

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

ANGUILLA

AXAHCVAP2022/0002

BETWEEN:

JOSEPH BRICE

Applicant

and

THE ATTORNEY GENERAL OF ANGUILLA

Respondent

Before:

The Hon. Mde. Vicki Ann Ellis

Justice of Appeal

The Hon. Mde. Esco Henry

Justice of Appeal

The Hon. Mde. Cadie St. Rose-Albertini

Justice of Appeal

Appearances:

Applicant in person

Mr. Theon Tross for the Respondent

2026: February 12.

Application for leave to appeal to His Majesty in Council - Constitutional motion – Section 16 of the Anguilla Constitution Order 1982 (as amended) (“the Constitution”) - Appeal as of right – Whether intended appeal raises a genuine question of constitutional interpretation - Sections 72(1)(a) and 72(1)(c) of the Constitution – Whether intended appeal raises questions of general and public importance – Section 72(2)(a) of the Constitution - Whether the intended appeal falls under any of the categories in section 72 of the Constitution for leave to appeal to His Majesty in Council – Procedural fairness

REASONS FOR DECISION

- [1] **ST. ROSE-ALBERTINI JA:** This matter was heard by the Court on 12th February 2026. On that date, the Court delivered its decision and indicated that written

reasons would follow shortly and be made available to the parties. The reasons are contained in this decision.

- [2] The application before the Court arose from proceedings commenced by Mr. Joseph Brice (“the applicant”) against the Attorney General of Anguilla (“the respondent”) in the High Court of Anguilla.¹ In that claim the applicant instituted a constitutional motion seeking redress for what he alleged was a wrongful arrest. In a judgment dated 2nd June 2022, Innocent J dismissed the motion, citing that the **UK Police And Criminal Evidence Act 1984** (“PACE”) which had formed the basis for the claim, was not applicable to Anguilla.
- [3] The applicant challenged the decision of Innocent J by way of appeal to this Court.² At the appeal stage the Court ordered that the parties consider the judgment in **Timothy Abbott v The Attorney General of St. Christopher and Nevis**³ and file and exchange written submissions addressing the following questions: (1) whether the learned trial judge erred in not striking out or dismissing the appellant’s constitutional motion as an abuse of process, because the appellant had not successfully availed himself of the collateral remedies available in private law or in the context of criminal proceedings; and (2) if the answer to question 1 is yes, whether the Court of Appeal should exercise its power under section 30(2) of **the Eastern Caribbean Supreme Court (Anguilla) Act**⁴ in respect of the decision of the learned trial judge.
- [4] In a judgment delivered on 18th September 2025 (“the judgment”), the Court held that constitutional relief should not be pursued where adequate private-law remedies are available, unless the circumstances disclose some special feature which makes constitutional intervention appropriate. Absent such feature, filing a

¹ Claim No AXAHCV2014/0076.

² Claim No AXAHCVAP2022/0002.

³ SKBHCVAP2018/0023 (delivered 5th June 2024, unreported).

⁴ Chapter E-15, Revised Statutes of Anguilla.

constitutional motion amounts to an abuse of process, once a more suitable alternative remedy exists, which is more appropriate in the circumstances.

- [5] The Court determined that the matters raised in the appellant's pleaded case did not give rise to any special feature which made it appropriate to seek recourse by way of a constitutional motion. The claim alleged loss of assets, financial distress and descent into penury and poverty. The Court found that these were matters that could be adequately dealt with in damages and could inform a court's decision in a private law claim to provide relief for false imprisonment and/or wrongful arrest. Thus, the learned trial judge erred in not finding that the appellant's originating motion amounted to an abuse of process, and to go further to determine the appeal on the merits would be inappropriate in these circumstances.
- [6] The Court exercised its powers under section 30 (2) of the Eastern Caribbean Supreme Court, (Anguilla) Act, to make the order which ought to have been made, and the motion was dismissed as an abuse of process. In summary, these are the issues which were determined in the judgment, for which the applicant now seeks leave, for review by the apex court.
- [7] By a notice of motion filed on 9th October 2025 ("the substantive application"), the applicant sought conditional leave to appeal the Court's judgment to His Majesty in Council ("the Privy Council"). Additionally, on 9th January 2026 the applicant filed an application for an extension of time to file and serve written submissions, supported by an affidavit, with a draft order.
- [8] Both applications came on for hearing before the Court on 12th February 2026. The application for extension of time was granted, and the applicant's written submissions filed on 6th January 2026 were deemed properly filed and served for the purposes of these proceedings. Thus, this decision addresses only the substantive application for conditional leave to appeal.

The Application for Conditional Leave

[9] The substantive application seeking leave to appeal to the Privy Council was supported by an affidavit sworn by the applicant, which exhibited several documents collectively marked as “JB-01”. The applicant sought the following orders:

- (1) “an Order granting conditional leave to appeal to His Majesty in Council against the Order of the Court of Appeal delivered herein on 18th September 2025 affirming the decision of the Honourable Mr. Justice Shawn Innocent, dated 2nd June 2022, pursuant to the provisions of section 72 (1)(a) of the Anguilla Constitution Order, 1982 as amended (the “**Constitution**”);⁵
- (2) if the Court is not satisfied that an appeal shall lie as of right pursuant to section 72 (1)(a) of the Constitution, that the Appellant be granted conditional leave to appeal pursuant to 72 (1)(b) or 72 (1)(c) of the Constitution;
- (3) that Conditional Leave be also granted to appeal against the order for costs;
- (4) that the costs of and occasioned by this motion be costs in the appeal to His Majesty in Council;
- (5) that the order of the Court of Appeal for the payment of costs be stayed; and
- (6) such further or other directions, orders or other relief as the Court shall deem just.”

[10] At the hearing on 12th February 2026, the applicant stated in oral submissions that he no longer intended to rely on the gateway set out in section 72(1)(b) of the **Constitution**, in support of his application, and formally abandoned that ground. It concerned the monetary threshold of XCD2,500.00 or more, in relation to the property, right, or matter in dispute.

[11] In the affidavit in support the applicant contends in summary that the application arises from constitutional proceedings brought under section 16 of the **Constitution**, concerning his arrest without warrant on 7th January 2009, his

⁵ Schedule to The Anguilla Constitution Order 1982 (as amended).

subsequent detention, conviction, and imprisonment for 18 months, and his eventual successful appeal against conviction after serving the sentence.

Applicant's Submissions

- [12] In support of his application, the applicant stated that he was entitled to bring the application, as it arose from constitutional proceedings brought under section 16 of the **Constitution** and his right of appeal to the Privy Council is rooted in sections 72(1)(a) and (c) and 72(2)(a) of the **Constitution**. Further the appeal was against a final decision in civil proceedings from which an appeal lay as of right pursuant to section 72(1)(a) and section 72(1)(c). In the alternative, he sought leave pursuant to section 72(2)(a) of the **Constitution**, contending that the intended appeal raises questions of great general and public importance. He relied on section 3 of the **West Indies Associated States (Appeals to Privy Council)⁶ Order 1967**, to argue that this Court had interfered with findings of fact and with the trial judge's exercise of discretion.
- [13] The applicant further argued that the Court erred in its interpretation and application of section 16 of the **Constitution**, when it treated the mere existence of alternative remedies at common law as an automatic bar to constitutional proceedings. Thus, he says, the Court's conclusion that where such remedies existed, the constitutional enforcement jurisdiction under section 16 could not be invoked, was flawed. The applicant contends that this approach misapplied the authorities relied upon by the Court, including **Timothy Abbott v Attorney General of St Christopher and Nevis**, **Jaroo v Attorney-General of Trinidad and Tobago**,⁷ and **Ramanoop v Attorney-General of Trinidad and Tobago**,⁸ none of which he says established a rigid exclusionary rule. Rather, he submitted that these authorities required an inquiry into whether the circumstances disclosed some feature indicating that

⁶ S.I. 1967 No. 233.

⁷ [2002] UKPC 5.

⁸ [2005] UKPC 15.

ordinary remedies were inadequate, consistent with the '*without prejudice*' wording of section 16(1), under which he initiated the motion.

[14] Section 16(1) states as follows:

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

[15] The applicant submitted that, although the Court acknowledged the existence of the '*special circumstance*' or '*special feature*' test derived from **Ramanoop**, that test was applied in an unduly narrow manner. He argued that the Court focused primarily on the absence of physical brutality comparable to that which obtained in **Ramanoop**, while discounting other alleged features, including the misuse of police and prosecutorial power, prolonged deprivation of liberty, reputational destruction, economic ruin, non-compliance with court orders, and intrusion into legal privilege. He contends that such matters are capable, in principle, of constituting features warranting constitutional vindication, as recognised in **Ramanoop** and **James v Attorney General of Trinidad and Tobago**,⁹ as these cases acknowledged that serious non-physical harm may also justify constitutional relief.

[16] The applicant further submitted that neither the High Court nor this Court determined the foundational issue of whether his arrest was lawful. He argued that, absent such determination, the Court could not accurately assess whether ordinary remedies were adequate or whether the constitutional motion disclosed the features which make recourse to section 16 appropriate. He contends that the failure to examine the lawfulness of the arrest, distorted the assessment of adequacy and abuse.

⁹ [2010] UKPC 23.

- [17] The applicant also advanced a procedural point, that the abuse of process objection was raised at an impermissibly late stage. It was not taken at the commencement of proceedings in 2014 in the court below, or during the appeal. On the contrary, the respondent had previously indicated that the court would not be invited to exercise its discretion under section 16(2). The objection emerged only on remittal. The applicant relied on **Naidike & Ors v Attorney General of Trinidad and Tobago**¹⁰ and the principle in **Henderson v Henderson**,¹¹ which advocates that the entire case should have been put forward at once to ensure finality in the proceedings. He submitted that such objection should have been raised at the outset and it was procedurally unfair and inconsistent with the principle of finality to entertain it at that stage.
- [18] Additionally, the applicant submitted that the intended appeal raised important unresolved questions of law in Anguilla, including whether PACE is extended to Anguilla by virtue of section 47¹² of the **Anguilla Criminal Procedure Act**.¹³ He argued that there existed conflicting High Court decisions on this issue, namely **Shayne Richardson v Attorney General of Anguilla et al**¹⁴ and **R v Diayan Austin et al**,¹⁵ which require authoritative resolution.
- [19] For these reasons, the applicant says that the judgment which he seeks to appeal involved serious and arguable errors of constitutional interpretation, an unduly restrictive approach to section 16, and procedural unfairness. He further contends that the issues raised are of great general and public importance and appropriate for determination by the Privy Council.

¹⁰ [2004] UKPC 49.

¹¹ (1843) 67 ER 313.

¹² Laws of England in relation to procedure to apply unless other provision is made.

¹³ Chapter C150, Revised Statutes of Anguilla 2000.

¹⁴ AXAHCV2008/0012 (delivered 7th July 2009, unreported).

¹⁵ AXAHC2018/0009 (delivered 2nd October 2019, unreported).

Respondent's Submissions

- [20] In opposing the application, the respondent submitted that the applicant has not disclosed any proper basis upon which leave, whether as of right or otherwise, should be granted. In rejecting the applicant's characterisation, that the intended appeal was grounded as of right under sections 72(1)(a) or 72(1)(c) of the **Constitution**, or alternatively under section 72(2)(a) on the basis of issues of great general or public importance, counsel for respondent argued that the applicant was proceeding on the mistaken premise that the existence of a constitutional right of appeal automatically entitles him to an audience before the Privy Council.
- [21] The respondent disputed that the requirements of section 72(1)(a) of the **Constitution** were satisfied, stating that constitutional proceedings under section 16 constituted a distinct species of proceedings, separate from civil or criminal proceedings, such that the applicant's reliance on section 72(1)(a) was misconceived. In support of this submission the respondent relied on **Richard Frederick & Another v Comptroller of Customs et al**¹⁶ and **Gairy v Attorney General of Grenada**,¹⁷ which established that constitutional motions are not to be equated with ordinary civil proceedings for the purpose of appellate jurisdiction.
- [22] The respondent further submitted that in any event, the issues raised below did not involve questions on the interpretation of the **Constitution** within the meaning of section 72(1)(a). Further, the determination of whether an arrest was lawful, including any consideration of the relevance of PACE or the application of Wednesbury reasonableness,¹⁸ did not amount to constitutional interpretation but rather concerned the application of settled legal principles to the facts of a case.
- [23] The respondent accepted that insofar as the judgment arose from an originating motion brought under section 16, it was final and satisfied the formal requirements

¹⁶SLUHCVP2008/037(delivered 6th July 2009, unreported).

¹⁷ [2002] 1 AC 167.

¹⁸ A test established in the case of *Associated Provincial Picture Houses Ltd v Wednesbury Corp*n [1948] 1 KB 223.

for an appeal as of right under section 72(1)(c). However, notwithstanding that the section may apply, the existence of an appeal as of right does not deprive this Court of its supervisory jurisdiction. The respondent submitted that Orders in Council, including the **Anguilla (Appeals to Privy Council) Order 1983**,¹⁹ preserved the Court's power to impose conditions and to ensure that an appeal raised a genuinely disputable issue, in order to proceed. In this regard, the respondent relied on **William Martin v Ursil Peters**,²⁰ **A v R (Guernsey)**,²¹ and **Meyer v Baynes**,²² which confirm that an appellate court may dismiss an application for leave where no genuinely disputable issue arises, even where an appeal exists as of right.

[24] The respondent submitted that no genuinely disputable issue arises in the present case because the constitutional jurisdiction of the Court was erroneously invoked in the first place. Strong reliance was placed on the dictum of Lord Diplock in **Harrikissoon v Attorney General of Trinidad and Tobago**,²³ which cautions against the misuse of constitutional proceedings as a substitute for ordinary judicial remedies and recognises that such proceedings may properly be struck out as an abuse of process where they are frivolous, vexatious, or designed to avoid normal procedures.

[25] Regarding the alternative ground under section 72(2)(a), the respondent submitted that there was no basis upon which leave may be granted in relation to an issue of great general or public importance, as the judgment was not a final decision in civil proceedings, but rather a final decision in constitutional proceedings under section 16. Reliance was again placed on **Gairy** and **Richard Frederick** referenced above, and the respondent distinguished earlier decided cases such as **Coard & Others v Attorney General of Grenada**,²⁴ submitting that the earlier cases had failed to

¹⁹ S.I. No. 1109 of 1983.

²⁰ ANUHCVP2004/0036 (delivered 17th September 2007, unreported).

²¹ [2018] UKPC 4.

²² [2019] UKPC 3.

²³ [1980] AC 265.

²⁴ [2007] UKPC 7.

appreciate the distinction between constitutional motions and civil proceedings and have since been overtaken by later higher authority.

- [26] Additionally, the respondent submitted that even if it could be said that jurisdiction existed, no question of great general or public importance arose. Applying the test articulated in **Martinus Francois v Attorney General of St Lucia**,²⁵ the respondent contends that the issues raised did not concern unsettled constitutional provisions, disputed areas of law, or questions with serious consequences for the public at large. Rather, the applicant's proposed questions concerned whether a lacuna existed in the law governing lawful arrest and whether this Court may regulate its own process.
- [27] Concerning lawful arrest, the respondent submitted that no lacuna exists, and the law governing arrest in Anguilla is well settled, drawing on constitutional, legislative, and common law principles. The respondent cited **Davis Fleming v Attorney General of Anguilla**,²⁶ which affirms that police officers have authority to arrest without warrant where there is reasonable cause to believe an arrestable offence has been or is about to be committed. The respondent also submitted that section 47 of the **Criminal Procedure Act** may only be engaged in the absence of domestic procedural law and was not applicable to the instant case.
- [28] The respondent further submitted that the applicant's reliance on **Shayne Richardson v Attorney General of Anguilla** and **R v Diayan Austin** was misplaced, because neither case established the applicability of PACE to Anguilla, nor did they create any conflict in relation to the lawfulness of arrest. On the contrary, **Diayan Austin** expressly held that PACE was not applicable to Anguilla and has not been received into law. The respondent further relied on **Panacom International Inc v Sunset Investment Ltd**²⁷ and **Veda Doyle v Agnes**

²⁵ SLUHCVP2003/0037 (delivered 29th March 2004, unreported).

²⁶ AXAHCVP2023/0018 (delivered 18th July 2025, unreported).

²⁷ SVGHCVP1992/0014 (delivered 19th September 1994, unreported).

Deane²⁸ to emphasise that reception provisions such as section 47 of the **Criminal Procedure Act** are limited to procedural matters and do not import English substantive law.

[29] Regarding the regulation of process, the respondent contended that it is beyond dispute that this Court possessed inherent jurisdiction to control its own proceedings and to make any order that ought to have been made below. Reliance was placed on **Danone Asia PTE Ltd et al v Golden Dynasty Enterprise Ltd et al** for that submission.²⁹ Counsel submitted that the applicant cited no authority to the contrary and that the issue is devoid of merit. Counsel further reiterated that the case of **Timothy Abbott** was dispositive of the abuse of process analysis in the present case.

[30] In conclusion, the respondent submitted that the application disclosed no genuinely disputable issue of law, that the Court lacked jurisdiction to grant leave under section 72(2)(a) of the **Constitution** and that no question of great general or public importance has arisen. The respondent accordingly urged the Court to dismiss the application in its entirety.

Analysis

[31] The central question for this Court was whether the applicant satisfied any of the requirements under section 72 of the **Constitution**, to justify granting conditional leave to appeal to the Privy Council. In the regard, the Court was required to examine whether the proposed appeal raised: (i) a genuine question of constitutional interpretation under section 72(1)(a); or (ii) a subsisting appeal as of right, properly invoked under section 72(1) (c); or (iii) a question of great general or public importance under section 72(2)(a).

²⁸ (2012) 82 WIR 287.

²⁹ BVIHC VAP2009/0002 (delivered 28th September 2009, unreported).

[32] In considering these matters, the Court remained mindful that the mere filing of a constitutional motion does not, by itself, entitle a litigant to further appellate review. The statutory requirements must be substantively met, and satisfaction in form only is insufficient.

[33] The applicable statutory provisions are reproduced below:

“72. (1) In the following cases, an appeal shall lie from decisions of the High Court to the Court of Appeal and thence to Her Majesty in Council as of right, that is to say—

(a) final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;

(b) final decisions in any civil proceedings where the matter in dispute on the appeal is of the value of XCD\$2,500 or upwards or where the appeal involves, directly or indirectly a claim to or a question respecting property or a right of the value of XCD\$2,500 or upwards;

(c) final decisions in proceedings under section 16 of this Constitution;

(d) final decisions in proceedings for dissolution or nullity of marriage; and

(e) in such other cases as may be prescribed by the Legislature.

(2) In the following cases, an appeal shall lie from decisions of the High Court to the Court of Appeal with the leave of the High Court or of the Court of Appeal and hence to Her Majesty in Council with the leave of the Court of Appeal, that is to say—

(a) where the decision appealed against is a final decision in civil proceedings and, in the opinion of the court giving leave, the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Court of Appeal or to Her Majesty in Council, as the case may be; and

(b) in such other cases as may be prescribed by the Legislature.”
(Emphasis added)

Section 72(1)(a) - Final Decisions, in any Civil or Criminal Proceedings, on Questions as to the Interpretation of the Constitution

[34] Regarding section 72(1)(a), it could not be said that the judgment was a final decision in civil or criminal proceedings. It is well settled that constitutional motions which seek redress against the state, are designed to protect fundamental rights against abuse by the state. As such, they are special and distinct from ordinary civil proceedings which settle private disputes, or criminal proceedings which are generally investigated and instituted by the state. The distinction has been affirmed in several decisions of this Court, of which **Richard Frederick et al** is one such decision.

[35] Further, the Court was not satisfied that the judgment raised any issue of constitutional interpretation. The intended appeal stems from the Court's finding that the applicant's constitutional motion constituted an abuse of process, given the availability of adequate alternative remedies in private law, that he could have pursued. That conclusion was reached by applying settled legal principles to the applicant's pleaded case. It did not require construing any uncertain constitutional provision, but rather applying well settled law governing the proper invocation of the constitutional enforcement jurisdiction under section 16. The mere fact that the proceedings were brought under section 16 did not convert what was a matter of procedural determination in the judgment into one of constitutional interpretation.

[36] The Court was therefore satisfied that no novel or unsettled issue of constitutional construction arose, the matter did not involve any question of constitutional interpretation, and consequently section 72(1) (a) was not engaged.

Section 72(1)(c) - Final Decisions in Proceedings under Section 16 of the Constitution

[37] Regarding section 72(1)(c), while it is accepted that the proceedings originated under section 16, and section 72(1)(c) grants an appeal as of right in proceedings under that section, the right does not operate automatically or mechanically. An appeal as of right does not mean that the Court has no control over the appeal, and

it has been said that a court of appeal has power to ensure that there is a genuinely disputable issue within the category of cases which are given an appeal as of right.³⁰

[38] This Court remained cognisant of the settled position that even where an appeal lies as of right, it retains a supervisory and policing function to prevent misuse of the appellate process. The most recent pronouncement on the correct test to be applied by this Court when considering whether permission ought to be given in an appeal as of right, is found in **Hawkins v Abarbanel**³¹ where the Privy Council stated that the threshold is low bearing in mind that there is a statutory appeal as of right. Nonetheless, the local court of appeal may refuse permission if the appeal raises no genuinely disputable issue, is devoid of merit, has no prospect of success, or the appeal is otherwise an abuse of process.

[39] Thus, in circumstances where the underlying proceedings have been found to be an abuse of process, as in the present case, and in particular where no substantive or genuinely disputable constitutional question arose or remained open for determination, a final decision in relation to a motion under section 16 could not, without more, compel the grant of conditional leave.

[40] In considering the proposed appeal under this limb, the Court was mindful that in **Michael J Prest v Magistrate District "C" et al**³² this Court emphasised that the character of proceedings is determined by its substance, not its label. The mere invocation of constitutional language does not transform what would ordinarily be private law proceedings into a distinct constitutional cause. Moreover, it was said there, that matters falling within the criminal justice process are ordinarily to be addressed within that framework and not displaced by parallel supervisory proceedings.

³⁰ A v R (Guernsey) [2018] UKPC 4

³¹ [2025] UKPC 58 at paragraphs 65-66

³² NEVHCVAP2022/0003 (delivered 16th April 2024, unreported) at paragraphs 18 to 20, 31 to 33, 45 to 46 and 73.

- [41] Similarly, in **Rubis Bahamas Limited v Lillian Antoinette Russell**,³³ the Court of Appeal of the Bahamas cautioned against expanding statutory appellate jurisdiction beyond its proper limits, stating that jurisdictional thresholds are to be applied with discipline and fidelity to the statutory scheme. That caution applies with equal force here. The present application effectively seeks to recharacterize a matter already governed by ordinary legal processes so as to secure appellate access through a constitutional framing. Such an approach would impermissibly extend constitutional enforcement into territory already regulated by established procedural and remedial structures and should not be countenanced.
- [42] It is trite that the constitutional enforcement jurisdiction must be exercised consistently with the caution expressed by Lord Diplock in **Harrikissoon**. In that case His Lordship warned that constitutional proceedings are not to be deployed as a general substitute for the normal procedures for obtaining redress where adequate alternative remedies exist. The warning remains authoritative and forms an important guardrail against the misuse of constitutional process. The applicant's grievance, which is grounded in allegations of unlawful arrest and detention, is in substance one traditionally addressed through established tortious remedies. This Court determined that the constitutional motion represented an impermissible recasting of a private law complaint. That conclusion was firmly established by the application of settled appellate authority and discloses no arguable constitutional controversy warranting further consideration by way of appeal.
- [43] The applicant contends that the Privy Council's decision in **Ramanoop** is helpful to his application. The Court is of the view that this decision does not dilute the principle articulated in **Harrikissoon**; but instead qualifies it. **Jaroo** and **Ramanoop** both concerned attempts to bring constitutional claims in Trinidad and Tobago. In both cases the claims were struck out as an abuse, with the Privy Council finding that invoking the constitutional procedure was an abuse where another route to remedy existed.

³³ SCCivApp. No. 86 of 2022.

[44] The following passage from the judgment of Lord Nicholls in **Ramanoop**, referring to a dictum of Lord Diplock in the earlier case of **Harrikissoon** is instructive. Lord Nicholls stated thus:

“Speaking in the context of judicial review as a parallel remedy, Lord Diplock warned against applications for constitutional relief being used as a general substitute for the normal procedures for invoking judicial control of administrative action....Lord Diplock observed that an allegation of contravention of a human right or fundamental freedom does not of itself entitle an applicant to invoke the s 14 procedure if it is apparent that this allegation is an abuse of process because it is made “solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right. **In other words, where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process...**”³⁴ (Emphasis added)

[45] The decision in **Ramanoop** does not support the proposition that the mere assertion of a constitutional breach entitles a litigant to bypass ordinary private law remedies. Rather, the Privy Council recognized that constitutional relief including an award of vindictory damages may be appropriate where the circumstances demonstrate that traditional remedies are incapable of adequately vindicating the constitutional right infringed. In **Ramanoop**, Lord Nicholls explained that constitutional damages serve not merely a compensatory function, but a vindictory one: they affirm the importance of constitutional rights and publicly mark the state’s violation of it. However, that jurisdiction is not supplemental in every case of unlawfulness; but rather it arises where the existing legal framework does not sufficiently vindicate the right.

[46] In considering whether the inability to obtain vindictory damages in private law is, without more, sufficient to justify recourse to constitutional proceedings, further

³⁴ [2005] UKPC 15, at paragraphs [24] and [25]

guidance is found in the reasoning of the United Kingdom Supreme Court in **R (Lumba) v Secretary of State for the Home Department**.³⁵ There the court emphasized that even where unlawful executive action is established, damages are not awarded simply to register the court's disapproval of illegality. Compensation in public law claims remains subject to orthodox principles of causation and proof of loss. The court therefore declined to treat the mere fact of unlawful detention under an unpublished policy as automatically attracting substantial damages where the claimant would in any event have been lawfully detained. This decision underscores that vindication of a legal right does not displace established remedial principles nor transform every public law wrong into a claim for constitutional damages.

[47] Taken together, **Ramanoop** and **Lumba** demonstrate that constitutional damages may be awarded where vindication of a fundamental right genuinely requires a remedy unavailable elsewhere. The constitutional jurisdiction is not triggered merely because private law does not employ the language of 'vindicatory damages', nor because constitutional framing may offer strategic advantages. The decisive inquiry is whether the available private law causes of action are incapable of providing adequate redress.

[48] In the present case, the applicant had not established that the private law remedies available whether in tort, or otherwise, were deficient to compensate for proven loss or to otherwise vindicate his interests. The inability to obtain a separately labelled award of 'vindicatory damages' does not, without more, render those remedies constitutionally inadequate. To hold otherwise would risk converting the constitutional enforcement jurisdiction into an alternative parallel forum for ordinary civil disputes simply because the Constitution permits a broader remedial vocabulary. That would be inconsistent with the disciplined boundaries emphasized in **Ramanoop** and with the remedial restraint articulated in **Lumba**.

³⁵ [2011] UKSC 12, at paragraphs [97] to [102].

- [49] Additionally, while **Ramanoop** recognises that constitutional relief may be available notwithstanding parallel remedies, it does not establish a free-standing right to constitutional adjudication whenever fundamental rights are alleged to have been infringed. On the contrary, the Privy Council in **Ramanoop** emphasised the need for special or exceptional features justifying constitutional vindication. That decision has been the subject of careful judicial scrutiny precisely because of the risk that it may be read too expansively. The Court was satisfied that the circumstances of the applicant in the present case did not approach the gravity or exceptional character that engaged the constitutional enforcement jurisdiction in **Ramanoop**. Allegations of unlawful arrest, absent brutality or demonstrable systemic abuse of state power of the type contemplated in that case, would not automatically transform a private law dispute into a constitutional one.
- [50] The Court therefore concluded that the applicant's reliance on **Ramanoop** was misplaced and did not disclose any misinterpretation by this Court, which would warrant further appellate pronouncements.
- [51] In assessing the applicant's arguments, the Court considered the broader jurisprudential principles articulated by the United Kingdom Supreme Court in **Prest v Petrodel Resources Ltd.**³⁶ Although that decision concerned the doctrine of corporate personality, its reasoning is instructive for the present purposes. The Supreme Court cautioned against the unwarranted expansion or distortion of established legal doctrines in order to achieve outcomes not properly grounded within their legal framework. That caution applies with equal force in the constitutional context. The present application seeks, in substance, to extend the constitutional enforcement jurisdiction into territory already governed by established private law remedies. Such recharacterization is impermissible. The applicant's attempt to transmute what is essentially a private law grievance into a constitutional

³⁶ [2013] UKSC 34 at paragraphs [34]-[35].

claim exemplifies the very doctrinal overreach against which superior courts must remain vigilant.

- [52] Similarly, **Rubis Bahamas Ltd** reinforces the inherent jurisdiction of appellate courts to regulate their own procedure and to prevent abuse of process. That authority underscores that appellate courts are not merely administrative gateways to higher tribunals. They possess the ability to ensure that proceedings properly fall within the jurisdiction invoked and that appellate mechanisms are not misused. The Court was therefore entitled and indeed obliged to consider whether the statutory threshold for further appeal was genuinely satisfied, notwithstanding the formal availability of a right of appeal under section 72(1)(c). The proposed appeal has no merit, and the threshold has not been met.

Section 72(2)(a) - Where the Decision Appealed Against is a Final Decision in Civil Proceedings and, in the opinion of the court giving leave, the Question involved in the Appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted...

- [53] Regarding section 72(2)(a), the Court was likewise not satisfied that the proposed appeal raised any question of great general or public importance. The matters advanced by the applicant including the regulation of appellate process, the timing of the abuse of process objections, the applicability of PACE and the alleged existence of a lacuna governing lawful arrest were found to be either settled in principle or fact specific. They did not reveal any uncertainty in the **Constitution** nor any issue of broad public consequence requiring authoritative determination by further appellate intervention. The threshold under section 72(2)(a) is intentionally high. It is not enough for a litigant to characterise his grievance as important; the issue must transcend the parties and present a serious or unsettled question of law which affects the general public as a whole. No such question arose in the present case.

- [54] In **Martinus Francois v The Attorney General**³⁷ cited by the respondent, this Court determined that in construing the phrase “*great general or public importance*”, the Court usually looks for matters that involve a really serious issue of law; a constitutional provision that has not been settled; an area of law in dispute; or a legal question the resolution of which poses dire consequences to the public.
- [55] In **Renaissance Ventures Limited et al v Comodo Holdings Limited**³⁸ this Court aptly stated the position as follows:
- “Where there is no genuine dispute on the applicable principles of law underlying the question which the applicant wishes to pursue on his or her proposed appeal, a question of great general or public importance does not ordinarily arise, especially where the principle of law is settled either by the highest appellate court or by longevity of application....Where, however, the real question on the proposed appeal is the way this Court has applied settled and clear law to the particular facts of the case, or whether a judicial discretion was properly exercised, leave will ordinarily not be granted on this ground. In such a case, the question on the proposed appeal may be of great importance to the aggrieved applicant, but it would not for that reason alone be a question of great general or public importance.”
- [56] Having assessed the relevant statutory criteria under sections 72(1) and 72(2), the settled jurisprudence governing abuse of constitutional process, the limitations articulated in **Ramanoop**, and the Court’s inherent supervisory role as affirmed in **Micheal J Prest, Rubis Bahamas Ltd and Hawkin**, the Court was unanimous in its view that the applicant had not demonstrated any basis upon which further appellate pronouncement is warranted. The proposed appeal disclosed no arguable question of constitutional interpretation, no issue of great general or public importance and no arguable basis for the Court granting conditional leave to review the conclusion that the proceedings below constituted an abuse of process.
- [57] In light of the Court’s determination that the application for conditional leave to appeal to the Privy Council was without merit, the applicant’s request for a stay of the judgment necessarily falls away. As such, there is no basis for suspending the

³⁷SLUHC VAP2003/0037 (delivered 29th March 2004, unreported) at paragraph 13.

³⁸BVIH CMAP2018/0005 & 0008 (delivered on 8th October 2018 at paragraph 10.

operation of the Court's order, and the costs order remains enforceable in accordance with the judgment.

Disposition

[58] For the reasons given above, the following orders made on 12th February 2026 are affirmed:

- (1) The motion for conditional leave to appeal to His Majesty in Council filed on 9th October 2025 is refused.
- (2) No order as to costs.

I concur.
Vicki Ann Ellis
Justice of Appeal

I concur.
Esco Henry
Justice of Appeal

By the Court

Deputy Chief Registrar