

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

CLAIM NO. SLUHCV2020/0108

BETWEEN:

AUGUSTIN HINKSON

Claimant

and

THE ATTORNEY GENERAL

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Cynthia Hinkson-Ouhla for the Claimant

Mr. Seryozha Cenac with Mrs. Antonia Charlemagne for the Defendant

2022: May 25, 26;
June 7; (Further submissions)
2024: September 2 .

JUDGMENT

- [1] **CENAC PHULGENCE J.:** On 18th December 2019, the claimant, Mr. Augustin Hinkson ("Mr. Hinkson") visited the Criminal Division of the High Court at the Nyerah Court building in Vigie, Castries to meet Ms. Natalie Dabreo ("Ms. Da Breo"). Mr. Hinkson was denied entry to the Court by the Inspector responsible for security, Mr. Hilary Lesforis ("Mr. Lesfloris"), because he was not properly attired for entry into the courtroom. After consulting his attorney, Mr. Hinkson addressed his attire and Mr. Lesfloris was then informed that Mr. Hinkson wished to sit in court to view the proceedings in a matter involving a defendant, Mr. Urban St. Brice ("Mr. St. Brice"). Mr. Hinkson was again denied entry by Mr. Lesfloris for what was deemed to be a security "red flag" caused by the apparent change in his reason for wanting to enter the courtroom.

[2] As a result of this denial, Mr. Hinkson, by originating motion, sought the following relief:

- i. A declaration that he was denied his right to enter the Criminal High Court during public hearings on 18th December 2019;
- ii. A declaration that Mr. St. Brice has been repeatedly and consistently denied his right to a public hearing in criminal case number SLUHCR2005/0399 since 13th June 2018;
- iii. A declaration that the permanent closure of public hearings at the Criminal High Court since its move to its present location at Vigie in Castries is unconstitutional;
- iv. An order that the Criminal High Court be opened during public hearings;
- v. Damages for himself and Mr. St. Brice for breach of section 8(10) of the Constitution of Saint Lucia¹ ("the Constitution").

[3] It is not disputed that Mr. Hinkson was denied access to the Criminal Division of the High Court on 18th December 2019. Where the parties diverge is that the defendant says that there was a valid reason for denying Mr. Hinkson access to the Court, whilst on the other hand, Mr. Hinkson says that there was no good reason for him being denied entry into the Court. I do not propose to set out all of the facts but will where necessary, refer to such of the facts which I believe are relevant to the determination of the issues in this matter.

Issues:

- [4] The issues arising for determination in this matter are:
1. Whether the right afforded by section 8(10) of the Constitution is a right guaranteed to an individual member of the public such as Mr. Hinkson who wishes to observe the proceedings?
 2. Whether Mr. Hinkson has standing to bring a claim for constitutional relief on behalf of a third-party, namely, Mr. St. Brice?
 3. If issue 2 is answered affirmatively, whether Mr. St Brice's right to a public hearing under section 8 of the Constitution has been infringed?

¹ Cap. 1.01, Revised Laws of Saint Lucia, 2020.

4. Whether Mr. Hinkson and/or Mr. St. Brice is entitled to damages in the circumstances?

Issue 1: Whether the right afforded by section 8(10) of the Constitution is a right guaranteed to an individual member of the public such as Mr. Hinkson who wishes to observe the proceedings?

- [5] Mrs. Cynthia Hinkson-Ouhla (“Mrs. Hinkson-Ouhla”), Counsel for Mr. Hinkson argues that the Constitution is the Supreme Law of the Land and must be construed in a manner favourable to the citizen. Put another way, in a manner which guarantees the rights of the citizens. According to Mrs. Hinkson-Ouhla, the right to a public hearing belongs both to the parties and the public. Citizens have a public interest in ensuring that constitutional rights are not watered down. Therefore, the right could equally be asserted by the parties as well as the public. The difference, Counsel posited was that the parties can agree to waive their rights, but the rights of the public are restricted by section 8(11). Further, Counsel argued that it is the responsibility of the Courts to maintain the standards for creating the climate for the efficient operation of the rights enshrined in the Constitution.
- [6] Mrs. Hinkson-Ouhla relies on the authority of the **Attorney General v Dumas**² citing paragraph 15 of the judgment, wherein it is stated that:

“The task of the judiciary is to uphold the Supremacy of the Constitution and thereby the rule of law. In *Bobb v Manning* 2006 UKPC 22 the Board at para 12 quoted Counsel’s submissions that the courts should not abdicate their important function of constitutional adjudication and also his citation of the judgment of Bhagwati J in the Supreme Court of India in the state of ***Rajasthan v Union of India AIR [1977] SC 1361*** para 143 in which he stated:

“This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited, and if so what are the limits and whether any action for the branch transgresses such limits. It is for the Court to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law”.

² [2017] UKPC 12.

[7] Mrs. Hinkson-Ouhla further argues that the Constitution has to be interpreted broadly. The right to a public hearing is both that of the public and the parties. There is no authority for limiting the assertion of the right to the parties. The Constitution is the supreme law of the land and bestows on all persons the protection of fundamental rights and freedoms. These rights and freedoms existed prior to the Constitution. These rights Counsel argues contain limitations which are spelt out in the Constitution as indicated by section 1 which categorically states that:

“the provisions of this chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained and those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.”

[8] According to Mrs. Hinkson-Ouhla, section 1 of the Constitution makes it clear that the only applicable restrictions are those contained in the Constitution. There are specific circumstances when members of the public can be restricted from proceedings. These are contained in section 8(11) and necessitate the application of legal provisions which permit such refusal. Mrs. Hinkson-Ouhla argues that the defendant has failed to show that any of the circumstances exist on which Mr. Hinkson’s denial of entry could have been lawfully predicated.

[9] Conversely, Mr. Seryozha Cenac (“Mr. Cenac”), Counsel for the defendant argues that section 8(10) of the Constitution does not apply to Mr. Hinkson at all. Section 8(10) of the Constitution seeks to protect the rights of litigants in proceedings, and not third parties (as is Mr. Hinkson). He argues that the Constitution does not protect the public’s right to access a court but protects an individual’s right to have his/her trial heard in public. Mr. Hinkson having no constitutional right to access a court, is incapable of showing that this right was infringed.

[10] In support of his submission, Mr. Cenac relies on the authority of **Gannett Co. v DePasquale**,³ a persuasive decision from the United States, where it was

³ 443 US 368 (1979).

held that open trials were part of the common law tradition, and that the Sixth Amendment right to a public trial was personal to the accused, conferring no right of access to pretrial proceedings that is separately enforceable by the public or the press. The Sixth Amendment remained the source of an accused's right to insist upon public judicial proceedings.

- [11] Mr. Cenac further submits that the Court ought to conclude that the public's right to access the Courts is not a constitutional protection, but a common law right enforceable in the ordinary legal manner, subject to the equally valid common law exceptions. Counsel relies on the authority of **Scott v Scott**⁴ wherein the Earl of Halsbury had this to say:

"I am of the opinion that every court of justice is open to every subject of the King. I will deal presently with what have been called exceptions to that rule, though I think that it is a mistake in some of the so-called exceptions thus to describe them, but I want, in the first instance, to emphasise the broad rule which I believe to be the law. I believe that this has been the rule at all events for some centuries, but, as I will attempt to show presently, it has been the unquestioned rule since 1857, unquestioned by anything which I can recognise as an authority."⁵

- [12] Counsel further relies on the dicta of Earl Loreburn, who added the following:

"Again, the court may be closed or cleared if such a precaution is necessary for the administration of justice. Tumult or disorder, or the just apprehension of it, would certainly justify the exclusion of all from whom such interruption is expected, and, if discrimination is impracticable, the exclusion of the public in general...."⁶ (my emphasis)

- [13] Mr. Cenac argues that section 8 of the Constitution was drafted in such a manner as to make clear that it was the right of the criminally charged to insist upon their cases being determined in public. That the right of the public to access the Court is therefore derived from the common law and as such does not enjoy the same constitutional protection as the right of the defendant to have his proceedings held in public.

⁴ [1913] All ER Rep.1.

⁵ Scott at p 12.

⁶ Scott at p 14.

[14] Mr. Cenac relies on the case of **Richmond Newspapers Inc v Virginia**,⁷ which he argues confirms that the right to a public hearing is for the benefit of the defendant at trial. This right, according to Counsel, was not absolute, but was subject to various considerations which "may sometimes justify limitations upon the unrestricted presence of spectators in the court room". Counsel drew particular attention to the dicta of the Court at page 3 of its decision where it said:

"Moreover, every courtroom has a finite physical capacity, and there may be occasion when not all who wish to attend a trial may do so. And while there exist many alternative ways to satisfy the constitutional demands of a fair trial, those demands may also sometimes justify limitations upon the unrestricted presence of spectators in the courtroom."

[15] Counsel submits that Mr. Hinkson can assert no constitutional infringement personal to him under section 8(10) of the Constitution and that aspect of the claim must therefore fail.

Discussion and Analysis

[16] This Court finds that essential to the principle of the rule of law and for the due administration of justice, the public resolution of disputes brought before the courts affords accountability, fosters public confidence, and provides notice of the legal consequences of behaviour and choices. Public access and observation of court proceedings is essential to upholding open justice. However, it is important to note that in every case, the court can decide how a hearing ought to be held. If it is necessary for the due administration of justice, a judge can decide to hold a hearing completely in private, with no observers allowed.

[17] Section 8(10) of the Constitution provides as follows –

"Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public."

⁷ 448 US 555 (1980).

[18] Section 8(11) of the Constitution also dictates that a defendant's right to public/open hearings is not absolute, and may be outweighed by other competing rights or interests such as security, preventing disclosure of non-public information, ensuring a fair trial, etc. Section 8(11) provides:

“Nothing in subsection (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and the legal practitioners representing them to such extent as the court or other authority—

- (a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of 18 years or the protection of the private lives of persons concerned in the proceedings; or
- (b) may by law be empowered or required to do in the interests of defence, public safety or public order.

[19] The claimant has submitted that section 8(10) not only guarantees a defendant's right to a public hearing, but also guarantees the public the right to attend and observe all public proceedings as well. The defendant has, on the other hand, argued that the public's right to access the Courts is not a constitutional protection, but a common law right enforceable in the ordinary legal manner, subject to the equally valid common law exceptions.

[20] In the case of **Honourable Julian Willcock Speaker of the House of Assembly v the Right Honourable Sir Gary Hickinbottom as Commissioner of the Commission of Inquiry et al**,⁸ Jack, J (Ag.) stated (obiter dicta) at paragraph 3: “The default position is that the Court hears all matters in open court...Someone who wants to observe a case has merely to attend the courthouse”. This means that the public is able to attend and observe open court matters and that the Court (and its administration) should accommodate/allow public attendance at these hearings.

⁸ Claim No. BVIHCV2021/0210, (delivered 13th September 2021, unreported).

[21] The Court of Appeal in the decision authored by Baptiste, JA in the case of **Steadroy C.O. Benjamin v the Commissioner of Police and another**⁹ provided guidance of the interpretation of the Constitution as follows:

“The nature of a constitution requires that a broad, generous and purposive approach be adopted to ensure that its interpretation reflects the deeper inspiration and aspiration of the basic concepts on which the Constitution is founded: per Byron CJ in Attorney General of Grenada v The Grenada Bar Association Grenada Civil Appeal No. 8 of 1999 (delivered 21st February 2000) at paragraph 7.

[22] The Court of Appeal in **Steadroy C.O. Benjamin**¹⁰ cited the decision of Frederick Alexander James v Commonwealth of Australia and the State of New South Wales and Others [1936] UKPC 52 adopting the dicta of the Privy Council that:

“It is true that a Constitution must not be construed in any narrow and pedantic sense. The words used are necessarily general and their full import and true meaning can often only be appreciated when considered, as the years go on, in relation to the vicissitudes of fact which from time to time emerge. It is not that the meaning of the words changes, but the changing circumstances illustrate and illuminate the full import of that meaning.”

[23] In **Stock v Frank Jones (Tipton) Ltd**¹¹, Viscount Dilhorne stated:

“It is now fashionable to talk of a purposive construction of a statute, but it has been recognized since the 17th century that it is the task of the judiciary in interpreting an Act to seek to interpret it ‘according to the intent of them that made it’.”

I therefore bear these principles in mind in seeking to interpret section 8(10) and (11).

[24] Both sides have submitted cases from the jurisdiction of the United States in support of their submissions¹², however these cases are merely persuasive authority and not binding on this Court.

⁹ ANUHCVP2009/023, (delivered 19th September 2011) at para 13.

¹⁰ Steadroy Benjamin at para 14.

¹¹ [1978] 1 WLR 231 (HL).

¹² Gannett Co v DePasquale, 443 US 368 (1979); Richmond Newspapers Inc. v Virginia, 448 US 555 (1980).

- [25] Unlike the jurisdiction of the United States of America (where the Supreme Court has held that the public has an independent right of access under the First Amendment to attend judicial proceedings), there is no enumerated/protected right of access to observe or attend proceedings given to the public in the Saint Lucia Constitution.
- [26] While section 8(10) provides for all proceedings to be held in public, it does not mean that all members of the public are entitled to attend and/or observe any hearing as of right. If it were the intention of the framers of the Constitution to give a constitutionally protected right of access to the public, a provision to that effect would have been included in the Constitution. It cannot therefore be inferred from the defendant's right to have his/her proceeding/hearing in public that there is a corresponding constitutional right of access to proceedings by members of the public.
- [27] The aggrieved party whose proceeding/hearing has not been conducted in public as provided for in section 8(10) of the Constitution and not in keeping with the exceptions listed in section 8(11) of the Constitution may approach the Court for redress, however the member of the public who has been excluded from attending the hearing is not clothed with the requisite standing or constitutional protection to seek such redress him/herself. This is very clear when one considers the wording of section 8(10) that the proceedings are to be held in public unless the parties agree otherwise. The subsection clearly refers to parties to proceedings. Mr. Hinkson was not a party to any proceedings before the Court. The marginal notes to section 8 of the Constitution read "Provisions to secure the protection of the law". When the provisions of section 8 are examined, one sees that they are regarding persons charged with criminal offences and persons who are seeking to have determination of some civil right and the safeguards to guarantee fairness before the court.
- [28] Accordingly, the fact that Mr. Hinkson was denied entry into the Criminal High Court on 18th December 2019 does not amount to a breach of section 8(10) of the Constitution for which he would be entitled to seek redress pursuant to section 16 of the Constitution, as he has no protected right under that section.

Mr. Hinkson is therefore not entitled to a declaration that his right to access the Criminal High Court during public hearings on 18th December 2019 was denied or infringed.

Issue 2: Whether Mr. Hinkson has standing to bring a claim for constitutional relief on behalf of a third-party namely, Mr. St. Brice?

- [29] Having determined that Mr. Hinkson in the circumstances is not entitled to constitutional relief for an infringement of his rights, I now turn to consider whether he is entitled to bring an action for infringement of the constitutional rights of a third-party, namely, Mr. Urban St. Brice.
- [30] Mr. Cenac, Counsel for the defendant submits that Mr. Hinkson's evidence is that an application for Mr. St. Brice's matter to be heard in public was made on 18th December 2019 and was denied. Counsel contends that there was no appeal of this denial but instead Mr. St. Brice sought to remove the matter to the constitutional court. Counsel submits that the appeal process was adequate to address any issues in relation to the alleged order of the court below. (I note that no evidence of this order denying the application was provided.)
- [31] Counsel further argues that neither Mr. Hinkson nor Mr. St. Brice indicates why Mr. St. Brice was unable to file his own application in his own name. According to Mr. Cenac, at all material times, Mr. St. Brice was present at court and had the benefit of Counsel. Mr. Cenac also argues that in all reality, the claimant can be aptly described in the words of Lord Denning as a mere "busybody".
- [32] In that regard, Mr. Cenac submits that Mr. Hinkson has no standing to bring a claim on behalf of Mr. St. Brice, firstly on the grounds that the claim is unmeritorious in and of itself, and secondly, there is insufficient nexus between himself and Mr. St. Brice to satisfy standing. Mrs. Hinkson-Ouhla in her submissions simply says that on the date in question, being when this claim was filed, Mr. St. Brice was detained.

Discussion and Analysis

- [33] The starting point of any discussion on the standing of Mr. Hinkson to bring an action for redress on behalf of a third party, Mr. St. Brice, is section 16(1) of the Constitution which provides as follows:

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

- [34] Before a person can commence legal proceedings in any suit, it is necessary that that person has standing to sue. This means that the person must be considered by the Court to be an appropriate party to bring the proceedings in question. The important point to note in relation to standing is that it depends on the identity of the person and the nature of the proceedings.

- [35] The authors H ‘Nyane and T Maqakachane in an article on standing to litigate in the public interest cited the approach of the Courts in Lesotho on the interpretation and application of the laws relating to standing and highlighted the historical position of the Roman-Dutch Courts stating that:

“The Constitution of Lesotho has no express provisions on standing to litigate on constitutional questions that do not fall within the Bill of Rights. It provides, instead, in section 22(1):

If any person alleges that any of the provisions of sections 4 to 21 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

This section is based on the common law position on standing. Under Roman-Dutch law, on which the common law of Lesotho is based, a private actor must establish a substantial legal interest which is being or is likely to be violated, except in cases where a person was detained,

in which case a relative or friend would be granted standing to apply or institute the claim on the latter's behalf."¹³

[36] The authors find authority for this approach in the decision of the South African Court of Appeal in **Wood v Odangwa Tribal Authority**,¹⁴ where Rumpff CJ states:

"Although the actions populares generally have become obsolete in the sense that a person is not entitled, "to protect the rights of the public" or "champion the cause of the people" it does not mean that when the liberty of a person is at stake, the interest of the person who applies for the interdict de libero homine exhibendo should be narrowly construed, on the contrary, in my view it should be widely construed because illegal deprivation of liberty is a threat to the very foundation of a society based on law and order."¹⁵

[37] His Lordship then went on to state:

"In such a case the applicant would not purport to act "on behalf of the public" and would not, therefore, institute what in Roman law was an action popularis. **He would be allowed to act on behalf of a detained person because he would satisfy the court that the detained person could not make the application himself.** This procedure would preserve what in Roman law was already considered of the highest value and no less regarded in Roman Dutch law. **The court would, of course, require to be satisfied that the applicant had good reason for making the application and that the detained person would have made the application himself if it had been in his power to do so...** There is, in my view, another ground for holding that the applicants have locus standi. ...I think that the interest a person may have in the liberty of another may arise not only through family relationship or personal friendship but also through the relationship that may bind the two persons by reason of agreement, express or implied, relating to a matter of common interest. I am thinking of a partnership, or a society, or a church, or a political party. Any member of such a society or body, would in my view, have an interest in the personal liberty of a co-member." ¹⁶ (my emphasis)

[38] It is noteworthy that section 22(1) of the Constitution of Lesotho is identical to section 16(1) of the Constitution of Saint Lucia and though the Court in **Wood v Odangwa Tribal Authority** considered the law from the Romano Dutch

¹³ H 'Nyane & T Maqakachane 'Standing to litigate in the public interest in Lesotho: The case for a liberal approach' (2020) 20 African Human Rights Law Journal 799-824 (P.806-808).

¹⁴ 1975 (2) SA 294.

¹⁵ 1975 (2) SA 294 at p 37.

¹⁶ 1975 (2) SA 294 at p 41.

perspective, the court considered the common law position at the time and found that the positions were congruent with each other.

[39] It would appear that a more liberal approach to standing has been applied by the Caribbean Courts in recent times. For instance, the Supreme Court of Belize in **The Maya Leaders Alliance, The Toledo Alcaldes Association and Others v Attorney General of Belize**¹⁷ found that the claimants had the necessary standing to bring an action for constitutional redress on behalf of its members for violations of their property rights under sections 3, 4, 16 and 17 of the Constitution of Belize. Conteh CJ found that the individual claimants claimed on their own behalf as well as on behalf of the several villages of which they are the Alcaldes, and in the case of the Maya Leaders Alliance and The Toledo Alcaldes Association (MLA and TAA), they were in fact authorised by written resolutions of their membership to bring the claim. The Chief Justice considered these factors and was satisfied that the claimants, given their interests in the subject-matter of the claim had adequate and proper standing to ventilate their claim before the court.

[40] Conteh CJ further found that given the collective nature of indigenous customary title to or interests in land, representative actions, such as the instant claim, whether by MLA or TAA or the individual Alcalde claimants, were an appropriate vehicle through which to advance those rights or interests.¹⁸

[41] Saunders P in the Caribbean Court of Justice decision of **Mc Ewan et al v The Attorney General of Guyana**¹⁹ stated that in constitutional proceedings, courts should adopt a liberal approach in affording standing to individuals and entities. It is in the public's interest to ensure that the Constitution is properly interpreted and applied, and the rule of law vindicated.

¹⁷ Claim No. 366 of 2008, Supreme Court of Belize, delivered 28th June 2010.

¹⁸ Claim No. 366 of 2008 at paras 9-13.

¹⁹ CCJ Appeal No. GYCV2017/015.

[42] In **Dumas v AG**²⁰ Jamadar JA in discussing standing said that:

“... across the common law world, as in the United Kingdom (and except for Australia), courts have been working assiduously, if not uniformly, to open the gates to general grievance public interest litigation, where an applicant is not directly affected by the impugned legislation or public/governmental action.”²¹

...the focus for the purpose of standing is on public law wrongs and there is a permissiveness to grant liberal access to individuals who may not be directly affected by an impugned action. This is not to say that the rules of standing in public law have become otiose. The learning in *Fordham* shows, that the courts are vigilant to exclude busybodies whose interest is to interfere in the affairs of others, as well as persons acting out of ill-will or for some other improper purpose²².

...the following general considerations can also be articulated as arising out of the more permissive approach to standing in public interest litigation: i. Standing goes to jurisdiction and is to be determined in the legal and factual context of each case. It is a matter of judicial discretion. ii. The merits of the challenge and the nature of the breach raised are important considerations. iii. The value in vindicating the rule of law (the principle of legality) is a significant consideration. iv. The importance of the issue raised. v. The public interest benefit in having the issue raised and determined. vi. The bona fides and competence of the applicant to raise the issues. vii. Whether the applicant is directly affected by, or has a genuine and serious interest and has demonstrated a credible engagement in relation to the issue raised. viii. The capacity of the applicant to effectively litigate the issues raised. ix. Whether the action commenced is a reasonable and effective means by which the courts can determine the issues raised. x. The imperative to be vigilant so as to prevent an abuse of process by busybodies and frivolous and vexatious litigation. xi. Whether the issues raised are a general or specific grievance and whether there are other challengers who are more directly impacted by the decision challenged, or more competent to litigate it. xii. The availability and allocation of judicial resources.

All of these are considerations which could be relevant and appropriate to the issue of standing in public law as part of the general circumstances of the case, but we do not propose them as a checklist or as absolute criteria for determining standing²³.

[43] Notwithstanding the liberal approach to standing discussed above, it seems clear to me that a claim on behalf of a detained person pursuant to section 16(1)

²⁰Trinidad and Tobago Civil Appeal No. P 218 of 2014.

²¹ Dumas at para 67.

²² Dumas at para 71.

²³ Dumas at paras 94-96.

of the Constitution must pertain to a right which the detained person could have asserted on his own. Therefore, in such a case, it must be presumed that the detained person would have had standing. As indicated by Jamadar JA in **Dumas**, standing must be determined in the legal and factual context of this case and is a matter of judicial discretion.

[44] The starting point is that the claim is being brought on behalf of a detained person. It is first important to consider the evidence. Mr. Hinkson in his affidavit in support of the claim says that he makes 'this claim on behalf of Mr. St. Brice who is incarcerated at the Bordelais Correctional Facility in Dennery'.²⁴ Mr. Urban St. Brice in his affidavit filed in support of the claim says that he has been denied a hearing in public for many years and states that he supports the claimant's section 8(10) constitutional application as being necessary to deal with the tumour spreading within the judicial system in Saint Lucia, as only public hearings can force the reestablishment of proper procedure within the justice system in Saint Lucia.²⁵

[45] Ms. Da Breo in her affidavit filed in support of the claim says as Mr. St. Brice's attorney, she can confirm that Mr. St. Brice 'asked and authorised Mr. Hinkson to pursue a claim seeking redress on his behalf under the Saint Lucia Constitution on the grounds that a section 8(10) breach had been committed against him'. She says further that this constitutional motion was filed with the consent, permission and authorisation of her client, Mr. St. Brice and at the time of the filing of the motion, Mr. St. Brice was on remand at the Bordelais Correctional Facility.

[46] The defendant in submissions hints that the fact of Mr. St. Brice's detention is denied but I note that no where in the affidavit in response to the claim was this raised, and the defendant certainly provided no evidence to controvert the evidence of the claimant and his two other witnesses, that Mr. St. Brice at the time when this claim was filed was detained at the Bordelais Correctional Facility. There was a suggestion by Counsel for the claimant that Mr. St. Brice

²⁴ At para 13.

²⁵ At para 29.

was at some point released from prison, but none of the affidavits provide evidence of when this was. I note that whilst Mr. Hinkson said in his affidavit that Mr. St. Brice was incarcerated at the Bordelais Correctional Facility, in cross-examination, Mr. Hinkson agreed that he did not know Mr St. Brice and could not say whether he was incarcerated or not.

[47] In the absence of any evidence to the contrary, the Court therefore accepts that Mr. St. Brice was detained at the Bordelais Correctional Facility at the time the claim was filed. Thus, potentially Mr. St. Brice could have his rights asserted through another person such as Mr. Hinkson.

[48] As indicated above, this is the starting point. It cannot be that this provision in the Constitution exists to simply permit detained persons to bring claims regarding infringements of their rights through others without any oversight from the Court or determination of whether in the particular circumstances, this ought to be allowed. I am of the view that the Court must retain some oversight in these cases so that this provision is not abused. It could very well be that some application should be made to determine whether in fact a claim can be filed on behalf of a detained person prior to the filing of a claim. I was unable to find any guidance on the process to be employed in this regard.

[49] In determining whether Mr. Hinkson can properly make this claim on Mr. St. Brice's behalf, I am guided by the case of **Wood v Odangwa**, which, while of persuasive authority, provides useful guidance and was concerned with the provision of the Constitution of South Africa which is in *pari materia* with section 16(1) of the Saint Lucia Constitution.

[50] That case highlighted the fact that whilst indeed a claim could be brought on behalf of a detained person, it had to be shown on the evidence and the Court satisfied that they were so acting because the detained person could not make the application himself, that there was a good reason for making the application and that the detained person would have made it himself if it had been in his power to do so. I think that this must be the correct approach when one considers the fact that a detained person's access to the court and to legal

representation is far better today given the changes in technology and infrastructure which facilitate much easier access.

[51] Considering the evidence of the claimant, I find that the claimant has not provided any evidence or indication to show why Mr. St. Brice could not make application for constitutional redress on his own. This is even more important in the context of this case where in the affidavit evidence in support of the claim, there is clear reference to Mr. St. Brice having brought a constitutional claim in 2018. At that time, he was represented by Counsel, Ms. Da Breo who is still his Counsel today and has given an affidavit in support of this claim. Mr. St. Brice has access to the Court in that he is able to be present at Court, which was the case on 18th December 2019 when Mr. Hinkson was denied entry into the Court. It is also to be noted that at the trial of this claim, the Court raised with Counsel for Mr. Hinkson whether it would not have been important for the Court to know why Mr. St. Brice was making his claim through Mr. Hinkson given that he had filed previous actions in his name. Counsel's response was that this would have entailed her going to the prisons and she could not have done so given the rise in Covid-19. It was not denied that that information would have been helpful to the Court.

[52] Having reviewed the evidence of the claimant, I see no justifiable reason to permit Mr. Hinkson to bring this claim on behalf of Mr. St. Brice. Mr. Hinkson exhibits a letter dated 18th December 2019 from Mr. St. Brice where he is being asked to champion Mr. St. Brice's cause in this matter by filing a claim on his behalf. Mr. St. Brice in his evidence makes no reference to this letter. He simply says he supports Mr. Hinkson's section 8(10) constitutional application. He also says that he told the judge that he had never met Mr. Hinkson, yet interestingly, he authorised him to make this claim on his behalf by way of this letter on the very day of his hearing.²⁶ The letter however does not assist with why Mr. St. Brice who has full access to the Court thought he needed to have Mr. Hinkson file a claim on his behalf. It is also worthy of note that Mr. Hinkson admitted in cross-examination that he never met or spoke to Mr. St. Brice. He does not

²⁶ See para 24 of Mr. Urban St. Brice's affidavit in support.

even say how this letter came to his attention from the man he had never met or spoken to.

- [53] I therefore find that Mr. Hinkson has no standing to bring this claim on behalf of Mr. St. Brice. There is therefore no need to consider the remaining issues. However, if I am incorrect on Mr. Hinkson's standing, I consider the following for completeness.

Issue 3: Whether Mr. St Brice's right to a public hearing under section 8 of the Constitution has been infringed.

- [54] The question is whether the fundamental rights and freedoms of Mr. St. Brice have been breached, namely the right to a public hearing as established by section 8(10) of the Constitution. That subsection provides that all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation shall be in public. Section 8(11) provides for circumstances where the court or other authority may be empowered by law excluding all other persons other than the parties and their legal practitioners. The subsection specifically mentions circumstances, where: (i) publicity may prejudice the interests of justice, (ii) it is interlocutory proceedings, (iii) it is in the interests of public morality, the welfare of persons under the age of 18 years, (iv) it is for the protection of private lives of persons involved in the proceedings, or (v) it is in the interests of defence, public safety or public order.
- [55] In Mr. Hinkson's affidavit he speaks of him being informed that Mr. St. Brice made an application for his hearing to be public and this was denied. He goes on to say that Mr. St. Brice has not had a public hearing since the Court moved to Vigie as court hearings have been closed to the public.²⁷ In cross-examination, Mr. Hinkson admitted that he had no personal knowledge of these matters and had been so informed by Ms. Da Breo. He also admitted that he had no personal knowledge of whether the Court was closed to the public and

²⁷ At para 14.

that he had no personal knowledge of whether or not Mr. St. Brice has had public or private hearings.

[56] Mr. Hinkson says that the concerns regarding the private nature of Mr. St. Brice's hearings relate to the period post 13th June 2018 as Mr. St. Brice had made a constitutional application in relation to pre-13th June 2018. He says that even after making that application, the hearings at the Criminal High Court continue to be in private.²⁸

[57] Mr. St. Brice in his affidavit speaks to the fact that he had raised the fact that he was being denied his right to public hearings at the Criminal Court in his constitutional claim filed on 13th June 2018 as all hearings were closed. That claim was denied and Mr. St. Brice appealed the decision of the High Court. However, having perused the judgments of the High Court²⁹ and the Court of Appeal,³⁰ I could not find any reference to this issue having been addressed by either court in its written judgment. It may very well have been raised but it was not an issue for the court's determination.

[58] Mr. St. Brice and Ms. Da Breo in their affidavits give evidence that at the hearing on 18th December 2019, Ms. Da Breo informed the court that Mr. St. Brice wished to assert his right to a hearing in public and that there was a gentleman who wished to come into the court gallery to observe the proceedings, and that he had been denied access to the court. Both Ms. Da Breo and Mr. St. Brice then recount the exchange between the bench and Ms. Da Breo and give evidence of various statements made by various persons none of whom have given evidence in this case.

[59] The Court cannot ascertain what was said as it cannot rely on the hearsay statements of the persons and unfortunately, no transcript of the proceedings before the court on 18th December 2019 was produced in evidence. In cross-examination, Ms. Da Breo when asked about the transcript for the hearing on

²⁸ At para 16-17.

²⁹ SLUHCV2018/0272, (delivered 29th October 2018, unreported).

³⁰ SLUHCVP2018/0036, (delivered 31st July 2020, unreported).

18th December 2019 responded that 'there are no transcripts and that she applied and got a letter from the Registrar'. Ms. Da Breo agreed that she had not exhibited that letter. One point of dispute between the parties is whether Mr. Hinkson ever appeared before the judge in court and was questioned as to the reason for him wanting to attend Mr. St. Brice's matter. Mr. Hinkson says he never did whilst the defendant says he did. In any event, I do not believe it necessary to delve into any of the evidence of what transpired in court on that day to determine this particular issue.

[60] Mrs. Hinkson-Ouhla, Counsel for Mr. Hinkson argues that the issue revolves around the question of whether there is any law permitting the exclusion of the public from attending criminal proceedings. Counsel argues that the **Criminal Procedure Rules**³¹ makes no reference to hearing of criminal matters whether interlocutory or trials in closed court. Consequently, there appears to be no law in force requiring any criminal proceedings to be heard in camera.

[61] Conversely, Counsel, Mr. Cenac argues that the only provision which requires that an accused appear in open court for the hearing of the matter is rule 10.3(9) of the **Criminal Procedure Rules** which provides that:

"A sufficiency hearing shall be held in open Court unless—
(a) a provision of the Criminal Code or these Rules provide otherwise; or
(b) the circumstances require confidentiality as to certain charges; in which case the proceedings shall be held in chambers."

[62] Counsel argues that other than rule 10.3(9), the only other provision in the rules which makes any reference to the way a matter is to be heard is rule 12.4 which reads as follows:

"Upon application for good cause shown, the Court may at any time order that the disclosure sought pursuant to rule 12.3 be denied, restricted, or deferred or make such other order as is appropriate and may hear the application in chambers".

[63] According to Mr. Cenac, the **Criminal Code** however does specify that certain matters/procedures are to be heard or conducted in open court, namely: section

³¹ Statutory Instrument No. 22 of 2015, Laws of Saint Lucia.

309-Prosecution for treason, section 887-Accused to appear and plead, section 971-Remittance of fine, section 978-Delivery and recording of the verdict, section 1096-Imposition of Custodial Sentences, section 1097-Length of Custodial Sentences, section 1105-Pronouncement Of Sentence.

[64] Mr. Cenac submits that apart from the abovementioned sections in the **Criminal Code** and **Criminal Procedure Rules**, the only other proceedings which are to be held in open court are those which according to section 8(10) of the Constitution of Saint Lucia, are such where a determination is being made of the existence or extent of any civil right or obligation or the decision of the Court. I do not agree with this submission. Section 8(10) specifically says that 'all proceedings of every court' and 'proceedings for the determination of the existence or extent of any civil right or obligation before any authority shall be held in public. This simply means that the proceedings are not to be held in private or in camera and that the public can attend the hearing if they wish, subject to the provisions of section 8(11).

[65] Counsel further argues that Mr. Hinkson's claim for a declaration that "the permanent closure of public hearings at the Criminal High Court since it moved to its present location at Vigie in Castries is unconstitutional" must fail. He argues that nothing in the claimant's four affidavits (there were three affidavits) filed in support of his claim, adduces any evidence to enable a court to arrive at a rational conclusion, on a balance of probabilities, that the Criminal High Court, as it relates to criminal trials, sits ordinarily in closed session, inaccessible to the public. I agree with Counsel's submissions.

[66] To this end, Mr. Cenac submits that there is no order of a court, transcript of proceedings or general petition (by members of the public) which supports the claim and/or allegations in this claim. There is no evidence, that the public, as a whole, was barred from attending Mr. St. Brice's hearing on that day in December 2018 or any other of his hearings before the High Court of Saint Lucia. The claimant's evidence merely shows that he and he alone was excluded from the court on the particular day.

- [67] I am in total agreement with these submissions. I also point out that even if all members of the public are not allowed to access the court for a specified reason, this does not in my view result in a change in the nature of the proceedings. Mr. St. Brice's hearing on the day in question was not in camera/private as there is no evidence to suggest this.
- [68] Counsel further argues that the defendant has made provisions for the attendance of the public as there is "room" in court for the public and that room is the "public gallery". According to Mr. Cenac, it would be quite curious that the court would have a general practice not to admit the public into the court, yet nevertheless provide for their attendance (which would never be facilitated). He submits that the dress code which was displayed on the wall was intended for the benefit of the public attending court. It was after Ms. Da Breo viewed this public notice and studied Mr. Hinkson's attire, she realized that he needed to tuck in his shirt. The fact that the court has placed a public notice as to the appropriate dress code undermines substantially the allegation that the court sits in closed session. If it did, there would be no need for such a notice for the benefit of the public. The court, Mr. Cenac submits, enquired into Mr. Hinkson's presence to determine the question of access. Had there been any general rule forbidding access, this would not have been necessary as Mr. Hinkson would have been excluded by default (his mere presence and not based on his attire or his original statement "to meet Ms. Dabreo"). I accept these submissions as they clearly do not support the claimant's assertion that the Criminal Court has been or is closed to the public.
- [69] Interestingly, rule 2.7 of the **Civil Procedure Rules 2023** specifically says that 'where a hearing takes place in public, the court is not required to make any special arrangements to enable the public to enter the hearing.' This is in the context of civil cases, but I believe it can equally apply to criminal matters. Therefore, even where, as suggested by Mr. Lesfloris, the building which houses the Criminal Division is not adequate to accommodate many people, this does not mean that the hearings are not in public.

[70] I agree with Counsel for the defendant that during the period of Mr. St. Brice's trial/hearing the court did not sit in camera or to the general exclusion of the public and at no time was Mr. St. Brice injudiciously denied a public hearing in violation of his rights as enshrined under section 8(10) of the Constitution. Mr. St. Brice's right to a public hearing has therefore not been infringed.

Damages

[71] Having addressed and concluded in relation to issues 1-3 above, there is no need to address issue 4 in relation to damages as the Court does not find that there was any breach of section 8(10) of the Constitution in relation to either Mr. Hinkson or Mr. St. Brice.

Conclusion

[72] For all the reasons above, the claim is therefore dismissed, and the claimant is not entitled to any of the relief sought. There shall be no order as to costs.

[73] I wish to express my sincerest apologies to Counsel and the parties for the delay in the delivery of this judgment attributable to circumstances beyond my control.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar