



CARIBBEAN COURT OF JUSTICE

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CCJ SAYS COURT OF APPEAL OF GUYANA HAS NO JURISDICTION IN ELECTION PETITION MATTER

Port of Spain, Trinidad and Tobago. Today, the Caribbean Court of Justice (CCJ) allowed the appeal against the decision of the Court of Appeal of Guyana in the consolidated appeals *Attorney General of Guyana v Monica Thomas & Others; Bharrat Jagdeo v Monica Thomas & Others* [2022] CCJ 15 (AJ) GY. The CCJ disagreed with the majority of the Court of Appeal that it had jurisdiction to entertain an appeal from a decision of the Chief Justice, sitting in the High Court, dismissing an election petition for improper/late service.

After the General and Regional Elections were held in Guyana on 2 March 2020 and the results declared in August 2020, Election Petition 99P/2020 was filed by the petitioners, Monica Thomas and Brennan Joette Natasha Nurse (now First and Second Respondents). They challenged the validity of the election, seeking an order that the election be deemed unconstitutional, null, void and of no legal effect.

The petition was heard by Chief Justice (Ag.) Roxane George. At the case management stage, the Chief Justice raised the issue of whether Mr David Granger, Representative of A Partnership for National Unity and Alliance for Change, was a proper and necessary party to the petition. The Chief Justice also raised the question of whether he had been properly served within the required statutory period. Mr Granger should have been served by 21 September 2020, but was, in fact, served on 25 September 2020. Accordingly, the Chief Justice dismissed the petition, ruling that it was a nullity.

The petitioners appealed the decision of the Chief Justice. However, the Attorney General and Mr Bharrat Jagdeo objected on the ground that the Court of Appeal lacked jurisdiction to hear the appeal. They argued that Article 163 of the Constitution creates a regime for hearing election petitions, and only provides two circumstances for appeal: one, an appeal from a decision of the judge granting or refusing leave to institute proceedings to determine questions stated in Article 163(1) of the Constitution and two, an appeal from the determination of any of those questions in Article 163(1) or an order made in consequence of such determination. The Attorney General and Mr Jagdeo argued that the Chief Justice's decision did not fall into either circumstance. Therefore, Ms Thomas and Ms Nurse had no right to appeal the decision. The majority of the Court of Appeal disagreed, holding that it did have jurisdiction to hear the appeal.

The judgment of the Court was delivered by Anderson JCCJ, with whose reasoning Wit JCCJ and Rajnauth-Lee JCCJ, agreed. The majority disagreed with the Court of Appeal, finding that the Court of Appeal lacked jurisdiction to hear the appeal. Justice Anderson explained that Article 163 of the Constitution, the National Assembly (Validity of Elections) Act and the National Assembly (Validity of Elections) Rules establish a comprehensive regime for challenges to an election. Election Petition 99P/2020 had to be determined in accordance with this framework, including whether there was compliance with the provisions for service of the petition. The Court emphasised that Article 163(3) of the Constitution limits the right to appeal decisions of the High Court in election petitions to only two circumstances. The decision of the Chief Justice to strike out the petition on the basis that there was improper/late service on Mr Granger did not fall into either of those circumstances, and, thus, an appeal was not possible.

Furthermore, jurisdiction could not be founded in Article 123 of the Constitution and section 6 of the Court of Appeal Act since the special elections jurisdiction created by Article 163 of the Constitution, the Act and Rules must prevail over the general “civil law proceedings” jurisdiction contemplated by Article 123 and Section 6(2) of the Court of Appeal Act. Further, the principle that general provisions of the Court of Appeal Act must yield to specific provisions in Article 163 is fundamental. Lastly, any tension between Article 163 of the Constitution and Section 6(2) of the Court of Appeal Act concerning the election jurisdiction must, naturally, be resolved in favour of the Constitution. The Court noted that there may be a rare exception to the rule as to the Court of Appeal’s jurisdiction in order to maintain the integrity of the Constitution, a possibility considered by the CCJ in *Cuffy v Skerritt*. However, there was no real suggestion from the Respondents that the Chief Justice’s decision could support an argument that could possibly justify invocation of this exception.

In his own opinion, Barrow JCCJ agreed that the Court of Appeal lacked jurisdiction, but for different reasons. He argued that it must be considered that while exclusive jurisdiction is given to determine election petitions, the Court’s general jurisdiction is not excluded from operating when the issue being determined is not a question under Article 163(1). In this case, the Chief Justice’s decision to dismiss the petition as a nullity was an ordinary question of law regarding service as required under the National Assembly (Validity of Elections) Act and the National Assembly (Validity of Elections) Rules. Article 163(4) gave power to Parliament to create legislation with respect to the High Court’s practice and procedure in relation to the jurisdiction and powers conferred upon it by or under Article 163(4)(c).

In crafting these legislative provisions, the Parliament of Guyana included section 42 of the National Assembly (Validity of Elections) Act and rule 21 of the National Assembly (Validity of Elections) Rules, which gave the court the same powers, jurisdiction and authority in election petitions ‘as if the proceedings were an ordinary action’. These provisions are relevant to answering the question of whether the decision to dismiss the petition is subject to the High Court’s general jurisdiction in the same way as an ordinary action. In any event, several indications made it clear that the Chief Justice’s order dismissing the petition was an order of a High Court judge made in chambers and for this type of order, no right of appeal is given to the Court of Appeal, according to section 6(2)(a)(i) of the Court of Appeal Act. The result, therefore, was that the purported appeal against the dismissal by the Chief Justice of the petition as a nullity was, itself, a nullity because there was no right of appeal to the Court of Appeal, to begin with.

In a separate opinion, Jamadar JCCJ agreed with Justice Barrow’s decision. He further observed that in Guyana, the deep basic structure and core constitutional values and principles to be found in Guyanese constitutionalism should guide a court when faced with choices as to multiple interpretations of statutory provisions. This is especially true in relation to provisions that implicate

core constitutional values such as free and fair parliamentary elections. He suggested that the narrow jurisdictional issue in this appeal needs to be placed, contextualised, and understood through the lenses of democratic governance in Guyana, the role of the Courts, and the learning to be found from various constitutional authorities and authorities on the election petition jurisdiction.

Consequently, the CCJ allowed the appeal and set aside the decision of the Court of Appeal. The Court ordered that each party should bear its own costs.

The matter was heard by the Honourable Justices Jacob Wit, Winston Anderson, Maureen Rajnauth-Lee, Denys Barrow and Peter Jamadar.

The Attorney General, Mr Mohabir Anil Nandlall SC, Mr Nigel O Hawke, Ms Prithima Kissoon, Ms Shoshanna Lall, Ms Raeanna Clarke, Mr Chevy A Devonish and Ms Asasha Ramzan appeared for the Attorney General, and Messrs Douglas Mendes SC, Rishi Dass, Devindra Kissoon, Clay Hackett and Ms Natasha M Vieira appeared for Bharrat Jagdeo. Messrs John S Jeremie SC, Roysdale Alton Forde SC, Khemraj Ramjattan, Bonar M E Robertson, Selwyn Pieters and Keith Scotland appeared for Monica Thomas and Brennan Joette Natasha Nurse; Mr Kurt Da Silva for the Chief Elections Officer; Mr Basil Williams SC for David Granger; Mr Timothy M Jonas SC for Asha Kissoon; Mr Ganesh A Hira for Vishnu Bandhu; Mr Kamal Ramkarran for Jonathan Yearwood; and Messrs Kashir A Khan, Mohamed S.G.F. Khan, Ivan A. Alert, Mr Joshua Abdool and Kalesh Loakman for Shazam Ally.

The full judgment of the Court and judgment summary are available on the CCJ's website at 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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