

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2015/0284

IN THE MATTER of Rule 56.2(1) of the Civil Procedure Rules 2000 and Section 21 of the Crown Proceedings Act Cap.5.06 of the Revised Edition of the Laws of St. Christopher and Nevis

AND

IN THE MATTER OF an Application for leave to obtain an Order of mandamus to compel the Permanent Secretary of the Ministry of Finance as the senior civil servant upon whom the relevant statutory duty is placed for the enforcement of money judgments against the Crown, to comply with the Certificate of Judgment served and enforced upon the Attorney General in accordance with section 21 of the Crown Proceedings Act Cap. 5.06 of the laws of the Federation of St. Christopher and Nevis, and to act in accordance with the statutory duty imposed upon the Permanent Secretary of the Ministry of Finance to pay to the Applicant forthwith the judgment sum together with any related costs and interests due and awarded in the Claim herein

AND

IN THE MATTER of and application for leave to apply for judicial review in accordance with Rule 56.1(1) (c) of the Civil Procedure Rules 2000

BETWEEN:

SKN CHOICE TIMES LTD

Applicant

AND

ATTORNEY GENERAL OF ST. KITTS & NEVIS

1st Respondent

PERMANENT SECRETARY IN THE MINISTRY OF FINANCE

Before: The Hon. Mr. Justice Trevor M. Ward QC

Appearances:-

Mrs. Angela Cozier for the Applicant.
Mr. Terence V. Byron for the Respondents.

2021: March 12
April 29

JUDGMENT

- [1] **WARD, J.:** The applicant seeks leave to obtain an Order of Mandamus to compel the 2nd respondent to pay monies owed by the State to the applicant for breach of contract, pursuant to a judgment of the High Court.

Background

- [2] On 15th October, 2019, the applicant obtained a judgment against the Crown for breach of a contract for services. The trial judge made the following orders:

1. *Judgment is entered in favour of the Claimant in the sum of \$225,000.00 for breach of contract to be paid by the Defendant within 14 days of today's date.*
2. *The Claimant is entitled to interest at a rate of 5% per annum on the total sum from 15th March 2015 until final payment.*
3. *Prescribed costs are awarded to the Claimant pursuant to CPR 65.5 to be paid by the Defendant within 14 days of today's date.*

- [3] On 27th November 2019, the 1st respondent filed a Notice of Appeal against the judgment, though no stay of proceedings was sought or granted.

- [4] On 10th March 2020, as a first step to obtaining the sums awarded to it, the applicant obtained an order of the court directing the Registrar of the High Court to issue a Certificate of Judgment pursuant to section 21 of the Crown Proceedings Act Cap. 5.06, (CPA). The Registrar duly issued the said Certificate of Judgment, and on 11th March 2020 it was served upon the Chambers of the 1st Respondent.

- [5] On the 18th April 2020, the applicant's counsel wrote to the Attorney General, and reminded him of the amount due and outstanding for payment under the Certificate of Judgment at the time it was served. Counsel further urged the 1st Respondent to complete the enforcement process by paying forthwith the amounts ordered to be paid by the court, failing which the applicant might commence committal proceedings without further notice.
- [6] Counsel for the 1st respondent replied to the applicant's counsel on 8th May, 2020. He gave the following undertaking:
- "I will seek the approval of the Honourable Attorney-General, which I have every reason to believe will be granted, to bring your letter and a summary of the proceedings to the attention of the Governor-General for his determination acting in his own deliberate judgment."*
- [7] By letter dated 11th May 2020, counsel for the applicant wrote again to the 1st respondent's attorney clarifying its earlier letter by explaining that the intention to commence proceedings to commit, was in relation to the contempt of court being perpetrated against the Applicant by the blatant breach of the process of enforcement of the court's order under the CPA.
- [8] On the 10th September 2020, having not received any correspondence, or any sign of compliance with the orders of the court, the applicant's director telephoned the office of the 1st respondent and requested a status update from the Permanent Secretary and informed her that he had given instructions to the applicant's attorney to commence committal proceedings against her office for contempt of the orders of the court. The Permanent Secretary to the 1st respondent undertook to look into the matter and revert.
- [9] On the 11th September, 2020, the applicant's director received a letter from the 1st respondent's attorney, stating among other things that *'a certificate of judgment under section 21 of the Crown Proceedings Act, is nothing more than an official notification of the Order of the Court. It does not have adjudicative value or power.'* No further correspondence was received from the respondents and, to date, no monies have been paid towards satisfaction of the judgment.
- [10] The applicant therefore filed Notice of Application on 14th January, 2021 seeking leave to obtain an order of mandamus to "compel the Permanent Secretary of the Ministry of Finance to comply with the Certificate of Judgment served upon the Attorney General in accordance with section 21 of the Crown Proceedings Act Cap. 5.06 of the laws of the Federation of St. Christopher and Nevis, and to

act in accordance with the statutory duty imposed upon the Permanent Secretary of the Ministry of Finance to pay to the Applicant forthwith the judgment sum together with any related costs and interests due and awarded in the Claim herein.”

The applicant's submissions

- [11] The applicant's case is that it has tried unsuccessfully to enforce a money judgment against the Crown by obtaining an order from the court for a Certificate of Judgment which was served on the 1st respondent and that, due to the refusal of the respondents to obey the orders of the court, it must now seek an order of mandamus to compel the enforcement of the said orders.
- [12] Mrs. Cozier submitted that section 21 of the CPA provides an enforcement procedure against the Crown. She submitted that section 21 provides the means for execution of the order made by the trial judge. There being no stay of execution of that order in place, and the applicant having satisfied subsections (1) and (2) of the CPA, the Attorney General, as the representative of the Crown, must pay the judgment debt. However, enforcement of the judgment has stalled because of the Governor General's failure and/or implied refusal¹ for almost a year to issue a warrant under his hand directing payment of the judgment debt to the applicant or its attorneys in accordance with section 21(3). Mrs. Cozier submitted that subsection (3) confers no discretion on the Governor General; he must issue a warrant under his hand directing payment. Accordingly, the applicant seeks mandamus in order to give effect to subsection (3).
- [13] Mrs. Cozier cites **The Permanent Secretary in the Ministry of Finance v Financial Investment and Consultancy Services Limited**² as authority for the proposition that mandamus lies against a public official under section 21 of the CPA where the Governor General fails to issue a warrant under his hand and submits that, in this case, the appropriate public official is the Permanent Secretary in the Ministry of Finance, who is tasked with payment on behalf of the government. Reliance is also placed on **Jennifer Gairy v Attorney General of Grenada (No. 2)**³ where the Privy Council held that the order of mandamus could properly be directed, and should have been directed, against a

¹ Relying on *Dorset Charles v Minister of Finance*

² GDAHCVAP2016/0001

³ (1999) 59 WIR 174

Minister of the Crown in the person of the Minister of Finance, contrary to the Court of Appeal's conclusion that it lay only against the Permanent Secretary (Finance).

- [14] Mrs. Cozier further submits that it is now well established in law that money judgments against the Crown can be successfully enforced against the Crown in accordance with the provisions of the CPA and that the prohibitions against execution, whether contained in section 21(4) of the CPA or under the CPR, Part 59.7, may either be waived or contracted out of by the government. Ms. Cozier submits that when the government entered into a contract for services with the applicant, which it breached, it satisfied the test for contracting out of the protection provided under section 21(4) of the CPA.
- [15] Mrs. Cozier criticises the response letter from counsel for the respondents on the basis that the 1st respondent knew, or ought to have known, that an undertaking to refer the applicant's letter to the Governor General was not a part of the enforcement process, as there is no provision in the CPA for the Governor General to '*act in his own deliberate judgment*' to effect payment of an order of the court. The applicant's right to be paid is established by the court order and by section 21 of the CPA which imposes an obligation on the Crown to pay, given that there is no stay of execution of the court order in place. Until set aside, the order must be obeyed: **Isaac v Robertson**⁴. Accordingly, submits Mrs. Cozier, any discretion which the Governor General is said to possess by virtue of the phrase "it shall be lawful" contained in subsection (3), must be exercised in favour of the applicant's right to have his judgment debt paid.
- [16] Learned counsel submitted that in circumstances where the applicant has communicated its demand for payment and there has been a failure or refusal to pay, it is fair and just for leave to be granted to the applicant to apply for an order of mandamus compelling the respondents, and in particular, the 2nd respondent, to immediately pay to the applicant all sums due and payable under the Certificate of Judgment. Mrs. Cozier stresses that mandamus cannot, and is not, sought against the Governor General, hence the need for it to be directed against the appropriate public official, namely, the Permanent Secretary in the Ministry of Finance.

⁴ PC App. No. 2 of 1983

The respondents' submissions

- [17] On behalf of the respondents, learned counsel, Mr. Terence Byron, submits that the scope of mandamus is restricted by the rule that it will not lie to enforce a duty owed by an officer of the Crown to the Crown, but only to enforce a duty created by law in favour of the applicant for mandamus. Nor will mandamus issue against the Crown, nor in order to enforce the payment of money by the Crown.
- [18] Mr. Byron points to Part 59 of the Civil Procedure Rules 2000 and opined that the applicant has proceeded without any regard whatsoever to **CPR** 59.7(1) which provides that the enforcement provisions contained in **CPR** Parts 44 to 53 do not apply to "any order against, or money due or accruing due, or alleged to be due or accruing due from the Crown. " That being so, Mr. Byron submits that the applicant is left only with the procedure outlined at section 21 of the CPA which governs satisfaction of orders against the Crown. In particular, Mr. Byron relies on Section 21(4) of the CPA which he interprets as establishing that the applicant is in error in proceeding against the 1st respondent.
- [19] Mr. Byron submits further that the applicant's understanding of section 21(3) of the CPA is flawed. According to him, the phrase "it shall be lawful" occurring therein, conveys that the Governor General has a choice to act or not, or a promise of a possibility, as distinguished from an imperative course of action to authorise payment of the court order. He relies on the House of Lords case of **Julius v Lord Bishop of Oxford**⁵ as authority for this construction of the words.
- [20] Thus, Mr. Byron submits that section 21(3) does not take away the discretion of the Governor General with regard to the manner or timing of any payment of the judgment debt. It would therefore be consistent with his powers and duty under Section 21(3) to decline to make the payment until judicial proceedings have been completed by way of appeal. But if the Governor General by warrant under his hand directs the amount in the Certificate to be paid to the applicant, it would be lawful for the Governor General to do so. But as he is the emanation of the Crown, in his position he is immune from an order of mandamus. In any event submits Mr. Byron, these proceedings do not seek to direct that the Governor General do anything and no attempt has been made to obtain an order of mandamus against him; he is not a subject of the instant application for leave.

⁵(1880) 5 App. Cas. 214

- [21] As it relates to the applicant's contention that the Permanent Secretary in the Ministry of Finance has a statutory duty to pay the judgment debt, Mr. Byron submits that there is a material and 'game changing' distinction between the provisions of the Grenadian counterpart of the CPA - with which the judgments relied upon by the applicant was concerned - and section 21(3) of the St. Kitts and Nevis CPA. In short, section 21(3) of the Grenadian CPA specifically provides that the Permanent Secretary in the Ministry of Finance shall pay to the person entitled or to his solicitor, the amount appearing by the certificate to be due to him together with the interest if any, lawfully due thereon. By contrast, as the law stands in St. Kitts and Nevis, the Permanent Secretary in the Ministry of Finance of the Government of St. Kitts and Nevis has no such statutory duty as does her counterpart in Grenada, and she can incur no similar, or any, liability to pay the amount appearing in the Certificate to be due.
- [22] In relation to the Attorney General, Mr. Byron submits that Section 21(4) makes it clear that the Attorney General of St. Kitts and Nevis shall not be personally liable under any order for the payment by the Crown of a money judgment.
- [23] In the premises, Mr. Byron invites the court to dismiss the application at this stage, as against each of these respondents, as having no reasonable prospect of success.

Discussion

- [24] Before proceeding to explore the issues in this case, it is convenient to note that it was open to this court to adjourn consideration of the hearing of this application pending the outcome of the appeal filed in the underlying claim pursuant to rule CPR 2000, rule 56.4(5). However, Mrs. Cozier urged the court to proceed because the 1st defendant has not sought a stay pending the appeal and none is in force. For his part, Mr. Byron urged the court not to adjourn the application because it was without any merit. Having considered the matter, I proceeded to hear the application.
- [25] The issue for resolution on this application is whether the applicant has established an arguable case with a realistic prospect of success that mandamus lies to compel the Permanent Secretary in the Ministry of Finance to immediately pay the judgment debt.

- [26] An applicant for leave to apply for leave to apply for judicial review must demonstrate that he has an arguable case with a realistic prospect of success. In conducting this assessment I have in mind the relevant learning as enunciated in the case of **Sharma v Browne-Antoine**⁶

“The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy”

- [27] The threshold for the grant of leave to apply for judicial review is low. The court at this stage is concerned only to examine whether the applicant has an arguable ground for judicial review which has a realistic prospect of success. See: **Attorney General of Trinidad and Tobago v Ayers-Caesar**.⁷

- [28] In order to meet this test, given the nature of the relief sought in this case, the applicant must first satisfy the conditions precedent to the grant of an order of mandamus. An applicant for mandamus must satisfy the ‘imperative rule’ that the applicant must have first made an express demand to the defaulting authority, calling upon it to perform its duty and that the authority must have refused. The proposition is succinctly stated in **Wade, Administrative Law**:⁸

“It has been said to be an ‘imperative rule’ that an applicant for mandamus must have first made an express demand to the defaulting authority, calling upon it to perform its duty, and that the authority must have refused. But these formalities are usually fulfilled by the conduct of the parties prior to the application, and refusal is readily implied from conduct. The substantial requirement is that the public authority should have been clearly informed as to what the applicant expected it to do, so that it might decide at its own option whether to act or not.”

- [29] The evidence bearing on these requirements is contained in the affidavit in support of the application. It establishes that on 18th April 2020, counsel for the applicant wrote to the Attorney General as representative of the Crown drawing attention to the order of the court and to the Certificate of Judgment issued by the Registrar. The letter further stated: “Please be advised that if my client does

⁶ [2006] UKPC 57

⁷ [2019] UKPC 44

⁸ 8th Edition at p. 615

not receive payment of the outstanding amount within fourteen (14) days of the date of this letter my client will commence committal proceedings against you without further notice.” In a further letter dated 11th May, 2020, counsel for the applicant made it clear that its previous letter had been written in consideration that the “enforcement process mandated by section 21 of the CPA has likewise been breached by the failure of the Attorney General to ensure that the outstanding judgment is paid.”

- [30] Given the provisions of **CPR** 59.7 and CPA 21(4), committal proceedings are not available against the Crown. I will return to these provisions presently. The point, however, is that the applicant signaled its intention to enforce the order and the Attorney General was clearly informed as to what the applicant expected to be done. In my view, the Attorney General was the appropriate authority to whom this demand should be directed. This is so for two reasons. In the first place, the Attorney General was named as the defendant in the underlying civil claim in accordance with the usual requirement where civil proceedings are commenced against the Crown. Secondly, the CPA at section 21(2) requires that the Attorney General be served with a copy of the Certificate of Judgment; not the Governor General. It seems to me that it is contemplated that the Attorney General would cause the Certificate of Judgment to be brought to the Governor General’s attention for action. Indeed, he undertook so to do. Accordingly, I am satisfied that the applicant made an express demand to the defaulting authority, calling upon it to perform its duty.
- [31] The next question is whether there was a refusal by said authority to comply with the demand. Refusal may be express or implied, as the learning quoted above makes plain. Mr. Byron suggests that it may be that the Governor General is awaiting the outcome of the appeal before making a decision. That may be one inference, since counsel undertook to forward a summary of the proceedings, “including the pending Appeal”. Nonetheless, if that is the case, it is reasonable to expect that the applicant would have been so advised. The applicant has heard nothing.
- [32] I find that the facts pleaded in the affidavit in support, justify the implication that there has been a refusal. Over a year has passed since the demand was made and the applicant is yet to receive payment or any update on the status of its demand.
- [33] The next issue is the crucial one: does mandamus lie to compel the Permanent Secretary in the Ministry of Finance to immediately pay the judgment debt?

The legal framework

- [34] The Crown Proceedings Act provides the mechanism for satisfaction of orders against the Crown. Section 21 provides:

“Satisfaction of orders against the Crown. 21.

(1) Where, in any civil proceedings by or against the Crown, or in connection with any arbitration to which the Crown is a party, any order (including an order for costs) is made by any court in favour of any person against the Crown, the proper officer of the court shall, on application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:

Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the particular officer of the Crown concerned, or the Attorney-General as the case may be.

(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and it shall be lawful for the Governor-General by warrant under his or her hand to direct the amount appearing by the certificate to be due, to be paid to the person entitled thereto or to his or her solicitor, together with the interest, if any, lawfully due thereon:

Provided that the court by which such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such directions to be inserted therein.

(4) Save as aforesaid and subject to rules of court, no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of

such amount or costs as aforesaid, and the Attorney-General or other officer of the Crown as the party in whose name civil proceedings by or against the Crown have been instituted shall not be personally liable under any order for the payment by the Crown, or the Attorney-General or other officer of the Crown as such, of such money or costs.”

- [35] Section 31(5) provides the Act shall not operate to limit the discretion of the court to grant relief by way of mandamus in cases in which such relief might have been granted before its commencement.
- [36] The CPA has as its objective the removal of certain privileges from suit against the Crown and certain impediments to bringing civil claims against the Crown. To this end, section 21 established a special procedure for persons who had obtained a money judgment from the court against the Crown to recover the sums awarded, including costs. Section 21 sets out the procedure for so doing. Where a judgment creditor has obtained judgment, they may apply to the court for a Certificate of Judgment at any time after the expiration of 21 days from the date of the order or, where the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later. Having obtained the certificate, the judgment creditor is required to serve it on the Attorney General. It then falls to the Governor General to issue a warrant under his hand to direct payment of the amount certified to be paid in the certificate. Sub section (4) immunises the Crown’s property from execution. It is enforced by the provisions of rule 50.2(3) which provides that an attachment of debts order may not be made to attach debts due from the Crown, and rule 59.7(1) (“Enforcement against Crown”) which provides that “Parts 44 to 53 do not apply to any order against, or money due or accruing due, or alleged to be due from the Crown”. See **The Attorney General of Grenada v Financial Investment & Consultancy Services Limited**.⁹
- [37] The applicant has not sought any order against the Governor General directing him to issue any such warrant. While they contend that he has a duty to do so, they concede that an order of mandamus does not lie against him as representative of the Crown. What the applicant does contend is that given the Governor General’s failure or refusal to issue his warrant directing payment of the judgment, mandamus lies against the Permanent Secretary in the Ministry of Finance who has a statutory duty under section 21(3) to make payment of the judgment debt. Reliance is placed on **The Permanent Secretary in the Ministry of Finance v Financial Investment and Consultancy**

⁹ GDAHCVAP2016/0038 at para 9 & 10

Services Limited. In this case, the respondent obtained judgment in the High Court against the Crown in the sum of \$3, 807,073.00 with interest. The Registrar subsequently issued a certificate directing the Permanent Secretary of the Ministry of Finance to pay the judgment debt to the respondent. The appellant failed to do so. The respondent commenced judicial review proceedings to enforce payment. Dismissing a preliminary point taken by the appellant that an order of mandamus did not lie to compel him to make payment of the judgment debt, the trial judge made an order of mandamus ordering the appellant to pay the judgment debt forthwith. On appeal, the Court of Appeal held that an order of mandamus lies to compel the Permanent Secretary in the Ministry of Finance to make immediate payment of the judgment debt to a judgment. The Court of Appeal in **Jennifer Gairy** had similarly concluded.

[38] The applicant places great store by the words of Byron C.J. who said in the latter case:

“It has become commonplace for counsel to complain about the difficulty of collecting money judgments against the Government. In my view, these complaints are based on a misinterpretation of the statutory provisions. There is sufficient statutory protection for the constitutional principle of separation of powers to ensure that the executive does not refuse to comply with court orders for money payments with impunity. The relevant statutory duty is not placed on any Minister of Government but on a senior civil servant, in the person of the Permanent Secretary (Finance). The Crown Proceedings Act makes provision for the enforcement of money judgments against the Crown. These provisions impose a specific statutory duty enforceable by mandamus on a public official.”

[39] In delivering the judgment of the Court of Appeal in the former case, Webster JA stated:

“I agree with and adopt the comments of Byron CJ regarding the meaning and effect of section 21 of the CPA, in particular that the section imposes a “specific statutory duty enforceable by mandamus on a public official”. (para 16)

[40] The applicant seems to extrapolate from these judgments that section 21 of the CPA St. Kitts & Nevis, is to similar effect. With respect, the judgments emanating from Grenada must be read in the context of the relevant provisions of section 21 of the CPA Grenada. Section 21(3) provides:

“(3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amounts payable, and the Permanent Secretary (Finance) shall, subject as hereinafter provided, pay to the person entitled or to his or her solicitor the amount appearing by the certificate to be due to him or her together with the interest, if any, lawfully due thereon.”

- [41] This subsection is in mandatory terms and imposes a statutory duty on the Permanent Secretary in the Ministry of Finance to pay the judgment debt upon presentation of the certificate. It has always been recognised that mandamus would lie against a government official upon whom a statutory duty is placed in relation to subjects of the Crown. The Grenadian provision is an example of this.
- [42] These provisions are in marked contrast with the terms of section 21(3) of our CPA. To my mind, mandamus does not lie against the Permanent Secretary since, unlike the position in Grenada, section 21(3) imposes no statutory duty on that public official to pay the judgment debt. I am, therefore, in agreement with the submission of Mr. Byron that the Permanent Secretary in the Ministry of Finance of the Government of St. Kitts and Nevis has no such statutory duty as does her counterpart in Grenada, and she can incur no similar, or any, liability to pay the amount appearing in the Certificate to be due.
- [43] The only functionary identified within that subsection is the Governor General, for whom "it shall be lawful" to issue a warrant under his hand directing payment of the judgment. The applicant contends that those terms make it mandatory for him to do so; while the defendant says they confer a discretion.
- [44] It has been held in **Julius v Lord Bishop of Oxford** that the words "it shall be lawful" confer a faculty or power, and they do not of themselves do more'; 'are permissive and enabling only'; 'the meaning of such words is the same, whether there is or is not a duty or obligation to use the power which they confer. They are potential, and never (in themselves) significant of any obligation'; 'are apt words to express that a power is given; and as, prima facie, the donee of a power may either exercise it or leave it unused, it is not inaccurate to say that, prima facie, they are equivalent to saying that the donee may do it.
- [45] Lord Blackburn added a proviso when he said, "but if the object for which the power is conferred is for the purpose of enforcing a right, there may be a duty cast on the donee of the power, to exercise it for the benefit of those who have that right, when required on their behalf. Where there is such a duty, it is not inaccurate to say that the words conferring the power are equivalent to saying that the donee must exercise it. It by no means follows that because there is a duty cast on the donee of a power to exercise it, that mandamus lies to enforce it: that depends on the nature of the duty and the position of the donee."

- [46] Here the nature of the duty is directing payment of a civil judgment. The donee of that power being the Governor General, there is no doubt, that mandamus does not lie against him, even if it could be said that the words impose a duty.
- [47] That leaves the Attorney General. While an order of mandamus could be made to compel performance by a minister of a statutory duty binding on him in his official capacity, the CPA does not impose a statutory duty on the Attorney General to pay the judgment debt either. It requires that the certificate of judgment be served upon him.
- [48] The applicant suggests, if faintly, that as a Minister of the Crown against whom civil proceedings are instituted such a duty devolves upon him. They point to the **Gairy** case where the Privy Council held that mandamus could be directed against the Minister of Finance, contrary to the finding of the Court of Appeal.
- [49] A careful reading of that judgment would show that at issue before the Privy Council was the power or duty of the courts to grant an effective remedy against the state for a violation of a constitutional right. In that context, their Lordships rejected the argument that there was no duty on the Minister of Finance to discharge the judgment debt, that there was no power in the court to order him to discharge it and that no coercive order could be made against him if he did not. Their Lordships stated:
- “This submission, it would seem, derived from the principle that mandamus only lies to compel a minister or public official to perform a statutory or public duty. But for reasons already given the appellant is not constrained by the principles governing applications for judicial review. Having proved a breach of a right protected by the constitution, having obtained a money judgment and having failed to obtain full payment, the appellant now seeks an effective, not merely a nominal remedy.” (para 23)
- [50] It was in those circumstances that the Board held that there was no one to whom the court’s order can more appropriately be made than the Minister of Finance, being the minister upon whom there rests the obligation to ensure that the debt owed by the state to the appellant was discharged (para 25). In short, the order was made against the minister in support of, and to enforce, a constitutional right. The Board recognised that if the appellant sought to go via the route of section 21 of the CPA he might be denied enforcement. Their Lordships stated:

“It was moreover likely that if the appellant pursued his rights under section 21 he might be denied enforcement in reliance on section 21(4), an obstacle he could overcome (if at all) only by relying on his rights under the constitution. But if the appellant was relying on the constitution he was not bound by section 21 in so far as that section inhibited his claim to constitutional relief.” (para 21).

- [51] In the case at bar, the applicant places reliance on section 21 of the CPA for the enforcement of the judgment debt. Section 21 (4) is clear. Money due or owing from the Crown cannot be attached and the Attorney-General, as the party in whose name civil proceedings by or against the Crown have been instituted or as an officer of the Crown is not personally liable under any order for the payment by the Crown of such money or costs. The applicant’s submission that the government waived its right to immunity against enforcement under section 21(4) when it entered into and breached the contract is untenable.
- [52] For the reasons discussed in this judgment, the applicant has failed to establish that there is an arguable case with a realistic prospect of success that mandamus lies against the Permanent Secretary in the Ministry of Finance or the Attorney General to compel payment of the judgment debt. The application is accordingly dismissed.

Trevor M. Ward, QC
High Court Judge

By the Court

Registrar