

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Civil)

SLUHCV2015/0221

BETWEEN:

DELIA SAMUEL

Claimant

and

THE ATTORNEY GENERAL OF SAINT LUCIA
THE COMMISSIONER OF POLICE
THE POLICE PROMOTIONS COMMITTEE

Defendants

On Written Submissions:

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Jeannot-Michel Walters for the Claimant
Mrs. Brender Portland-Reynolds for the Defendants

2018: January 19.

JUDGMENT

[1] **CENAC-PHULGENCE J:** The claimant, Delia Samuel (“Ms. Samuel”) was at the time of the filing of this claim a woman police constable, Number 644 of the Royal Saint Lucia Police Force (“the Force”). Ms. Samuel filed a constitutional motion seeking to challenge the constitutionality of section 59 of the **Police Act**¹ (“the

¹ Cap 14.01 of the Revised Laws of Saint Lucia 2013.

Act”) and the Police Promotions Guidelines (“the Promotions Guidelines”). The claim was filed pursuant to section 105 of the **Constitution of Saint Lucia**².

[2] Ms. Samuel seeks the following relief:

- (a) A declaration that the Promotions Guidelines issued by the Cabinet of Saint Lucia contained in Cabinet Conclusion 353 of 2013 made on the 17th day of June 2013 are inconsistent with section 94(3) of the **Constitution of Saint Lucia** which grants the Commissioner of Police the power to appoint persons to hold or act in offices in the Royal Saint Police Force from Constable to Inspector of Police.
- (b) A declaration that the decision of the second Defendant to follow the Promotion Guidelines issued by the Cabinet of Ministers in the exercise of his power to appoint persons to hold or act in the offices in the Royal Saint Lucia Police Force from Constable to Inspector of Police is an unlawful abdication of his powers conferred by section 94(3) of the **Constitution of Saint Lucia**.
- (c) A declaration that the Promotions Guidelines are ultra vires the power to make Regulations conferred on the Cabinet of Ministers by section 59 of the **Police Act**, thereby infringing the claimant’s rights under section 94 of the **Saint Lucia Constitution**.
- (d) Further or in the alternative a declaration that section 59 of the **Police Act** is inconsistent with section 94(3) of the **Constitution of Saint Lucia** and is therefore null and void to the extent of its inconsistency.
- (e) An order to quash the Promotions Guidelines contained in Cabinet Conclusion No. 353 of 2013 dated the 17th day of June 2013.

² Cap 1.01, Revised Laws of Saint Lucia 2008.

- (f) An order directing the second defendant to exercise his powers to appoint persons to the rank of Inspector and below in the Royal Saint Lucia Police Force pursuant to section 94(3) of the **Saint Lucia Constitution** without reference to Promotions Guidelines issued by the Cabinet of Ministers.
- (g) An order prohibiting the Promotion Committee established by the Promotions Guidelines from further considering of applications for the appointment of police officers to the rank of Inspector of Police and below in the Royal Saint Lucia Police Force.
- (h) An order staying the promotion process advertised on 8th October 2014.

Background Facts

- [3] Ms. Samuel filed an affidavit in support of her claim. Ms. Samuel at the date of the claim had been a member of the Royal Police Force for 16 years having been enlisted into the Force on 8th February 1999. On or about 8th October 2014, various vacancies in the Police Force were advertised. Ms. Samuel sought to be promoted and applied to be appointed as Corporal of Police. Ms. Samuel alluded in her affidavit to the fact that there were concerns expressed by the Police Welfare Association about the process adopted by the Commissioner to appoint persons in the Police Force. This however, does not bear any significance in light of the claim.
- [4] On 3rd December 2014, a letter emanating from the office of the Commissioner of Police was sent to Ms. Samuel stating that in accordance with section 3 and/or section 5 of the revised **Promotions Guidelines 2013**, her application did not meet the approval of the Promotions Committee and it cited two reasons for this; the first being that her performance appraisals scored below 140 and the second that only one performance appraisal was attached. The letter continued that the Promotions Committee wished to afford her the opportunity to produce documentary evidence to substantiate her case or submit missing documents to

permit her acceptance into the promotions process for 2015-2017. The letter stated that she was to have responded by a certain date.

- [5] On 7th January 2015, the Chair of the Promotions Committee, Errol Alexander wrote to Ms. Samuel, copied to the Commissioner of Police informing her that after examination of her response to the Committee and further revision of her application, she was not eligible to participate in the promotions process for 2015-2017.
- [6] The affidavit of Ms. Samuel contains several statements which are statements of law rather than evidence to support her claim and which are best addressed in the discussion to follow. It is trite that an affidavit must contain the evidence upon which one relies and not simply be statements of legal principles or legal exposition based on advice obtained from one's attorney. Ms. Samuel stated in her affidavit that she believes that prior to the implementation of the Promotions Guidelines she would have been considered to be promoted from Constable to Corporal of Police and that she has therefore been adversely affected by the Promotion Guidelines.
- [7] Ms. Samuel sought to restrain the second and third defendants from continuing with the promotions process but that application was denied by the High Court at a previous hearing in 2015.
- [8] The defendants filed an affidavit in reply of the Honourable Attorney General. The main thrust of the response was to highlight the fact that affidavit in support of the claim contained several statements which were irrelevant, opinionated, immaterial, and/or which amounted to hearsay and in respect of which Ms. Samuel was not qualified and/or possessed of the specialized knowledge to give and or make reference to, in particular with respect to matters of law. The defendants also averred that the cause of action against them could not be sustained as the claimant had failed to particularize with any detail and sufficiency the constitutional

breaches if any, and further, there was no evidence that there had been any contravention of the fundamental rights and freedoms provisions of the Constitution.

Has the claimant invoked the constitutional jurisdiction of the High Court?

[9] In submissions filed on 11th May 2017, the defendants contended that the claimant has failed to invoke the constitutional jurisdiction of the Court in that she has failed to demonstrate the likely constitutional breaches in relation to her. They submitted that the claim is speculative and it is uncertain which infringement it is seeking to address. They further submitted that the claimant has not pleaded nor is there any evidence to suggest that the claim was brought pursuant to section 16(1) of the Constitution and that the requirements of section 16 have been met. Consequently, the defendants submitted that the Court should not exercise its jurisdiction to determine this matter.

[10] Whilst I must agree with the defendants that it is a requirement of rule 56.7(4) of the **Civil Procedure Rules 2000** (“CPR”) that an affidavit in support of a constitutional claim must state the constitutional ground and the relief sought, I must point out that Ms. Samuel’s claim does not speak to section 16 of the Constitution but to section 105. The writers of the text **Fundamentals of Caribbean Constitutional Law**³ point out that Caribbean constitutions give jurisdiction to the High Court or Supreme Court to provide effective remedies for breaches of guaranteed fundamental rights and freedoms. However, they also point out that in the newer constitutions, the High/Supreme Court also has explicit jurisdiction to determine whether there has been a contravention of a non-bill of rights provision in the constitutions⁴. Section 105 states that “any person who alleges that any provision of this Constitution (other than a provision of Chapter I)⁵ has been or is being contravened may, if he has a relevant interest, apply to the

³ Tracy Robinson, Arif Bulkan, Adrian Saunders, Sweet & Maxwell, 2015 at paras 4-005 and 6-009.

⁴ Section 119, Antigua and Barbuda Constitution, section 103(1), Dominica Constitution, section 101, Grenada Constitution, section 105, Saint Lucia Constitution, section 96, St. Kitts and Nevis Constitution and section 96, St. Vincent & the Grenadines Constitution.

⁵ Chapter I is the fundamental rights and freedoms section.

High Court for a declaration and for relief under section 105.” The claimant has definitely sought to invoke the constitutional jurisdiction of the Court and she must therefore produce evidence to support her contention that a particular section being section 94 of the Constitution has been contravened.

Whether section 94 of the Constitution has been contravened

Submissions of claimant and defendants

- [11] Ms. Samuel challenged the constitutionality of the Promotions Guidelines. She submitted that section 94(3) of the Constitution gives the Commissioner of Police the power to promote police officers up to the rank of Inspector of Police. Ms. Samuel argued that section 59 of the **Police Act** does not give Cabinet the power to enact regulations to direct the Commissioner of Police in the exercise of his powers under section 94(3) of the Constitution. She further argued that the enactment of the Promotions Guidelines and the establishment of the Promotions Committee are inconsistent with section 94(3) of the Constitution and should therefore be declared void.
- [12] Ms. Samuel submitted that the action of the Promotions Committee in deeming her ineligible for promotion was contrary to section 94(3) of the Constitution thereby infringing her rights under the Constitution to have her application for promotion considered by the Commissioner of Police. It is further contended by Ms. Samuel that the Promotions Guidelines made by Cabinet interfered with the functions of the Commissioner of Police under the Constitution and therefore amended the Constitution and infringed Ms. Samuel's rights under section 94(3) of the Constitution.
- [13] Ms. Samuel submitted that the Commissioner of Police could not have delegated his powers to the Promotions Committee as this power can only be delegated to a member of the Royal Saint Lucia Police Force in accordance with section 94(4) of the Constitution. The claimant further submitted that since the Commissioner of Police did not use his jurisdiction under the Constitution to establish the

Promotions Committee and Guidelines, they are ultra vires the Constitution and the Police Act - are therefore null and void.

- [14] Finally, Ms. Samuel submitted that the Commissioner of Police has fettered his discretion over promotions and surrendered it to the Promotions Committee. In support of her submissions, Ms. Samuel cited the cases of **Gopichand Ganga et al v Commissioner of Police et al**⁶ and **Eusebio Cooper et al v Director of Personnel Administration et al**⁷.
- [15] The defendants submitted correctly that the presumption is always in favour of constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles and cited in support **Attorney General v Lawrence**⁸. The defendants further submitted that the power of the Commissioner to appoint under section 94 of the Constitution has not been eroded and/or fettered and is maintained irrespective of the implementation of the Police Promotions Guidelines. They contended that the Promotions Guidelines introduced a criteria for selection and that this does not amount to a transfer of the power of the Commissioner of Police to appoint.
- [16] The defendants further argued that Ms. Samuel has failed to establish with any certainty how section 94 of the Constitution has been contravened. They submitted that there is no ambiguity in the law which is capable of rebutting the presumption of constitutionality of the provisions and Ms. Samuel has failed to discharge the burden of displacing that presumption. The process adopted by the Promotions Committee cannot be said to be an usurping of the constitutional power of the Commissioner of Police to appoint and neither can it be considered a delegation of that power. The defendants therefore held the position that the process adopted is not inconsistent with the provisions of the Constitution giving the Commissioner of Police the power to appoint to ranks up to that of Inspector.

⁶ [2011] UKPC 28.

⁷ [2006] UKPC 37.

⁸ (1983) 31 WIR 176 at 179.

The Legislative Framework

- [17] The relevant legislative provisions are set out below. Section 16 of the Act provides as follows:

“16. Qualifications for appointment

- (1) A person shall not be appointed to the Force as an inspector, subordinate officer or constable unless —
 - (a) He or she has attained the age of 18 years but has not reached the age of 30 years. However, in any such case the Commissioner of Police may with the approval of the Governor General appoint a person who has already attained the age of 30 years; *(Amended by Act 17 of 1970 and substituted by Act 2 of 2013)*
 - (b) He or she is of the required height and chest measurements according to the standard fixed by the Commissioner of Police;
 - (c) He or she passes a medical examination as to his or her bodily fitness to be held by such Medical Officer as may be appointed for the purpose by the Governor General;
 - (d) He or she produces to the Commissioner of Police satisfactory proof of his or her good character; and
 - (e) **He or she satisfies the Commissioner of Police that he or she fulfils the requirements respecting appointments, including promotions contained in guidelines issued by Cabinet or prescribed in regulations under this Act;** *(Substituted by Act 2 of 2013)*
 - (f) He or she satisfies the Commissioner of Police that he or she has attained a reasonable standard of education.” (my emphasis)

- [18] Amendments to section 59 were effected by Statutory Instrument No. 2 of 2013 dated 18th April 2013. The amended section 59 and new section 59A of the Act are in the following terms:

“59. Regulations

- (1) The Cabinet may, subject to the provisions of this Act, make regulations relating to all or any of the following matters, that is to say —
 - (a) The description and issue of arms, ammunition and necessaries to be supplied to the Force;
 - (b) The The form of Certificate of appointment of police officers;

- (c) Prescribing the acts or omissions of inspectors, subordinate officers and constables which shall be offences against police force discipline;
- (d) The conduct of disciplinary proceedings against inspectors, subordinate officers and constables;
- (e) The constitution, procedure and functions of the Police Association;
- (f) Good conduct pay to subordinate officers and constables of the Force;
- (g) The leave, resignation, release and dismissal of police officers including the Special Reserve;
- (h) The treatment of persons detained or confined in any police building;
- (i) Prescribing anything which by this Act is to be or may be prescribed and;
- (j) Generally for the good order and government of the Force.”

“59A. Standing orders

- (1) The Commissioner of Police may, and when required by Cabinet, shall, issue standing orders, not inconsistent with this Act or regulations, for any of the following purposes that is to say —
 - (a) The description and issue of accoutrements and badges of rank to be supplied to the Force;
 - (b) The duties to be performed by police officers;
 - (c) The training of the Force;
 - (d) The management and good government of all police buildings, accommodation, stores and furniture;
 - (e) The posting of all police officers and the duties to be performed by them;
 - (f) The management of police canteens and recreation rooms;
 - (g) The welfare of police officers;
 - (h) The collection of evidence or taking of evidence by police officers;
 - (i) Such other matters as may be necessary for preventing abuse or neglect of duty, for rendering the Force more efficient in the discharge of its duty, and for carrying out the objects of this Act.
- (2) Every such standing order —
 - (a) Shall be subject to the approval of Cabinet; and
 - (b) Shall be brought to the notice of every police officer, but need not be published in the Gazette.”

[19] Section 94(3) of the Constitution provides:

“(3) The power to appoint persons to hold or act in offices in the Police Force of or below the rank of Inspector (including the power to confirm appointments), and, subject to the provisions of section 96, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Commissioner of Police.”

Section 94(4) states:

“(4) The Commissioner of Police may, by directions given in such manner as he or she thinks fit and subject to such conditions as he or she thinks fit, delegate any of his or her powers under subsection (3) to any other member of the Police Force.”

[20] An investigation into the legislative history revealed that in 2011, the existing **Police (Promotions) Regulations**, Statutory Instrument 149 of 2006 were repealed and there were no regulations which replaced them by the statutory instrument which effected the repeal⁹.

The Promotions Guidelines

[21] The only evidence produced by the claimant of the promotions guidelines is a two page document headed Cabinet Conclusion No. 353 of 2013 and dated 17th June 2013. The relevant part of the text of the first page of the Conclusion reads as follows:

“353. APPROVAL OF THE PROMOTION GUIDELINES FOR THE ROYAL SAINT LUCIA POLICE FORCE
Cabinet considered a Memorandum dated 22nd May 2013, submitted by the Ministry of Home Affairs and National Security and approved the promotion guidelines for the Royal Saint Lucia Police Force, as detailed in Appendix III...”

This is followed by a single page with two headings namely Promotion Committee and Eligibility for the Promotion Process. By Ms. Samuel’s own evidence this document contains other provisions since in the letter from the Committee to her dated 3rd December 2017, it quotes section 5. The claimant is asking this Court to

⁹ Statutory Instrument No. 88 of 2011.

make a determination as to the constitutionality of the guidelines but fails to put the entire text and content of the Promotion Guidelines before the Court.

[22] The claimant has also failed to provide evidence as to the submission which was made to Cabinet by the Ministry of Home Affairs and National Security. Ms. Samuel claimed that Cabinet issued the Promotion Guidelines pursuant to section 59. However, section 59 provides that Cabinet can make regulations. There is no allegation from Ms. Samuel that any regulations were made by Cabinet containing these promotion guidelines and I could find no statutory instrument containing any such regulations made by Cabinet so it is safe to conclude that, that is not the enabling provision for the promotion guidelines.

[23] Section 59A which speaks to standing orders provides that the Commissioner may issue standing orders dealing with various matters and for these to be subject to approval of Cabinet. As I have indicated there is no evidence to indicate how these promotion guidelines were put to Cabinet for approval and it would only be speculative if I were to come to any conclusion.

Discussion

[24] Section 94(3) of the Constitution is clear and gives the Commissioner of Police power to appoint police officers to the rank of Inspector of Police and below. Apart from the few criteria mentioned in section 16 of the Act there is nothing else which guides the appointment procedure. There is nothing which suggests how the applications are to be dealt with or any of the matters which may touch and concern the application and selection process.

[25] The claimant referred to the cases of **Eusebio Cooper** and **Gopichand Ganga**. These two cases must however be assessed in their contexts. Both cases emanate from Trinidad and Tobago where there is a legislative regime which details the entire process for police appointments, the form and manner in which

applications are to be made, eligibility of applicants, examinations and who is to set those, the establishment of a Promotion Advisory Board among other things.

- [26] In the case of **Eusebio Cooper**, the appellants were police constables with the Trinidad and Tobago Police Force. They sat the examinations for promotion to the rank of Sergeant which had been set by the Public Service Examination Board. The Board was also responsible for marking the exam scripts and releasing the results to the candidates. The power to make appointments in the police force in Trinidad and Tobago vests in the Police Service Commission by virtue of section 122 of the Trinidad and Tobago Constitution. In a media release, the Police Service Commission informed that the sole responsibility for the conduct of the examinations fell under the purview of the Public Service Examinations Board which was a Cabinet appointed body and that the Board is not part of the Police Service Commission.
- [27] In a claim for judicial review, the High Court found that the appointment of the Public Service Examination Board by Cabinet was unconstitutional, illegal, null and void and of no effect and that the Police Service Commission was the only authority responsible for the conduct of promotion examinations for the police service. The Court of Appeal disagreed and set aside the orders and declarations made by the High Court.
- [28] On appeal to the Privy Council, the issue for consideration was whether the appointment of the Public Service Examination Board by the Cabinet was unconstitutional. By section 129(1) of the Trinidad Constitution, the Police Service Commission may with the consent of the Prime Minister, by regulation or otherwise regulate its own procedure. The procedure of the Police Service Commission is regulated by the Police Service Commission Regulations. These regulations make provision for the form and manner in which applications are to be made for appointment to the Police Force and examination and interviews are to be conducted for entry into it, the establishing of a Promotion Advisory Board and

a system of examinations and interviews and that the examinations shall be set and the papers marked by such Examination Board as may be appointed for that purpose.

[29] At paragraph 28 of the judgment, the Board said this:

“The Constitution requires that the powers which it gives to the Public Service Commissions, and to the Police Service Commission in particular, to appoint persons to hold or act in public offices and to make appointments on promotion must be exercised free from interference or influence of any kind by the executive. There is room in this system for the taking of some initiatives by the Cabinet. A distinction can be drawn between acts that dictate to the Commissions what they can and cannot do, and the provision of a facility that the Commissions are free to use or not to use as they think fit. The appointment of a Public Service Examination Board by Cabinet for the Commission to use if they choose to do so is not in itself objectionable. The advantages of using such a centralised body are obvious, and in practice the Commissions may well be content to continue to make use of them. The objection which has given rise to these proceedings lies in the misapprehension as to where the responsibility for choosing that system lies. ...”

[30] The Board concluded that the sole responsibility for the conduct of examinations for the appointment and promotion of police officers lay with the Commission. How the Commission chose to discharge this responsibility was a matter for the Commission itself to determine, in the exercise of its powers under the Police Service Regulations. Regulation 19 provided that all examinations in the Police Service shall be set and marked by such Examination Board as may be appointed for this purpose. The Board therefore concluded that the regulation did not in its terms say by whom the appointment was to be made but looking at the context of the regulations as a whole and in light of the Constitution, it must be understood as reserving the power to make the appointment to the Commission and not to the executive. The appeal was therefore allowed.

[31] In the **Gopichand Ganga** case, the appellants were officers in the Police Force of Trinidad and Tobago. The Police Service Commission is the body responsible for appointing, promoting and dismissing police officers. Its powers are regulated by

the Police Service Commission Regulations. The regulations provided that the Commission in considering any matter or question may consult with any police officer or public officer or other person as the Commission may consider proper and desirable. Regulation 15 made provision for the Commissioner to submit to the Commission a list of officers whom he considered suitable for promotion. It also provided that the Commission may, after considering the representations made, endorse, or otherwise, the recommendations of the Commissioner when promoting an officer.

[32] The Commissioner introduced a points based system for evaluating members of the Police Force for promotion. Following a request by the Commission, the Commissioner decided to make recommendations to the Commission for the promotion of officers in the First Division and applied the points based system to them. The Commissioner also wrote a letter to the officers advising that they had been omitted from the list of persons selected for promotion and invited them to make representations in accordance with the regulations. The claim for judicial review was dismissed by the High Court, the Court considering that under the procedure adopted, the Commissioner's recommendations were to be considered and evaluated by the Commission and not merely endorsed or rubber-stamped and since the decision whether or not to promote was that of the Commission, there could be no unfairness or illegality in the Commissioner making the recommendations for promotion. The Court of Appeal dismissed the appellants' appeal.

[33] On appeal to the Privy Council, the Board said that it was unable to accept that there was any infringement of constitutional principles in the Commissioner making recommendations in response to a request by the Commission in circumstances where the decision whether or not to appoint remains that of the Commission. Despite the Commissioner's letter to the appellants informing that they had been omitted from the persons selected for promotion, the Board did not

consider that the Commission had delegated its power of appointment to the Commissioner.

[34] In both of the above cases there were clearly defined regulations which influenced the positions taken by the Court. I do not find these two cases to be particularly helpful to the claimant. In the case at bar, the Constitution vests the power of appointment of police officers up to the rank of Inspector of Police in the Commissioner of Police. Unlike in Trinidad and Tobago, there are no regulations which guide the actual application process. The only provision which comes close to this is section 16 of the Act which speaks to the qualifications to be appointed as inspector, subordinate officer or constable. The section does not say how these qualifications are to be assessed. However, notably the section does refer to the Commissioner being satisfied that the applicant fulfils the requirements respecting appointments, including promotions contained in guidelines issued by Cabinet or prescribed in regulations under the Act.

[35] Ms. Samuel made an application and that application was assessed and she was told that she did not meet certain criteria by the Promotions Committee. As I indicated, Ms. Samuel has not shown how the guidelines approved by Cabinet fetter or divest the Commissioner of the power vested in him by section 94(3) of the Constitution. She has not referred to any particular provision in the guidelines which indicates that the Commissioner is bound by any of the actions of the Promotions Committee or that he is simply a rubber stamp. As far as I see it, what has happened in this case is no different to a filtering process where the applications are vetted to ensure that persons who are selected past the application stage are only those who meet the qualifications for appointment.

[36] Clearly, the formulation of guidelines aimed at uniformity of standards and consistency of procedure and practice in making appointments to public office and at the economic use of limited resources to avoid unnecessary duplication of effort is highly desirable. Otherwise, it would mean that the Commissioner of Police

would have to do the sifting of applications and conduct interviews and assessments which may prove to be very unwieldy. I am of the view that the Promotion Guidelines approved by Cabinet were designed to assist the Commissioner in discharging his statutory function. The claimant has failed to produce any evidence to show that that statutory function to appoint officers up to the rank of Inspector has been fettered or that the power to appoint no longer resides with the Commissioner of Police. The claimant has failed to show how the Promotion Guidelines have taken away the power of the Commissioner over the issue of promotion of officers up to the rank of Inspector.

[37] Ms. Samuel has also failed to show what rights she has under section 94 of the Constitution which she claims have been infringed. Section 94 deals with appointments in the Police Service and does not in any of its provisions create or provide for any individual rights which are capable of being infringed. Ms. Samuel did not have a right to be appointed to the post of Corporal of Police as any application which she made would have been subject to her meeting the qualifications as set out on section 16 of the Act.

[38] Ms. Samuel has failed to put evidence of the genesis of the Promotions Guidelines in circumstances where there was no suggestion in the Cabinet Conclusion that Cabinet was making regulations pursuant to section 59 of the Act. She has produced no such regulations and a Cabinet Conclusion with an annex which is supposed to contain the Promotions Guidelines is certainly not regulations made pursuant to an act. There is no evidence that the Promotions Guidelines were issued by Cabinet when on the face of the Conclusion it clearly says that the Promotions Guidelines were approved by Cabinet. Section 59 of the Act gives the Cabinet power to make regulations in relation to specific matters and the claimant has not shown how that is inconsistent with the power to appoint vested in the Commissioner by section 94 of the Constitution.

Conclusion

[39] In all the circumstances and for all the reasons outlined above, the claim is dismissed and I decline to grant the declarations sought by Ms. Samuel. There shall be no order as to costs.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar