

IN THE CARIBBEAN COURT OF JUSTICE
Original Jurisdiction

CCJ Application No TT/N/OJ2025/001

Between

Mike Daniel Bhagwansingh

Applicant

And

The State of Trinidad and Tobago

Respondent

Caribbean Community law – Special leave — Locus standi of private entities – Whether Treaty confers on Contracting Party the right to provide financial services which enures to the benefit of nationals of that Contracting Party - Revised Treaty of Chaguaramas, arts 36, 38, 46, 211 and 222.

SUMMARY

The applicant, Mr Mike Daniel Bhagwansingh, sought *special leave* under Article 222 of the Revised Treaty of Chaguaramas (‘the RTC’) to bring a claim against his own state of Trinidad and Tobago. He argued that the requirement under the Financial Institutions Act (‘FIA’) of Trinidad and Tobago, to obtain a licence from the Central Bank before conducting banking business, violated his right to provide financial services under the RTC.

After hearing the parties, the Court dismissed the application for special leave and consequently dismissed Mr Bhagwansingh’s separate request that all hearings be held by video conference. Costs were awarded to Trinidad and Tobago.

In its judgment, the Court affirmed that under Article 222 of the RTC, a private entity can only appear as a party in original jurisdiction proceedings upon establishing an arguable case that: (1) the private entity is a ‘person’ of a Contracting Party; (2) a right or benefit conferred on a Contracting Party under the Treaty enures to the benefit of the private entity of that Contracting Party directly; (3) the private entity has been *prejudiced* in respect of that right or benefit; (4) the Contracting Party has *declined or omitted* to espouse the claim,

or expressly agreed that the private entity may espouse the claim instead of the Contracting Party; and (5) the interest of justice requires that the private entity be allowed to espouse the claim.

While recognising the doctrine of correlative rights – where obligations owed by one State may create rights for another – the Court noted that the doctrine cannot transform Treaty obligations reciprocally owed by Contracting Parties *inter se* into duties owed by a Contracting Party to its nationals.

In this case, the Court interpreted the definition of ‘the provision of services’ in Article 36 (4) of the RTC as requiring the existence of some cross-border element, which did not exist on the facts of this case. Therefore, while Trinidad and Tobago and persons of that Contracting Party may have a right to provide services, including financial services, in the territories of other Contracting Parties, the RTC did not confer on Trinidad and Tobago a right to provide financial services in Trinidad and Tobago. That right is governed exclusively by the domestic laws of Trinidad and Tobago.

Consequent on this analysis, the Court found that the applicant had failed to satisfy the first requirement for obtaining special leave. The applicant had not proven that any right conferred on Trinidad and Tobago to provide financial services in other contracting parties had become transmuted into a duty on Trinidad and Tobago to recognize the right of the applicant to provide financial services in Trinidad and Tobago. The Court considered it unnecessary to examine the other criteria for obtaining leave.

Given that the application was plainly unarguable, the Court found no justification for departing from the general rule that costs follow the event and accordingly awarded costs to the State of Trinidad and Tobago as the successful party.

Cases referred to:

Douglas v Commonwealth of Dominica [2017] CCJ 1 (OJ), (2017) 90 WIR 251; *Hummingbird Rice Mills Ltd v Suriname* [2012] CCJ 2 (OJ); *SM Jaleel & Co Ltd v Co-*

operative Republic of Guyana [2017] CCJ 2 (OJ), (2017) 91 WIR 276; *Trinidad Cement Ltd v Co-operative Republic of Guyana* [2009] CCJ 1 (OJ), (2009) 74 WIR 302.

Legislation referred to:

Trinidad and Tobago - Financial Institutions Act, Chap 79:09.

Treaties and International Sources referred to:

Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy (adopted 5 July 2001, entered into force 1 January 2006) 2259 UNTS 293.

Other Sources referred to:

Caribbean Court of Justice (Original Jurisdiction) Rules 2024.

THE COURT,

Composed of W Anderson, President and M Rajnauth-Lee and D Barrow, Judges

having regard to the application for special leave to commence proceedings (including the annexures thereto), the affidavit in support of the application for special leave, the proposed originating application, the application for hearings via video conference, and the affidavit in support of that application, all filed at the Court on behalf of the Applicant on 27 May 2025, the request to be heard filed on behalf of the State of Trinidad and Tobago on 12 June 2025, the case management orders made on 2 July 2025 and 20 August 2025, respectively, the written submission and authorities filed on behalf of the Applicant on 25 July 2025, the written submission and authorities filed on behalf of the Respondent on 22 August 2025, the reply to Respondent's written submissions filed on behalf of the Applicant on 9 September 2025, and to the public hearing held via video conference on 7 October 2025,

and after considering the oral submissions of:

- **Mike Daniel Bhagwansingh**, on his own behalf
- **The State of Trinidad and Tobago**, by Mr Sanjiv Lalla, appearing with Mr Murvani Ojah Maharaj and Ms Claire Thomas-Medina, Attorneys-at-Law

issues on **26 February 2026**, the following:

REASONS

Introduction

- [1] On 27 May 2025, Mr Mike Daniel Bhagwansingh ('the applicant') representing himself, filed an application for special leave pursuant to Article 222 of the Revised Treaty of Chaguaramas ('the RTC') and r 10.4 of the Caribbean Court of Justice (Original Jurisdiction) Rules 2024 ('the Rules'). The applicant sought special leave to appear as a party in an action against his own state, Trinidad and Tobago.
- [2] On 7 October 2025, following a contested hearing via video conference, and after considering both the written and oral submissions of the parties, this Court, exercising its jurisdiction under Article 211(1)(d) of the RTC, dismissed the application for special leave. This Court also dismissed the application for all hearings to take place via video conference and awarded costs to the State of Trinidad and Tobago.
- [3] The Court now provides the reasons for its decisions made on 7 October 2025.

The Application for Special Leave

- [4] The applicant's proposed action against the State of Trinidad and Tobago would assert that the statutory requirement under Trinidad and Tobago's Financial Institutions Act ('FIA') to obtain a licence issued by the Central Bank to carry on banking business in Trinidad and Tobago¹ amounts to a discriminatory restriction which contravenes his right to provide financial and banking services under the RTC².

¹ Pursuant to ss 16(3) and 20 of the Financial Institutions Act, Chap 79:09.

² Pursuant to art 38(1) of the RTC, read in conjunction with art 46(1).

The Licence Requirement Under the FIA

- [5] The long title of the FIA states that it is, ‘An Act to provide for the regulation of banks and other financial institutions which engage in the business of banking and business of a financial nature, for matters incidental and related thereto and for the repeal of the Financial Institutions Act, 1993.’
- [6] Section 16(1) of the FIA requires a person carrying on banking business in Trinidad and Tobago to be (i) either a company incorporated or continued in Trinidad and Tobago, or a foreign financial institution, and (ii) licenced by the Central Bank of Trinidad and Tobago (‘CBTT’).
- [7] Section 16(2) of the FIA defines the phrase ‘banking business’ or ‘business of banking’, which means, ‘the business of soliciting and receiving sums of money from the public on current or deposit account which may be withdrawn on demand, by cheque, draft, order or notice, and the solicitation and granting of credit exposures, by a person whether as principal or agent and includes payment card business and, generally, the undertaking of any business appertaining to the business of commercial banking.’
- [8] Section 16(3) makes it clear that the licence must be applied for before the business of banking is commenced. The process of applying for a licence is outlined under s 20 of the FIA. Pursuant to s 16(8), any person who carries on banking business without a licence commits a criminal offence and is liable on summary conviction to be fined and imprisoned.
- [9] A State clearly has a vested interest in regulating its banking sector with a view to protecting the public and safeguarding the economy. A Central Bank is one of the vehicles through which the regulation is carried out. Section 5(2) of the FIA states that, ‘The primary objective of the Central Bank, in respect of licensees shall be to

maintain confidence in, and promote the soundness and stability of, the financial system in Trinidad and Tobago.’

Threshold for the Grant of Special Leave

[10] Article 222 of the RTC, entitled ‘*Locus Standi of Private Entities*’, states that:

Persons, natural or juridical, of a Contracting Party may, with the special leave of the Court, be allowed to appear as parties in proceedings before the Court where:

- (a) the Court has determined in any particular case that this Treaty intended that a right or benefit conferred by or under this Treaty on a Contracting Party shall enure to the benefit of such persons directly; and
- (b) the persons concerned have established that such persons have been prejudiced in respect of the enjoyment of the right or benefit mentioned in paragraph (a) of this Article; and
- (c) the Contracting Party entitled to espouse the claim in proceedings before the Court has:
 - (i) omitted or declined to espouse the claim, or
 - (ii) expressly agreed that the persons concerned may espouse the claim instead of the Contracting Party so entitled; and
- (d) the Court has found that the interest of justice requires that the persons be allowed to espouse the claim.

[11] Rules 10.4(1) and (2) of the Rules are also instructive. Rule 10. 4(1) states that:

A national wishing to commence proceedings pursuant to Article 222 of the Treaty must file an application for special leave to which is annexed a copy of the proposed originating application, which shall comply with Rules 10.1 and 10.2.

[12] Rule 10.4(2) states that:

The applicant shall set out in the application for special leave such facts, and annex to it such documents, as are necessary to establish –

- (a) that the applicant is a national;

- (b) that it is arguable that the Treaty intended that a right or benefit conferred by or under the Treaty on the Contracting Party to which the applicant belongs should enure to the benefit of the applicant directly;
- (c) that it is arguable that the applicant has been prejudiced in respect of the enjoyment of the right or benefit mentioned in paragraph (b) above;
- (d) that the Contracting Party entitled to espouse the claim in proceedings before the Court has –
 - (i) omitted or declined to espouse the claim; or
 - (ii) expressly agreed that the applicant espouse the claim in its stead; and
- (e) that the interest of justice requires that the applicant be allowed to espouse the claim.

[13] The synergy between the cited rules and Article 222 is immediately recognisable. There is no dispute that the applicant is a national of Trinidad and Tobago, which is a Contracting Party to the RTC. And it was said by this Court as early as 2009 in *Trinidad Cement Ltd v Co-operative Republic of Guyana*,³ that nationals can sue their own State in the original jurisdiction of the Court.

[14] It should be noted that *Trinidad Cement Ltd v Co-operative Republic of Guyana*,⁴ involved a Trinidad and Tobago national, that is Trinidad Cement Ltd, as well as a Guyanese national, that is, TCL Guyana Ltd suing the State of Guyana. Similarly, in *SM Jaleel & Co Ltd v Co-operative Republic of Guyana*,⁵ the application for special leave to bring proceedings against the State of Guyana was brought by both a company incorporated in Trinidad and Tobago, and a company incorporated in Guyana. Both of these cases would therefore have proceeded even if the national

³ [2009] CCJ 1 (OJ), (2009) 74 WIR 302.

⁴ *ibid.*

⁵ [2017] CCJ 2 (OJ), (2017) 91 WIR 276.

entity was not permitted to sue its own State. The other cases in which a national sought to sue its own State all failed at the Article 222 leave stage.⁶

[15] This is not the place to consider the correctness of the principle that nationals can sue their own State, which was assumed and espoused in the aforementioned cases. What is clear, however, is that a private entity can only be granted special leave to bring original jurisdiction proceedings if it satisfies the five requirements of Article 222 of the RTC and restated in the five conditions of Rule 10.4(2).⁷

[16] In the present case, it is accepted that the applicant is a person or national of a contracting party. Both parties agreed and submitted that in order to obtain special leave, the applicant must go on to show, among other things, that:

- a. The RTC intended to confer the right to provide services upon Trinidad and Tobago and that this right enured to the benefit of the applicant directly as a national of Trinidad and Tobago; and
- b. Section 16(3) of the FIA in Trinidad and Tobago prejudices the applicant in respect of the enjoyment of that right.⁸

Whether the RTC Confers on Trinidad and Tobago a Right to Provide Financial Services which Enures to the Benefit of the Applicant Directly

[17] With reference to the first requirement for special leave contained in Article 222(a) of the RTC, the applicant must show to the standard of arguability that the RTC intended that a right or benefit conferred by or under this Treaty on a Contracting Party shall enure to his benefit directly. Therefore, in this case, the applicant necessarily argues that the RTC confers on Trinidad and Tobago (the relevant Contracting Party) the right to provide financial services and that Trinidad and Tobago's right in that regard enures to his benefit directly.

⁶ See, for example, *Douglas v Commonwealth of Dominica* [2017] CCJ 1 (OJ), (2017) 90 WIR 251, where a Dominican national was refused leave to bring proceedings against his own State.

⁷ *Trinidad Cement Ltd* (n 3) at [33].

⁸ Mike Daniel Bhagwansingh, 'Submissions on behalf of the Applicant', Submission in *Bhagwansingh v State of Trinidad and Tobago*, CCJ Application No TT/N/OJ2025/001, 25 July 2025, para 1; State of Trinidad and Tobago, 'Submissions on behalf of the Respondent', Submission in *Bhagwansingh v State of Trinidad and Tobago*, CCJ Application No TT/N/OJ2025/001, 22 August 2025, paras 2, 3.

[18] The applicant submitted that he directly enjoys the right to provide financial services based on Article 46(1) in combination with Article 38(1) of the RTC.

[19] Article 46(1) states that:

Without prejudice to the rights recognised and agreed to be accorded by Member States in Articles 32, 33, 37, 38 and 40 among themselves and to Community nationals, Member States have agreed, and undertake as a first step towards achieving the goal set out in Article 45, to accord to the following categories of Community nationals the right to seek employment in their jurisdictions (emphasis added).

[20] Article 38(1) states that ‘Subject to the provisions of this Chapter, the Member States shall remove *discriminatory restrictions* on banking, insurance and other financial services’ (emphasis added).

[21] In essence, the applicant relies on the introductory words of Article 46(1) as evidence that Article 38 contains an implied right to provide financial and banking services which is ‘*recognised and agreed to be accorded by Member States ... among themselves and to Community nationals*’ (emphasis added).

[22] Trinidad and Tobago submitted that the absence of evidence as to the nature of the banking, insurance, or financial services that the applicant intends to provide prevents them from determining whether Article 38(1) of the RTC applies to the applicant or whether he directly enjoys any rights or benefits arising from it.

Discussion

[23] Articles 38(1) and 46(1) on which the applicant relies are in Chapter Three of the RTC. This Court has previously clarified that:

Chapter Three peculiarly concerns itself with issues critical for the success of an integration regime, namely, the right of establishment, the movement of labour, the right to move capital and the right to provide services. These are fundamental core rights given by the RTC and must be seen in the context of the resolve of the Contracting Parties ‘to establish conditions

which would facilitate access by their nationals to the collective resources of the Region on a non-discriminatory basis'.⁹

[24] A salient feature of the application is the absence of any cross-border or international element whatsoever. Based on the definition of 'services' and 'the provision of services' in Article 36(4) of the RTC, it is imperative that some cross-border element exist to justify the commencement of proceedings in the original jurisdiction for the enforcement of a right to provide services emanating from the RTC.

[25] Article 36(4) of the RTC states that:

For the purposes of this Chapter, "services" means services provided against remuneration other than wages in any approved sector and "the provision of services" means the supply of services:

- (a) from the territory of one Member State into the territory of another Member State;
- (b) in the territory of one Member State to the service consumer of another Member State;
- (c) by a service supplier of one Member State through commercial presence in the territory of another Member State; and
- (d) by a service supplier of one Member State through the presence of natural persons of a Member State in the territory of another Member State.

[26] The treaty therefore intended that any right conferred by the RTC on Trinidad and Tobago (or another Contracting Party) to provide banking, insurance and other financial services would be exercisable only in a transnational context. For example, Trinidad and Tobago, as a Contracting Party would have a right to bring proceedings against another Contracting Party to allege, say, that its nationals are being accorded discriminatory treatment in the territory of that other Contracting

⁹ *Trinidad Cement Ltd* (n 3) at [26].

Party as regards the right to provide financial services. In that regard, Trinidad and Tobago's right may also be capable of enuring to the benefit of its nationals. In appropriate cases, nationals of Trinidad and Tobago may bring Article 222 actions against the other Contracting Party. The RTC, however, does not confer on Trinidad and Tobago, or its nationals, a right to provide banking services in Trinidad and Tobago. The rights of nationals of Trinidad and Tobago to carry out banking business in that territory are governed by the domestic law of Trinidad and Tobago, to the exclusion of the RTC.

[27] In *Trinidad Cement Ltd v Co-operative Republic of Guyana*,¹⁰ this Court affirmed that some rights, despite not being expressly stated, may be 'be derived or inferred from correlative obligations imposed upon the contracting parties'.¹¹ Therefore, '[w]here an obligation is thus imposed, it is capable of yielding a correlative right that enures directly to the benefit of private entities throughout the entire Community.'¹² This principle of 'correlative rights' means that an obligation imposed on a Contracting State, A, corresponds with a correlative right in another Contracting State, B. That correlative right may enure to the benefit of nationals of Contracting State B, who could therefore bring Article 222 proceedings in the original jurisdiction to enforce the right against Contracting State A in the event that the latter State causes them prejudice in breaching the correlative right.

[28] In contrast, the factual matrix of the instant case does not invite the application of the principle of correlative rights. In keeping with the nature of a treaty being an agreement between states, an obligation imposed on States/Contracting Parties *inter se* can only vest correlative rights in other States/Contracting Parties which may, in select cases and subject to the nature of the right, enure to the benefit of nationals of those *other* Contracting Parties. There is no mechanism in the RTC through which rights conferred on a Contracting Party are transmuted into duties owed by that Contracting Party to its own nationals.

¹⁰ *Trinidad Cement Ltd* (n 3).

¹¹ *ibid* at [32].

¹² *ibid*.

[29] Accordingly, in relation to Article 222(a) of the RTC, the applicant necessarily fails to establish an arguable case that the RTC confers on Trinidad and Tobago a right to provide banking services that enures directly to his benefit.

Whether s 16(3) of the FIA Prejudiced the Right of the Applicant to Provide Banking Services

[30] The applicant has failed to satisfy the first limb of Article 222(a). Having been unsuccessful at the first hurdle it is unnecessary for this Court to assess whether the other requirements for special leave have been satisfied.

Costs

[31] In 2012, with respect to costs awards in the original jurisdiction, this Court stated in *Hummingbird Rice Mills Ltd v Suriname*¹³ that:

At this nursery stage of the development of Caribbean Community law, it is important that the burden of establishing the basic principles underpinning the Single Market should not weigh too heavily and disproportionately on private entities and thus discourage the bringing of important issues of economic integration law before the Court.

[32] On the basis of that principle, over the last 20 years since the Court's establishment, private parties who have been unsuccessful in the original jurisdiction have generally not been ordered to pay the costs of the successful party.

[33] On this occasion, however, the Court distinguishes this case from others, such as *Hummingbird Rice Mills Ltd*, where leave was granted to bring an action which was ultimately (wholly or partially) unsuccessful. In such cases the imposition of costs could have the effect of discouraging the bringing of arguable cases and thus close the opportunity for the Court to pronounce upon community jurisprudence.

¹³ [2012] CCJ 2 (OJ) at [6].

[34] In this matter, the Court considers it was not reasonable for the applicant to bring a plainly unarguable case against the respondent. In the circumstances, it is therefore proper to apply the general rule that costs follow the event and award costs of the application to Trinidad and Tobago on the standard basis.

Disposition

[35] For the foregoing reasons, the Court orders that:

- a. The application for special leave is dismissed.
- b. As a consequence of the dismissal of the application for special leave, the application for all hearings to take place via video conference is dismissed.
- c. Costs of the application for special leave are awarded to Trinidad and Tobago on the standard basis and are to be assessed in default of agreement.

/s/ W Anderson

Mr Justice Anderson (President)

/s/ M Rajnauth-Lee

Justice Rajnauth-Lee

/s/ D Barrow

Mr Justice Barrow