IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF THE EASTERN CARIBBEAN SUPREME COURT (SAINT LUCIA)

CCJ Appeal No LCCV2025/002
LC Civil Appeal No SLUHCVAP2023/0025

BETWEEN

ALLEN CHASTANET	**APPELLANT**

AND

COMPTROLLER OF CUSTOMS	**FIRST RESPONDENT**

AND

PAUL NOEL	**SECOND RESPONDENT**

Before:	**Mr Justice Anderson, President** **Mme Justice Rajnauth-Lee** **Mr Justice Barrow** **Mme Justice Ononaiwu** **Mr Justice Eboe-Osuji**
Date of Judgment:	**15 October 2025**

Appearances

Mr Garth Patterson SC, Mr Mark Maragh, Ms Tanya Alexis-Francis and Ms Akeelia Richards for the Appellant

Mr Anthony Astaphan, SC and Mr Seryozha Cenac for the Respondents

Constitutional law — Criminal law — Application for leave to commence judicial review — Discontinuance or withdrawal of criminal proceedings —Doctrine of merger — Proper subject of review — Whether judicial review lies against the 'decision' of the Comptroller to withdraw or discontinue the criminal case — Whether DPP took over prosecution — Constitution of Saint Lucia, Cap 1.01 — Customs (Control and Management) Act, Cap 15.05.

SUMMARY

This appeal arose from the withdrawal or discontinuance of criminal proceedings instituted in 2020 by the Comptroller of Customs against Dr Ernest Hilaire for infractions under s 102(3) of the Customs (Control and Management) Act of Saint Lucia. The charges concerned Dr Hilaire's alleged failure to produce a commercial invoice for a vehicle imported into Saint Lucia following his tenure as High Commissioner in London. After mediation and a change in government, the new Comptroller of Customs sought to withdraw the prosecution, and the presiding Magistrate granted leave for the withdrawal of the criminal case.

Mr Allen Chastanet sought judicial review of the Comptroller's 'decision' to withdraw the case, contending that by January 2021 the Director of Public Prosecutions ('DPP') had taken over the prosecution, thereby rendering ultra vires the Comptroller's withdrawal of it. The High Court and Court of Appeal dismissed his application for leave to commence judicial review.

The Caribbean Court of Justice (Eboe-Osuji J, with Anderson P, Rajnauth-Lee, Barrow and Ononaiwu JJ concurring) affirmed that the evidence did not establish that the DPP had taken over the prosecution. The Court held that the mere forwarding of the case file to the DPP and the subsequent participation of counsel from the DPP's office in the proceedings were insufficient to establish that the DPP had taken over the prosecution. The Court noted that the DPP himself had never claimed to have taken over the matter, even after its discontinuance.

The Court further held that, pursuant to s 73(4) of the Constitution, only the DPP has exclusive authority to withdraw or discontinue criminal proceedings, but that where another authority institutes proceedings, those may be withdrawn with the leave of the court. Accordingly, once the Magistrate granted leave to withdraw, the Comptroller's bureaucratic decision to withdraw the prosecution merged into the Magistrate's resulting judicial decision. Relying on the doctrine of merger, Eboe-Osuji J explained that the only decision that is open to challenge is the Magistrate's order, not the Comptroller's

antecedent step. Since no challenge was brought against the Magistrate's decision, judicial review of the Comptroller's decision was legally misconceived.

Following his disposition of the appeal on the merits, Eboe-Osuji J also underscored the importance of clarity when the DPP assumes control of a prosecution, recommending formal written communication, public notice and reflection of the change in the style of cause.

In a concurring judgment, Barrow J stressed the illogicality of the reliefs sought. The Appellant's case rested on the premise that the DPP had taken over the prosecution, yet he sought orders to quash the Comptroller's decision and to compel the Comptroller to reinstate the charges. If the Comptroller lacked authority to withdraw, he equally lacked authority to reinstate. Barrow J cautioned against unnecessary consumption of judicial resources, noting that the matter could have been disposed of on the simple basis that the reliefs were conceptually impossible.

The appeal was dismissed with no order as to costs.

Cases referred to:

Hilaire v Chastanet [2023] UKPC 22, [2023] 4 LRC 771 (LC); *Kendall v Hamilton* [1874-80] All ER Rep 932; *King v Hoare* [1844] 13 M & W 494; 153 ER 206; *Sharma v Brown-Antoine* [2006] UKPC 57, (2006) 69 WIR 379 (TT); *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2014] AC 160; *Zavarco plc v Nasir* [2022] Ch 105.

Legislation referred to:

Saint Lucia – Constitution of Saint Lucia, Cap 1.01, Criminal Code, Cap 3.01, Customs (Control and Management) Act, Cap 15.05.

Other Sources referred to:

Garner B A, *Black's Law Dictionary* (12th edn, Thomson Reuters 2024).

JUDGMENT

Reasons for Judgment:

EBOE-OSUJI J:

Discussion

[1] This is an appeal against the judgment of the Eastern Caribbean Court of Appeal (by way of Saint Lucia) which upheld the judgment of the High Court dismissing the application of Mr Allen Chastanet for leave to commence judicial review of the Customs Comptroller's putative discontinuance or withdrawal of criminal proceedings against Dr Ernest Hilaire for offences contrary to the Customs (Control and Management) Act[1] of Saint Lucia.

[2] In my view, the overriding issue in the case is whether a judicial review lies against the putative 'decision' of the Comptroller to withdraw or discontinue the criminal case, notwithstanding that the decision of the Magistrate seised of the case was, as a matter of law, the effective decision for the withdrawal or discontinuance of the case.

[3] A bystander familiar with the records of the case must be forgiven to see in them a tale of two titans—a former Prime Minister and an incumbent Deputy Prime

[1] Cap 15:05.

Minister—on opposite sides of the Saint Lucian political divide, playing out their entrenched rivalry in the arena of the courtroom, all the way to the highest courts of the jurisdiction. To be noted in that regard is an earlier judgment of the United Kingdom's Judicial Committee of the Privy Council in 2023 (when it was the highest appellate court for Saint Lucia) in *Hilaire v Chastanet*[2] involving allegations of defamation.

[4] The appeal in the present case arose out of three informations issued in 2020 against Dr Hilaire on charges of 'failure to follow the lawful directions of the Comptroller of Customs'. The Appellant in this appeal, Allen Chastanet, was the Prime Minister at the time, and Dr Hilaire was a member of parliament in the opposition but later became the Deputy Prime Minister in the current government since 2021. The charges arose out of Dr Hilaire's importation into Saint Lucia of a Land Rover Discovery motor car ('the car') in December 2015, following, it appears, the conclusion of his assignment in London, England, as the High Commissioner of Saint Lucia. There were certain discrepancies in the attendant paperwork that eventually resulted in the legal proceedings that culminated in this appeal.

[5] The records of this case reveal two competing lines of narrative. According to one line, the car was always a private purchase made by Dr Hilaire, though using the name of the High Commission as a way of buying the car on a tax-free basis in the United Kingdom, and he eventually imported the car into Saint Lucia in his own name. There is a statement to that effect made by one Mr Tafawa Williams, who, it appears, was a staff member of the High Commission at the time. In a letter dated 21 February 2018, he informs that 'at all times I was the final purchaser of the vehicle and acted on behalf of Dr. Ernest Hilaire, who had returned to Saint Lucia during the time of manufacturing of the vehicle. For all intents and purposes, it is, and was always my understanding that Dr Ernest Hilaire is the sole legal owner of the vehicle.'

[2] [2023] UKPC 22, [2023] 4 LRC 771 (LC).

[6] According to the rival narrative, a Land Rover Discovery that was originally bought and registered in the name of the Government of Saint Lucia at its High Commission in London was eventually found in Saint Lucia in the private possession of Dr Hilaire. It appears that on 18 October 2017, the Cabinet Secretary to the Government of Saint Lucia launched an inquest to that effect. He did so in a memorandum to the Department of Finance in the Ministry of Finance, titled 'Report of Missing Government Property/Asset', attaching some documents. Consequently, on 20 November 2017, the Director of Finance in the Department of Finance wrote a memorandum to the Comptroller of Customs titled, in turn, 'Report of Missing Government Property/Asset.' By that time, it may be noted, Dr Hilaire had become a member of parliament in opposition to the government of Mr Chastanet who at the time was both the Prime Minister and the Minister of Finance. It may be noted in passing that the Customs Department fell under his portfolio as the Minister of Finance.

[7] In her carefully worded memorandum concerning the investigation, the Director of Finance wrote, amongst other things, that:

- She had reviewed the Cabinet Secretary's memorandum and the attached documents—including '5. Invoice dated 20, October 2015 from Land Rover; 6. RBS: Payment Credit Advice dated October 23, 2015; 7. Vehicle Registration Document November 20, 2015'. [It is important to mark this now, because of the question encountered eventually as to whether the commercial invoice for the car was always in the records of the Customs Department.]
- From that review, it appeared that a car that used to be a government asset was now in the private possession of Dr Hilaire.
- However, the Department of Finance maintains a database of all government vehicles. That database had now been searched, and as of the date of her writing did not show that the car in question was ever purchased by the government or disposed of by it.

- There should be investigation and follow up action undertaken to determine the true ownership of the car.

[8] On 17 November 2017, it appears, the Permanent Secretary in the Ministry of Finance gave written instructions to the Comptroller of Customs also under the title 'Report of Missing Government Property/Asset', directing investigation and follow up action.

[9] In the course of the resulting investigation that lasted some three years, Mr Peter Chiquot, who was Comptroller of Customs at the time, demanded from Dr Hilaire the submission of the 'commercial invoice' for the purchase of the car, in order to effect what is known as 'perfect entry' in the records of the Customs Department. That demand was made three times: Dr Hilaire failed to comply, though he had promised to do so. Rather than produce the demanded document, Dr Hilaire's lawyers, at the law firm of Fosters, eventually wrote a letter in stern lawyerly tenor demanding that Comptroller Chiquot must cease and desist from further harassment of their client. The Fosters letter conveyed more than a hinted allegation that Comptroller Chiquot was harassing their client at the behest of the incumbent Prime Minister Chastanet (who now is the Appellant in this appeal).

[10] The letter from Fosters, it seems, had the opposite effect than it intended. In its wake, the Comptroller issued three criminal summonses against Dr Hilaire on 16 October 2020 charging him with three incidents of infractions pursuant to s 102(3) of the Customs (Control and Management) Act. Mr Chiquot later explained (in his affidavit in this case) that the 'course of action [of prosecuting Dr Hillaire] was deemed necessary … because of the continued defiance and bullying in responses from Foster's [sic] Chambers, on behalf of Dr Hillaire.'

[11] The specific charges against Dr Hilaire, replicated in the three summonses in the case, were to the same effect. Two of them were for 'failure to comply with the Comptroller of Customs' lawful directive to produce your supplier's commercial

invoice to the satisfaction of the Comptroller of Customs.' There was a slight variation in the third summons in the terms of failure to produce the 'supplier's commercial invoice and other relevant documents to the satisfaction of the Comptroller of Customs'. In a related measure, the Customs Department impounded the car, no doubt pending the resolution of the criminal proceedings.

[12] At the time of the decision to prosecute Dr Hilaire for these customs infractions, Sharman Emmanuel was Deputy Comptroller of Customs—i.e. Mr Chiquot's second-in-command. Mr Emmanuel was less than enthusiastic about the criminal proceedings against Dr Hilaire. As Mr Chiquot attested later (in his affidavit), Mr Emmanuel apparently considered that the Customs Department's sole responsibility was revenue collection. In Mr Chiquot's words:

> Mr Emmanuel was a member of the team and participated in the discussions leading to the decision to prosecute. He well understood the reasoning behind the decision to prosecute Dr. Hilaire, but had expressed his concerns about pursuing the matter, because his view was that the responsibility of the Customs department was only revenue collection.

[13] It helps to note here that Mr Emmanuel was later to become the Comptroller who took the decision within the Custom's Department to drop the case. This will be discussed in more detail later.

[14] The unstated argument in the reticence of Mr Emmanuel (as Deputy Comptroller) against the criminal proceedings is appreciably that the Customs Department should only concern itself with the question whether the needed revenue had been collected in respect of goods imported into the country. That being so, investigations, tracing, recovery or prosecutions as regards a 'Missing Government Property/Asset' was the responsibility of other departments of government. Despite Deputy Comptroller Emmanuel's reservations, his boss at the time, Comptroller Chiquot, proceeded with the prosecution in the terms of the summonses indicated earlier.

[15] As a countermeasure, Dr Hilaire commenced civil proceedings against the Comptroller of Customs and Mr Chiquot (as the Comptroller) in his personal capacity.

[16] As the criminal case unfolded, the presiding Magistrate ordered the parties to undergo mediation with a view to settling the case, as Mr Patterson, KC (counsel for the Appellant Chastanet) conceded during the hearing of this appeal. During his oral submissions before this Court, Mr Patterson thought it odd that the Magistrate should direct mediation in a criminal case. Perhaps, that says much about the Magistrate's view of the seriousness of the criminal case: my colleague Barrow J registers that concern without ceremony. At least two mediation sessions were held before the change of government that resulted from the election held on 26 July 2021. One of those mediation sessions was on 28 June 2021 and another was on 6 July 2021. Mr Chiquot, it appears, attended both mediations in his capacity as the Comptroller. Dr Hilaire and his lawyers—notably including Mr Leslie Mondesir—attended the mediation session on 28 June 2021. But they failed to attend the second session on 6 July 2021: and when the mediator called to find out why, she was told that the appointment had slipped their minds because of the sudden election call by the Prime Minister (the Appellant Chastanet), which compelled them to hit the hustings in a scramble. It all turned out evidently well for them, given that the election resulted in the change of government and the Appellant Chastanet lost the premiership following that election.

[17] Another casualty of the change of government, it appears, was Mr Chiquot. He lost his post as Comptroller of Customs. He attested that the new government informed him that they did not want him to continue serving as the Comptroller of Customs. His former deputy, Mr Emmanuel, was appointed to replace him as the new Comptroller.

[18] The now former Comptroller Chiquot attests that the new Comptroller Emmanuel requested (from Mr Chiquot) the Hilaire prosecution case file for a planned meeting with the new Attorney General, Mr Leslie Mondesir. Mr Chiquot attests that he

urged the new Comptroller Emmanuel to exercise caution with the planned meeting because the new Attorney General, until lately, had represented Dr Hilaire as counsel in the case. Mr Chiquot didn't later inquire about what had transpired in Comptroller Emmanuel's meeting with Attorney General Mondesir, but he attests that he (Mr Chiquot) learned from Comptroller Emmanuel that the meeting did take place and that the subject of the Hilaire prosecution was at least broached. In his own affidavit, Comptroller Emmanuel denies that he ever discussed the Hilaire prosecution with Attorney General Mondesir before his (Mr Emmanuel's) determination that the prosecution must be withdrawn. Mr Emmanuel attests that his determination in that regard was made after consultation with three colleagues at the Customs Department all of whom reviewed the file and thought there was no serious case to be pursued.

[19] The evidence in this case, it must be noted, shows that on 18 October 2021, Dr Hilaire's lawyers wrote to Comptroller Emmanuel demanding the return of the car to Dr Hilaire. That letter was copied to 'The Attorney General, Mr Leslie Mondesir.' The record also shows that on 25 October 2021, Comptroller Emmanuel did send a memorandum, 'TO: The Honourable Attorney General, Attorney General Chambers, Attn: Seryozha Cenac,' apparently transmitting the 18 October 2021 letter from Dr Hilaire's lawyers. Comptroller Emmanuel's memorandum noted that he had been notified by the exit report of the former Comptroller Chiquot, that the matter 'is with the Attorney General's Chambers ("Chambers") and the discussions have ensued with [Dr Hilaire's lawyers], Chambers and the Customs Department with a view to a resolution.' The memo concluded on the note that the Comptroller's office 'therefore await your guidance on this matter.'

[20] It must be said in passing that nothing from the foregoing established that Comptroller Emmanuel had received instructions or recommendations from Attorney General Mondesir himself regarding steps to be taken in the Hilaire prosecution. It is evident from the record that there was nothing unusual with the Comptroller of Customs seeking advice and direction from the Attorney General of Saint Lucia, as a standard operating procedure of the Customs Department.

Comptroller Chiquot in his time had done so. What would be highly inappropriate in this case would be for Mr Mondesir—as Attorney General—to give input directly or indirectly to the conduct of the Hilaire prosecution given his preceding role as counsel for Dr Hilaire. But evidence that he gave such an input must be sufficiently clear. It cannot be casually presumed or inferred from the elements of the record recounted above. Professional integrity is not a delicate lily, which necessarily wilts merely on the wind that communications about the case were forwarded to Attorney General Mondesir's office in that capacity. It is less so when the communication in question was directed to the attention of Mr Seryozha Cenac, another lawyer in the Attorney General's office. Probative evidence of Attorney General Mondesir's own positive input must be adduced. The best evidence on the matter goes no further than Mr Chiquot's allegation that Mr Emmanuel informed him that the meeting took place and that the discussion was had: an allegation that Mr Emmanuel denied.

[21] Returning now to the subject of mediations: there was another mediation in the criminal case on 1 December 2021. Mr Emmanuel attended it in his new capacity as the Comptroller of Customs. It appears from the record that he had made efforts to contact Mr Chiquot by telephone to invite him along, but Mr Chiquot missed Mr Emmanuel's telephone calls. At that mediation, Mr Emmanuel agreed to withdraw the prosecution in consideration of Dr Hilaire reciprocally withdrawing his lawsuit against the Comptroller of Customs (the position now occupied by Mr Emmanuel). Apparently, the withdrawal of Dr Hilaire's lawsuit against Mr Chiquot (in his personal capacity) was not part of the resolution at that point. It is not necessary, in my view, to presume bad faith in that regard; though that bit of the story may understandably seem somewhat rough to some strangers to the intricacies of civil litigation. A perfectly good faith explanation would be that Mr Chiquot was not in attendance at that mediation and no agreement might then have been properly made to withdraw the lawsuit against him personally, given the possible exchange of considerations that often accompanies such withdrawals. Indeed, Dr Hilaire's lawsuit against Mr Chiquot was eventually withdrawn upon the latter tabling an

apology to Dr Hilaire in terms that Mr Chiquot's decision to commence criminal proceedings against Dr Hilaire resulted from a sense of duty, unactuated by malice.

[22] It is worth mentioning, perhaps, that part of Mr Emmanuel's reasoning in withdrawing the prosecution was that the prosecution was premised on the demand upon Dr Hilaire to produce information—specifically the commercial invoice for the car. The summonses for the prosecution amply bear out that cause of the prosecution. But that document, according to Comptroller Emmanuel, was always in the possession of the Customs Department. And that, in his view, was a consideration that seriously undermined the prosecution. Appreciably so in the sense that if the cause of the criminal complaint against Dr Hilaire was his failure to produce the 'commercial invoice' for the vehicle, the presence of that invoice within the records of the Customs Department all along would be fatal to the case for the prosecution.

[23] Consequent upon the agreement reached during the mediation to withdraw both the criminal case against Dr Hilaire and his case against the Comptroller of Customs, Comptroller Emmanuel informed the Magistrate of his determination to withdraw the criminal case. From all indications, the Magistrate then withdrew the case. That judicial act is apparent from the three documents issued 'In the First District Court' of Saint Lucia, dated 22 March 2022, signed and sealed by the Clerk of the Court, evidently memorialising the withdrawal of the three cases with a uniform consequential order to release the impounded vehicle. Amongst other things, the documents say as follows:

> It was adjudged and ordered by the said Court sitting Castries (D Court) [sic]
>
> On the 2nd day of December 2021, the matter against the Defendant was withdrawn after Mediation.
>
> The said adjudication was consequent on Withdrawal
>
> In respect of a charge against the defendant having on:

> [Thursday February 21st, 2018; Thursday September 24th, 2020; Tuesday 6th day of October, 2020] in the City of Castries, within the First Judicial District of this state being the importer of [the vehicle] on December 18th 2015 … did without reasonable cause, fail to comply with the Comptroller Customs lawful directive to produce your supplier's commercial invoice [and other relevant documents] to the satisfaction of the Comptroller of Customs.
>
> Contrary [to] Section 102(2) and (3) of the Customs (Control and Management) …

[24] Notably, those terminal documents come from the same Court that had also issued the original summonses to Dr Hilaire dated 16 October 2020, marking the commencement of his prosecution in the three cases.

[25] The foregoing summary of the facts is provided simply for apparent context. For purposes of this judgment, with one exception, no evaluation is required to be made—and none is made—as to the forensic worth of the discrete incidents in the matrix of facts summarised above.

Whether the DPP had taken over the Hilaire Criminal Case

[26] The exception alluded to in the preceding paragraph concerns the factual question whether the Director of Public Prosecution ('DPP') had taken over the prosecution of the Hilaire case before its discontinuance. That fact-finding is made necessary by its materiality to the legal point on which this appeal turns. The overriding issue in the case is whether a judicial review lies against the putative 'decision' of the Comptroller to withdraw or discontinue the case, notwithstanding that the decision of the Magistrate seised of the case was, as a matter of law, the effective decision for the withdrawal or discontinuance of the case. The characterisation of that issue as 'overriding' assumes that the Comptroller of Customs—not the DPP—had carriage of the criminal proceedings at the time of its withdrawal. The orientation of the issue before the Court will be materially different if it is established that the DPP had taken over the case, rather than that the case had remained with the

Comptroller. It is so because s 73(2)(c) and (4) of the Constitution of Saint Lucia[3] directly confers upon the DPP exclusive power to discontinue criminal proceedings in Saint Lucia, as seen immediately below:

> **73. Control of public prosecutions**
>
> (1) There shall be a Director of Public Prosecutions whose office shall be a public office.
>
> (2) The Director of Public Prosecutions *shall have power in any case in which he or she considers it desirable so to do –*
>
> (a) to institute and undertake criminal proceedings against any person before any court of law (other than a court-martial) in respect of any offence alleged to have been committed by that person;
>
> (b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and
>
> *(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.*
>
> (3) The powers of the Director of Public Prosecutions under subsection (2) may be exercised by him or her in person or through other persons acting under and in accordance with his or her general or special instructions.
>
> (4) *The powers conferred on the Director of Public Prosecutions by subsections (2)(b) and (2)(c) shall be vested in him or her to the exclusion of any other person or authority*:
>
> Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court (emphasis added).

[27] Since the provisions of s 73(2)(c) and (4) directly vest in the DPP the power to discontinue a criminal case—which power is to 'the exclusion of any other person

[3] Cap 1.01.

or authority'—it means that the DPP's exercise of that power as such may be the direct subject of judicial review.

[28] But, as the proviso to s 73(4) shows, any other prosecutorial authority, besides the DPP, may withdraw criminal proceedings they instituted—only with 'the leave of the court.' The Constitution of Saint Lucia thus requires a Comptroller's bureaucratic 'decision' to withdraw a case that he or she instituted to be sanctioned by a court of law. For one thing, the import of s 73(4) raises a question whether the Comptroller's withdrawal of the case is available for judicial review when it was a judicial decision that granted leave for the withdrawal. But, more immediately for purposes of this case, a finding that the DPP had taken over the Hilaire criminal proceeding, pursuant to s 73(4) of the Constitution, would preclude the Comptroller's authority to withdraw the case.

[29] An answer which doesn't establish that the DPP had taken over the case entails a definitive finding of fact within the remit of *present* judicial decision-making and will be dispositive of the case. The attendant legal consideration would entail more than an appraisal of realistic *arguability* of that issue in a *future* judicial review—noting that *arguability* is the operative test in an application for leave to commence judicial review.[4]

[30] Both the trial judge and the Court of Appeal concluded that the evidence in the case did not establish that the DPP had taken over the Hilaire prosecution. Notably, the Court of Appeal devoted special attention to that factual matter from paragraphs 98 to 109 of their judgment.

[31] The Appellant's claim that the DPP had taken over the Hilaire prosecution primarily stands on two evidential legs. The first is a letter of 18 January 2021 that Comptroller Chiquot (as he then was) wrote to the DPP captioned 'Submission of Case File Re – Dr Ernest Hilaire'. The letter informed that criminal proceedings under the Customs (Control and Management) Act had been commenced against

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[4] See, for instance, *Sharma v Brown-Antoine* [2006] UKPC 57, (2006) 69 WIR 379 (TT).

Dr Hilaire in the Magistrate's Court on three informations; it informed that the matters were being forwarded to the DPP 'for information and onward prosecution'; and, it indicates that the dossier on the three cases were forwarded under the cover of that letter. The second evidential leg was that counsel from the DPP's office had subsequently appeared for the Comptroller both in the actual proceedings before the Magistrate and in the mediation that the Magistrate had directed the parties to undergo.

[32] The trial judge and the Court of Appeal were not persuaded that these facts—operating alone or together—were sufficient to establish that the DPP did take over the Hilaire case. I agree. The best that Comptroller Chiquot's letter of 18 January 2021 does is show that he did send the case file to the DPP 'for information and onward prosecution'. That evidence falls short of proving that the DPP did *take over* the prosecution as the prosecutorial authority with proprietary power over decision-making. Notably, there was no evidence that the DPP had reacted to the Comptroller's letter by way of a return of communication saying that the DPP was thenceforth taking over the case. That position is not materially improved by the fact entailed in the second evidential leg of the claim of DPP take over—i.e. that counsel from the DPP's office had assisted or represented the Comptroller in the ensuing criminal proceedings and the associated mediation. In situations like that, the involvement of the DPP or his office may entail one of two things: that the DPP had taken over the case or that lawyers from the DPP's office were merely acting as counsel for the Comptroller while the proprietary power over decision-making in the prosecution remained with the Comptroller.

[33] It is well known that ownership of a case does not devolve upon counsel merely because they appear in the proceedings. Counsel remain only legal professional agents of their clients—with the clients remaining the real owners of the cause. That presumption also operates in those instances where lawyers from government 'law shops'—specifically the Ministry of Justice, the Attorney General's Department, the DPP's Office—appear as counsel in judicial proceedings commenced by other government departments that may lack real expertise in legal proceedings. The

actual takeover of the ownership of those cases by a government law shop requires clear indicia communicating that fact. Such clear indicia are lacking in the facts of this case.

[34] As regards the Hilaire prosecution, there is no evidence indicating the capacity in which lawyers from the DPP's office were participating in the case. That evidential deficiency amounts to absence of proof of the proposition that the DPP had taken over the case at any time before its discontinuance.

[35] An enigmatic feature of the case, as noted by the trial judge and the Court of Appeal, has been the failure of the DPP to stake a claim of having taken over the case. As the records of the case reveal, that failure began in earnest directly on the day the case was withdrawn; when (as Mr Chiquot attested) in a meeting between the DPP and Comptroller Emmanuel, the DPP merely directed expletive-laced ire at Comptroller Emmanuel for withdrawing the case without consulting the DPP beforehand. That exchange (as Mr Chiquot reported it) is part of the *res gestae* in the story of the case. The DPP's umbrage, notably, included no suggestion that he had taken over the case before the withdrawal. The DPP's failure to make that claim continues. And it is so, despite not only his full knowledge of that withdrawal but also (as must be reasonably presumed) his knowledge of the Appellant's application for leave to commence judicial review of that withdrawal which has culminated in this appeal.

The Appellant's Application for Leave to Commence Judicial Review

[36] Displeased with the discontinuance of the Hilaire prosecution, the Appellant Chastanet applied to the High Court for leave to commence judicial review against the withdrawal. The subject of the Appellant's effort in that regard has exclusively been Comptroller Emmanuel, as the official who made the 'decision' that discontinued the case. The Appellant seeks to bring judicial review proceedings against that 'decision'. At both the High Court and the Court of Appeal, the matter proceeded on that basis. All the submissions of counsel and judges' analyses had focused on the question whether the matter met the correct legal test for grant of

leave to the Appellant to seek judicial review of the Comptroller's 'decision' to discontinue the case. In consideration of that question, case law was adduced at length.

[37] In my view, the case has as such proceeded along the rails of the wrong question. For, the circumstances of this case make judicial review of the Comptroller's putative 'decision' (to discontinue the prosecution) a question with no proper legal object. I call it a 'putative' decision, because it has been treated all along as the decision that effected the withdrawal or discontinuance of the case as a matter of law. That, however, is an erroneous view of the Comptroller's decision. This is because the imperative of the Magistrate's leave—once granted—to withdraw the prosecution did, as a matter of law, overtake the Comptroller's putative 'decision', which is only a bureaucratic decision, as the immediate spark that actuated the case's effective withdrawal. In the circumstances, the Comptroller's putative 'decision' to withdraw the prosecution was, for purposes of the law, only the event of an inferior order, which merged with an innovating event of the higher order in the form of the Magistrate's grant of leave withdrawing the case. Without the Magistrate's decision granting leave, the withdrawal would have been a legal impossibility. This is clear enough from the proviso to s 73(4) of the Constitution which, as may be recalled, provides as follows:

> The powers conferred on the Director of Public Prosecutions by subsections (2)(b) and (2)(c) shall be vested in him or her to the exclusion of any other person or authority:
>
> *Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and <u>with the leave of the court</u>* (emphasis added).

The grant of leave by a court of law entails a decision of the court. It entails a merger of the motivating request or application for the leave into that judicial decision, in the same way that an originating process merges with the eventual judicial decision that concludes the judicial process. Such judicial decisions entail, in turn, an innovation of the matter, in the sense of a new encompassing event—the court's decision—that has taken over from then on.

The Doctrine of Merger

[38] The doctrine of merger is captured in the old Latin maxim *transit in rem judicatam*, which Baron Parke famously explained in the old case of *King v Hoare* as follows: '[T]he cause of action is changed into matter of record, which is of a higher nature, and the inferior remedy is merged in the higher.'[5] Lord Penzance spoke to that doctrine in *Kendall v Hamilton*:[6]

> The doctrine of law-respecting merger is perfectly intelligible. Where a security of one kind or nature has been superseded by a security of a higher kind or nature it is reasonable to insist that the party seeking redress should rest upon the latter, and not fall back on the former. In like manner when that which was originally only a right of action has been advanced into a judgment of a court of record, the judgment is a bar to an action brought on the original cause of action. The reasons for this result are given by PARKE, B, in *Kind* [sic] *v Hoare*.

[39] Although writing in dissent as to the outcome, Lord Penzance was merely reprising the essence of the defining principle in *King v Hoare*.

[40] Understandably due to its substrate maxim, *transit in rem judicatam*, the doctrine of merger is often invoked in the same breath as other legal concepts, such as *res judicata*, issue estoppel, cause of action estoppel, or abuse of process. But it is not identical to them, as Lord Sumption usefully explained in *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd*.[7] Only one of 'a number of different legal principles with different juridical origins', Lord Sumption summarised five of them, with merger as the third. And he explained it as follows:

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[5] See *King v Hoare* [1844] 13 M & W 494; 153 ER 206, at 210.
[6] *Kendall v Hamilton* [1874-80] All ER Rep 932 at 941.
[7] [2014] AC 160.

> Third, there is the doctrine of merger, which treats a cause of action as extinguished once judgment has been given on it, and the claimant's sole right as being a right on the judgment. Although this produces the same effect as the second principle, it is in reality a substantive rule about the legal effect of an English judgment, which is regarded as "of a higher nature" and therefore as superseding the underlying cause of action: see *King v Hoare* …[8]

[41] Sir David Richards, writing the lead judgment in *Zavarco plc v Nasir*, in which his two colleagues concurred, observed that '[i]t is not easy to discern from the authorities the precise scope or limits of the doctrine of merger.'[9] That is true. I am, however, satisfied that the understood scope and limits of the doctrine are appreciably broad enough to accommodate the notion that a court's grant of leave to withdraw or discontinue a prosecution is a dispositive legal event of a higher order as a matter of record, into which has merged the spurring application as a legal step of an inferior order.

[42] There is no doubt that the Hilaire prosecution was withdrawn with leave of the Magistrate. The evidence on record clearly shows that the Magistrate made an order withdrawing the prosecution. And the prosecution thus stands withdrawn. It stands withdrawn as a matter of a dispositive judicial decision, which until set aside or overturned by a higher court must now control the status of both the case and the person who was lately a defendant in it, a defendant on the track of the attendant criminal jeopardy.

[43] There is, of course, any number of grounds on which an aggrieved person can challenge the validity of a decision of a court of law, if minded to do so. No such challenge was made by the Appellant Chastanet against the decision of the Magistrate withdrawing the prosecution. Pressed on the point, counsel for the Appellant, perhaps out of the need to appear respectful of the Magistrate's decision, repeatedly asserted that they do not—and have never set out to—challenge the

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[8] ibid at [17].
[9] *Zavarco plc v Nasir* [2022] Ch 105 at [29].

Magistrate's grant of leave to withdraw the prosecution. That, of course, is the critical difficulty.

[44] There is no necessary inconsistency in the legal process between professional decorum and procedural efficiency. Challenges to judicial decisions are a routine feature of the legal process. Procedural efficiency requires such challenges to be launched responsibly when the need arises, even as professional decorum requires them to be launched with respect. The grounds on which such challenges may be launched are as varied as the imagination of counsel in the circumstances of the given case. But the challenge is against the judicial decision itself, not against the step taken by a party, which culminated in the decision.

[45] In the current case, for instance, it was up to the Appellant to challenge the Magistrate's withdrawal decision on any number of grounds including—to the extent reasonably arguable—subjecting to inquiry the question whether the Magistrate had brought independent judgement to bear on the grant of leave, or whether the Magistrate had merely acceded automatically to the Comptroller's bureaucratic 'decision' to withdraw the case, as communicated to the Magistrate. In that regard, it is notable that the record of the District Court memorialising the Magistrate's 'adjudication and order' that 'the matter against the Defendant was withdrawn after Mediation' indicated that '[t]he said adjudication was consequent on Withdrawal.' The meaning of that notation may not be clear to everyone. Was 'the said adjudication consequent on [w]ithdrawal' occasioned by the Magistrate's grant of leave in an exercise of judicial discretion? Or was it consequent merely upon the Comptroller's communication of his 'decision' (made at the level of his desk) to withdraw the case, which the Magistrate automatically acted upon with no independent judgement brought to bear as a matter of the exercise of the inherent judicial discretion contemplated in the proviso to s 73(4) of the Constitution? These are inquiries that the Appellant could have triggered in a challenge to the decision of the Magistrate memorialised in the record of the District Court. But the Appellant made no such challenge.

[46] It may be helpful at this juncture to advert, additionally, to a prospect of inefficiency that underscores the Appellant's approach of back flipping over the Magistrate's withdrawal decision, to judicially review the Comptroller's bureaucratic 'decision' to withdraw the case. Assuming that the judicial review of the Comptroller's decision has a proper object as a matter of law, a successful outcome may then result in multiplication of proceedings. This is because a second proceeding would need to be launched eventually against the Magistrate's decision, since it was not the subject of the inquiry in the first proceeding. That is not only slovenly, but the outcome may entail evident embarrassment to the judicial process given the possibility of a different outcome. Good order in the administration of justice does not permit this Court to condone such a haphazard approach to the legal process.

Conclusion

[47] The Magistrate's grant of leave to the Comptroller, pursuant to the proviso of s 73(4) of the Constitution, to withdraw the Hilaire prosecution is a dispositive judicial decision. It is as such a legal event of a higher order, into which merged the Comptroller's antecedent 'decision'—made at the level of his own office—to withdraw the prosecution. Hence, the Magistrate's leave to withdraw the prosecution, once granted, had the effect of extinguishing the Comptroller's request that spurred it. From that point, the only decision that could be challenged, and which was not challenged in this case, was the decision of the Magistrate.

[48] For the foregoing reasons, I would dismiss the appeal with no order as to costs.

Postscript

Clarity to be shown when the DPP takes over a Criminal Prosecution

[49] The facts of this case generated significant debate about the operation of s 73(2)(b) of the Constitution of Saint Lucia. As may be recalled, that provision gives the DPP the power 'to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority'. As was found by the courts below and this Court, the evidence in the case falls short of establishing that

the DPP had *taken over* the Hilaire prosecution before its withdrawal, notwithstanding that the Comptroller wrote a letter dated 18 January 2021 to the DPP informing of the case and transmitting the case file for 'information and onward prosecution', which letter was not (according to the evidence) answered by the DPP. The claim that the DPP had taken over the case was not improved by evidence that counsel from the DPP's office had appeared in both the case and the associated mediation.

[50] This case has thus brought to the fore the need to ensure clarity whenever the DPP takes over and continues any prosecution that was instituted or undertaken by any other person or authority. Such clarity can be signalled by the following measures amongst others: (a) formal communication to the person or other authority that instituted the criminal proceeding, clearly indicating that the DPP has taken over and continued the prosecution; (b) formal announcement to the public on similar terms as above; and, (c) reflection of the change in the style of cause of the case, as appropriate and as permitted by applicable law and prescribed legal procedure.

BARROW J:

[51] I agree with Justice Eboe-Osuji that this appeal should be dismissed with no order as to costs and rely on his statement of facts and principles in offering my views.

The Claim for Judicial Review

[52] Conceptually, logically and legally, what the Appellant (Claimant) asked of the High Court in his application for judicial review was impossible for the court to grant and the application could have been determined on that simple basis.

[53] The foundation of the application by the Appellant was that the Director of Public Prosecutions ('DPP') had taken over the prosecution of three cases in the Magistrate's Court against the current Deputy Prime Minister, and the withdrawal

of these cases by the Comptroller of Customs was 'invalid, null and void'. In short, it was the wrong person or official who withdrew.

[54] The application to the High Court[10] was for a declaration that the decision to withdraw was ultra vires, irrational, unreasonable, arbitrary, made in bad faith, based on improper considerations or purposes including political considerations, in breach of statutory duties and or was an abuse of power. The remedies sought by the Appellant included an order (A) of *certiorari* quashing the decision and (B) directing the Comptroller to *reinstate* the prosecution.

[55] Logically, the Appellant's case that there was no valid withdrawal of the prosecution necessarily meant that, legally, the prosecution was still extant, and this was confirmed by the Appellant asking the court to declare so. But, critically, on the Appellant's case that prosecution was in the hands of the DPP.

<u>The Remedies Claimed</u>

[56] The Appellant provided no authority or learning on the legal effect of the withdrawal of the charges in the Magistrate's Court–which, on his case, was only a purported withdrawal because it was done by the wrong person and was a nullity. The Appellant was unhindered in his arguments by reasoning, such as presented by Eboe-Osuji J, that the Comptroller's decision to withdraw was merged in the order of discontinuance, documented in the records of the Magistrate's Court, and the decision was no longer available to be undone. Nor did the Appellant refer to the other possible view: that withdrawal was the equivalent of a *nolle prosequi*[11] in an indictable matter or a dismissal for want of prosecution in a summary matter. In such a situation, further prosecution for the same offence would require the laying of fresh charges–if the time for doing so had not been prescribed under some law.[12] I offer no view on the matter and only advert to the possibility to indicate what was not addressed by counsel. Perhaps it was tactical that the Appellant singularly

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[10] Record of Appeal, 'Application Without Notice for Leave to File for Declarations and Administrative Orders filed in the High Court St Lucia' 577.

[11] Bryan A Garner (ed), *Black's Law Dictionary* (12th edn, Thomson Reuters 2024): A formal entry upon the record, by the plaintiff in a civil suit or the prosecuting officer in a criminal action, by which he declares that he 'will not further prosecute' the case, either as to some of the counts, or some of the defendants, or altogether.

[12] As, for instance, the Criminal Code, Cap 3.01.

pursued the approach indicated in the remedies he sought, which were the quashing of the Comptroller's decision to withdraw the charges and the directing of the Comptroller to reinstate the prosecution.

[57] The illogicality of the reliefs sought is undeniable. The Appellant's entire claim was the assertion that the prosecution had been taken over by the DPP and it was no longer within the competence of the Comptroller. It would be nonsense, on that premise, for the court to order the Comptroller to reinstate the prosecution. According to the Appellant, it was not his to discontinue; therefore, it could not be his to reinstate.

Conclusion

[58] The respective judgments took 17 pages in the High Court, 60 pages in the Court of Appeal and 21 pages in this Court. With no lack of respect for the stature of the litigants, this matter was as much as any other matter subject to be dealt with according to the strictures of judicial resources. The courts and judges continue to be under great pressure to find time and personnel to hear and decide the serious backlog of cases. The considerable amount of judicial time and effort spent on this matter could have been better spent. It could have been dealt with shortly and no less justly, for that.

Disposition and Order

[59] The appeal is dismissed with no orders as to costs.

/s/ W Anderson

Mr Justice Anderson (President)

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ D Barrow

Mr Justice Barrow

/s/ C Ononaiwu

Mme Justice Ononaiwu

/s/ C Eboe-Osuji

Mr Justice Eboe-Osuji