a citizen in Section 93(1):

"The following persons shall be entitled, upon making application, to be registered as citizens -

(a) Any man who is married to a citizen or who has been married to a person who, at any time during the period during which they were married to each other, was a citizen.

An application under this section shall be made in such manner as may be prescribed, as respects that application, by or under a law enacted by Parliament."

[69] In outlining criteria for citizenship two expressions are used in the Constitution: "shall become" and 'shall be entitled'. An individual satisfying criteria in sections 90, 91 and 92 "shall become" a citizen. Under those sections there is an absolute right. There is therefore an automatic transition to citizenship, with no discretion given to any entity to cause or bring about that transition.

³ [2010] ECSCJ No. 283; High Court Civil Claims Nos. 232 and 233 of 2010, delivered October 21, 2010

[70] By Section 93(1) of the Constitution an individual within a stated category of persons 'shall be entitled' to be registered as a citizen upon the making of an application. Under that section there is no absolute right. There is not an automatic transition to citizenship but an entitlement to citizenship, to be obtained by applying to an entity (who, by the Immigration Act is a Minister). The fact that an application is to be made, strongly suggests that the decision making entity may exercise a discretion and decide on whether that entitlement is to be translated into the grant of citizenship. The entitlement can be, but may not be (discretion), translated into a grant of citizenship.

[71] Section 93(3) of the Constitution refers to the passing of a law by Parliament that prescribes the manner in which that application may be made. Inherent in that authority is the authority to prescribe conditions. The law enacted by Parliament is the Saint Vincent and the Grenadines Citizenship Act (Cap.80), which gives discretion to the Minister to grant citizenship with directions as to how that discretion is to be exercised. Section 7 enacts:

"A person claiming to be entitled to be registered as a citizen of Saint Vincent and the Grenadines under the provisions of section 93 of the Constitution may make application to the Minister in the prescribed manner and, in any such case if it appears to the Minister that the applicant is entitled to such registration and that all relevant provisions of the constitution have been complied with, he shall cause the applicant to be registered as a citizen of Saint Vincent and the Grenadines."

[72] **Here I find that marrying a Vincentian impacts the first applicant's case by bestowing on him, not an absolute right to citizenship, but rather an entitlement to apply for the grant of citizenship. It does no more than entitle the first applicant to be considered for citizenship.** That entitlement is similar to a job situation. The qualifications that an individual holds entitle him to be considered for a particular job, not to be appointed to that job. I have approached this matter a little differently from the Nielsen case but the result is the same. In that case the Court of Appeal at p 284 para. G: said:

"In my understanding, the true position is that any person who marries a Guyanese citizen is entitled to be registered as a Guyanese citizen under the provisions of article 45 of the Constitution, provided, however, that the executive branch of the Government, through a designated Minister, offers no objection. It is important to understand that a person does not on marriage automatically take on his wife's or husband's citizenship." (Emphasis added)

[52] Similarly, in **Clive Oliveira v The Attorney General and The Chief Immigration Officer**,⁴ the court considered section 114(1) of the Constitution of Antigua and Barbuda which states:

114 (1) Subject to the provisions of paragraph (e) of section 112 and section 117 of this Constitution, the following persons shall be entitled, upon making application, to be registered on or after 1st November 1981-
(b) any person who-

⁴ ANUHCv2008/0449, delivered May 26, 2009

*(i) was married to a person who is or becomes a citizen;
Provided that no application shall be allowed from such person before the marriage has subsisted for upwards of three years and that such person is not, or was not at the time of the death of the spouse, living apart from the spouse under a decree of a competent court or a deed of separation.*

[53] At paragraph 79 of the judgment, Blenman J (as she then was), under the heading 'Right to be registered' stated:

"I will now address the issue of the entitlement to citizenship, as contended for. This issue brings into sharp focus section 114 of the Constitution. I have no doubt that section 114 of the Constitution entitles the person to apply to be registered as a citizen if that person is married to an Antiguan citizen for upwards of three years. The question of citizenship is a matter for the State to determine."

[54] Her Ladyship granted the claimant a declaration that he was entitled to apply to the relevant authorities to be registered as a citizen of Antigua and Barbuda.

[55] These authorities are clear that the fact of Mr. Morgan's marriage to Ms. Stevens does not give him an absolute right to citizenship of St. Kitts and Nevis. By virtue of section 92(1)(a) of the Constitution, he is given the right to apply to be registered as a citizen of St. Kitts and Nevis, a right he exercised. The question arises as to whether Mr. Morgan was denied the right to make his application pursuant to section 92(1) given the refusal of the Ministry to accept his first application of October 26, 2022, and having accepted his second application of April 18, 2023, being told that the application would have to be returned because of the policy. There is no evidence that Mr. Morgan's application was in fact returned to him. The Minister's affidavit evidence is that the application was accepted but not processed. In these circumstances, Mr. Morgan exercised his right to apply pursuant to section 92(1)(a) of the Constitution, and the application, having been accepted, he was not denied his right to so apply.

Minister's discretion, court's powers, national security

[56] The claimants move the court for an order to compel the Minister to urgently include Mr. Morgan in the list of candidates to be approved for citizenship of St. Kitts and Nevis, that is, subject to the payment of the applicable fees and other necessary actions. The authorities dictate that the Constitution empowers the

Minister with a discretion in the determination of an application under section 92(1).

[57] Specifically, the proviso to section 92(1) of the Constitution authorises the Minister to refuse an application for registration as a citizen in circumstances prescribed by Parliament in the interests of defence, public safety or public order if he is satisfied that there are reasonable grounds for refusing to grant the application. The applicable Act of Parliament which lays down the circumstances for refusal of a citizenship application is the Citizenship Act. Section 3(8) of the Citizenship Act gives the Minister a discretion to refuse to register a person as a citizen pursuant to section 92 “if he or she is satisfied that there are reasonable grounds in the interests of defence, public safety or public order for so doing”.

[58] In the case of **Esther v Prime Minister and Another**,⁵ of persuasive authority, the Supreme Court of Mauritius considered the Mauritius Constitution and the Citizenship Act of Mauritius. Section 24 of the Constitution made provision for a woman who married a citizen of Mauritius to be entitled, upon making application, to be registered as a citizen of Mauritius “subject to such exceptions and qualifications as may be prescribed in the interests of national security or public policy”. Whereas section 7 of the Citizenship Act prohibited registration under certain circumstances, it did not state that such wives may be refused registration on grounds of national security or public policy. Further, it did not state that the Minister had the responsibility for determining that such grounds existed for refusing an application. An application by a wife of a Mauritian citizen was refused. She brought proceedings in the Supreme Court seeking an order of mandamus directing the responsible Minister (the Prime Minister) to grant her application. The Court, in dismissing the application, held that the effect of the provisions of the Constitution of Mauritius and the Citizenship Act, when read in the context of the Act as a whole, was that a discretion was conferred on the Minister exercisable on the grounds of national security or public policy.

⁵ [1985] LRC (Const) 429

[59] The matters that affect the public interest and involve considerations of public policy determination lie with the Executive. In **Hinds and others v The Queen; Director of Public Prosecutions v Jackson; Attorney General of Jamaica (intervener)**,⁶ with reference to the Gun Court Act of Jamaica, the Board of the Privy Council stated:

“It is provided by s 13(1) of the 1974 Act, which starts with the introductory words **'In the interest of public safety, public order** or the protection of the private lives of persons concerned in the proceedings', that all three divisions of the Gun Court shall sit in camera. The court is also empowered to direct that no particulars of the trial other than the name of the accused, the offence charged and the verdict and sentence shall be published without the prior approval of the court.

The introductory words of s 13(1) of the 1974 Act amount to a declaration by Parliament that the hearing in camera of the kinds of cases which fall within the jurisdiction of the Gun Court is reasonably required for the protection of the interests referred to, which include public safety and public order. By s 48(1) of the Constitution the power to make laws for the peace, order and good government of Jamaica is vested in Parliament; and prima facie it is for Parliament to decide what is or is not reasonably required in the interests of public safety or public order. **Such a decision involves considerations of public policy which lie outside the field of the judicial power and may have to be made in the light of information available to a government of a kind that cannot effectively be adduced in evidence by means of the judicial process.**”

[60] The claimants seek orders of mandamus to compel the Minister to urgently determine and declare that any policies of the Government which fetter, limit or otherwise hinder applications for citizenship by marriage by Russian nationals violate the Constitution, and to urgently change any of its current policies which may fetter, limit or otherwise hinder applications for citizenship by marriage from Russian nationals.

[61] The Minister's evidence states, “The decision not to register Russian nationals as citizens of St. Kitts and Nevis, whether applicants by way of the CBI Program or otherwise, was made in the interests of defence, public safety, public order and national security of St. Kitts and Nevis and our international partners having regard to the ongoing war initiated by Russia against Ukraine to ensure that no

⁶ [1976] 1 All ER 353 at 368

action taken by St. Kitts and Nevis would have the effect of making the sanctions imposed by these countries of no effect.”

- [62] I accept the Minister’s submission that the interests of defence are not limited to the physical defence of the country, and include matters of national security. In the case of **Secretary of State for the Home Department v Rehman**,⁷ the appeal to the House of Lords concerned a deportation certification made in the interests of national security in respect of a Pakistani national who was found to be involved in an Islamic terrorist organisation. It was established that it was unlikely that he and his followers would carry out any acts of violence in the United Kingdom as his activities were intended to further the cause of a terrorist organisation abroad. At paragraph 18 of the judgment, Lord Slynn explained the interplay between national security and defence as follows:

“National security and defence of the realm may cover the same ground though I tend to think that the latter is capable of a wider meaning. But if they are the same then I would accept that defence of the realm may justify action to prevent indirect and subsequent threats to the safety of the realm.”

- [63] The House of Lords provided useful guidance on the term ‘national security’ and rejected a narrow construction of the term based on the need to establish a direct threat to the State. At paragraphs 15 to 17 of the judgment, Lord Slynn continued:

“There must be some possibility of risk or danger to the security or well-being of the nation which the Secretary of State considers makes it desirable for the public good that the individual should be deported, but I do not accept that this risk has to be the result of ‘a direct threat’ to the United Kingdom...Nor do I accept that **the interests of national security are limited to action by an individual which can be said to be ‘targeted at’ the United Kingdom, its system of government or its people...**

It seems to me that, in contemporary world conditions, action against a foreign state may be capable indirectly of affecting the security of the United Kingdom. The means open to terrorists, both in attacking another state and attacking international or global activity by the community of nations, whatever the objectives of the terrorist, may well be capable of reflecting on the safety and well-being of the United Kingdom or its citizens. The sophistication of means available, the speed of movement of persons and goods, the speed of modern communication, are all factors which may have to be taken into account in deciding whether

⁷ [2002] 1 All ER 122

there is a real possibility that the national security of the United Kingdom may immediately or subsequently be put at risk by the actions of others. **To require the matters in question to be capable of resulting ‘directly’ in a threat to national security limits too tightly the discretion of the executive in deciding how the interests of the state, including not merely military defence but democracy, the legal and constitutional systems of the state need to be protected.”**

I would accept the Secretary of State’s submission that the reciprocal co-operation between the United Kingdom and other states in combating international terrorism is capable of fostering such security ‘by, inter alia, the United Kingdom taking action against supporters within the United Kingdom of terrorism directed against other states’. **There is a very large element of policy in this which is...primarily for the Secretary of State. This is an area where it seems to me particularly that the Secretary of State can claim that a preventative or precautionary action is justified. If an act is capable of creating indirectly a real possibility of harm to national security it is in principle wrong to say that the state must wait until action is taken which has a direct effect against the United Kingdom.”** (*Emphasis added*)

[64] Further, at paragraph 28 Lord Steyn quoted from Lord Woolf’s judgment in the Court of Appeal as follows:

“Addressing directly the issue whether the conduct must be targeted against the security of this country, Lord Woolf MR observed:

‘Whatever may have been the position in the past, increasingly the security of one country is dependent upon the security of other countries. That is why this country has entered into numerous alliances. They acknowledge the extent to which this country’s security is dependent upon the security of other countries. The establishment of NATO is but a reflection of this reality. An attack on an ally can undermine the security of this country.’”

[65] Recently, our Court of Appeal in **Minister of National Security and Attorney General v Khalid Awad and Walid Awad**⁸ stated:

“National security interests are not only limited to the particular State. As a consequence of globalisation, (*sic*) national security can extend to the international community at large due to international law obligations and duties. In this case, St. Kitts and Nevis is a country which actively participates in the international community and is a signatory to treaties that touch and concern national security such as the **International Convention for the Suppression of the Financing of Terrorism**. As such its national security obligations could extend beyond its borders.”

⁸ SKBHCVP2022/0015, delivered September 22, 2023, at para. 40 per Thom JA

[66] I agree with the submission of the Minister that the decisions in **Rehman** and **Awad** show that the expression “national security” is to be interpreted broadly having regard to the prevailing circumstances including the relationships between nations and shared goals such as fostering security of nations. Further **Rehman** indicates that action taken on account of national security may be precautionary or preventative. The policy decision in this case was taken following St. Kitts and Nevis’ vote at the United Nations demanding that Russia end its war of aggression against Ukraine. The policy seeks to ensure that the sanctions imposed by St. Kitts and Nevis’ international partners are not circumvented or made of no effect.

[67] Given the authorities with regard to the wide ambit of ‘national security’, taken together with the discretionary powers of the Minister in refusing an application for citizenship, and with the further layer of the ouster or limitation of judicial authority in considerations of public policy, I am of the view that in the circumstances of this case, the Government was entitled to make and apply the policy, which is not inconsistent with section 92(1) of the Constitution and section 3(8) of the Citizenship Act.

Discrimination

[68] I see no basis for the claim that Mr. Morgan is being discriminated against on account of his race. In fact, there is nothing in writing in this case indicating what is his race. From his only appearances before this court (all of which have been via Zoom), Mr. Morgan appears to be Caucasian and Ms. Stevens who appeared in person, of African descent. No moment at all has been made as to these observations. To my mind, the reference to Russian nationals does not raise the issue of racial discrimination.

[69] There was no fetter on the claimants’ right to marry and remain married to each other. Notwithstanding his online appearances, as far as the Minister is concerned, Mr. Morgan is free to travel without a visa to St. Kitts so that it is not correct to say that he is unable to live together with his wife in St. Kitts as a family.

[70] As regards Mr. Morgan’s place of origin, the same principles in relation to section 92(1) apply, and the policy falls within the exceptions provided for in section 15(2)

of the Constitution. Therefore, in my view, in relation to the claimants, there is no breach of section 15(2), the protection from discrimination provision in the Constitution.

Disposition

[71] In light of all the foregoing, the claimants are not entitled to, and the court will not grant the orders sought. The Government of St. Kitts and Nevis is entitled to make and implement the policy which is not inconsistent with the provisions of the Constitution and section 3(8) of the Citizenship Act. While Mr. Morgan's application has not been processed and therefore not refused, it is unfortunate that he has not been afforded the courtesy of a written response to his application and numerous follow-up queries in respect thereof, bearing in mind the likely outcome of the application if considered once the policy is in place.

[72] The claim is dismissed with no order as to costs.

Tamara Gill
High Court Judge

By the Court

Registrar