

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

GRENADA

GDAHCVAP2016/0001

BETWEEN:

THE PERMANENT SECRETARY OF THE MINISTRY OF FINANCE

Appellant

and

FINANCIAL INVESTMENT AND CONSULTANCY SERVICES LIMITED

Respondent

Before:

The Hon. Mde. Louise Esther Blenman

Justice of Appeal

The Hon. Mr. Mario Michel

Justice of Appeal

The Hon. Mr. Paul Webster

Justice of Appeal [Ag.]

Appearances:

Mr. Thomas Astaphan, QC with him, Mr. Dwight Horsford, Solicitor General and
Ms. Maurissa Johnson for the Appellant.

Mr. James Bristol for the Respondent.

2017: April 5;
2018: March 13.

Interlocutory appeal — Judicial review proceedings — Preliminary point — Whether order of mandamus lies to compel the appellant to make satisfaction of judgment debt — Statutory interpretation — Implied repeal — Whether section 21 of the Crown Proceedings Act of Grenada impliedly repealed by section 41 of the Public Finance Management Act of Grenada — Applicability of generalia specialibus non derogant maxim — Impact of implied repeal of section 21 of Crown Proceedings Act on separation of powers principle

On 21st May 2015, the respondent, Financial Investment and Consultancy Services Ltd., obtained judgment in the High Court against the Crown for the sum of \$3,807,073.00 with interest at 6% per annum. Subsequently, on 2nd July 2015, the Registrar of the High Court issued a certificate in accordance with section 21(3) of the Crown Proceedings Act 1959 (the “CPA”) directing the appellant, the Permanent Secretary of the Ministry of Finance, to pay the judgment debt to the respondent.

The appellant failed to pay the judgment debt or any part thereof. As a result, the respondent commenced judicial review proceedings in the High Court to enforce payment. On 4th November 2015, a judge of the High Court granted leave to the respondent to apply for an order of mandamus requiring the appellant to fulfil his statutory duty by paying the judgment debt. At the first hearing of the claim, the appellant raised a preliminary point that an order of mandamus does not lie to compel him to make immediate payment of the judgment debt.

The learned judge, without giving reasons, dismissed the preliminary point. She proceeded to hear the substantive application for the order of mandamus and ordered the appellant to pay the judgment debt to the respondent forthwith.

The appellant, dissatisfied with the order of the learned judge, appealed against the dismissal of the preliminary point. The main issue arising in this appeal is whether an order of mandamus lies in the circumstances to compel the appellant to make immediate payment of the judgment debt. The resolution of the main issue required the consideration of one sub-issue; namely, whether section 21 of the CPA was impliedly repealed by section 41 of the Public Finance Management Act (the “PFMA”), being the later of the two Acts.

On the issue of implied repeal, the appellant submitted that section 41 of the PFMA created an exclusive and comprehensive procedure for settling judgments debts against the State and it is inconsistent with the procedure in section 21 of the CPA. Further, that as the PFMA is the later Act, the procedure for settling judgment debts against the State in section 41 of the PFMA impliedly repealed the procedure in section 21 of the CPA.

The respondent submitted that the special procedure in section 21 of the CPA should not be treated as impliedly repealed by the discretionary and general provisions of section 41 of the PFMA. This is because section 21 of the CPA deals specifically with civil proceedings to which the Crown is a party and the enforcement of judgments against the Crown, while section 41 of the PFMA addresses the proper management and control of public money and related matters. Additionally, the respondent argued that the general words in section 41 of the PFMA are capable of reasonable and sensible application without extending them to subjects specifically dealt with in earlier legislation. Finally, the provisions of section 41 of the PFMA are not so inconsistent with section 21 of the CPA that the two cannot coexist.

Held: dismissing the appeal against the order of the learned judge and awarding prescribed costs of the appeal to the respondent in the amount of \$5,000.00, that:

1. The test of whether there has been a repeal by implication by subsequent legislation is this: are the provisions of the later act so inconsistent with, or repugnant to, the provisions of the earlier act that the two cannot stand together. The test is subject to the exception embodied in the maxim *generalia specialibus non derogant*.

Churchwardens and Overseers of West Ham v Fourth City Mutual Building Society [1892] 1 QB 654 applied; **Mary Seward v The Owner of the “Vera Cruz”** (1884) 10 App Cas 59 applied; **Kutner v Phillips** [1891] 2 QB 267 applied.

2. There are differences between section 41 of the PFMA and section 21 of the CPA. Notwithstanding the differences between the two provisions, they can operate together and can be given effect to at the same time. Section 21 of the CPA created a comprehensive and specialised procedure for a judgment creditor to obtain prompt payment from the Government of his or her judgment debt by obtaining a certificate of the judgment from the Registrar of the High Court and submitting it to the Attorney General. This is a special procedure and it has not been derogated from by the general provisions of section 41 which deal with the internal mechanism for payments out of the Consolidated Fund. Section 41 says nothing about a third party judgment creditor having to make a claim on the Minister, nor does it direct any prescript in relation to a third party judgment creditor, unlike the specific provision in section 21 of CPA. The exception to the implied repeal principle embodied in the *generalia specialibus non derogant* maxim is therefore applicable and, as a result, section 21 of the CPA was not impliedly repealed by section 41 of the PFMA and continues to be a part of the law of Grenada.

Section 21 of the Crown Proceedings Act, Cap.74, Revised Laws of Grenada 2010 applied; **Section 41 of the Public Finance Management Act**, Act No. 27 of 2007, Laws of Grenada applied; **Churchwardens and Overseers of West Ham v Fourth City Mutual Building Society** [1892] 1 QB 654 applied; **Mary Seward v The Owner of the “Vera Cruz”** (1884) 10 App Cas 59 applied; **Kutner v Phillips** [1891] 2 QB 267 applied; **Gairy (Jennifer) v Attorney General of Grenada (No.2)** (1999) 59 WIR 174 followed; **Ray Sylvester v Keith Mitchell and Minister of Finance** GDAHCV2014/0172 (delivered 23rd July 2014, unreported) considered.

3. An implied repeal of section 21 of the CPA could impact the separation of powers principle. This is because a finding that section 21 of the CPA was impliedly repealed by section 41 of the PFMA would have the effect of removing the court's power to order when a money judgment should be paid, and assigning that power to the Executive pursuant to section 41. An implied repeal of section 21 would have the effect of Executive intervention in the time for payment of monies ordered by the courts to be paid by the Government. It is unlikely that Parliament intended to achieve such a drastic result by an implied repeal of section 21 of the CPA.

Gairy (Jennifer) v Attorney General of Grenada (No.2) (1999) 59 WIR 174 followed.

4. As section 21 of the CPA was not impliedly repealed by section 41 of the PFMA, the learned judge did not err in dismissing the preliminary point. Therefore, an order of mandamus lies to compel the Permanent Secretary of the Ministry of Finance to make immediate payment of the judgment debt to the respondent.

JUDGMENT

- [1] **WEBSTER JA [AG.]**: This appeal concerns the important issue of the availability of the remedy of mandamus against the Permanent Secretary in the Ministry of Finance of the Government of Grenada to compel him to pay forthwith a money judgment obtained by the respondent in the High Court.

Background

- [2] The background to this appeal is short and undisputed. On 21st May 2015 the respondent, Financial Investment and Consultancy Services Ltd., obtained judgment in the High Court against the Crown for the sum of \$3,807,073.00 with interest at 6% per annum from the date of the judgment until payment (the “judgment debt”). On 2nd July 2015, the Registrar of the High Court issued a certificate in accordance with section 21(3) of the **Crown Proceedings Act 1959**¹ (the “CPA”) directing the appellant to pay the judgment debt to the respondent. The appellant failed to pay the judgment debt or any part of it and the respondent commenced judicial review proceedings in the High Court to enforce payment.

Proceedings in the High Court

- [3] On 4th November 2015, a judge of the High Court granted leave to the respondent to apply for an order of mandamus directed to the appellant requiring him to fulfil his statutory duty by paying the judgment debt. The respondent filed its fixed date claim form on 12th November 2015.

¹ Cap.74, Revised Laws of Grenada 2010. Section 21 of the Crown Proceedings Act is set out in paragraph 14 below.

- [4] At the first hearing of the claim, the appellant raised a preliminary point that an order of mandamus does not lie to compel the appellant to make immediate payment of the judgment debt. The hearing was adjourned to allow counsel for the parties to file written submissions on the preliminary point.
- [5] The learned trial judge considered the written and oral submissions of the parties and on 17th December 2015 dismissed the preliminary point and adjourned the first hearing of the claim to 18th February 2016. The judge did not give reasons for dismissing the preliminary point and the written order was not available after the hearing.
- [6] On 4th January 2016, the appellant applied for leave to appeal against the dismissal of the preliminary point. Both before and after filing the application, the appellant made written requests to the Registrar for copies of the learned judge's order and the reasons for her decision. The order was eventually filed on 29th February 2016. The order recited the preliminary point as "[w]hether an order of mandamus lies in the circumstances to compel the permanent secretary of the Ministry of Finance to make immediate payment of the judgment debt determined in the underlying proceedings", and proceeded to dismiss the preliminary point (the "December order").
- [7] The learned judge did not give reasons for her decision, a practice that this Court and the English Court of Appeal has repeatedly criticized.² The parties and the Court are left to speculate as to the judge's reasons for dismissing the preliminary point. Learned counsel for the parties have pursued the appeal on the assumption that the preliminary point was dismissed mainly or entirely because the judge found that section 21 of the CPA was not impliedly repealed by section 41 of the

² See for example Gordon JA in *IPOC International Growth Fund Limited v LV Finance Group Limited* BVI Civil Appeal Nos. 20 of 2003 and 1 of 2004 (delivered 19th September 2005, unreported) and in *Amazing Global Technologies Limited v Prudential Trustee Company Limited* BVIHCVAP2008/008 (delivered 4th May 2009, unreported), and the English Court of Appeal in *Flannery v Halifax Estate Agencies Limited* [2001] 1 WLR 377.

Public Finance Management Act,³ (the “PFMA”). We will do the same. However, that does not assist with determining why the judge found that there was no implied repeal and this Court is forced to apply its reasoning de novo in coming to a decision.

[8] The application for leave to appeal was first considered by a single judge of the Court on 21st January 2016. The single judge adjourned the application on account of the absence of a copy of the December order that the appellant was seeking to appeal.

[9] In the meantime, the appellant applied in the court below for a stay of execution of proceedings in that court pending the determination of the (intended) appeal. The stay application was heard and dismissed by the learned judge on 18th February 2016. The judge also fixed 9th March 2016 for the hearing of the claim.

[10] The appellant did not take the prudent step of amending his pending application for leave to appeal to include an application for a stay of the proceedings in the lower court and to request an urgent hearing of the combined application before any further steps could be taken in the lower court. As a result, when the fixed date claim came on for hearing on 9th March 2016 there was no extant appeal and the only application for a stay of the proceedings had been dismissed by the judge. The judge was therefore entitled to proceed as she did with the hearing of the respondent’s claim for an order of mandamus. Having heard counsel for the parties and considered the matter, the judge ordered the appellant to pay the judgment debt to the respondent forthwith. There is no appeal against this order. This placed the appellant in the tenuous position of pursuing an appeal against the dismissal of the preliminary point when there is a final order granting the substantive relief prayed for by the respondent. I will return to this issue later in this judgment.⁴

³ Act No. 27 of 2007, Laws of Grenada.

⁴ See paragraph 36 below.

- [11] The next step in the proceedings was that on 22nd March 2016 a single judge of the Court of Appeal granted leave to appeal against the December order. The notice of appeal was filed on 13th April 2016.

The appeal

- [12] The main issue in the appeal is the issue recited by the learned judge in the December order, namely, whether an order of mandamus lies in the circumstances to compel the Permanent Secretary of the Ministry of Finance to make immediate payment of the judgement debt. The resolution of this issue involves considering the following sub-issues, namely:

- (i) Whether section 21(3) of the CPA was impliedly repealed by section 41 of the PFMA, being the later of the two Acts. If section 21(3) was not impliedly repealed by section 41 that will be the end of the matter and the appeal will have to be dismissed.
- (ii) If section 21(3) was repealed by section 41 whether the latter section imposed a public duty on the appellant to make immediate payment of the judgment debt.
- (iii) If the answer to the previous question is no, did section 41 place a duty to pay the judgment debt in the circumstances of this case on the Accountant General so that an order for mandamus can no longer properly lie against the Permanent Secretary of the Ministry of Finance.

The answer to these questions and the resolution of the main issue call for detailed consideration of the relevant provisions of the CPA, in particular section 21, and the PFMA, in particular section 41. The relevant parts of these provisions are set out below.

The Crown Proceedings Act

[13] The CPA has its origins in the **Crown Proceedings Act 1947** of the United Kingdom. The UK Act was passed because of what was seen then as the need to remove certain privileges from suit that attached to the Crown and certain impediments to bringing civil claims against the Crown.

[14] The Grenada CPA was passed 12 years later in 1959. It was modelled on the UK Act and its objects were the same (per Lord Bingham of Cornhill in **Gairy (Jennifer) v Attorney General of Grenada (No. 2)**).⁵ Having established in the early sections of the Act that the Crown is no longer immune from civil and tortious liability, section 21, with marginal note “Satisfaction of orders against the Crown”, provides:

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

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

(2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.

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

Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole or any amounts

⁵ (1999) 59 WIR 174.

payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such directions to be inserted therein.

(4) Save as aforesaid no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Crown, or in a ministry or government department, or any officer of the Crown as such, of any such money or costs.”

In summary, section 21 established a specific procedure for persons with money judgments against the Crown to recover from the Crown any monies that are ordered to be paid by the court. The judgment creditor, having obtained judgment, can apply to the court at any time after the expiration of 21 days after judgment was delivered for a certificate containing the particulars of the judgment. The certificate must be served on the Attorney General and upon service, the Permanent Secretary in the Ministry of Finance shall pay the amount appearing in the certificate with interest (if any) to the judgment creditor.

- [15] Section 21 was considered by this court in the **Jennifer Gairy**⁶ case. The judgment of the court was delivered by Sir Dennis Byron, Chief Justice, and although the Privy Council allowed an appeal against his judgment, the dictum of the Chief Justice still provides good guidance for the interpretation of section 21. The Chief Justice set out section 21 in full and commented on it in paragraph 30 of his judgment under the heading “Enforcing money orders against the Crown”:

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

⁶ supra note 3.

- [16] I agree with and adopt the comments of Byron CJ regarding the meaning and effect of section 21 of the CPA, in particular that the section imposes a “specific statutory duty enforceable by mandamus on a public official”.
- [17] Section 21 is in the same terms as section 25 of the UK CPA. A similar provision also appears in the Crown Proceedings Acts of other states and territories of the Eastern Caribbean. This section has stood the test of time and has been relied on by litigants in the Eastern Caribbean to enforce (with varying degrees of success) payment of monies ordered by the courts to be paid by the Crown. The section was referred to without demur by the High Court of Grenada in **Ray Sylvester v Keith Mitchell and Minister of Finance** (Mohammed J),⁷ albeit on the point of the requirement for the judgment creditor making a prior demand for payment of the court’s certificate, and by the Court of Appeal and Privy Council in the **Jennifer Gairy**⁸ case.

Section 41 of the Public Finance Management Act

- [18] On 1st July 2008 Parliament in Grenada enacted the PFMA. The preamble to the Act reads:
- “An Act to provide for the proper management and control of public money, public property and the control of other resources, and to provide for matters connected therewith and incidental thereto.”
- [19] The appellant relied on section 41 to submit that it impliedly repealed section 21(2) of the CPA. Section 41 insofar as it is material to this appeal reads:
- “41(1) Subject of this section, the Accountant General may, on the direction of the Minister acting on the advice of the Attorney General, pay the following claims out of the Consolidated Fund –
- (a) money required to be paid by the Government by an order of a court;
 - (b) money required to be paid by the Government by an order of a tribunal;
 - (c) an award by an arbitrator against government.”

⁷ GDAHCV2014/0172 (delivered 23rd July 2014, unreported).

⁸ *supra* note 3.

(2) In this section “designated authority” means the Minister except to the extent that he or she has delegated his or her authority to public officer, in which case the delegate, to the extent of the delegation, is a designated authority in addition to the Minister; and
“an order of a court” includes a judgment, decree or rule.

(3) ...

(4) ...

(5) ...

(6) No payment shall be made out of the Consolidated Fund in respect of a claim under subsection (1) or (4) that is in excess of the amount available in an appropriation for the purpose.”

[20] In my view, section 41 sets out a procedure for the payment from the Consolidated Fund as a matter of internal governmental management. The section does not affect, far less displace, the Permanent Secretary’s obligation to pay a third party judgment creditor’s debt upon presentation of the Registrar’s certificate.

[21] The main differences between this section and section 21 of the CPA are:

- (i) the paymaster is the Accountant General as opposed to the Permanent Secretary of the Ministry of Finance, in section 21 of the CPA;
- (ii) the Accountant General acts on the direction of the Minister of Finance who in turn acts on the advice of the Attorney General;
- (iii) the Accountant General has a discretion in deciding when to pay the amount ordered by the court; and
- (iv) fundamentally, no payment can be made out of the Consolidated Fund in respect of an order for payment that is in excess of the amount available in an appropriation for the purpose.

Counsel’s submissions

[22] Lead counsel for the appellant Mr. Thomas Astaphan, QC submitted that section 41 of the PFMA created an exclusive and comprehensive procedure for settling court judgments against the State and that its provisions are inconsistent with the

equivalent provisions in section 21 of the CPA. The PFMA, being the later enactment, has the effect of impliedly repealing section 21 of the CPA to the extent of the inconsistency. In short, the procedure for settling judgment debts against the State in section 41 impliedly repealed the procedure in section 21.

- [23] Mr. James Bristol who appeared for the respondent submitted that section 21 of the CPA was not repealed by section 41 of the PFMA for two reasons. Firstly, the CPA deals specifically with civil proceedings by and against the Crown and the enforcement of judgments against the Crown. On the other hand, the PFMA is a more general statute dealing with the proper management and control of public money, public property and related matters. The PFMA created a management scheme for the guidance of officers within the Ministry of Finance as opposed to the CPA which provides a procedure for dealing with claims by and against the Crown. Section 21 of the CPA is a special procedure and it ought not to be treated as being impliedly repealed by the discretionary and general provisions of the PFMA. Further, the general words in section 41 are capable of reasonable and sensible application without extending them to subjects specifically dealt with in earlier legislation – *generalia specialibus non derogant* (a general provision does not derogate from a special).

- [24] Mr. Bristol's second submission on implied repeal is that the provisions of section 41 of the PFMA are not so inconsistent with section 21 of the CPA that the two cannot coexist.

Discussion - Implied Repeal

- [25] Mr. Astaphan, QC relied on Code S 87 of **Bennion on Statutory Interpretation**⁹ 5th edition, for a definition of the principle of implied repeal. Code S 87 reads:

“Where a later enactment does not expressly amend (whether textually or indirectly) an earlier enactment which it has power to override, but the provisions of the later enactment are inconsistent with those of the earlier,

⁹ Oliver Jones, *Bennion on Statutory Interpretation* (5th edn, LexisNexis UK 2008) p. 293.

the later by implication amends the earlier so far as is necessary to remove the inconsistency between them.”

I think that this is too simple a definition of implied repeal. The principle does not turn solely on inconsistency between the provisions of the two pieces of legislation. The same passage was updated in the 6th edition of **Bennion** and the passage now reads:

“Where a later enactment does not expressly amend (whether textually or indirectly) an earlier enactment which it has power to override, but the provisions of the later enactment are inconsistent with those of the earlier, the later by implication repeals the earlier in accordance with the maxim *leges posteriores priores contrarias* (later laws abrogate earlier contrary laws). This is subject to the exception embodied in the maxim *generalia specialibus non derogant*.”¹⁰ (underlining added)

I highlight the difference between the two versions of the passage because the addition of the final sentence in the 6th edition is directly relevant to Mr. Bristol’s submission that the exception to the general rule of implied repeal embodied in the maxim *generalia specialibus non derogant* applies in this case. I will return to this point later in the judgment.

[26] The learned editors of **Bennion** proceeded to refer to the judgment of A.L. Smith J in **Churchwardens and Overseers of West Ham v Fourth City Mutual Building Society**¹¹ for the test to be applied to determine whether a later statute has the effect of impliedly repealing an earlier statute. A. L. Smith J stated:

“The test of whether there has been a repeal by implication by subsequent legislation is this: are the provisions of the later Act so inconsistent with, or repugnant to, the provisions of earlier act that the two cannot stand together.”

I think this is a more apt description of the principle of implied repeal. Further, as submitted by Mr. Bristol and confirmed by the authorities, the principle is subject to the exception that a general provision does not derogate from a special provision

¹⁰ Oliver Jones, *Bennion on Statutory Interpretation* (6th edn, LexisNexis UK 2013) p. 279.

¹¹ [1892] 1 QB 654 at p. 658.

(*generalia specialibus non derogant*). This exception was described in the following cases:

- (a) In **Mary Seward v The Owner of the “Vera Cruz”**¹² the Earl of Selbourne LC said:

“Now, if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intent to do so.”

- (b) In **Kutner v Phillips**¹³ AL Smith J said:

“a repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together in which case the maxim “*Leges posteriores contrarias abrogant*” applies. Unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time a repeal will not be implied and special Acts are not repealed by general Acts unless there is some express reference to the previous legislation, or unless there is a necessary inconsistency in the two Acts standing together.”

[27] Based on the authorities cited above, I am satisfied that the test to be applied is that where there is inconsistency between two pieces of legislation the later enactment (in this case the PFMA and in particular section 41) must be so inconsistent with or repugnant to the earlier enactment (in this case section 21 of the CPA) that the two cannot stand together and effect cannot be given to both at the same time. Further, the test is always subject to the exception embodied in the maxim *generalia specialibus non derogant*.

[28] In applying the test for implied repeal to the issues in this case I must also consider the following additional points.

¹² (1884) 10 App Cas 59 at p. 68.

¹³ [1891] 2 QB 267 at p. 27.

[29] Firstly, “[t]he court will not lightly find a case of implied repeal, and the test for it is a high one”.¹⁴

[30] Secondly, if section 21 has been impliedly repealed by section 41, the impact of the repeal on the separation of powers principle. The principle is considered below in paragraph 34.

Applying the test

[31] Turning to the facts of this case I think that the following steps should be considered in determining whether section 21 was impliedly repealed by section 41.

[32] Firstly, is there an inconsistency between section 21 of the CPA and section 41 of the PFMA. It is common ground that there are inconsistencies between the two sections and these were outlined in paragraph 21 above.

[33] Secondly, are the inconsistencies such that section 21 is repugnant to section 41 to the extent that the two sections cannot stand together and effect cannot be given to both of them at the same time? In this regard, I accept Mr. Bristol’s submission that section 21 of the CPA created a comprehensive and specialised procedure for a judgment creditor to obtain prompt payment from the Government of his or her judgment debt by obtaining a certificate of the judgment from the Registrar of the High Court and submitting it to the Attorney General. This is a special procedure and it has not been derogated from by the general provisions of section 41 which deal with the internal mechanism for payments out of the Consolidated Fund. Section 41 says nothing about a third party judgment creditor having to make a claim on the Minister, nor does it direct any prescript in relation to a third party judgment creditor, unlike the specific provision in section 21 of

¹⁴ Per Buxton LJ in *R (on the application of O’Byrne) v Secretary of State for the Environment, Transport and the Regions* [2001] EWCA Civ 499 at para 22.

CPA. I am satisfied that the two sections can operate together and that both can be given effect to at the same time. This finding also captures the exception to the implied repeal rule embodied in the *generalia specialibus non derogant* principle.

- [34] Finally, I have taken into consideration that the implied repeal of section 21 of the CPA could have an impact on the separation of powers principle. In the **Jennifer Gairy**¹⁵ case, Byron CJ stated that when the court makes an order for the payment of money the State should not be able to intervene by determining when that money should be paid.¹⁶ I agree. A finding that section 21 has been impliedly repealed by section 41 thereby taking away the court's power to order when a money judgment should be paid, and putting that power into the hands of the Executive pursuant to section 41, could have the effect of Executive intervention in the time for payment of monies ordered by the courts to be paid by the Government. It is inconceivable that Parliament intended to achieve this drastic result *sub silentio* by an implied repeal of section 21 of the CPA.

Conclusion

- [35] Having considered the evidence, the legal submissions by counsel on both sides and the authorities, I find that section 21 of the CPA was not impliedly repealed by section 41 of the PFMA and section 21 continues to be a part of the law of Grenada. The result of the main issue in this appeal is therefore that an order of mandamus lies to compel the Permanent Secretary of the Ministry of Finance to make immediate payment of the judgment debt to the respondent and I would so order. This finding makes it unnecessary to deal with the second and third sub-issues in paragraph 12 above.
- [36] I mentioned earlier in this judgment that the judge, having dismissed the preliminary point, proceeded to hear the substantive application for the order of mandamus and made the order. There is no appeal against that order. Having

¹⁵ *supra* note 3. The text of the statement by Byron CJ is set out at paragraph 15 above.

found that the judge did not err in dismissing the preliminary point, there is no reason why her final order cannot be enforced.

[37] This result is not as harsh as it may appear to be at first blush. There are situations, and this case may be an example, where the Government is not financially able to satisfy a judgment debt forthwith. In this situation, the Government's recourse is as stated by Lord Bingham of Cornhill in the **Jennifer Gairy**¹⁷ case when His Lordship said at paragraph 31:

"If the exigencies of public finance should prohibit immediate payment to the appellant of the full sum outstanding, the Attorney-General, representing the Minister of Finance, may apply to the judge for approval of payment by instalments."

The Government's financial position in 2015 was set out in the supporting affidavit filed by Mike James Sylvester on 16th December 2015. His evidence is that the Government is unable to pay the respondent's judgment debt. There is no updating evidence as to the Government's current financial ability to honour the judgment debt. In the absence of such evidence, and in any event, it is reasonable to assume that the Government is now in a position to either liquidate the debt or make reasonable arrangements for liquidating it by instalments.

¹⁷ supra note 3.

Order

[38] I would dismiss the appeal against the order made by the learned judge on 17th December 2015 and order the appellant to pay the respondent prescribed costs of the appeal of \$5,000.00, being two-thirds of the costs awarded in the court below.

I concur.
Louise Esther Blenman
Justice of Appeal

I concur.
Mario Michel
Justice of Appeal

By the Court

Chief Registrar