

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2018/0008

**IN THE MATTER OF AN APPLICATION BY THE
ATTORNEY GENERAL OF SAINT CHRISTOPHER
AND NEVIS PURSUANT TO SECTION 36 OF
THE CONSTITUTION OF SAINT CHRISTOPHER
AND NEVIS AND TO SECTION 12 OF THE
NATIONAL ASSEMBLY ELECTIONS ACT CAP
2:01**

BETWEEN:

THE ATTORNEY GENERAL OF SAINT CHRISTOPHER AND NEVIS

Claimant

and

Dr. DENZIL DOUGLAS

Defendant

Appearances:-

Mr. Douglas L. Mendes SC with him Mr. Michael A.A. Quamina, Ms. Leah Abdulah instructed by Ms. Talibah V. O. Byron for the Claimant.

Mr. Anthony W. Astaphan SC, Mr. Delano Bart QC with Mr. Sylvester Anthony and Mrs. Angelina Gracy Sookoo-Bobb and Mr. Kendrickson Kentish for the Defendant.

2018: May 30
July 02
2019: January, 10

JUDGMENT

- [1] This claim seeks to challenge the eligibility of the Leader of the Opposition, Dr. Denzil Douglas, to retain his seat in the National Assembly having obtained and used a diplomatic passport issued by the Commonwealth of Dominica subsequent to his election. The material facts are summarised hereunder

- [2] The defendant is the leader of the opposition. He was elected as the member of the National Assembly of St. Kitts and Nevis representing the constituency of St. Christopher No.6. following Federal Elections held in St. Kitts and Nevis on 15th February, 2015.
- [3] On July 30th 2015, he was issued a diplomatic passport, by the Commonwealth of Dominica which recorded him as being a citizen of Dominica. The said document bears an expiry date of 29th July, 2020.
- [4] The circumstances and procedure that led to the issuance of the diplomatic passport to the Defendant are as set out at paragraphs; 9 – 16 of his affidavit in response to the originating motion and may be summarized as follows.
- [5] After the Defendant demitted office as Prime Minister in February, 2015 he met with the Prime Minister of Dominica and other government officials on a number of occasions on various matters. Consequently, the Prime Minister of Dominica offered to extend to him the use of a diplomatic passport as a political and professional courtesy in recognition of his status as a former Prime Minister and current leader of the opposition of the Federation of St. Christopher and Nevis.
- [6] The Prime Minister of Dominica subsequently invited the Defendant to fill in the necessary application form in order that the diplomatic passport could be processed. He did so, save for two columns on the form pertaining to citizenship which he left blank because he was not a citizen of Dominica and thus considered those columns inapplicable for the purpose of obtaining the diplomatic passport.
- [7] The diplomatic passport was subsequently issued to the Defendant in July 2015 and used by him to depart St. Kitts and to gain entry to seven countries on ten occasions for what he describes as “convenience of travel and business purposes.”
- [8] While the diplomatic passport reflects the Defendant’s citizenship as Dominican, it has not been challenged that this is on account of the default setting of the software system used to process the passport so that any passport issued by the Commonwealth of Dominica, whether diplomatic or ordinary, will reflect that the holder is a Dominican Citizen. This evidence is contained in a letter from the Permanent Secretary in the Ministry of Foreign Affairs, Dominica and the affidavit of Margaret Astona Browne, former St. Kitts Permanent Secretary in the

Ministry of National Security and Immigration with responsibility for administrative oversight of the passport processing system

The Claimant's submissions

[9] Basing itself solely on the defendant's possession and use of the said diplomatic passport, the claimant contends that by virtue of his own act, the Defendant is, in accordance with the laws of Dominica, under an acknowledgement of allegiance, obedience or adherence to a foreign power or state, namely the Commonwealth of Dominica in breach of section 28(1)(a) of the Constitution of St. Kitts and Nevis.

[10] The Claimant further contends that by his voluntary act, the Defendant would have been disqualified from being a member of the National Assembly if he were not already a member and must therefore vacate his seat pursuant to section 31(3)(c) of the Constitution.

[11] The Claimant accordingly seeks a declaration that the Defendant has vacated his seat and seeks an injunction restraining the Defendant from taking his seat in the National Assembly and from performing his functions as a member thereof.

The Defendant's submissions

[12] The Defendant makes the preliminary submission that the Commonwealth of Dominica is not a foreign power or state within the meaning of section 28 (1) of the Constitution. He submits that by virtue of the definition of "Foreign Country" contained in the Citizenship Act, Dominica, as a Commonwealth country, is not regarded as a foreign power or state. He invokes the fact that Commonwealth citizens who satisfy the residency requirements are eligible to become citizens of St. Kitts and Nevis and attain the right to vote pursuant to section 92(2) of the said Act. He points out that Dominica has equivalent provisions in law. For these reasons it is said that Dominica is not a foreign power or state.

[13] He urges the court not to follow the decision of Mitchell, J in **Baldwin Spencer v Guy Yearwood**¹ where it was held, that in relation to Antigua and Barbuda, Canada was a foreign power/state notwithstanding that it was a Commonwealth country. The Defendant submits that Mitchell, J failed to have regard to similar provisions in Antiguan law. Alternatively, submits the

¹ ANUHCv2003/0139

Defendant, that decision should be confined to Antigua.

[14] The Defendant submits secondly that the Claimant must be confined to its pleaded case. It is said that the Claimant's pleaded case was that the Defendant was a citizen of Dominica, being recorded as such on the diplomatic passport, and that he swore an oath of allegiance to Dominica and thus attracted the section 28(1)(a) disqualification. He submits that the Claimant's case at trial evolved in a manner not consistent with its pleaded case. It is argued that at trial the Claimant's case changed by asserting that the Defendant attracted disqualification because he applied for obtained and used a Dominican Diplomatic passport.

[15] The Defendant submits that since the Claimant now concedes that the Defendant is not a citizen of Dominica and that he swore no oath or affirmation of allegiance to Dominica the claim should be dismissed.

[16] Alternatively, the Defendant's contention is that under Dominican Law, the mere possession and or use of a diplomatic passport does not render him under an acknowledgment of allegiance, obedience or adherence to the Commonwealth of Dominica in circumstances where he has never sought or applied for citizenship; is not a citizen or resident of Dominica and has not sworn an oath or made an affirmation of allegiance to Dominica and where he was granted the diplomatic passport as a professional courtesy by the Prime Minister of Dominica. In those circumstances, contends the Defendant, Section 28(1) has not been breached.

[17] It is sensible to determine the preliminary points raised by the Defendant at the outset as, if meritorious, they are dispositive of the case.

Is Dominica a foreign power or state?

[18] The Court must determine the meaning of the expression "foreign power or state" in the context of section 28(1)(a). It is well to bear in mind the mischief of this section which aims at the avoidance of divided allegiance or loyalties on the part of members of the National Assembly.

[19] A useful definition of a foreign sovereign state in international law is contained in the House of Lords case of **The Arantzazu Mendi [1939] AC 256** at 264-265:

“By ‘exercising de facto administrative control’ or ‘exercising effective administrative control’, I understand exercising all the functions of a sovereign government, in maintaining law and order, instituting and maintaining courts of justice, adopting or imposing laws regulating the relations of inhabitants of the territory to one another and to the Government. It necessarily implies the ownership and control of property whether for military or civil purposes, including vessels whether warships or merchant ships. In those circumstances it seems to me that the recognition of a Government as possessing all those attributes in a territory while not subordinate to any other Government in that territory is to recognise it as sovereign, and for the purpose of international law as a foreign sovereign State.”

[20] In the Australian case of **Sue v Hill**² the issue was whether the United Kingdom was a foreign power in relation to Australia within the meaning of section 44(1) of the Australian Constitution. The High Court held:

“The expression “a foreign power” in **s 44** does not invite attention to the quality of the relationship between Australia and the power to which the person is said to be under an acknowledgment of allegiance, obedience or adherence or of which that person is a subject or a citizen or entitled to the rights and privileges of a subject or citizen. That is, the inquiry is not about whether Australia's relationships with that power are friendly or not, close or distant, or meet any other qualitative description. Rather, the words invite attention to questions of international and domestic sovereignty.”

[21] This Court respectfully agrees that the question of international and domestic sovereignty is the correct focus in construing the provision. The Constitution of Saint Kitts and Nevis declares in Chapter 1 that it is a sovereign democratic state. Both St. Kitts and Nevis and Dominica are vested with independent international legal personalities. They have separate and distinct laws relating to citizenship and its citizens owe different allegiances. Their respective exercise of sovereignty is completely independent of each other.

[22] The fact that for the limited purposes of the Citizenship Act Dominica is not regarded as a foreign country does nothing to attenuate or negate its status as a sovereign, independent state and thus a foreign power or state within the meaning of section 28(1)(a).

[23] Further, the fact that citizens of Dominica who satisfy the residency requirement under the laws

² [1999] HCA, 30

of St. Kitts and Nevis may become eligible to become citizens and acquire the right to vote is not predicated on the basis that Dominica is not a foreign power or state but derives from the fact that such persons have satisfied the residency requirements under St. Kitts and Nevis law.

[24] I therefore take the view that Mitchell J was right when he held:

“Antigua and Barbuda and Canada have their own laws as to nationality so that their citizens owe different allegiances. Canada has a distinct legal personality and its exercises of sovereignty, for example, in entering military alliances, participating in armed conflicts and acceding to treaties, themselves have no legal consequences for this country...From the date of its [the Constitution] signing into law, assuming there was no earlier statute conferring Antigua and Barbuda citizenship, Englishmen, Canadians and all other Commonwealth citizens not meeting the citizenship provisions of Antigua and Barbuda’s law became foreigners.”

[25] Mutatis Mutandis, these observations apply with equal force in the present context. I therefore hold that Dominica is a foreign power or state within the meaning of section 28(1)(a) of the Constitution.

The Claimant’s pleaded case

[26] Turning now to the Defendant’s submission regarding the Claimant’s pleaded case, I am satisfied that on a proper reading of the Claimant’s pleadings the Defendant’s contention that it evolved into a different case cannot survive scrutiny. The Claimant did not plead that the Defendant was a Citizen of Dominica. The Claimant pleaded that the diplomatic passport “recorded him as being a citizen of Dominica” and that the law of Dominica “requires all citizens to swear an oath of allegiance upon being registered as a citizen.” The Claimant also pleaded: “By the common law of Dominica, a person who also possesses/and/or travels on a Dominican passport is under acknowledgment of allegiance to Dominica.”

[27] The nub of the Claimant’s case as pleaded was that the acquisition and use of the diplomatic passport placed the Defendant under an acknowledgment of allegiance, obedience or adherence to the Commonwealth of Dominica.

[28] This submission is also without merit.

[29] I turn now to the substantive issue in this case: whether in accordance with the law of the Commonwealth of Dominica the Defendant acknowledged allegiance, and/or obedience and/or adherence to the Commonwealth of Dominica by virtue of his voluntary possession and use of a Dominican Diplomatic Passport.

The legal framework

[30] Section 27 of the Constitution of the Federation of St. Christopher and Nevis stipulates the qualifications for representatives and senators in the National Assembly. It provides:

“Subject to section 28, a person shall be qualified to be elected or appointed as a member of the National Assembly if, and shall not be so qualified unless, he is a citizen of the age of twenty-one years or upwards and he or one of his parents was born in Saint Christopher and Nevis and he is domiciled there at the date of his nomination for election or his appointment, as the case may be.”

[31] As it relates to disqualification of members Section 28(1)(a) is the only relevant provision in issue in this case. It provides so far as relevant:

“(1) A person shall not be qualified to be elected or appointed as a member if he –
(a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state.”

[32] Section 31(1)(3) governs the tenure of office of members of the National Assembly and provides so far as relevant:

“An elected or appointed member shall vacate his seat in the Assembly –

(a) ...

(b)if he ceases to be a citizen

(c) Subject to subsection (4), if any other circumstance arise that, if he were not a member, would cause him to be disqualified to be elected or appointed as such by virtue of subsection (1) of section 28 or of any law enacted in pursuance of subsection (2), (3) or (5) of that section...”

[33] The High Court is vested with the jurisdiction to hear and determine any question whether any member of the Assembly has vacated his seat pursuant to Section 36(1)(d) of the Constitution.

Issue:

[34] There is a singular issue for resolution in this case, namely, whether in accordance with the law of the commonwealth of Dominica the Defendant acknowledged allegiance, and/or obedience and/or adherence to the Commonwealth of Dominica by virtue of his voluntary act of applying for and his possession and use of a Dominican Diplomatic Passport to travel to other countries. In other words, does the voluntary acquisition and use of a Dominican diplomatic passport amount to an acknowledgment of allegiance, obedience or adherence to the Commonwealth of Dominica thus disqualifying Dr. Douglas from membership in the National Assembly.

[35] In a preliminary ruling delivered on 2nd July, 2018, I held that Dominican law is a question of fact to be proved by expert evidence. Leave was granted to the parties to adduce expert evidence on the law of Dominica. The Claimant relies on the expert reports of Mr. Justin Simon QC and Mr. Reginald Armour SC. The Defendant relies on the expert report of Mr. Gerald D. Burton. All three are attorneys-at-law who practise at the Dominican Bar.

[36] Mr. Justin Simon QC is a Citizen of the Commonwealth of Dominican and an attorney of 44 years' experience. He is called to the bar of several Caribbean Countries, including Dominica. He served as Attorney-General of Antigua and Barbuda for about 10 years.

[37] Mr. Reginald Armour SC is a citizen of the Commonwealth of Dominica and is an attorney with over 30 years' experience practicing at the bar of Trinidad and Tobago, Dominica and several other Caribbean countries.

[38] Mr. Gerald Burton is a citizen of the Commonwealth of Dominica and an attorney of approximately 25 years standing.

[39] In addition to the reports of the experts, I have had for my consideration the Constitution of the Commonwealth of Dominica; Commonwealth of Dominica Citizenship Act, Chap. 1:10 and regulations; Commonwealth of Dominica Citizenship (Amendment) Act, 1991 and other pieces of legislation and case law.

[40] While expert opinion is admitted for the purpose of assisting the Court, the Court cannot

abdicate its ultimate responsibility to interpret and determine what is the law of Dominica as it relates to the issue in this case as applied to the facts of this case. That said I will summarize the contentions of the respective experts.

The Claimant's experts

[41] In summary, Mr. Simon QC, on behalf of the Claimant, submitted in his report and in viva voce evidence that the issue of a Dominican Passport raises a prima facie case that the holder thereof is citizen of the Commonwealth of Dominica by virtue of the protection that is offered to the holder when travelling by the Head of State of Dominica. The presumption of citizenship also arises, he submitted, because the Defendant's possession and use of the Diplomatic Passport is in and of itself a voluntary act in which the Defendant acknowledged allegiance and/or obedience and/or adherence to Dominica.

[42] Mr. Simon QC claims to derive support for this proposition from the dissenting judgment of Mitchell, J. A. (Ag) in **Ronald Green v Peter Saint Jean and Maynard Joseph v Roosevelt**³

[43] Under cross-examination, he accepted that one relevant difference between an ordinary passport and a diplomatic passport is that an ordinary passport cannot be revoked at the discretion of the Government whereas a diplomatic passport is revocable at will. He accepted that the case of Ronald Green on which he had relied in his report did not concern a diplomatic passport but rather concerned French citizen and a French passport.

[44] For the Claimant, Mr. Reginal Armour SC relied on a line of cases which dealt with the meaning and significance of a passport in order to ground the proposition that by use and/or presentation of a passport, the holder invokes the protection of the State or Sovereign in whose name the passport was issued. It was Mr. Armour's view that no significance attaches to the fact that the Defendant did not swear an oath or affirmation of allegiance to Dominica or did not acquire Dominican citizenship. According to Mr. Armour, the requirement of a "voluntary act" is fulfilled by his voluntary application for and use of the diplomatic passport which thereby placed the Defendant under an acknowledgment of allegiance, obedience or adherence to the Commonwealth of Dominica.

[45] Mr. Armour relied principally on the dicta of Lord Jowitt, L.C. in **Joyce v Director of Public Prosecutions**⁴ at pages 369-370 applied in **Sykes v Cleary**⁵ as authority for this proposition.

³ DOMHCVAP2012/0001

⁴ [1945] AC 347

and reflective of the common law of Dominica. Mr. Armour submitted that the notion of allegiance lies at the heart of the question.

[46] Mr. Armour further submitted that no distinction is to be drawn between the terms “passport” and “diplomatic passport” as the definition of “passport” contained in section 2 of the Dominican Immigration and Passport Act, Chap. 18:01 is in terms which accord with and are consistent with the common law definition and attributes of a passport, thus the issuance to and bearing of the Diplomatic Passport affords to Dr. Douglas the protection of the sovereign state of the Commonwealth of Dominica as a bearer of the said passport.

[47] Unlike Mr. Simon, however, Mr. Armour did not contend that a presumption of Dominican citizenship arose because of the possession and use of the diplomatic passport.

[48] Under cross-examination Mr. Armour accepted that the fact that when travelling the Defendant had always declared himself a citizen of St. Kitts and Nevis and had never declared himself a citizen of Dominica was a relevant consideration for the Court. He accepted that there were no statutory or legislative provisions governing the issuance of a diplomatic passport. He said the word diplomatic passport does not appear in any statutory provision of which he is aware. He admitted that he had seen no case law which dealt specifically with the granting of a diplomatic passport. He accepted that one relevant difference between an ordinary passport and a diplomatic passport is that an ordinary passport cannot be revoked at the discretion of the Government because it is an entitlement of Dominican citizens whereas a diplomatic passport can be revoked at will.

The Defendant’s expert

[49] On behalf of the Defendant, Mr. Burton submitted that there is no statutory provision under the laws of the Commonwealth of Dominica that govern the issue of diplomatic passports. The substantive provisions of the Immigration and Passport Act, as well as the Regulations, speak only to the issuance of the ordinary passport which is granted only to citizens of the State.

[50] Secondly, Mr. Burton submitted that while a prescribed oath of allegiance must be sworn by applicants for citizenship by registration or naturalization before they become eligible to be issued with the ordinary passport, no such requirement attaches to an applicant for a diplomatic passport who is not even required to be a citizen of Dominica.

⁵ (1992) 109 ALR

[51] Thirdly, contended Mr. Burton, the grant of a diplomatic passport is akin to an honorary award by the executive at its sole discretion. The grant or receipt of such a document lacking legal or statutory basis, or the possession of or travelling on such a document cannot constitute an acknowledgement of allegiance or obedience or adherence to the Commonwealth of Dominica he contended.

[52] Under cross-examination Mr. Burton accepted that the decision of the House of Lords in **Joyce** had established that the mere possession or use of a standard passport would constitute an acknowledgment of allegiance and that the decision did not turn on the taking of an oath of allegiance to England. He maintained, however, that in **Joyce**, it was Joyce's status as a resident alien which caused him to owe allegiance in the first place. This he saw as a distinguishing feature. He maintained further that the issuance of an ordinary Dominican passport is reserved for citizens who owe allegiance while the diplomatic passport may be issued to non-citizens who may owe no allegiance to Dominica.

[53] He acknowledged that the fact that the holder of the passport was not a citizen was irrelevant and that the basis of the decision in **Joyce** was that the person who obtains and uses the passport obtains the protection of the State issuing the passport. However, he disagreed that this would constitute an acknowledgment of allegiance, distinguishing **Joyce** on its facts.

Discussion and analysis

[54] As the Court sees it, two important tasks must be undertaken in order to resolve the issue. The first is to discern the proper meaning of the expression "under an acknowledgment of allegiance, obedience or adherence" as used in section 28(1) (a) of the St. Kitts & Nevis Constitution; the second to discover the nature or character of the voluntary act having the capacity to bring about an acknowledgement of allegiance under Dominican Law. Does the act of possession of and travel on a Dominican Diplomatic Passport suffice?

Meaning of "Under an acknowledgement of allegiance, adherence or obedience."

[55] The word obedience bears its ordinary meaning. It is defined in the Oxford Dictionary as "compliance with an order, request or law or submission to another's authority. As to the meaning of adherence, I adopt the definition of "adherence" formulated in **Hewitt v Rivers et**

al⁶. Adherence means giving aid and comfort or support to enemies of the State. It is a form of treason which embraces overt intentional acts calculated to assist enemies of the State.

[56] Applying these definitions, I have determined that there is no evidence of any voluntary act by the Defendant capable of constituting obedience or adherence to the Commonwealth of Dominica as defined. Thus I will hereafter treat only with the concept of “acknowledgment of allegiance.”

[57] The case of **Joyce** was not concerned with the interpretation of such a provision. However, the Australian authority of **Re Canavan and other references**⁷, relied on by the Claimant, provides considerable assistance as to the approach to be taken to the construction of this expression. It falls to me to construe this case to see whether it provides any support for the Claimant’s argument that the mere act of possessing and using the diplomatic passport is sufficient to place the Defendant under an acknowledgment of allegiance to the Commonwealth of Dominica.

[58] The Australian provision under consideration in that case was section 44(i) of the Australian Constitution. It provides:

“Any person who

- (i) Is under any acknowledgement of allegiance, obedience or adherence to a foreign power, or is a subject or citizen or entitled to the rights or privileges of a subject or citizen of a foreign power.” (emphasis added)

[59] It is to be noted that the Australian provision contains three categories of disqualification. Unlike the St. Kitts and Nevis Constitution, the Australian provision expressly provides that persons are caught within the mischief if they enjoy rights or privileges associated with subjecthood or citizenship under foreign law.

[60] While the case primarily engaged the third limb, the court embarked on an interpretation of the meaning of the entire section in order to properly construe the provision. The court explained the source of the duty owed by a candidate in each category of disqualification by citing

⁶ [2013] (2) CILR 262

⁷ [2018] 3LRC 106

approvingly the dicta of Brennan J in **Sykes v Cleary**:

“The first category covers the case where such a duty arises from an acknowledgment of the duty by the candidate, senator or member. The second category covers the case where the duty is reciprocal to the status conferred by the law of a foreign power. The third category covers the case where the duty is reciprocal to the rights or privileges conferred by the law of a foreign power...The third category ...covers those who, though not foreign nationals, are under the protection of a foreign power as though they were subjects or citizens of a foreign power.”

[61] In short, therefore, in Australia one may be disqualified if (a) he is under an acknowledgment of allegiance, adherence or obedience or (b) he is a subject or citizen of a foreign power or (c) he is entitled to the rights or privileges of a subject or citizen of a foreign power though not himself a citizen of that foreign power.

[62] At paragraph 24 of the judgment, the court recognized “the distinction expressly drawn in section 44(i) between a voluntary act of allegiance on the part of the person concerned on the one hand, and a state of affairs existing under the foreign law, being the status of subjecthood or citizenship or the existence of the rights or privileges of subjecthood or citizenship, on the other. In other words, each limb of disqualification is an independent and free standing basis of disqualification.

[63] The Court considered that the whole purpose of section 44(i) was to prevent persons with foreign loyalties or obligations from being members of the Australian Parliament and specifically held that the first limb (St. Kitts 28(1)(a)) *“pursues this purpose by looking to the conduct of the person concerned. The second limb of section 44(i) does not look to conduct manifesting an actual split in the allegiance of the person concerned or the person’s subjective feelings of allegiance. On the contrary, it operates to disqualify the candidate whether or not the candidate is, in fact, minded to act upon his or her duty of allegiance.”*

[64] At paragraph 21 the court recognized the force in the submission that “in the first limb, the words ‘under any acknowledgement capture any person who has formally or informally acknowledged allegiance, obedience or adherence to a foreign power and who has not withdrawn or revoked that acknowledgement.’ This was an adoption of the meaning ascribed,

obiter dicta in **Nile v Wood**⁸ where a challenge was made on the basis that the elected representative was under an acknowledgement of allegiance, obedience or adherence to a foreign power because he had taken actions against the vessels of a friendly nation.

[65] The Court in **Re Canavan** felt fortified in adopting this more restricted interpretation of the first limb in view of the drafting history of the provision. The predecessor which derived from the British North American Act of 1867 provided:

“Any person ...[w]ho has taken an oath or made a declaration or acknowledgement of allegiance, or adherence to a Foreign Power...shall be incapable of being chosen or of sitting as a Senator or Member of the House of Representatives ...”

[66] This draft was retained until recast in their final form in 1898 without discussion. The Court favoured a textual interpretation of the words giving them their ordinary and natural meaning.

Section 28(1)(a) - The St. Kitts position

[67] In contrast to the Australian provision, S.28 (1)(a) of the Constitution of St. Kitts and Nevis recognizes only one category of disqualification: acknowledgment of allegiance, obedience or adherence to a foreign power of state. Section 28(1)(a) does not disqualify a person from membership in the National Assembly because he is entitled to the rights or privileges of a subject or citizen of a foreign power. The disqualification comes from a person doing a voluntary act that places him under an acknowledgment of allegiance to a foreign power or state. Thus the focus has to be on the conduct of the person.

[68] As the learned Chief Justice stated in **Ronald Green v Peter Saint; Maynard Joseph v Roosevelt Skerrit**⁹:

“The focus must still be on the *voluntary act* which is said to amount to an acknowledgment of allegiance, obedience or adherence to that foreign state *under the law of that foreign state*.” (Para 39)

[69] In **Re Canavan** it was said that the word ‘acknowledgment’ connotes an act involving an

⁸ [1987] HCA, 62.

⁹

exercise of the will of the person concerned. 'Allegiance' is defined as "the obligation of fidelity and obedience to government owed by an individual in consideration for the protection government gives. It is a legal bond in which there are two (2) parties – the subject and sovereign. It is referred to as a mutual bond and obligation between the sovereign and his subject a government and its citizens) because the subject has a duty to serve and be loyal and the sovereign a duty to protect."

[70] I consider the case of **Re Canavan** and its adoption of a restrictive interpretation of the words "under an acknowledgment of allegiance" to be highly persuasive and I adopt that approach. Thus, applied to this case the voluntary act must be such as to manifest the conscious exercise of the Defendant's will, acknowledging the obligation of fidelity and obedience to the Commonwealth of Dominica. This is not to say that the swearing of an oath or affirmation is the only way to acknowledge such allegiance. One can easily conceive that a person's action may well reflect allegiance to a foreign power. A ready example is joining the military of a foreign power or voluntarily acquiring citizenship of a foreign power or state. What is essential, however, is that the voluntary act must demonstrate a conscious acknowledgement of the obligation of fidelity and obedience to a foreign power or state.

[71] As recognized by the learned Chief Justice in **Ronald Green**, the consequences of disqualification under section 28(1)(a) can have a dire effect on the democratic process and derogate from the right of persons to participate in that process. This fact warrants that it be strictly construed so as to require a clear demonstration that one has transferred loyalty and allegiance to a foreign power or state.

[72] I shall presently examine the evidence as to material facts and law presented before me in order to ascertain whether it discloses such a voluntary act as contemplated by section 28(1)(a).

The Diplomatic Passport

[73] Before passing to that task however, it is necessary to conduct a comparative examination of the manner in which Dominican Law provides for the issuance of an "ordinary passport" to citizens of Dominica on the one hand and a "diplomatic passport" on the other. I do so based on the material placed before the Court and on the evidence adduced.

[74] The issuance of an ordinary passport to citizens is governed by the Immigration and Passport Act, Chap.18:01. The Act defines passport as meaning a passport issued or renewed not more than five years previously by or on behalf of the Government of the country of which the person to whom it relates is a subject or citizen or some other recognized travel document satisfactorily establishing the national status and identity of the person to whom it relates which passport or document is still in force and has attached to it a photograph of the person to whom it relates.

[75] Pursuant to Passport Regulations 9, a passport may be issued to citizens upon application in the prescribed form. An applicant for an ordinary passport is required to sign a declaration that he has not lost the status of Citizen of the Commonwealth of Dominica.

[76] A person acquires Dominican citizenship by birth or descent (Section 98, Constitution of Dominica). In the case of natural born citizens they, of course owe allegiance to the Commonwealth of Dominica on birth.

[77] Persons may also acquire citizenship by registration (section 100, Constitution of Dominica and section 6, Citizenship Act, Chap.1:10) or naturalization (section 8, Citizenship Act Chap. 1:10). Notably, however, in the case of citizens by registration or naturalization it is a requirement under sections 7 and 8 respectively of the Citizenship Act that such applicants must subscribe an oath or affirmation of allegiance before being registered as a citizen or being granted a certificate of naturalisation. Only then may they qualify to be issued the ordinary passport. On the application form for an ordinary passport, they are required to provide particulars of said certificates: certificate number, place and date of issue.

[78] Upon application for an ordinary passport, no further oath or affirmation of allegiance is required for the grant of same. This seems perfectly understandable because at the time of applying for the passport, the applicant is a person already owing allegiance to the Commonwealth of Dominica either by birth or descent or having sworn an oath or subscribed an affirmation of allegiance when seeking naturalization or registration. Thus the acquisition of a passport by a citizen does not create the duty of allegiance.

[79] By contrast, as is common ground, there is no statutory provision or legislative enactment in Dominica governing the issuance of a diplomatic passport. This has been governed by executive policy. On 3rd March, 2017 the Ministry of Foreign Affairs issued the *Interim Policy Guidelines on the Issuance of Diplomatic and Official Passports and Related Official*

Documents. This document, it is to be noted, was not in force at the time the Diplomatic Passport was issued to the Defendant but is said to have been issued *“in an effort to provide clarity, avoid ambiguity and strengthen existing procedures and the practice utilized in the making of diplomatic appointments and the issuance of diplomatic appointments and the issuance of Diplomatic and Service Passports.”*

[80] However, Mr. Burton, himself the holder of a diplomatic passport, has confirmed a pre-existing practice for the grant of such passports.

[81] The policy document further declares that passports issued under this policy regime are issued *“principally to facilitate the travel of persons who are employed with or acting on behalf of the Government of the Commonwealth of Dominica.”* Such persons may include non-nationals. It then itemizes the category of persons to whom a diplomatic passport may be granted. The defendant does not fall into any of these categories.

[82] The policy document sets out the procedure for the issuance of diplomatic and service passports. Under this policy regime, application for a diplomatic passport is made on a prescribed form available at the Ministry of Foreign Affairs. This is not the same form used when applying for an ordinary passport.

[83] Upon completion, the application form is submitted to the Permanent Secretary, who, if she approves it, then forwards it to the Immigration Department and ultimately to the Minister with responsibility for Immigration for their approval. Thereupon the diplomatic passport is returned to the Ministry of Foreign affairs which issues it to the applicant. It is valid for a maximum of five years unless the person’s appointment is for a lesser period in which case the passport must be surrendered upon the expiration of that lesser period.

[84] There is very little difference between the physical appearance of both documents apart from their colour and the initial letter in the passport number.

[85] Nonetheless, a number of noteworthy differences between the two types of passport are apparent. The first is that the ordinary passport is governed by a statutory framework while the diplomatic passport is a matter of executive policy. The experts agree that an ordinary passport may not be revoked at will while a diplomatic passport may be. Further, while holders of the ordinary passport all owe prior allegiance to Dominica, no oath or affirmation of allegiance is required to be subscribed by an applicant for a diplomatic passport as a condition precedent to

its issuance. While the ordinary passport is reserved exclusively for persons owing allegiance to Dominica, i.e. citizens, the diplomatic passport may be issued to a person who is not a citizen of Dominica.

[86] Notwithstanding these procedural and other differences between these two classes of passports the Claimant submits that there is no distinction to be drawn between them because a diplomatic passport, like an ordinary passport, engages the protection of the Commonwealth of Dominica. Both documents contain the following request on the insider cover of the documents:

“The President of the Commonwealth of Dominica requests and requires in the name of the Government of Dominica all those whom it may concern to allow the bearer to pass freely without let or hindrance and afford the bearer such substance and protection as may be necessary.”

[87] Basing itself principally on the authority of **Joyce**, the claimant argues that by voluntarily applying for, obtaining and travelling on the diplomatic passport the defendant has invoked the protection of the Commonwealth of Dominica and is accordingly under an acknowledgment of allegiance to Dominica.

[88] The Defendant counters that this is too broad a reading of **Joyce**, the principle of which is more narrowly confined. The Defendant contends that **Joyce** does not extend to a person or holder of a diplomatic passport who had no existing allegiance at the time of the acquisition or use of the diplomatic passport, and who never declared he was a citizen, and never declared or swore an Oath of allegiance to acquire that passport.

The case law

[89] The experts regard **Joyce** as a source of Dominican law as it represents Dominica's common law. Given that the experts are diametrically opposed as to the interpretation and applicability of the principles derived from the case of **Joyce** to the facts of this case, it falls to the Court to resolve the conflict and to discern the proper construction to be placed on the authority and to determine its applicability to the specific facts of this case. See **Porter Capital Corporation v Zulfikar Masters** [2017] EWHC2215 (CH); **Bumper Development Corporation v Commissioner of Police for the Metropolis**, [1991] 1WLR 1362.

[90] The issue in **Joyce** was whether an alien who had been resident within the King's realm could be held guilty and convicted in England for high treason in respect of acts committed by him outside the realm. The material facts are important to a proper understanding of the ratio of the case and, in particular, the statements relating to the nature of a passport.

[91] Joyce was a natural born American Citizen who was the son of a naturalized American citizen, who himself had previously been a British subject by birth. When aged 3, Joyce was taken to Ireland where he stayed until 1921 before proceeding to England. He was resident within the King's realm for some 24 years. On July 4, 1933 he applied for a British Passport, purportedly for holiday travel, describing himself as a British Subject by birth. He was granted the passport for a period of 5 years. On its expiration in 1938, he applied for a renewal, again declaring that he was a British subject and that he had not lost that national status. His application was granted and the passport renewed for 1 year. On 24 August, 1939 he again applied for a renewal which was granted. On an unknown date thereafter he left the realm. In 1945 he was arrested and it was discovered that he had been working as a broadcaster for the Germans. He was charged with treason.

[92] Central to the resolution of the issue was the question of allegiance, which, as Lord Jowitt observed, "depends upon one thing only, namely the relation in which the actor stands to the king to whose enemies he adheres. An act that is in one man treasonable, may not be so in another".

[93] Lord Jowitt identified the need to first determine the category of persons who owe allegiance. He answered the question this way:

"I have said my Lords that the question for consideration is bound up with the question of allegiance. Allegiance is owed to their Sovereign Lord the King by his natural born subjects; so it is by those who, being aliens, become his subjects by denisation or naturalization (I will call them all "naturalised" subjects); so it is by those who, being aliens, reside within the King's realm. Whether you look to the feudal law for the origin of this conception or find it in the elementary necessities of any political society, it is clear that fundamentally it recognizes the need of the man for protection and of the Sovereign Lord for service. ***Protectio trahit subjectionem et subjection protectionem.*** All who were brought within the King's protection were *ad fidem regis*:

all owed him allegiance...The natural-born subject owes allegiance from his birth, the naturalized subject from his naturalization, the alien from the day when he comes within the realm.”

[94] Joyce was therefore held to be a person already owing allegiance to the King by virtue of being an alien who had been resident in the King’s realm for some 24 years and therefore under his protection. The question was whether he owed allegiance once he left the realm. If he did not, he could not be guilty of treason for acts committed abroad.

[95] Lord Jowitt carefully framed the respondent’s contention as to why Joyce would be guilty of treason when he stated:

“It is no part of the case for the Crown that the appellant is debarred from alleging that he is not a British subject. The contention is a different one: it is that by the holding of a passport he asserts and maintains the relation in which he formerly stood, claiming the continued protection of the Crown and thereby pledging the continuance of his fidelity.”
(P.192 –B)

[96] In that context Lord Jowitt stated:

“The material facts are these, that being for long resident here and owing allegiance he applied for and obtained a passport and leaving the realm adhered to the King’s enemies. It does not matter that he made false representations as to his status,, asserting that he was a British subject by birth...the essential fact is that he got the passport and I now examine its effect. The actual passport issued to the appellant has not been produced, but its contents have been duly proved. The terms of a passport are familiar...By its terms it requests and requires in the name of His Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance and to afford him every assistance and protection of which he may stand in need. It is I think true that the possession of a passport by a British subject does not increase the Sovereign’s duty of protection, though it will make his path easier. For him it serves as a voucher and means of identification. But the possession of a passport by one who is not a British subject gives him rights and imposes upon the Sovereign obligation which would otherwise not be given or imposed. It is immaterial that he has obtained it by misrepresentation and that he is not in law a British subject. By the possession of that document he is enabled to obtain in a foreign country the protection extended to British

subjects. By his own act he has maintained the bond which while he was within the realm bound him to the Sovereign. The question is not whether he obtained British citizenship by obtaining the passport, but whether by its receipt **he extended his duty of allegiance** beyond the moment when he left the shores of this country. **As one owing allegiance to the King** he sought and obtained the protection of the King for himself while abroad.” (emphasis added)

[97] Lord Porter put the matter more pointedly when he cautioned:

“It must be remembered that the matter to be determined is not whether the appellant took upon himself a new allegiance, but whether he continued an allegiance which he had owed for some 24 years...” (emphasis added)

[98] As the Court sees it, Lord Jowitt identified the issue to be whether by obtaining the passport Joyce extended his duty of allegiance beyond the shores of England. The answer and the actual point decided in **Joyce** is that by obtaining a British passport, Joyce, as a person already owing allegiance to the King when within the realm, extended his duty of allegiance beyond the moment he left England.

[99] It is important to note that in discussing the significance of a passport the reference is to the protection it affords to the holder. Lord Jowitt observed that possession of a passport by a British Subject does not increase the Sovereign’s duty of protection; it merely serves as a voucher and means of identification. In the case of a person who is not a British subject, however, it gives him rights and imposes obligation on the Sovereign. It is immaterial that he obtained the passport by misrepresentation or that he was not in law a British subject. Once he obtained the passport he gained the protection of the Sovereign.

[100] Thus understood, the judgment does not define the nature of a passport as constituting an acknowledgment of allegiance when issued to a person owing no previous allegiance to the King. To find or identify the source of Joyce’s duty of allegiance the Court resorted to his status as a resident alien within the realm for 24 years. It is for this reason that this fact is highlighted in their Lordships’ judgments as a material fact. Thus, the Court held that when Joyce applied for and obtained the passport, the passport extended - not created - his duty of allegiance because of the protection it afforded him while abroad.

[101] Nothing contained in **Joyce** supports the broader proposition that a non-citizen or person owing no previous allegiance who acquires a foreign passport thereby comes under an acknowledgment of allegiance to the State issuing the passport. If this were the ratio of the case then Joyce's residence within the realm for 24 years would have been irrelevant. But yet, in the judgment, it is inextricably linked to the question of allegiance and regarded as a material fact.

[102] It seems to me then that there is a material distinction to be drawn between the facts in **Joyce** and the instant case. There is no evidence of the Defendant here owing any allegiance to the Commonwealth of Dominica prior to obtaining the passport. **Joyce** did not treat with this situation. It was concerned with the effect of obtaining a British passport by a resident alien who already owed allegiance to the King

[103] To the extent that authorities cited by the claimant, such as **Abraham Dabdoub v Daryl Vaz et al**; **Daryl Vaz v Abraham Dabdoub**¹⁰ and **Hewitt v Rivers et al** interpret **Joyce** as establishing such a proposition, I am in respectful disagreement. Those authorities do not bind this Court.

[104] The folly in simply invoking another non-binding Court's interpretation of the case is exposed by the fact that even among these authorities there is disagreement as to what proposition **Joyce** truly establishes. For example In **Dabdoub v Vaz** the Chief Justice of Jamaica at first instance and also the Court of Appeal said that **Joyce** is persuasive authority for the proposition that by possession and use of a passport a citizen acknowledges his duty of allegiance.

[105] The Claimant in written closing submissions in reply at paragraph 36 seemingly agrees that this is one of the propositions established by **Joyce** but contends it is not limited only to citizens or other persons owing prior allegiance.

[106] Commenting on the interpretation placed on **Joyce** by the Jamaican High Court and Court of Appeal, the Chief Justice of the Cayman Islands in **Hewitt v Rivers et al**, remarked:

"Reliance on **Joyce v DPP** as authority for the proposition that the acquisition of a

¹⁰ Supreme Court Civil No. 45 %47/2008 Jamaica Court of Appeal

passport by a citizen who acquires it as an ordinary incident of citizenship is tantamount to an acknowledgment of foreign allegiance sufficient to disqualify a candidate appears uniquely among all cases reviewed in the Jamaican case of *Vaz v Dabdoub*...

[107] The learned Chief Justice went on to state that on his analysis of **Joyce**, “the principle it decided was more narrowly confined and did not pronounce upon the nature of the allegiance owed by someone who is a citizen of the country whose passport he or she obtains.” The learned Chief Justice declared that he felt “compelled, respectfully to differ” from the interpretation placed on **Joyce** by the Jamaican courts.

[108] Like Chief Justice Smellie, this Court is required to form its own its own considered opinion as to the interpretation to be placed on **Joyce**.

[109] The Claimant’s expert, Mr. Simon QC, also relies on the dicta of Mitchell, J.A. in the case of **Ronald Green**. In that case the issue was whether the holding and using of French passports disqualified the respondents by virtue of section 32 of the Constitution of Dominica which is the equivalent of section 28(1)(a). Mitchell J.A. stated:

“The possession of a passport gives rights and imposes obligations of protection upon the State issuing the passport. The holder of a foreign passport travelling on it, thus by his own act maintains the bond which while he was within the State bound him to it. While in the **Dabdoub v Vaz** case, there was expert opinion before the trial judge that the acquisition of a passport by Mr. Vaz amounted to “by his own act” acknowledging US citizenship and his allegiance, it can in my view no longer be doubted that the mere acquiring of the passport of a foreign state amounts to a voluntary acknowledgment of allegiance to that State.... I am satisfied from the authorities that once it is established that a citizen of the Commonwealth of Dominica by his own voluntary act as an adult acquire, renewed or travelled on a foreign passport, he was by all the authorities that bind our court or that are persuasive disqualified by virtue of section 32 of the Constitution. In my view, it is unnecessary for a qualified person challenging the nomination or election of a person who obtained, renewed or travelled on a foreign passport either to plead the foreign law in question or to prove that under that foreign law such an action amounts to an acknowledgment of allegiance, obedience or adherence to the foreign State sufficient to establish a disqualification under the

Constitution. The Oxford Dictionary defines “passport” as meaning since the year 1536, “A document issued by a competent authority, granting permission to the person specified in it to travel , and authenticating his right to protection,” It is this right to protection by a government that is enjoyed by a citizen, and that is itself the proof of citizenship. The holding and producing of a passport has for centuries been the most common way for a person to establish his citizenship. A passport is one’s proof of citizenship. There is no document more eloquent or more commonly used by persons all over the world to establish citizenship than a passport.”

[110] Two observations may be made about this passage. First, when placed in full context of paragraph 23 of the judgment, it is plain that Mitchell J.A. pegged the right to protection afforded by a passport to citizenship.

[111] Clearly, that dicta cannot apply to the present situation because it is uncontroverted that the Defendant is not a citizen of Dominica even though he is the holder of a diplomatic passport. This serves to underscore a fundamental difference between an ordinary Dominican passport and a diplomatic passport under Dominican Law: a diplomatic passport is clearly not necessarily proof of Dominican citizenship whereas the possession of an ordinary passport is.

[112] Secondly, and more fundamentally, Mitchell J.A.’s view that it can no longer be doubted that the mere acquiring of the passport of a foreign state amounts to a voluntary acknowledgment of allegiance to that State was not determined by the majority of the Court and is not binding on this Court.

[113] The Chief Justice articulated the view of the majority at paragraphs 30-36. In summary, the majority were not prepared to presume that which Mitchell J.A. regarded as settled law. They held that that was a question to be determined in accordance with the foreign law through expert evidence.

[114] The Claimant also relies on **Dabdoub v Vaz**. In this case, Vaz acquired US Citizen at birth. As a citizen, he naturally owed allegiance to the United States so this was not found to be a disqualifying factor as the Jamaican Constitution countenanced dual citizenship. However, as an adult he applied for, obtained and travelled on his US Passport declaring to Immigration officials on several occasions that he was a US Citizen. **Joyce** was applied and the Court held that his voluntary taking of steps to acknowledge his citizenship disqualified him from sitting in

the House of Representatives.

[115] It is important not to lose sight of the reason for this finding which was that the expert evidence before the court was that in order to obtain a United States passport one has to apply for it and satisfy the Secretary of State that that he or she owes allegiance to the United States. Only persons owing allegiance to the United States can obtain a United States Passport under United States law.

[116] Properly understood, this case has no parallel to the case at bar. Vaz was a person owing natural allegiance to the United States. By his own voluntary act he satisfied the Secretary of State that he owed allegiance to the United States before he could obtain the passport. Having obtained, it he represented himself to immigration officials as a US citizen thus acknowledging his allegiance to the United States.

[117] In this case, however, the Defendant was not required to satisfy anyone or take any oath or affirmation of allegiance to the Commonwealth of Dominica. The case of **Dabdoub v. Vaz** is plainly distinguishable.

[118] In the cases cited by the claimant in support of what I may short handedly call “the protection argument”, the issuance of the passport and the protection it afforded were inextricably linked to the question of allegiance owed by virtue of citizenship or being a subject or, as in **Joyce’s** case, an alien resident within the King’s realm for 24 years.

[119] None of these cases concerned the case of a non-citizen who held no prior allegiance to a foreign state, voluntarily acquiring and travelling on a diplomatic passport issued by a foreign state. The circumstances of the case at bar are unique and peculiar in that regard.

[120] Accordingly, I agree with the contention of Mr. Burton that those authorities cannot be taken to represent Dominican law on the discreet issue before this Court.

Findings and conclusion

[121] **Joyce** aside, I must determine whether on the evidence before me Dominican law admits of the proposition contended for by the Claimant that the mere possession and use of a diplomatic passport amounts to an acknowledgment of allegiance to the Commonwealth of Dominica.

[122] One cannot approach this issue without confronting the reality of Dominica’s

contemporary statutory and executive policy framework governing the issue of the two types of passport.

[123] The evidence relating to the current state of Dominican law establishes the following:

[124] There is no statutory or legislative framework governing the issuance of diplomatic passports in Dominica. It is a creature of executive policy and, unlike the ordinary passport, is issued solely at the discretion of the Government and is revocable at will. Unlike the ordinary passport which is issued only to citizens who owe prior allegiance to the Commonwealth, the diplomatic passport may be issued to non-citizens and non-residents who owe no prior allegiance to Dominica.

[125] Further, the Defendant was not required to and took no oath or affirmation of allegiance to the Commonwealth of Dominica in order to obtain the diplomatic passport. Indeed the evidence before me is that the executive policy has deliberately not imposed a reciprocal duty of allegiance on the holder of a diplomatic passport even though the State offers its protection to the holder when abroad.

[126] I find that the special and distinct policy regime carved out for the issuance of a diplomatic passport is of significance. It must mean something that the executive has deliberately not required any oath, or affirmation or other demonstrable sign of allegiance or residence requirement as a condition precedent to the issuance of the diplomatic passport.

[127] I find further that the Defendant is not a natural-born or naturalized or registered citizen of the Commonwealth of Dominica. He was not and is not resident in Dominica; he did not apply for and did not obtain Dominican citizenship. Clearly then the Defendant does not fall within the category of persons identified by Lord Jowitt as a person by whom allegiance is owed.

[128] I find that under Dominican law the diplomatic passport accords the protection of Dominica to the Defendant when traveling to countries other than St. Kitts and Nevis. However, under Dominican law this does not place the Defendant under an acknowledgment of allegiance, obedience or adherence.

[129] The notion that a person may be under the protection of a State but may yet owe no

allegiance to it was recognized in **Sykes v Cleary**, (1992) 176 CLR 77, at p.110. Brennan, J stated:

“Where non-nationals are under the protection of a foreign power, they may owe a duty of allegiance or obedience to the foreign power by the law of that power.” (Emphasis added)

[130] Here Brennan, J recognizes that in the case of non-nationals under the protection of a foreign power, whether there is a reciprocal duty of allegiance or not depends on the law of that foreign power. It is not automatic.

[131] On a proper construction of Dominican Law, I hold that no reciprocal duty of allegiance is owed by the holder of Dominican diplomatic passport who is not a citizen of Dominica.

[132] In my view, where the State accords its protection to the holder of a diplomatic passport but deliberately refrains from making a demand for reciprocal allegiance, or in the absence of the existence of actual allegiance, the mere possession and use of the diplomatic passport does not create allegiance, adherence or obedience to the Commonwealth of Dominica under Dominican Law.

[133] A distinction is to be drawn between a voluntary act of allegiance on the part of the person concerned on the one hand, and a state of affairs existing under the foreign law, being the status of subjecthood or citizenship or the existence of the rights or privileges of subjecthood or citizenship, on the other. It is the conduct of the defendant to which one must look.

[134] I find further, and it has been not been contradicted, that the Defendant obtained the diplomatic passport solely as a gesture of political and professional courtesy extended to him in his capacity as a former Prime Minister and current Leader of the opposition.

[135] Accordingly, I hold that under Dominican law the voluntary act of acquiring and using a diplomatic passport by a non-citizen does not place the holder under an acknowledgement of allegiance or obedience or adherence to the Commonwealth of Dominica within the meaning of section 28(1)(a) as this is not an act that manifests the conscious exercise of the Defendant's will, acknowledging the obligation of fidelity and obedience to the Commonwealth of Dominica.

[136] To hold otherwise on these facts would be to disqualify the defendant because he is entitled to the benefit or privilege of protection owed to a citizen of Dominica when he travels abroad although he has not in clear terms acknowledged that he has willfully transferred allegiance to the Commonwealth of Dominica. As stated earlier in this judgment, S.28(1)(a) does not contemplate as a disqualifying factor the fact that a person may be entitled to the benefits of a foreign subject or citizen as the Australian model does.

[137] For the foregoing reasons the claim is dismissed.

[138] I invite written submissions on costs to be filed within fourteen days hereof.

Trevor M. Ward, QC
Resident Judge

By the Court

Registrar