IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Appeal No CV 1 of 2012
GY Civil Appeal No 7 of 2012

BETWEEN

ROBIN SINGH and RAJENDRA SINGH **APPELLANTS**
In their capacity as representatives of
The GUYANA CRICKET BOARD

AND

THE ATTORNEY GENERAL OF GUYANA **RESPONDENT**

Before The Honourables **Mr Justice Nelson**
Madame Justice Bernard
Mr Justice Wit
Mr Justice Hayton
Mr Justice Anderson

Appearances

Sir Fenton Ramsohoye, SC; Mr Sanjeev Datadin; Mr R Satram; Mr CV Satram and Mr A Gajraj for the Appellant

Mr Mohabir Nandlall and Mr Nareshwar Harnanan for the Respondent

JUDGMENT
of
Justices Nelson, Bernard, Wit, Hayton and Anderson
Delivered by
The Honourable Mr Justice Hayton
on the 11th day of June, 2012

The Background

[1] The genesis of these proceedings is found in the action *Angela Haniff v Ramsay Ali et al* No 319-W of 2011 in the High Court. Little did Ms. Haniff know that the judgment in this action was to lead the Ministry of Sport to assume the national administration of cricket in Guyana via an Interim Management Committee in place of the Guyana Cricket Board.

[2] Prior to the taking of such drastic action cricket in Guyana was administered nationally by an unincorporated association called the Guyana Cricket Board ("the GCB"). It had three members, the Berbice Cricket Board ("the BCB"), the Demerara Cricket Board ("the DCB") and the Essequibo Cricket Board ("the ECB"), all unincorporated associations, each entitled to a third of the GCB's assets in the event of their dissolution of the GCB under Rule 48 of its rules. Under the constitution of these three sub-Boards their membership comprised the unincorporated associations running cricket in these three regions e.g. the DCB consisted of four members, the East Coast Cricket Board of Control, the Georgetown Cricket Association, the East Bank Cricket Association and the West Demerara Cricket Association. The members of these sub-sub Boards were the cricket clubs in the relevant sub-regions which are unincorporated associations whose members were the individuals actually playing cricket.

[3] It is trite law, as stated in *John v Rees*[1], that a club or an association "if unincorporated is not an entity separate from its members" and so cannot sue or be sued. Nevertheless, it is also trite law, as stated in *Hanchett-Stamford v Att-Gen*[2], "that the members for the time being of an unincorporated association are beneficially entitled to 'its' assets, subject to the contractual arrangements between them", so that a member cannot sever his share and claim assets from the trustee unless the association is dissolved under its constitution: his share must accrue to the other members on his death or resignation. Indeed, assets received for the benefit of the association are

[1] [1970] Ch 345 at 398
[2] [2008] EWHC 330 (Ch) at [31]

treated "as an accretion to the funds which are the subject of the contract which the members have made inter se" as pointed out in *Re Recher's Will Trusts*[3], endorsed in *Hanchett-Stamford* at [29], and described as "quite elementary" in *Re Bucks Constabulary Widows and Orphans Fund Friendly Society (No 2)*[4]. Moreover, is it not also the case that individual members can sue and be sued as representatives of their association under Order 14 rules 8, 10, 28 and 32 of the Rules of the High Court that appear to be to similar effect as the English Order 15 r 12 of the Rules of the Supreme Court, now Civil Procedure Rule 19.6, on which see *Howells v Dominion Insurance Co Ltd*[5] ?

[4] In *Haniff v Ali* Ms. Haniff, in her capacity as secretary of the BCB and its delegate at the 10 June 2011 Annual General Meeting of the GCB, sued Mr. Ali, president of the GCB, the two trustees of the GCB assets, and other significant representatives of the GCB. The action was heard on 11 and 15 August 2011. On 22 August a ruling, surprisingly citing no authorities, was delivered by Chang CJ (ag). In his final paragraph he held "Since all the parties to this action are no more than representatives of unincorporated umbrella associations which (along with their membership) lack legal personality, this action was misconceived and must be struck out and dismissed."

[5] Earlier at page 7 of his judgment he had stated:

"The private unincorporated umbrella associations (and their unincorporated membership associations) are accountable to no person or authority except themselves for the making and implementation of Rules or for the use of finances received whether from donations or matches played under their auspices. If moneys are stolen or misappropriated, neither they nor their unincorporated membership associations can be complainants in either civil or criminal proceedings – for lack of legal personality. They make their own Rules and procedures for the conduct of their affairs – breach of which cannot be challenged in court for the simple reason that they and their members are legal non-entities."

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[3] [1972] Ch 526 at 539
[4] [1979] 1 WLR 937 at 941
[5] [2005] EWHC 552 (QB)

[6] He thus considered that there was a vacuum (though "Equity abhors a vacuum") and so stated at page 9:

"In the present state of affairs, while a legislative structure for the administration of cricket is desirable, there may be the immediate need for the Minister responsible for sports to impose his executive will in the national interest until such time as parliament can provide a more permanent welfare structure. The Minister can take immediate interim action."

[7] The Minister for Culture, Youth and Sport took up this suggestion in a letter of 23 December 2011 to the secretary to the GCB.

"Pursuant to the letter and spirit of the said Order of Court, I hereby inform you that as an immediate interim remedial action, I have decided to install an Interim Management Committee which shall assume the administration of cricket nationally in lieu and in place of the Guyana Cricket Board, as the Government continues to explore a more permanent solution to this administrative and legal dilemma. This new initiative may involve and include the intervention of the legislature. As you are aware, consequent upon the 2011 General and Regional elections, the business of Parliament is yet to resume.

In the circumstances, I kindly request that you forthwith cease to act as, or on behalf, or hold yourself out to be a representative or an agent or an officer of the Guyana Cricket Board and that you immediately deliver to the Permanent Secretary of the Ministry of Culture, Youth and Sport, Mr. Alfred King all or any properties, account, record(s) or books owned by, or which touch and concern, or are connected with the business of the Guyana Cricket Board."

[8] This caused Mr Lionel Jaikarran and Mr Chetram Singh, the two trustees of the GCB, on 28 December 2011 to file an *ex parte* motion for an Order or Rule Nisi of Certiorari quashing the Minister's decision communicated by that letter. Mr. Lionel Jaikarran on 28 December 2011 had sworn an affidavit in support of this motion.

[9] On 28 and 29 December 2011 Chang CJ (ag) himself heard the *ex parte* application and on 29 December ordered that the application be refused. No written judgment has been given, but Mr. Sanjeev Datadin, who then appeared - and still appears - as counsel for the applicants, informed this Court that Chang CJ (ag) had applied his ruling in *Haniff v Ali* regarding the claimants as having no *locus standi* because they were purporting to represent a body that was a legal non-entity.

[10] Pursuant to Order 46 r 16 of the Rules of the High Court, the *ex parte* application was renewed on 30 December 2011 by way of a fresh hearing before the Full Court.

[11] On 18 January 2012 the proceedings came before the Full Court (Ramlall and Bovell Drakes JJ). Ms. Yonge of the Attorney General's Chambers appeared as counsel to seek leave to intervene in the proceedings. Such leave was granted and the matter adjourned to 19 January 2012 but Ms. Yonge then sought leave to withdraw her appearance for intervention. The Full Court granted such leave after allowing to be placed before it the authorities that she wished the court to consider.

[12] On 25 January 2012 the Full Court ordered the 30 December 2011 motion be dismissed after reciting it had read the Notice of Motion and the supporting affidavit of 30 December 2011 and heard only the Attorney-at-Law for the Applicants. It refused an application to appeal to the Court of Appeal. Some oral reasons for dismissing the motion were given but no written judgment has yet been produced. According to Mr. Sanjeev Datadin, who then appeared as counsel for the applicants, one of the reasons was that in the light of *Haniff v Ali* the applicants had no *locus standi*. The Full Court further indicated that it had no power to give leave to appeal to the Court of Appeal.

[13] The Court of Appeal, however, was moved by motion dated 30 January 2012 for leave to appeal against the decision of the Full Court and for the application for leave to be treated as the hearing of the substantive appeal for the making of an order nisi for a writ of certiorari. The Court of Appeal heard

the matter on 14 February 2012 but summarily dismissed the motion, apparently on the ground that it had no jurisdiction to hear an appeal from an *ex parte* decision in the light of the wording of section 6(5)(d) of the Court of Appeal Act Cap 3.01 set out below at [16], though, again, no written reasons have been provided.

[14] On 2 March 2012 the two trustees ("the Applicants") applied to this Court for special leave to appeal against the Court of Appeal's judgment of 14 February that it had no jurisdiction to hear any appeal to it in this matter. On 13 March notice was given of a case management conference to deal with this, to be held on 26 March. At this *inter partes* video conference, this Court granted special leave to appeal and gave directions leading to the hearing of this appeal. Due to the Applicants' resignations from the GCB this Court also gave leave for an application to be filed to substitute those Applicants.

[15] On 12 April 2012 there was an *inter partes* hearing by video conference of the application for substitution of the Applicants by Mr. Robin Singh and Mr. Rajendra Singh ("the Appellants") in their capacity as authorised representatives of the GCB as evidenced by their joint affidavit dated 26 March 2012 and filed on 10 April 2012. At the *inter partes* hearing this Court granted leave for such substitution. The standing of the Appellants has not been questioned in these proceedings before this Court. Perhaps, the Attorney-General was aware of the view of Bernard CJ in *Re Application of Carl Hanoman* HCSJ No 23M of 1999[6] accepting that "The prerogative remedies being of a 'public' character... have always had more liberal rules about standing than the remedies of private law."

[6] Cited in R Ramlogan, Judicial Review in the Commonwealth Caribbean, 2007, at page 11

The issues in this appeal

[16] Whether or not an appeal lies to the Court of Appeal from the High Court or the Full Court as the case may be is dependent purely on legislation. The relevant legislation is as follows in section 6 of the Court of Appeal Act Cap 3.01 (but omitting s 6(3)as concerned only with orders referred to in s 6(2)(d)):

"(1) The Court of Appeal shall have jurisdiction to hear and determine any matter arising in any civil proceedings upon a case stated or upon a question of law reserved by the Full Court or by a judge of the High Court pursuant to any power conferred in that behalf by any Act.

(2) Subject as otherwise provided in this section, an appeal shall lie to the Court of Appeal in any cause or matter from any order of the Full Court or of a judge of the High Court (whether made before or after the date on which this Act comes into force) where such order is –

(a) final and is not –

(i) an order of a judge of the High Court made in chambers or in a summary proceeding;

(ii) an order made with the consent of the parties;

(iii) an order as to costs;

(iv) an order referred to in paragraph (d);

(b) a decree nisi in a matrimonial cause or an order in an admiralty action determining liability;

(c) declared by rules of court to be of the nature of a final order;

(d) an order upon appeal from any other court, tribunal, body or person.

(4) With the leave of the Full Court or of the Court of Appeal, an appeal shall lie under this section from a decision of the Full Court upon appeal from a judge of the High Court in respect of an order referred to in subsection (2)(a)(i), (a)(ii) or (a)(iii) or in respect of an order of a judge of the High Court not referred to in the said subsection.

(5) No appeal shall lie under this section –

(a) from any order made in any criminal cause or matter;

(b) from an order allowing an extension of time for appealing from an order;

(c) from an order of a judge giving unconditional leave to defend an action;

(d) from an order obtained by default or made on an *ex parte* application;

(e) from a determination of the Full Court under subsection (8) of this section."

[17] It is also necessary, as will be seen, to consider Order 46 r 16 of the Rules of the High Court which states: "Where an *ex parte* application has been refused by the Court below, application for a similar purpose may be made to the Full Court *ex parte* within four days from the refusal or within such enlarged time as a Judge or the Full Court may allow."

[18] The Attorney General of Guyana, "the Respondent", submits that all *ex parte* applications are to be treated the same. The position applicable for interlocutory *ex parte* motions governs the position for what one may term an "originating" *ex parte* motion for an order nisi for issue of the prerogative certiorari writ.

[19] He correctly points out that the scheme set out in section 6 applies to interlocutory *ex parte* motions as follows. There is no possible "as of right" appeal to the Court of Appeal because the grant or refusal of such a motion is not a "final" order within s. 6(2) bringing finality to a dispute. Where an *ex parte* application is refused by the High Court, however, there is a right to go to the Full Court, not by way of appeal (as erroneously indicated in the side-note), but by way of a new application for the same purpose under Order 46 r 16, as held by Chang CJ (ag) in *Re Clico and General Insurance (South America) Ltd* No 191-P of 2009. If the Full Court refuses this application, an appeal to the Court of Appeal can only be made under s. 6(4) with leave of the Full Court or the Court of Appeal from an *appeal* to the Full Court in respect of certain orders, so that s. 6(4) cannot assist an unsuccessful *ex parte* applicant who applied to the Full Court under Order 46 r 16. Most damningly, s. 6(5)(d) expressly directs that no appeal to the Court of Appeal shall lie from an order made on any *ex parte* application. Thus he concludes that the attempt

in these proceedings to appeal to the Court of Appeal from an order dismissing an *ex parte* application is hopeless.

[20] This, of course, makes good sense for interlocutory *ex parte* applications so that they are resolved expeditiously, with the possibility of making a new *ex parte* application to the High Court if circumstances develop to strengthen the case for such an application. Crucially, if the application fails, progress is still being made under the civil procedure rules to have the matter fully and finally determined *inter partes*.

[21] Counsel for the Appellants, however, disputes that it makes such good sense for an originating *ex parte* application for an order nisi for the issue of a writ of *certiorari* because, if the application is refused, there is no underlying *inter partes* action to fall back on, no action ever having been launched. Counsel supports this view by referring to the present case where he submits that there is no real possibility of ever making a successful *ex parte* application to launch new proceedings for the same alleged unlawful abuse of power complained of in the earlier two applications.

[22] He submits that if the Appellants made a new *ex parte* application, surely the reality is that the High Court judge would follow the decisions of the High Court in December 2011 and the Full Court in January 2012 refusing the previous applications by applying the August 2011 ruling in *Haniff v Ali*. Thus, the refusals of the two *ex parte* applications have finally disposed of the rights of the parties because it is clear that the reality is that no leave for the issue of a nisi order for certiorari will ever be granted, so leaving the Minister for Culture Youth and Sport and the Interim Management Committee running the administration of cricket in Guyana.

[23] This Court accepts this submission, so that the order refusing the *ex parte* application has been a "final order", an order being an "order" even where the order refuses an application, despite the Respondent's attempt to argue the contrary. It is to be noted that this final order capable of being appealed under s 6(2) is not excepted from such possible appeal by s 6(2)(a)(i) as "an order of

a judge of the High Court made in chambers or in a summary proceeding." Applications for a court order nisi for prerogative writ are made on *ex parte* motion supported by affidavit (see *Re Application by Gerriah Sarran* [7]*),* so that they are not chambers matters. Nor are they summary proceedings since they are preliminary to an *inter partes* hearing The Appellants thus have a right of appeal under s. 6(2) unless ousted by s. 6(5)(d) which states that no appeal lies from an order "made on an *ex parte* application".

[24] As to the latter issue, counsel for the Appellants submitted, however, that the order was made on an *inter partes* application. He submitted that the intervention of counsel for the Attorney General by obtaining leave to appear for the Attorney General in the *ex parte* application before the Full Court made the application *inter partes*. This submission is rejected. First, the Full Court next day granted the application for leave to withdraw the appearance, merely accepting some authorities left with the Court to assist it, so that its order referred only to an appearance by counsel making the application. Second, even if the appearance had not been withdrawn, so that the Court heard some observations made by counsel for the Attorney General, the nature of an application for an order nisi is that there are two parts, (i) the *ex parte* application followed (ii), if the application succeeds, by an *inter partes* hearing. If the judge in his or her discretion is prepared to allow counsel for the other side to appear to assist the court to have some dialogue with it, this does not change the character of the *ex parte* application: see *Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd*[8] where Megarry J referred to an *ex parte* motion that became what he termed an opposed *ex parte* motion when the defendant appeared to assist the court.

[25] At face value s. 6(5)(d) appears to oust any appeal to the Court of Appeal. It is, however, necessary to consider whether s. 6(5)(d) is implicitly restricted to interlocutory *ex parte* applications, so that it does not apply when the Appellants' *ex parte* application was an originating application as in the present case.

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[7] (1969) 14 WIR 361
[8] [1972] 1 WLR 1213 at 1214

[26] This requires noting that the procedure for the issue of prerogative writs eg for *certiorari*, is governed by the English Crown Office Rules 1906 as made clear by Bernard C in *Att-Gen v Jardim*[9], stating "In Guyana ... the old prerogative writs based on the Crown Office Rules 1906 are still in existence. I reiterate that they were never regarded as civil proceedings." These prerogative remedies are remedies to which the citizen is not entitled as of right but only at the discretion of the court and were regarded as "Crown side proceedings" as distinct from "civil proceedings" which in any event did not then lie against the Crown. A prerogative writ calling upon a public body to perform a public duty or requiring decisions of such a body to be quashed was not properly to be regarded as a civil proceeding, such being concerned with private law, not public law, remedies. Thus the Attorney General could not take advantage of the State Liability and Proceedings Act 1984 to appeal orders of *certiorari* and *mandamus* granted to Mr. Jardim against the Commissioner of Police.

[27] Nevertheless, in Guyana there are High Court Rules governing matters in the High Court and a Court of Appeal Act, Part II headed "Civil Appeals" which deals with "civil proceedings" in s. 6 and provides in ss. 7, 8 and 9 for certain matters on hearing of an appeal in "any civil cause or matter", while Part III is headed "Criminal Appeals" and deals with such appeals.

[28] It thus appears that non-criminal appeals must extend to Crown side proceedings so as to be capable of falling within Part II of the Court of Appeal Act if consistent with the nature of prerogative writs as appearing from the Crown Office Rules, so long as the High Court Rules provide no rules to supplant the Crown Office Rules. Indeed, counsel for the Respondent conceded that the practice for seeking an order nisi for the issue of a writ of *certiorari* was to apply by way of motion under Order 40 of the Rules of the High Court but without the need to satisfy Order 40 r 3 stating "no motion shall be made without previous notice to the parties affected thereby".

[9] (2003) 67 WIR 100 at 105

[29] It is noted that Order l.3 of the Rules of the High Court states that "wherever touching any matter of practice or procedure these Rules are silent, the Rules of the Supreme Court in force immediately before 23 February 1970, made in England under and by virtue of the Supreme Court of Judicature (Consolidation) Act 1925 or any law amending the same shall apply *mutatis mutandis*." The 1970 English Rules (particularly Order 53), however, applied to a new scheme of prerogative orders that in 1938 had replaced the old-fashioned scheme for prerogative writs preserved in Guyana by s. 23 of the Civil Law Act Cap 6.01. Thus, Singh J (as he then was) in *Re Application by Guyana Telephone & Telegraph Co Ltd* Suit No. 13 (decided 28 March 2000)[10] rejected any application to Guyanese prerogative writs of the English Rules relating to the new English prerogative orders.

[30] How then should one deal with *ex parte* applications for an order nisi for a certiorari writ to be issued, taking account of the nature of such an application and the nature of the writ against the background of the Guyanese Constitution? In its Preamble it emphasises the importance of a system of governance that promotes, inter alia, fundamental human rights and the rule of law. The main purpose of certiorari, indeed, is to quash unlawful conduct of public bodies which can very well cause interference with fundamental rights which include rights to property under Article 142 of the Constitution and freedom of association under Article 147. Rules of court should thus be purposively construed so as to foster the fundamentals of the Constitution.

[31] The nature of the present *ex parte* application is an originating one to enable a case to get started *inter partes.* If the application is refused the case never gets off the ground. It is thus very different from an interlocutory *ex parte* application. If that is refused then matters proceed under the underlying existing *inter partes* action, while, if circumstances change significantly, a further ex parte application can easily be made. In the case of an originating *ex parte* application, while in theory a further *ex parte* application may be possible, it is difficult in practice to see how a further *ex parte* application

[10] See passages cited in A Fladjoe, Commonwealth Caribbean Public Law 3rd ed 2008 page 21

could successfully be made to quash a particular alleged unlawful decision if an earlier application has been refused unless significant new facts emerge eg as to the bad faith of a decision-maker.

[32] It may well be that the normal "once and for all" nature of the refusal of an *ex parte* originating motion affected the Court of Appeal in two cases where an appeal from a High Court judge's refusal of such an application for a prerogative writ was actually heard by the Court of Appeal as a straightforward appeal: *Re Application by John Ewart Langhorne*[11] and *Re Application by Gerriah Sarran*[12]. Very likely, the court was influenced by the fact that it appears in England that where an order for the issue of a prerogative writ or order was refused there was an appeal to the Court of Appeal[13]. Indeed, Crane JA in delivering the leading judgment in *Sarran*[14] expressly referred to *Ex p Fry*[15] where the English Court of Appeal had heard an appeal from a refused *ex parte* application for an order of certiorari. Moreover Cummings JA in *Sarran* expressly referred[16] to Guyanese legislation whose provisions, it seems, are now reflected in the Court of Appeal Act, s 3, which, essentially, vests in the Court of Appeal "Subject to the provisions of any Act ... all the powers and authorities vested in it exercisable by the Supreme Court of Judicature in England on the first day of January 1958".

[33] Cummings JA referred to the Crown Office Rules and held that the High Court had jurisdiction to hear applications like those of the applicant who had applied by *ex parte* motion supported by an affidavit. He expressed no qualms over the Court of Appeal's jurisdiction to hear an appeal direct from the High Court's refusal of an *ex parte* application. All judges assumed that they were dealing with a "final' decision.

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[11] (1969) 14 WIR 353
[12] (1969) 14 WIR 361
[13] See Vol 9 Halsbury's Laws of England 2nd ed para 1477 and Vol 11 Halsbury's Laws of England 3rd ed para 152 and s27 Supreme Court of Judicature (Consolidation) Act 1925
[14] (1969) 14 WIR 361 at 365-366
[15] [1954] 2 All ER 118
[16] Ibid at 369-370

[34] Despite these two authorities, the Respondent relied heavily upon the subsequent Court of Appeal decision in *Re Williams and Salisbury*[17] dealing with an appeal from the High Court's refusal of an *ex parte* application for an order nisi for issue of a writ for certiorari. Crane JA, who was on the panel for the two above cases (to which no reference was made), was on the panel with Haynes C and Massiah JA. While, on its face, the application was a claim for an order nisi of certiorari to remove into the High Court the proceedings of the preliminary magistrates inquiry against the applicants, nevertheless the order actually sought was an order directing the magistrate to refer certain constitutional matters to the High Court. It was this that the Court of Appeal focused upon in holding that this was an interlocutory order and not a final decision capable of being appealed. Thus there was no jurisdiction to hear an appeal. The Respondent strongly invoked the support of this case for arguing that the Appellants in the present proceedings had no right of appeal. It will be seen, however, that *Re Williams and Salisbury* is clearly distinguishable.

[35] At a preliminary inquiry in the Magistrates Court, Mr Williams and Mr Salisbury ("the Defendants") had been charged with obtaining a cheque by false pretences but had been discharged after the magistrate had found that they had no case to answer. The DPP then purported to exercise a statutory power under s 72(2)(ii) of the Criminal Law Procedure Act Cap 10.01 to direct the magistrate to reopen the inquiry with a view to committing the Defendants to trial. On reopening the inquiry the Defendants' counsel, Mr Gibson, urged the Magistrate not to commit them for trial because the statutory power was ultra vires Articles 47 and 73 of the Constitution and so void. He requested the magistrate to exercise his power to refer this issue to the High Court. The magistrate refused to do this, but did not commit the Defendants for trial, sitting on the fence, suggesting that the Defendants ought to bring a motion for breach of their fundamental rights.

[36] The Defendants did not take up this suggestion but made an *ex parte* application to the High Court for an order nisi directed to the magistrate

[17] (1978) WIR 133

compelling him to refer the constitutional invalidity of s 72(2)(ii) of the Criminal Procedure Act to the High Court. Thus, as conceded by Mr Gibson (at pages 141,168-169 and 171) he was seeking only an interlocutory order from the High Court. After all, at that stage no judge would begin to consider whether the Defendants' fundamental rights to a fair trial under Article 10 of the Constitution had been infringed or whether s 72 was unconstitutional and void. Churaman J, however, in hearing the *ex parte* application and, in the absence of the DPP and the magistrate, surprisingly upheld the validity of s 72(2)(ii) and so refused to make the order sought against the magistrate. The Court of Appeal strongly criticised him for such ruling beyond his remit - "the whole affair was a comedy of errors" according to Crane JA at 160 - and Mr Gibson could not convert an interlocutory proceeding into a "final" decision because the judge had unjustifiably come to a final decision. The judge's refusal of the *ex parte* application was not determinative of any rights of the Defendants since they could have their fundamental rights and the invalidity of s 72(2)(ii) determined by motions in the High Court, while it was also possible that on a re-opening of the trial the magistrate might, perhaps, decide to exercise his power under Article 19(3) of the Constitution to state a case for the opinion of the High Court. Thus the case does not undermine the position reflected in *Langhorne* and in *Sarran.*

[37] At this juncture it is necessary to deal with a further point going to the jurisdiction of this Court that was raised by the Attorney General at the very end of the hearing. He raised various issues as to the meaning of "civil proceedings" in ss 6, 7 and 8 of the Caribbean Court of Justice Act. In the absence of adequate notice to the other side and of forensic argument, the only point needing to be dealt with is that the final order obtained in these Crown side proceedings peculiar to Guyana was obtained in "civil proceedings" or a "civil matter". In the context of the appeal heard in *Sarran*, paragraphs [27]-[28] above and the variety of CARICOM States intended to be covered by the appellate jurisdiction set out in Article XXV of The Agreement Establishing the CCJ, "civil proceedings" or "civil matters" are proceedings or matters that are not criminal matters, so extending to public law or judicial review matters.

Conclusions

[38] In the light of the above Court of Appeal authorities and the already discussed nature of originating *ex parte* motions for an order nisi for issue of the writ of certiorari, this Court concludes that an order refusing such an application is a final order within s 6(2) of the Court of Appeal Act. The seeking of such a public law remedy to prevent alleged unlawful abuse of public powers is of such significance in the light of Guyana's Constitution that an appeal lies as of right to the Court of Appeal. Moreover, such an originating *ex parte* application falls outside the restriction in s 6(5)(d) which is limited to *ex parte* applications made in the course of subsisting *inter partes* proceedings. Similarly, it is only in the case of interlocutory *ex parte* applications that there is the right to renew the application before the Full Court under Order 46 r 16 of the Rules of the High Court.

[39] It follows that in the current proceedings there was no jurisdiction in the Full Court to hear the renewed *ex parte* application and give any judgment. It thus happens, fortuitously, that the Court of Appeal was correct to hold that it had no jurisdiction to hear an appeal from the Full Court, though in error in relying upon s 6(5)(d) for having no jurisdiction.

[40] In the current proceedings there should have been an appeal as of right to the Court of Appeal from the order of Chang CJ (ag) of 29 December 2011 refusing the *ex parte* application. The Applicants, however, cannot be blamed for initially accepting at face value the wording of s 6(5)(d) of the Court of Appeal Act and Order 46 r 16 of the Rules of the High Court and so going to the Full Court or for the fact that an extension of time is now needed for the Court of Appeal to be able to hear the appeal from the order of 29 December 2011.

[41] In these very exceptional circumstances this Court considers that no court could properly refuse an application for an extension of time for appealing that 29 December order. Order II, rule 3, paragraphs (4) to (7) of the Court of Appeal Rules enable the Court of Appeal to grant extensions of time for

appeals and under s 3 of the Caribbean Court of Justice Act No 16 of 2004 giving effect to Article XXV.6 of The Agreement Establishing the CCJ, this Court has all the powers of the Court of Appeal. Due to the seriousness of the issues and the urgency of the matter this Court most exceptionally will exercise the powers of the Court of Appeal in the following manner.

[42] This Court grants the Appellants an extension of time until fourteen days from the delivery of this judgment to file a notice of appeal from the order of Chang CJ (ag) of 29 December 2011, providing the Appellants within seven days of delivery of this judgment file with the Registrar of the Supreme Court a motion seeking such an extension. Such motion shall be supported by affidavit exhibiting a copy of this Court's judgment as justification for such extension of time. Upon compliance with these conditions the notice of appeal shall reflect that it is filed pursuant to an order of this Court granting an enlargement of time.

[43] The appeal is dismissed. In all the special circumstances there will be no order as to costs.

/s/ R F Nelson
The Hon Mr Justice R Nelson

/s/ D Bernard
The Hon Mme Justice D Bernard

/s/ J Wit
The Hon Mr Justice J Wit

/s/ D Hayton
The Hon Mr Justice D Hayton

/s/ W Anderson
The Hon Mr Justice W Anderson