



## CARIBBEAN COURT OF JUSTICE

134 HENRY STREET  
PORT OF SPAIN  
REPUBLIC OF TRINIDAD AND TOBAGO  
Telephone: (868) 623-2CCJ Fax: (868) 624-4710  
Website: [www.ccj.org](http://www.ccj.org)

**MEDIA RELEASE**  
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### **CCJ AGREES PETITIONERS HAVE NO RIGHT OF APPEAL**

**Port of Spain, Trinidad and Tobago.** On 5 July, the Caribbean Court of Justice (CCJ) dismissed an application for special leave to appeal against the decision of the Court of Appeal of the Eastern Caribbean Supreme Court in the Dominican case of *Cuffy and Others v Skerrit and Others* [2022] CCJ 12 (AJ) DM. The CCJ agreed with the Court of Appeal that the Petitioners who challenged the results of the last General Elections by way of election petitions, had no right to appeal the decision of the High Court judge to strike out their petitions.

After the Dominica General Elections on 6 December 2019, the Petitioners filed ten (10) election petitions claiming that the elections were conducted in a manner contrary to established electoral laws and regulations. The respondents applied to strike out the petitions. They submitted that the petitions lacked sufficient details. The trial judge agreed with the respondents and struck out the petitions.

The Petitioners sought to appeal the decision of the trial judge. The respondents raised the issue that the Court of Appeal had no authority to hear the appeal. They stated that ss 40(6) and (7) of the Constitution only permit appeals against a final decision in law. However, the decision of the trial judge was not final, it was what the law refers to as “interlocutory.” This means that the trial judge dismissed the petitions at an intermediate stage and as such, he did not determine the merits of the petitions. Consequently, there could be no right to appeal the decision. The Court of Appeal agreed with the respondents and declined to hear the appeal.

The Petitioners applied to the CCJ for special leave to appeal the Court of Appeal’s decision. The CCJ in a judgment authored by Mr Justice Saunders, President of the Court, held that in order to determine what is a *final* decision in ss 40(6) and (7) one must look at the meaning, aim, history, rationale and context of those constitutional sub-sections. The CCJ noted the numerous Commonwealth Caribbean cases which stated that election petitions must be determined promptly so that the legitimacy of a government does not remain in question.

The CCJ found that the trial judge did not determine the merits of the petitions. In other words, he did not reach the stage where he would have determined the question of whether a candidate was validly elected or not. Instead, he struck out the petitions on procedural grounds. Accordingly, the decision of the trial judge was not *final*, but *interlocutory*.

The CCJ further noted, however, that the Constitution guarantees every person in Dominica the right to a fair hearing within a reasonable time by an independent and impartial tribunal. A very high value is placed on that right. Therefore, if a Petitioner complains at a stage before the trial of their petition (an interlocutory stage), that their right to a fair hearing was violated, then the Court of Appeal should assume the authority to hear that complaint. Nevertheless, the CCJ took the view that in this case, no issue arose as to whether the Petitioners had not received a fair hearing.

Mr Justice Jamadar in his concurring opinion found that the right to be registered to vote is at the heart of free and fair elections. A complaint which appeared in most of the petitions was that the election officials failed to use the revised annual list and supplementary register as required by law. The trial judge even acknowledged the clear failure to follow that law. Mr Justice Jamadar found that on constitutional grounds, the Court of Appeal arguably may have had jurisdiction to hear the appeal, irrespective of whether the decision was considered to be final or not. However, except for what he called, this small nuance, he basically agreed with the Court's decision.

Consequently, the CCJ refused the application for special leave and thus upheld the orders of the Court of Appeal. No order as to costs was made, since the CCJ considered that efforts by the citizenry, in good faith, to call attention to perceived deficiencies in the electoral process, should not be discouraged.

The members on the Bench were the Honourable Mr Justice Adrian Saunders, President of the Court, sitting with the Honourable Justices Wit, Anderson, Rajnauth-Lee and Jamadar. The Applicants/Petitioners were represented by Mr Alair Shepherd QC, Ms Zahidha James and Ms Najmah Reece. The first respondent was represented by Mr Anthony Astaphan SC, Mr Lennox Lawrence and Ms Jodie Luke. The second, third, fourth, seventh and eighth respondents were represented by Ms Heather Felix-Evans. The ninth respondent was represented by Mr Anthony Astaphan SC and Mr Stephen Isidore. The tenth, eleventh and twelfth respondents were represented by Mr Levi Peter, the Attorney General, Mrs Vanica Joseph and Ms Nadira Lando.

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.

For more information please contact:  
The Public Education & Protocol Unit  
Tel: (868) 623-2225 exts. 2296, 2246  
Email: pecu@ccj.org