



**CARIBBEAN COURT OF JUSTICE**

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**MEDIA RELEASE**  
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**CCJ DISMISSES APPEAL OF THE ESTATE OF MARJORIE ILMA KNOX;  
CALLS DELAY UNACCEPTABLE**

**Port of Spain, Trinidad and Tobago.** In a judgment released today, the Caribbean Court of Justice (CCJ) dismissed the appeal of the Estate of Marjorie Ilma Knox in the matter of the *Estate of Marjorie Ilma Knox v John Vere Evelyn Deane and others* [2021] CCJ (AJ). However, the CCJ criticised the unacceptable and serious delay of the Court of Appeal of Barbados in delivering its judgment. The CCJ heard the appeal on 16 March 2021.

Marjorie Ilma Knox, deceased, (“Knox”), owed debts to the Respondents by a court order to pay them costs (“the costs”) in different amounts. Payment of the costs remained outstanding, and the respondent Kingsland Estate Ltd. (“KEL”) became indebted to Knox, one of its shareholders, on account of dividends due to Knox. The various respondents applied for a garnishee or attachment order against the dividends. The trial judge ordered that the payment of the costs should be satisfied by attaching the dividends due by KEL to Knox. One of the amounts the judge ordered to be satisfied from the dividends was the amount Knox owed to KEL as part of the costs. The trial judge ordered that KEL could ‘set off’ this sum against its obligation to pay dividends to Knox. Knox appealed.

The Court of Appeal took four years to deliver its judgment. During this time two of the justices of appeal who heard the appeal, Mason JA, and Burgess JA, demitted office. Mason JA became Her Excellency the Governor General of Barbados and Burgess JA became a judge of the CCJ. The Court of Appeal pronounced a judgment on 26 June 2020. The Court of Appeal dismissed Knox’s appeal against the attachment order. Both retired judges concurred with the reasons and the result and signed the judgment.

Knox appealed to the CCJ on two procedural grounds: concerning the steps taken by the judge in making the attachment order to use the dividends to pay the costs and the order for “set off,” allowing KEL to withhold the money it owed to Knox as payment. Knox further appealed on a constitutional ground, concerning the right to a fair trial, judicial delay and the separation of powers.

Knox submitted that the trial judge made an error on procedural grounds by failing to order that certain identified third parties should be served with the application. Knox claimed that these third parties owned the beneficial interest in the dividends. None of the third parties ever made an application to intervene in these proceedings. In respect of the alleged third-party rights, in a judgment authored by the Hon. Mr Justice Barrow, the Court found that the Court of Appeal correctly decided that the trial judge was right to refuse service of the application on the third parties. Such an order would have needlessly delayed the application for the attachment order to take the dividends that was before the judge. Knox was neither entitled to apply to 'join' them 'as interveners,' nor advance arguments on their behalf. In respect of the order that KEL could 'set off' the debt owed to it by Knox, the Court found that KEL was entitled, as of right, to withhold what Knox owed to KEL from what KEL owed to Knox and it did not matter that the judge used the term "set off". The Court found that the appeal fails on both procedural grounds.

In respect of the constitutional ground, Knox argued that the Court of Appeal's judgment was a nullity because the authority of the retired judges to act as appellate judges had expired and they had not re-taken the oath of judicial office before delivery of the judgment. Knox also argued that at the time when the judgment was delivered, the former Mason JA had become the Governor General, this meant the Bench that gave the decision was not an independent and impartial tribunal as it then comprised a member of the Executive branch of government. This circumstance, it was said, created a breach of the principle of separation of powers.

In a judgment authored by the Hon. Mr Justice Saunders, the Court found that the Constitution empowers a person to sit as a judge for the purpose of delivering judgment or doing any other thing concerning proceedings which were commenced before them before their resignation without re-appointment or re-taking of the judicial oath. The CCJ found that the Court of Appeal did not breach the principle of separation of powers and remained independent and impartial. Everything that the former Mason JA did in relation to the judgment was done as a former judge and not in her capacity of Governor General. There was no evidence to suggest that the former judge channelled any executive authority or exercised any executive power or discretion. The Court found that on the constitutional ground the appeal also fails.

The Court, commented that the delay by the Court of Appeal in delivering the judgment was serious and unacceptable. However, the Court found that the delay did not prejudice the ability of the Court of Appeal to render its decision.

In a concurring judgment the Hon. Mr Justice Jamadar commented on sections 18 and 84 of the Constitution of Barbados as they relate to delay in the delivery of judgments, finding that based on an outer time standard of reasonableness for the delivery of judgments of six months, this delay of four years was unacceptable. In cases such as this, the expected minimum should be an explanation of the delay to the parties and an appropriate apology. These would not exempt the default, but maybe they could rescue in some small measure, public trust and confidence in the administration of justice in Barbados.

Therefore, Knox's appeal was dismissed, and the orders of the Court of Appeal of Barbados affirmed. The Court was presided over by the Hon. Mr Justice Saunders, President and the Hon. Justices Wit, Rajnauth-Lee, Barrow and Jamadar . The Appellant was represented by Mr Alair Shepherd QC, Mr Philip McWatt and Ms Sumaya Desai. Ms Doris Moore represented the Second Respondent. Mr Leslie Haynes QC and Mr Kashawn Wood represented the Ninth Respondent. Mr Barry Gale QC and Mrs Laura Harvey-Read represented Tenth Respondent.

The full judgment of the Court is available on the Court's website at [www.ccj.org](http://www.ccj.org)

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#### About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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