

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

SAINT CHRISTOPHER AND NEVIS

NEVHCVP2018/0006

BETWEEN:

THE NEVIS ISLAND ADMINISTRATION

Appellant

and

OCEAN REEF RESORTS LIMITED

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE

Chief Justice

The Hon. Mr. Mario Michel

Justice of Appeal

The Hon. Mr. Gerard St. C. Farara

Justice of Appeal [Ag.]

Appearances:

Mr. Terrence Byron and Ms. Rhonda Nisbett-Browne for the Appellant

Dr. Henry Browne QC for the Respondent

Ms. Simone Bullen-Thompson, Solicitor General appearing amicus curiae on behalf
of the Attorney General of Saint Christopher and Nevis

2022: June 22;
August 17.

Interlocutory appeal – Preliminary issue — Juridical status of the Nevis Island Administration — Whether the Nevis Island Administration is part and parcel of the Crown for the purposes of civil proceedings pursuant to the Crown Proceedings Act — Whether the Nevis Island Administration was the proper party to be served with the claim - Request and entry of default judgment

The appellant, the Nevis Island Administration (the “NIA”), is a body established under the Constitution of Saint Christopher and Nevis (the “Constitution”) to advise the Governor General in the government of the island of Nevis. It has exclusive responsibility for the administration within the island of Nevis in relation to specific subject matters under the Constitution. The respondent, Ocean Reef Resorts Limited (“Ocean Reef”), filed a claim against the NIA seeking damages for breach of a contract pertaining to the development of

certain property in Nevis. The claim was served on a secretary in the Legal Department of the NIA. The NIA failed to acknowledge service of the claim within the 14-day period prescribed for so doing under the Civil Procedure Rules 2000 (the "CPR"). Consequently, Ocean Reef filed a request for entry of judgment in default of acknowledgement of service. The Registrar entered judgment in default against the NIA for an amount to be decided by the court. The NIA then applied to set aside the default judgment on the basis that the claim was not served personally in accordance with CPR 5.1(1), as the Legal Department of the NIA was not authorised to accept service on behalf of the NIA. Ocean Reef in response argued that the Legal Department is authorised to accept service on behalf of the NIA.

The learned master dismissed the application to set aside the default judgment and awarded costs to Ocean Reef. He found that there was proper service of Ocean Reef's claim on the NIA by service on the secretary of the Legal Department of the NIA. He therefore concluded that there was no basis on which the default judgment could be set aside under CPR 13.2.

Being dissatisfied, the NIA appealed against the decision of the master. When the appeal first came on for hearing, the Court raised as a preliminary issue whether the proper party was served with the claim for the purposes of the entry of default judgment; and further, as the claim is one for breach of contract against the NIA, whether the NIA is a juridical person separate and apart from the Crown or is part and parcel of the Crown for the purposes of proceedings governed by the Crown Proceedings Act. This preliminary issue, having not been considered by the master or canvassed by the parties in the proceedings below, the Court invited the Attorney General as *amicus curiae* to provide a legal opinion on the issue and also directed the parties to file written submissions on the issue. The Court thereafter heard the parties on the preliminary issue.

Held: finding that the NIA has no legal standing to sue and be sued in civil proceedings given the applicability of the Crown Proceedings Act to Nevis and further, that the proper party to Ocean Reef's claim and the proper party to be served in respect of the claim is the Attorney General of Saint Christopher and Nevis; and ordering that each party bear its own costs, that:

1. The Constitution confers substantial authority on the NIA as an organ of government and carves out eight specific areas for which the NIA shall have exclusive responsibility within the island of Nevis. This includes the responsibility for land and buildings in Nevis vested in the Crown and specifically appropriated to the use of the Government. There is however nothing in the Constitution which imbues the NIA with legal standing to sue or be sued in respect of land and buildings vested in the Crown, or indeed in respect of any of the other areas of exclusive responsibility. Furthermore, the Nevis Island Legislature has no power under the Constitution to make laws relating to proceedings by or against the Crown, other than as it relates to the conduct of proceedings under section 112 of the Constitution. It is therefore clear that, barring public law or 'Crown-side' type proceedings, the NIA only has legal standing in circumstances where section 112 is engaged. This section addresses disputes as between the NIA and the Federal Government and is therefore inapplicable to the case at bar.

Sections 102, 106 and section 3 of Schedule 5 of the **Constitution of Saint Christopher and Nevis**, Cap 1.01 Laws of Saint Christopher and Nevis considered.

2. The Crown Proceedings Act is federal legislation which applies to both Saint Christopher and Nevis. According to section 3 of the Crown Proceedings Act civil proceedings against the Crown must be instituted against the Attorney General. There are no provisions in the Constitution which disapply section 3 of the Crown Proceedings Act in relation to Nevis. There is also no separate Attorney General for Nevis, but one Attorney General for the Federation. Furthermore, no specific carve out has been made in the Crown Proceedings Act to permit the NIA to assume the role of the Attorney General as it relates to civil proceedings commenced in Nevis against the Crown. It therefore follows that the NIA is part and parcel of the Crown for the purposes of civil proceedings under the Crown Proceedings Act. Accordingly, Ocean Reef's claim, being civil proceedings under the Crown Proceedings Act, ought to have been instituted against and served on the Attorney General.
3. The mere fact that civil proceedings by and against the NIA are commonplace is not a good or legitimate reason for overlooking the clear provisions of the Crown Proceedings Act. It is well-settled that a common practice engaged in over a number of years does not thereby render it correct by common and repetitive usage over time. Furthermore, the practical expediency or other advantages of naming the NIA as the defendant to civil proceedings in Nevis, instead of the Attorney General, ought not to result in the clear provisions of the Crown Proceedings Act being disregarded and more so where clear expression of its exception is contained in the Constitution itself. It would therefore not be correct to construe the provisions of the Crown Proceedings Act to allow for the institution of civil proceedings against the NIA.

Sections 3, 13 and 14 of the **Crown Proceedings Act**, Cap 5.06, Revised Laws of Saint Christopher and Nevis applied; **Bryan James v Attorney General** SLUHCVAP2013/0023 (delivered 22nd April, 2014, unreported) followed; **Elmoalis Ltd. v The Attorney General of Anguilla** AXAHCVAP2019/0002 (delivered 21st May 2021, unreported) followed; **Beverley Levy v Ken Sales and Marketing Limited** [2008] UKPC 6 considered; **Ferdinand James v Planviron (Caribbean Practice) Limited** SLUHCVAP2017/0050 (delivered 16th October 2019, unreported) followed; **Choice FM Limited v Nevis Island Administration et al** NEVHCV2013/122 (delivered 20th October 2014, unreported) disapproved.

JUDGMENT

Introduction

- [1] **PEREIRA CJ:** The Federation of Saint Christopher and Nevis has the distinction of being the only dual-island federal state in the Caribbean region. On the island of

Nevis, much of the day-to-day governance is undertaken by the appellant, the Nevis Island Administration (the “NIA”), which is a body established under the **Constitution of Saint Christopher and Nevis**¹ (the “**Constitution**”). The NIA has appealed against the decision of the learned master dismissing its application to set aside a default judgment entered in favour of the respondent, Ocean Reef Resorts Limited (“Ocean Reef”). This judgment however solely addresses, as a preliminary issue, the juridical status of the NIA vis-à-vis the Crown in proceedings under the **Crown Proceedings Act**.² That preliminary issue is, in the circumstances of this matter, determinative of the broader question of whether the NIA was the proper defendant to Ocean Reef’s claim for the purposes of the entry of the default judgment. The relevant background to the appeal is not disputed and is briefly set out below.

Background

- [2] The **Constitution** provides for two forms of government for the State of Saint Christopher and Nevis; namely, a Federal Government and the NIA. Established under section 102 of the **Constitution**, the purpose of the NIA is ‘to advise the Governor General in the government of the island of Nevis’. It comprises the Premier of the island of Nevis and at least two other members appointed by the Governor General. It has exclusive responsibility for the administration within the island of Nevis in relation to specific subject matters listed under the **Constitution**.
- [3] On 15th November 2017, Ocean Reef, a company incorporated under the **Companies Ordinance 1999**,³ filed a claim against the NIA seeking damages for breach of an agreement entered into between them for the development of certain property in Nevis. The following day, the claim form, statement of claim and prescribed forms were served on one Ms. Nadia Newton, Secretary of the Legal Department of the NIA. According to the affidavit of service filed on behalf of Ocean Reef, the said Secretary of the Legal Department ‘signed an acknowledgement of

¹ Cap. 1.01, Laws of Saint Christopher and Nevis.

² Cap. 5.06, Revised Laws of Saint Christopher and Nevis, 2002.

³ Cap. 7.06 (N), Revised Laws of Saint Christopher and Nevis, 2017.

service on behalf of the defendant indicating that she is authorised to accept service'. It bears note that the form of acknowledgement of service contained in the record is not filled out or dated and signed by anyone.

- [4] The NIA failed to acknowledge service of the claim within the 14-day period prescribed for so doing under the **Civil Procedure Rules 2000** (the "CPR"). As a consequence, on 5th December 2017, Ocean Reef without more, filed a request pursuant to CPR 12.7 for entry of judgment in default of acknowledgement of service. On 11th December 2017, the Registrar of the High Court entered judgment in default of acknowledgment of service said to be pursuant to CPR 12.4 and 12.10 (1)(b) against the NIA for an amount to be decided by the court. The record does not disclose that Ocean Reef sought permission to obtain judgment against the NIA as a part or component of the federal state of Saint Christopher and Nevis or of having treated the NIA as part and parcel of the Crown as required by CPR 12.3.
- [5] On 22nd December 2017, the NIA applied to set aside the default judgment pursuant to CPR 13.2. The NIA contended that the claim form and statement of claim were not served personally on the NIA in accordance with CPR 5.1(1), as the Legal Department of the NIA was not authorised to accept service on behalf of the NIA. In response to this contention, Ocean Reef argued that the Legal Department has authority to accept service on behalf of the NIA. This submission was based on the fact that court proceedings and other documents are routinely served on the secretary and other staff of the Legal Department of the NIA and that no challenge to the propriety of such service has been made in the past. No efforts were made to address the legal question as to who is the proper party to be sued in respect of private law claims being made against the NIA or indeed the proper party to be served in respect of such proceedings.

Decision of the Master

- [6] By a written decision, the master dismissed the application to set aside the default judgment and awarded costs to Ocean Reef. It suffices to say for the purposes of

this judgment that the master found that there was proper service of Ocean Reef's claim on the NIA by service on the secretary of the Legal Department of the NIA. Accordingly, he concluded that there was no basis on which the default judgment could be set aside under CPR 13.2.

The Appeal

- [7] The NIA appealed against the decision of the learned master, advancing some 10 grounds of appeal challenging several findings of fact and law but essentially contending that service had not been effected and that the master erred in so concluding. This squarely raised the question as to who is the person to be served in proceedings of the kind before the Court, and more broadly the question as to the proper party to be sued in respect of private law claims against the NIA.
- [8] The appeal initially came on for hearing before a differently constituted panel of this Court on 31st January 2019. On that occasion, the Court raised as a preliminary issue whether the proper party was served with the claim for the purposes of the entry of default judgment; and further, as the claim is one for breach of contract against the NIA, whether the NIA is a juridical person separate and apart from the Crown or is part and parcel of the Crown for the purposes of proceedings governed by the **Crown Proceedings Act**. This was not considered by the master in his written judgment or canvassed by the parties in the proceedings below but the Court considered it sufficiently important that this question be addressed for the purpose of promoting legal certainty, as it relates to commencement and service of civil proceedings in respect of the NIA and should not rest on some form of indulgence or practice.
- [9] By this judgment, it is hoped that appeals on the question of the party to be sued and served in such proceedings will be unnecessary or at best quite rare. The Court invited the Attorney General as *amicus curiae* to provide a legal opinion on the preliminary issue and the parties were directed to file written submissions on the issue thereafter. The Attorney General filed a legal opinion on the preliminary issue

on 22nd March 2019. Written submissions on the preliminary issue were filed on behalf of the NIA on 24th April 2019. When the appeal again came on for hearing before the Court on 22nd May 2019, Ocean Reef was given further time to file submissions and the Attorney General was given liberty to file further submissions by way of assistance to the Court. For reasons which are not entirely clear, the matter went into a state of dormancy and next came on for hearing some three years later on 22nd June 2022 after Ocean Reef and the Attorney General filed written submissions on 11th April and 14th June 2022 respectively. On that occasion, the Court heard the parties on the preliminary issue.

Discussion

Juridical Status of the NIA vis-à-vis the Crown

[10] A useful starting point for determining the juridical status of the NIA is to consider the relevant provisions of Chapter X of the **Constitution** which sets out specific provisions in relation to the island of Nevis.

[11] Section 102 of the **Constitution**, which establishes the NIA, provides as follows:

- “(1) There shall be a Nevis Island Administration, which shall consist of:
 - (a) a Premier; and
 - (b) two other members or not less than two nor more than such greater number of members as the Nevis Island Legislature may prescribe, who shall be appointed by the Governor-General.
- (2) The Governor-General, acting in his or her own deliberate judgment, shall appoint as Premier an elected member of the Assembly who seems to him or her likely to command the support of the majority of the elected members of the Assembly.
- (3) The Governor-General, acting in accordance with the advice of the Premier, shall appoint the other members of the Administration from among the members of the Assembly...”

[12] The functions of the NIA are set out in section 102(5) as follows:

- “(5) The functions of the Administration shall be to advise the Governor-General in the government of the island of Nevis and the Administration shall be collectively responsible to the Assembly for any advice given to the Governor-General by or under the general authority of the Administration

and for all things done by or under the authority of any member of the Administration in the execution of his or her office.”

However, the NIA’s functions are limited by the matters set out in section 102(6), which states that subsection (5) shall not apply in relation to:

“(a) the assignment of responsibility to any member of the Administration under section 54, as applied with modifications by section 104(4), or the authorisation of another member of the Administration to perform the functions of the Premier during absence or illness;

(b) the dissolution of the Nevis Island Legislature;

(c) the matters referred to in section 66 of this Constitution (which relate to the prerogative of mercy); or

(d) any matter in respect of which the Nevis Island Legislature has no power to make laws for the island of Nevis.”

[13] Section 106 of the **Constitution** which is under the rubric ‘Responsibilities of the Administration’ outlines the matters for which the NIA has exclusive responsibility within the island of Nevis in the following terms:

“(1) The Administration shall have exclusive responsibility for the administration within the island of Nevis, in accordance with the provisions of any relevant laws, of the following matters:

(a) airports and seaports;

(b) education;

(c) extraction and processing of minerals;

(d) fisheries;

(e) health and welfare;

(f) labour;

(g) land and buildings vested in the Crown and specifically appropriated to the use of the Government; and

(h) licensing of imports into and exports out of Saint Christopher and Nevis.

(2) Nothing in subsection (1) shall:

(a) affect the exercise of any power vested by law in the Governor-General or a Minister; or

(b) empower the Administration to take any action that is inconsistent with the general policy of the Government as signified by the Prime Minister in a written communication to the Premier, or that relates to a question that in the opinion of the Prime Minister

as so signified involves issues of national concern, without the prior concurrence of the Prime Minister.”

[14] Section 112 of the **Constitution** provides that:

“The High Court shall, to the exclusion of any other court of law, have original jurisdiction in any dispute between the Administration and the Government if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.”

[15] It is clear from the provisions above that the **Constitution** confers on the NIA substantial authority as an organ of government for the island of Nevis. Section 102 of the **Constitution** establishes the NIA as a body comprising the Premier of Nevis and at least two other members, who are appointed by the Governor General. These officers of the Crown are appointed for the purpose of advising the Governor General in the administration of the island of Nevis in relation to the matters under the general authority of the NIA. However, this function does not extend to the matters set out in 102(6).

[16] Section 106 of the **Constitution** carves out eight specific areas for which the NIA shall have exclusive responsibility within the island of Nevis. This section includes the responsibility for land and buildings in Nevis vested in the Crown and specifically appropriated to the use of the Government. I note that there is however nothing in section 106 which imbues the NIA with legal standing to sue or be sued in respect of land and buildings vested in the Crown, or indeed in respect of any of the other areas of exclusive responsibility. Having considered the relevant provisions of the **Constitution**, it seems to me that the NIA, barring public law or ‘Crown-side’ type proceedings, has legal standing only in circumstances where section 112 is engaged.

[17] Section 112 of the **Constitution** concerns disputes between the NIA and the Federal Government. To my mind, section 112 speaks plainly to circumstances where the NIA is seeking to bring proceedings against the Federal Government of Saint Christopher and Nevis. This section is engaged only in narrowly defined

cases, such as where Nevis wishes to secede from the Federation. I therefore do not consider section 112 as being applicable to the case at bar.

[18] What is more critical to the issue of the NIA's legal standing is the provision of section 3 of Schedule 5 of the **Constitution**. According to that section, the Nevis Island Legislature has no power to make laws relating to proceedings by or against the Crown, other than as it relates to the conduct of proceedings under section 112. The upshot of this is that the Nevis Island Legislature has no power to enact legislation which disapplies the provisions of the **Crown Proceedings Act**. This, in my view, is tacit recognition that, in relation to private law proceedings brought in Nevis by or against the Crown, the Federal Parliament intended the **Crown Proceedings Act** to apply. It is perhaps useful to now consider the provisions of the **Crown Proceedings Act** which are relevant to the preliminary issue.

[19] According to its long title, the **Crown Proceedings Act** is 'an act to provide for matters relating to the civil liabilities and rights of the Crown and to provide for matters relating to civil proceedings by and against the Crown and to provide for related or incidental matters'. Section 3 of the **Crown Proceedings Act** provides for the right to sue the Crown. Section 3(1) states as follows:

"(1) Where, after the commencement of this Act, any person has a claim against the Crown as defined in subsection (2) then, subject to the provisions of this Act, the claim may be enforced as of right, and without the consent of the Governor General, by proceedings taken against the Crown for that purpose in accordance with the provisions of this Act."

[20] Section 3(2) goes on to provide that:

"(2) The reference to a claim against the Crown in subsection (1) shall be construed as meaning a claim against the Government of the State in a suit instituted by the claimant as plaintiff against the Attorney-General as defendant under any enactment." (Underlining supplied).

[21] Section 13 defines the parties to civil proceedings. Critically, section 13(2) states that:

“(2) Civil proceedings against the Crown shall be instituted against the Attorney-General.” (Underlining supplied).

[22] Additionally, section 14 states that:

“All documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown shall, where the proceedings by or against the Crown are brought in the name of an officer of the Crown, other than the Attorney-General, be served on that officer or on the Attorney-General.” (Underlining supplied).

[23] It is common ground that Ocean Reef’s claim constitutes civil proceedings for the purposes of the **Crown Proceedings Act**. It is also undisputed that the **Crown Proceedings Act** is federal legislation which applies equally to both Saint Christopher and Nevis. It would appear from section 3 of the **Crown Proceedings Act** that civil proceedings against the Crown must be instituted against the Attorney General. This was made plain in **Bryan James v Attorney General**,⁴ which considered the equivalent provisions of the Saint Lucian Crown Proceedings Act. There are no provisions in the **Constitution** which disapply section 3 or indeed any other section of the **Crown Proceedings Act** in relation to Nevis. There is also no separate Attorney General for Nevis, but one Attorney General who serves as the principal legal advisor of the Federation. Furthermore, no specific carve out has been made in the **Crown Proceedings Act** to permit the NIA to ‘stand in the shoes’ of the Attorney General as it relates to civil proceedings commenced in Nevis against the Crown. It would therefore not be correct, in my view, to simply infer that the NIA has legal standing to be sued in such proceedings in the absence of a clear intention on the part of the Federal Parliament for section 3 of the **Crown Proceedings Act** to be disapplied in relation to Nevis.

[24] I consider it necessary to underscore that the issue of the NIA’s legal standing is being considered within the context of proceedings which are civil in nature, which are distinct from judicial review or public law proceedings. It is well settled that judicial review or public law proceedings are not civil proceedings for the purposes

⁴ SLUHCVP2013/0023 (delivered 22nd April 2014, unreported).

of the **Crown Proceedings Act**. In **Elmoalis Ltd. v The Attorney General of Anguilla**,⁵ the Court referring to its earlier decision in **Quorum Island (BVI) Ltd. v Virgin Islands Environmental Council**⁶ observed thus:

“[68]...In [Quorum Island (BVI) Ltd v Virgin Islands Environmental Council], Rawlins CJ interpreted section 19 of the Crown Proceedings Act of the Territory of the Virgin Islands, which is in all material respects identical to section 19 of the Anguillan Crown Proceedings Act, and concluded that the BVI Crown Proceedings Act does not require the Attorney General to be a necessary or proper defendant in judicial review/prerogative type proceedings as they are not civil proceedings within the definition of the legislation. The proper defendant in prerogative proceedings is the person or authority whose decision is challenged. The ratio of Rawlins CJ in Quorum stands together with pronouncements of the Privy Council in *Minister of Foreign Affairs v Vehicles and Supplies Limited* and *Bahamas Hotel Maintenance and Allied Workers Union v Bahamas Hotel Catering and Allied Workers Union* and others in relation to comparable legislation in countries outside this Court’s jurisdiction.”

In view of the reasoning of the Court in **Elmoalis** and **Quorum Island**, it is to my mind beyond doubt that Ocean Reef’s claim, being civil proceedings within the meaning of the **Crown Proceedings Act**, ought to have been instituted against the Attorney General rather than against the NIA.

- [25] The learned Solicitor General, Ms. Simone Bullen-Thompson, in her written submissions while accepting that the NIA is a component or emanation of the Crown contended that the Court should nonetheless construe the provisions of the **Crown Proceedings Act** to allow for the institution of civil proceedings against the NIA. She stated that this would be consistent with the level of autonomy that the **Constitution** gives to Nevis and give effect to the realities of the nature of the relationship between the Federal Government and the NIA. Ms. Bullen-Thompson further contended that the effect of instituting proceedings against the Attorney General as the proper party to be sued in respect of acts of the NIA would be to expose the Federal Government to liability in respect of matters in respect of which it has no authority or control. She also claimed that neither the Government nor the

⁵ AXAHCVP2019/0002 (delivered 21st May 2021, unreported).

⁶ BVIHCVAP2009/021 (delivered 12th August 2011, unreported).

Attorney General would be privy to the facts, documents, and information in relation such matters, and would not be in a position to compel the NIA to provide same. In support of her submissions, she relied on the decision of the High Court in **Choice FM Limited v Nevis Island Administration et al**⁷ where the court made the following observations on the appropriateness of the joinder of the Attorney General in a claim against the NIA for breach of contract:

“[69] ...in my opinion, the NIA was created by the Constitution as an organ of government for the island of Nevis. The Constitution invests the NIA with a high level of autonomy. It performs functions that are uniquely governmental. In my judgment, it was not necessary, for the purposes of this case, to join the AG to the proceedings. I am of the view that the NIA can stand on its own for the purposes of these proceedings. Indeed, it is well known that actions by and against the NIA alone are commonplace. In this case, it is readily apparent that the NIA entered into the contract on its own volition, without the input of the AG, and has terminated the contract of its own volition without input of, or notice to the AG.

[70] Now, if it is accepted that the NIA is a component of the Crown, then, the Crown Proceedings Act applies, and the proper Defendant to cite is the AG. If the NIA is not the Crown, or a component of the Crown, then it must of necessity be regarded as a private entity, which would make it liable for any wrongful act, e.g. for any breach of the contract allegedly entered into with Choice FM, and there is no need for the AG to be joined.

[71] In the final analysis, despite the provisions of Section 13 (2) of the Act, I am not of the view that it was necessary to join the AG as a party in this case, absent his own involvement in the decision taken to enter into the contract, the breach of which is alleged, and damages sought., and given the unique status of the NIA within the Federal framework.”

[26] I am unable to agree with the submissions of the learned Solicitor General on this point. Having considered the **Choice FM Limited** decision, I do not agree with the reasoning of the court for two main reasons. Firstly, the mere fact that civil proceedings by and against the NIA alone are commonplace is not a good or legitimate reason for disregarding the clear provisions of the **Crown Proceedings Act**. As the Judicial Committee of the Privy Council expressed in **Beverley Levy v Ken Sales and Marketing Limited**⁸ and as this Court observed in **Ferdinand**

⁷ NEVHCV2013/122 (delivered 20th October 2014, unreported).

⁸ [2008] UKPC 6.

James v Planviron (Caribbean Practice) Limited,⁹ a common practice engaged in over a number of years does not thereby render it correct by common and repetitive usage over time. I adopt these very helpful pronouncements here. Secondly, the fact that the Attorney General would have no direct knowledge of the circumstances giving rise to a claim concerning acts by the NIA is not a sufficient let alone a compelling reason as a matter of law to conclude that joinder of the Attorney General was unnecessary. This is no more than an administrative hurdle. It seems to me that the practical expediency or other possible advantages of naming the NIA as the sole defendant to civil proceedings in Nevis, instead of the Attorney General, ought not to result in the clear provisions of the **Crown Proceedings Act** being disregarded and more so where clear expression of its exception is contained in the **Constitution** itself. Courts are required to interpret and apply the law and not disregard it because of what may be perceived as leading to some practical inconvenience. It certainly does not lead to an absurd result. To the contrary it goes a long way towards ensuring certainty and removing the recurring doubts which have historically attended matters of this kind as demonstrated by the **Choice FM Limited** decision and like cases. For these reasons, I do not regard the **Choice FM Limited** decision as instructive on the issue of the NIA's legal standing to sue or be sued in civil proceedings. It would therefore not be correct, in my view, to construe the provisions of the **Crown Proceedings Act** to allow for the institution of civil proceedings against the NIA.

[27] I would also remark by way of observation that, while Saint Christopher and Nevis is the only sovereign federal state within the Commonwealth Caribbean, it is not the only twin-island state. It may prove useful, in considering the issue of the NIA's juridical status, to examine the similar bodies established within other twin-island states such as Antigua and Barbuda and Trinidad and Tobago.

⁹ SLUHCVP2017/0050 (delivered 16th October 2019, unreported).

- [28] In relation to the State of Antigua and Barbuda, section 123 of the **Antigua and Barbuda Constitution 1981**¹⁰ establishes a Council for Barbuda which is the principal organ of local government on the island of Barbuda. Similarly, in respect of Trinidad and Tobago, section 141A of the Constitution of the Republic of Trinidad and Tobago¹¹ establishes the Tobago House of Assembly, which undertakes comparable functions to the NIA and the Barbuda Council.
- [29] In addition to the Constitutions of those States, legislation, namely the **Barbuda Local Government Act**¹² and the Tobago House of Assembly Act (the “THA Act”),¹³ have been enacted to further define the powers and functions of the Council and the Assembly respectively.¹⁴ Section 18 of the **Barbuda Local Government Act** sets out the matters over which the Barbuda Council has responsibility in the island of Barbuda. Section 25 of the THA Act similarly outlines the matters for which the THA has responsibility in the island of Tobago. These matters are comparable to the areas for which the NIA has exclusive responsibility under section 106 of the **Constitution**.
- [30] It is however readily apparent that the **Barbuda Local Government Act** and the THA Act go much further than the constitutional provisions relating to the NIA. Indeed, section 3(2) of the **Barbuda Local Government Act** provides that the Barbuda Council shall be a body corporate by the name of ‘the Barbuda Council’ with perpetual succession and a common seal, and power to purchase, acquire, hold, mortgage and dispose of land and other property. Sections 3(4) and 3(5) of the enactment go on to provide that the Barbuda Council shall be entitled to make contracts and may sue and be sued in the name of ‘the Barbuda Council’ and that the Barbuda Council shall have an official seal which shall be judicially noticed. Several decisions from this Court including **The Barbuda Council v Antigua**

¹⁰ Cap. 23, Laws of Antigua and Barbuda.

¹¹ Cap 1.01, Laws of Trinidad and Tobago.

¹² Cap. 44, Laws of Antigua and Barbuda.

¹³ Cap 25.03, Laws of Trinidad and Tobago.

¹⁴ Prior to the adoption of the 1983 Federal Constitution of Saint Kitts and Nevis, a Local Government Act (No. 20 of 1967) establishing a Local Council also existed for the island of Nevis.

Aggregates Limited et al¹⁵ recognise that the Barbuda Council has legal standing in civil proceedings.

- [31] In the same vein, section 5 of the THA Act provides that the Tobago House of Assembly shall be a body corporate and have a common seal which shall be judicially noticed. Under the THA Act, it is also made plain that legal standing is conferred upon the THA to sue and be sued as a statutory body in respect of specified matters provided for under that enactment. It has also been suggested in a number of cases from Trinidad and Tobago including **Manzoor Ali v Tobago House of Assembly**,¹⁶ **Tobago House of Assembly v Mentor Melville et al**¹⁷ and most recently, **Gillian Lewis v Chief Fire Officer, Tobago House of Assembly**¹⁸ that the THA has legal standing in respect of specified matters under the THA Act.
- [32] The short point here is that, unlike in the case of the Barbuda Council and the Tobago House of Assembly, there are no provisions under the **Constitution** imbuing the NIA with standing to sue or be sued, except, as I indicated earlier, in the narrow circumstances where section 112 is engaged. There is also no other enactment, apart from the **Constitution**, in which provisions imbuing the NIA with legal standing would be set out. This, in my view, quite clearly suggests that the Federal Parliament had no intention for the NIA to be clothed with legal standing to sue or be sued in civil proceedings.
- [33] In the premises, I am satisfied that the NIA has no legal standing to sue or be sued in civil proceedings. Indeed, in the absence of an express provision in the **Constitution** permitting civil proceedings to be brought by or against the NIA in respect of the matters specified in section 106, such proceedings ought to be instituted against the Attorney General in accordance with the provisions of the **Crown Proceedings Act**. The NIA is therefore part and parcel of the Crown for the

¹⁵ ANUHCVP2005/0011 (delivered 14th May 2007, unreported).

¹⁶ TT 2010 CA 33.

¹⁷ Claim No. CV2011-04125 (delivered 9th October 2013, unreported).

¹⁸ Claim No. CV2018-03251 (delivered 3rd March 2021, unreported).

purposes of the **Crown Proceedings Act**. It follows from my conclusion on the preliminary issue that the proper defendant to Ocean Reef's claim is the Attorney General and not the NIA and the person to be served with legal process is the Attorney General. Having so concluded on this issue, the parties may wish to consider their positions in respect of the substantive appeal.

Conclusion

- [34] For the foregoing reasons, I would therefore find that the NIA has no legal standing to sue and be sued in civil proceedings given the applicability of the **Crown Proceedings Act** to Nevis and further, that the proper party to Ocean Reef's claim and the proper party to be served in respect of the claim is the Attorney General of Saint Christopher and Nevis. I would also order that each party bear its own costs.
- [35] I am grateful to learned counsel for the parties and to the Attorney General of Saint Christopher and Nevis for their assistance in both their written and oral submissions.

I concur.
Mario Michel
Justice of Appeal

I concur.
Gerard St. C. Farara
Justice of Appeal [Ag.]

By the Court

Deputy Chief Registrar