GRENADA

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 7 OF 1999

BETWEEN:

ERIC MATTHEW GAIRY
JENNIFER GAIRY (a party added
pursuant to the order of the court made
the 10th day of December 1997

Appellants

and

THE ATTORNEY-GENERAL OF GRENADA

Respondent

Before:

The Hon. Mr. Dennis Byron	Chief Justice
The Hon. Mr.Albert Redhead	Justice of Appeal
The Hon. Mr. Albert Matthew	Justice of Appeal [Ag.]

Appearances:

Mr. D. Knight Q.C., and Mr. A. Astaphan S.C. for the Appellants
Mr. E. Thomas and Mr. K. Friday for the Respondent

1999: July 7;
November, 22.

JUDGMENT

[1] BYRON, C.J. This is an appeal against a ruling of Alleyne J. delivered on the 25th February, 1999 dismissing the appellants' Motion for an Order of Mandamus directed against the Minister of Finance, for want of jurisdiction. The proceedings turned on the

relief sought in the Notice of Motion filed on 23rd January 1997 and I think it important to set out its terms in full:

> "[a Motion]… on behalf of the Applicant, for an Order of Mandamus directed to the Minister of Finance requiring the Minister to make prompt payment of the balance of the compensation ordered by paragraphs 2,3 & 5 of the said order [order dated the 29th day of April 1994, made by the High Court in Suit No. 377 of 1987 and varied by the Court of Appeal by order dated the 6th day of July, 1994 in Civil Appeal No. 9 of 1994] whereby it was ordered (inter alia) as follows:
>
> (2) That judgement be entered for the plaintiff in the sum of $3,649,414.00 being the amount awarded the plaintiff by the arbitrator.
>
> (3) That interest on the said amount be paid at the rate of $6.00 per centum per annum from the 1st day of November 1990 until payment.
>
> (5) That there be prompt payment of the above amounts.
>
> upon the grounds set forth in the copy statement served herewith used on the application for leave to issue this notice of motion.
>
> And for an order that the costs of and occasioned by this motion be paid by the Respondent to the Applicant to be taxed on Solicitor and own client if not agreed.
>
> And take notice that upon the hearing of this motion, the Applicant will use the affidavit of Jean Alexander sworn and filed herein on the 16th day of January, 1997."

The Background

[2] By a decree styled "People's Law No. 95 of 1979 – Proclamation by the People's Revolutionary Government", certain properties of Sir Eric Gairy, (the Prime Minister of Grenada whose government was overthrown by the revolution), were confiscated. After the restoration of constitutional government, proceedings for redress were initiated and on 10th November, 1990 St. Paul J. ordered that the confiscation was null and void. He ordered that the property be returned and that compensation for the unlawful confiscation be paid, to be assessed by an arbitrator appointed by the court. On 29th April, 1994 before Moore J., a consent order was entered adopting the report of the arbitrator and entering judgment in the sum of $3,649,414.00, together with interest at the rate of $6.00 per centum per annum from the 1st day of November, 1990 until payment. It included the order:

> "(5) That the Minister of Finance be directed to issue a warrant under his hand forthwith for the prompt payment of the above amounts from the consolidated fund."

[3] An appeal was lodged against this order by the Hon. Attorney-General on behalf of the Government seeking to set it aside on various grounds. One of the grounds was that no mandatory order should have been made against the Minister of Finance. The judgment of the Court of Appeal delivered by me on 6th July, 1994 in Civil Appeal No. 9 of 1994 includes this finding:

> "…it has become unnecessary to adjudicate on this point as, after argument Counsel for the respondent conceded that the mandatory order against the Minister of Finance should not have been made and entered. Both sides agreed that a suitable wording for paragraph (5) of the order would be:
>
> "(5) That there be prompt payment of the above amounts".
>
> And I accordingly so order."

[4] The remainder of the order was confirmed. The record of appeal in Civil Appeal No. 9 of 1994 revealed that most of the land was returned and the parcels retained, were in the process of proper land acquisition. It seemed from the record that these parcels were required for public purposes associated with the International Airport at Point Salines.

[5] Payments had been made and there remains an outstanding balance of over $1,000,000.00. Disputes have arisen about the manner and time of disbursement of this outstanding balance. This has led to the initiation of these proceedings.

[6] When the matter came on for hearing on 1st February, 1999 Learned Counsel for the Respondent moved for the matter to be struck out on the grounds that the matter is res judicata and lacked a solid legal basis.

The Rationale of the Judgment

[7] The res judicata point dissolved into a linguistic issue in that it was contended that the appellants were seeking again exactly the same order of which they already had benefited. The learned trial judge indicated that he treated the application as one seeking an

enforceable order, enjoining the Minister of Finance to pay the compensation within a fixed time which, if disobeyed, could lead to contempt or other similar proceedings against the Minister. The central issue which was considered and on which he adjudicated after analysis of the submissions and the law was expressed in his ratio decidendi as follows:

> "The question is whether this court can make a mandatory order against the Minister, enforceable by contempt or coercive proceedings. Such an order would be in effect, an order binding the Consolidated Fund, and as such would unquestionably be an order against the Crown. Jaundoo has unequivocally decided that a court in Her Majesty's Dominions has no jurisdication to do so; Lord Diplock at page 148 B-C."

The Grounds of Appeal

[8] The appellants raised several challenges to obiter dicta in the case, including statement such as:

(a) "it is not for the court to give teeth to the provisions of the constitution"; and

(b) "the courts cannot assume powers which have not been conferred on them by the law, nor can they usurp the legislative functions."

The central challenge, however, was against the learned trial judge's decision that the court has no jurisdiction to make an order of mandamus against the Minister.

Procedural Problems in litigation against the Crown

[9] Litigation between the citizen and the State has always been considered problematic. In constitutional democracies under the rule of law, however, the courts have assumed jurisdiction to hear and determine all disputes of a justiciable nature. The principle of equality before the law, where every man whatever his rank or condition is subject to the ordinary law, must result in every official from the Prime Minister down to a junior clerk having the same responsibility for every act done without lawful justification, as any other citizen.

[10] In proceedings where citizens claim against the Crown generally, for wrongful acts various problems have arisen. One is simply technical and procedural. There was a presumption that the Crown would never authorize wrongdoing and so could not be responsible for any

wrong committed in its name. The practice and procedure that developed, however was that if the specific officer could be identified judgment could be entered against him. In England this resulted in the cumbersome practice of the Government nominating a defendant, who may not have been personally guilty, so that the court could adjudicate. The Crown thereafter usually made an ex gratia payment of the judgment debt.

[11] In matters of the prerogative orders, where there were applications to the court to make injunctive or mandatory orders against the Crown, another technical or procedural humbug existed. Since the courts dispensed justice in the name of Her Majesty, it was considered an absurdity for the Queen to give orders to Herself. In these matters as well, in order to get justice before the courts, it was necessary to identify a specific official who had a specific duty to the applicant. If that could be done the court would act. In other words, the courts did exercise the jurisdiction, but there were procedural difficulties, in the main requiring accurate specification of the wrongdoer and the specific duty he was alleged to have breached. The difficulties resulted in criticisms that the process constituted impediments to justice. In order to give effect to the rights of citizens who had disputes with the Government, in accordance with the constitutional principles embraced in the concept of the rule of law, legislation was enacted. The Crown Proceedings Act was passed in England in 1947. It should be noted that the purpose of this legislation was to make it easier for the Crown to be a party to litigation. It was intended to facilitate, not restrict, the right of the citizen to gain redress against the Government. Thereafter Acts in similar terms were passed throughout the Dominions. Such an Act was enacted in Grenada on the 15th day of April, 1959 as the Crown Proceedings Act.

Jaundoo's Case

[12] It was against this background that the case described by the learned trial judge as a landmark case, Oliver Casey Jaundoo v Attorney-General of Guyana (1971) 16 W.I.R. 141, must be read. Mrs. Jaundoo's tribulations in the litigation were largely caused by the forms and procedures adopted by her counsel, who had initiated proceedings to prevent the Government of Guyana from taking her land without compensation as she suspected it had intended to do. In order to protect her constitutional rights she applied for an

injunction against "the Government of Guyana". At that time Guyana was still a constitutional monarchy so that the entity described as the "Government of Guyana" was interpreted as being the same as the Crown. Lord Diplock at page 148, expressed the principle, by then already well established, that a court in Her Majesty's Dominions had no jurisdiction to grant an injunction against the Crown, and explained:

> "The reason for this in constitutional theory is that the court exercises its judicial authority on behalf of the Crown. Accordingly any orders of the court are themselves made on behalf of the Crown and it is incongruous that the Crown should give orders to itself."

[13] He went on to explain that the injunctive relief sought against the "Government of Guyana" offended the principle that the persons to be bound by such an order must be clearly identified on page 148, Lord Diplock asked the rhetorical question to emphasize the breach of the principle:

> "How far down the official hierarchy of public service or up it to Her Majesty does an injunction in these terms extend? If road construction operations were commenced or continued despite the injunction, would everyone from the Cabinet downwards who could have given instructions that the operations should be carried out be liable to committal or attachment for breach?"

[14] It was clear that Lord Diplock had drawn the well-established theoretical distinction between seeking an order against the Crown and seeking one against a Minister, or other official, of the Crown. After explaining the court's power to make declaratory orders, he went on at the same page to describe quite clearly the form of application that the appellants could have employed to invoke the jurisdiction of the court to make an injunctive order against a Minister, or other official, of the Crown, as follows:

> "A declaration of rights unlike an injunction, however, is not a suitable form of interim relief pending final determination of the landowner's application. But if the matter were urgent, it would have been open to the landowner to add, as an additional party to the motion, the director of works or the minister in whom the powers of the director of works under the Roads Ordinance are now vested, and to claim an injunction against him. This would give the court jurisdiction to grant an

> interim injunction if the urgency of the matter so required. This was the course adopted in the Canadian case of Carlic v the Queen and Minister of Manpower and Immigration, although their Lordships do not accept as correct that the interim injunction granted in that case should have been expressed to be against both defendants instead of against the Minister to the exclusion of the Queen."

[15] Lord Diplock clearly expressed the opinion that the court had jurisdiction to issue an injunctive order against the Minister of Works in relation to the specific duties conferred on him by the Roads Ordinance, even though the order would have bound the Government in the same way as an order against the Crown would have, could it have been made. It is, therefore, not correct to say that Jaundoo is an authority for the general proposition that the court has no jurisdiction to issue injunctive or mandatory orders against a Minister of Government. Any such proposition has to be linked to the presence or absence of a statutory duty binding on the Minister in his official capacity.

Mandatory orders against the Crown

[16] In accordance with the settled law and practice for well over a century, and there are numerous authorities expressing the principle, the courts have exercised jurisdiction to issue mandatory orders against a Minister of Government or the Crown.

An authoritative example is the case of Regina v. Commissioners of Customs and Excise Ex parte Cook and Another (1970) 1 W.L.R, 450 at 455 where Lord Parker expressed it thus:

> "It is sometimes said as a general proposition that mandamus will not lie against the Crown or an officer or servant of the Crown. I think that we all know in this day and age that that as a general proposition is quite untrue. There have been many cases, of which the most recent is Padfield v Minister of Agriculture, Fisheries and Food (1968) A.C. 997 in which a mandamus was issued to a Minister. Indeed, that has always been the case, as can be seen since as long ago as 1850 when in Reg v Commissioners of Woods, Forests, Lands, Works and Buildings, Ex parte Budge (1850) 15 Q.B.761 Sir Frederick Thesiger expressed the proposition in argument in this form, at p.768:
>
> > 'Whenever a person, whether filling an office under the Crown or not, has a statutory duty towards another person, a mandamus will lie to compel him to perform it.'
>
> Those words of Sir Frederick Thesiger were in fact adopted by Cockburn C.J."

[17] The proposition has been applied throughout the Commonwealth. An example is the Australian case of Commissioners of State Revenue v Royal Insurance Australia Ltd (1994) 4 L.R.C 511, where Mason C.J. said at 532:

> "At one time it seems to have been thought that mandamus would not be granted to enforce payment of money by the Crown (see, for example, *R v Lords Comrs of the Treasury (1872) LR 7 Q.B. 387*. However, in principle there can be no objection to the grant of relief by way of mandamus directed to a statutory officer requiring that officer to pay money if there be a public legal duty to so act [see *R v Comrs for Special Purposes of the Income Tax (1888) 21 Q.B. 313 at 322* per Lindley L.J.)… consequently, mandamus will issue not only to compel exercise of the discretion according to law but also to compel it to be exercised in the way in which it must be exercised."

[18] Reference was also made in argument to the Zimbabwe case of Mhora v Minister of Home Affairs (1990) 2 Z.L.R. 236, among several others.

[19] A most thorough and informative description of the nature and development of this branch of the law was given by Lord Woolf in, In re M (1993) 3 W.L.R. at 433. He traced the development of the jurisdiction to grant relief by prerogative order and judicial review against the Crown and officers of the Crown and explained the rationale for and the effect of the Crown Proceedings Act 1947.

Crown Proceedings Act, Cap. 74

[20] I think however that it is appropriate at this stage to go directly to the Crown Proceedings Act Cap.74 of the Revised Laws of Grenada 1990, because the learned Trial Judge and Counsel for the Respondent regarded it as prescribing restrictions against mandatory relief against the Crown and officers of the Crown.

[21] It was submitted that section 17 of the Act prohibits the court from making mandatory orders against the Crown or Ministers of the Crown. In considering this point it is important to note that there are substantial differences in the legal principles applicable to injunctions and to orders for mandamus. Section 17 of the Act does not make any reference to orders for mandamus and it must be read in that context. So I set out the provisions said to have the restricting effect:

"Section 17

(1) In any civil proceedings by or against the Crown the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that-

(a) where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant any injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(b) in any proceedings against the Crown for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Crown to the land or property or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown"

[22] It is clear that in proceedings to which the section 17(1) provisos (a) and (b) and section 17(2) apply, no injunction can be granted against the Crown, or an officer of the Crown if its effect is the same as binding the Crown. An important question, however, is what are the proceedings governed by the section. The construction of the section is affected by the limiting phrase "Civil Proceedings". This at once gives warning that not "all" proceedings are included in the section. This raises the question as to how to identify what proceedings are excluded. An answer is provided in the judgment of Lord Woolf in, In re M. (supra). Section 17 of the Grenada Act is an exact reproduction of section 21 of the Crown Proceedings Act in England. Lord Woolf explained that in England the meaning of the term "civil proceedings" would be construed to exclude proceedings brought for prerogative orders. In relation to section 21 (2) he explained that in England the restriction is to situations where relief could not have been obtained against the Crown prior to the Act. He concluded this section of his judgment by commenting at page 454:

> "There appears to be no reason in principle why, if a statute places a duty on a specified minister or other official which creates a cause of action, an action cannot not be brought for breach of statutory duty claiming damages or for an injunction, in the limited circumstances where injunctive relief would be appropriate, against the specified minister personally by any person entitled to the benefit of the cause of action. If, on the other hand, the duty is placed on the Crown in general, then section 21(2) would appear to prevent injunctive relief being granted…"

[23] It is true that some of the aids to interpretation utilized in the reasoning of Lord Woolf do not attain in Grenada. In particular there is no interpretation section defining the term "civil proceedings". However, when the constitutional provisions of Grenada are considered, there does not appear to be any reason why a different construction should be placed on section 17, than is placed on the identical words in the English statute.

[24] The case of an order for mandamus, however, is strikingly different. It is unnecessary to rely on any analogous reasoning. There is direct and specific statutory prescription empowering the court to grant relief by way of mandamus. I refer to section 31(5) of the Crown Proceedings Act:

> "Section 31(5):
>
> This Act shall not operate to limit the discretion of the Court to grant relief by way of *mandamus* in cases in which such relief might have been granted before the commencement of this Act, notwithstanding that by reason of the provisions of this Act some other and further remedy is available."

[25] The jurisprudence on the subject, to which I have already referred, is replete with evidence that before the commencement of the Act the court did have power to grant relief by way of mandamus where it was proven that an officer of the Crown failed to discharge a duty imposed on him by statute. In, In re M Lord Woolf confirmed this view and commented at page 457:

> "….where a duty was imposed by statute for the benefit of the public on a particular minister, so that he was under a duty to perform that duty in his official capacity, then orders of prohibition and mandamus were granted regularly against the minister."

[26] In my judgment, therefore, the Crown Proceedings Act Cap. 74 provides statutory empowerment to the court to order mandamus against a minister of the Crown. This is further confirmation that it is wrong to conclude that there is no jurisdiction to do so.

The Land Acquisition Act

[27] In argument, the appellants argued that the relevant duty to be enforced was the duty identified in the Land Acquisition Act, Cap. 159 of the Revised Laws of Grenada 1990, as amended by the Land Acquisition (Amendment) Act 1991. Section 29 was amended to include the direction that compensation under the Act:

> "shall be a charge on the Consolidated Fund and shall be paid out of the Consolidated Fund on the warrant of the Minister of Finance."

[28] This is a specific duty imposed by statute on a particular minister in his official capacity for the benefit of the public. In my view, this is a public duty enforceable by an order of mandamus.

The Specification Problem

[29] In this case the money order to be enforced was not compensation under the Land Acquisition Act. In fact the land was not "acquired". The Revolutionary Government attempted to "confiscate" the land. The court declared it unlawful, null and void. The money ordered was compensation for unlawful entering on the land and depriving the landowner of its use and causing him loss. It was similar to a judgment for damages for trespass. It was in the form of an ordinary money judgment of the court. No compensation was payable or became a charge under the Land Acquisition Act. The statutory duty imposed by section 29 did not apply to the facts of this case. The appellants failed to identify any statutory duty owed by the Minister of Finance, under the Land Acquisition Act.

Enforcing Money Orders against the Crown

[30] It has become commonplace for counsel to complain about the difficulty of collecting money judgments against the Government. In my view, these complaints are based on a misinterpretation of the statutory provisions. There is sufficient statutory protection for the

constitutional principle of the separation of powers to ensure that the executive does not refuse to comply with court orders for money payments with impunity. The relevant statutory duty is not placed on any minister of government but on a senior civil servant, in the person of the Permanent Secretary (Finance). The Crown Proceedings Act makes such provision for the enforcement of money judgments against the Crown. These provisions impose a specific statutory duty enforceable by mandamus on a public official. I will reproduce section 21 to demonstrate the scheme of the legislation:

> "Section 21
>
> (1) Where in any civil proceedings by or against the Crown, or in connection with any arbitration to which the Crown is a party, any order (including an order for costs) is made by any court in favour of any person against the Crown or against a Ministry or Government department or against an officer of the Crown as such, the proper officer of the court shall, on an application in that behalf made by or on behalf of that person at any time after the expiration of twenty-one days from the date of the order or, in case the order provides for the payment of costs and the costs require to be taxed, at any time after the costs have been taxed, whichever is the later, issue to that person a certificate in the prescribed form containing particulars of the order:
>
> Provided that, if the court so directs, a separate certificate shall be issued with respect to the costs (if any) ordered to be paid to the applicant.
>
> (2) A copy of any certificate issued under this section may be served by the person in whose favour the order is made upon the Attorney-General.
>
> (3) If the order provides for the payment of any money by way of damages or otherwise, or of any costs, the certificate shall state the amount so payable, and the Permanent Secretary (Finance) shall, subject as hereinafter provided, pay to the person entitled or to his solicitor the amount appearing by the certificate to be due to him together with the interest, if any, lawfully due thereon:
>
> Provided that the court by which any such order as aforesaid is made or any court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the whole of any amount so payable, or any part thereof, shall be suspended, and if the certificate has not been issued may order any such directions to be inserted therein.
>
> (4) Save as aforesaid no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Crown, or any Ministry or Government department, or any officer of the Crown as such, of any such money or costs."

[31] In my view the duty imposed on the Permanent Secretary (Finance) in Section 21(3) is mandatory and once the procedure has been followed he must perform that duty or be at risk. There was some argument that section 21(4) operated to prevent an order enforcing

the statutory duties imposed by section 21(3). I respectfully reject that. The prohibition is against other methods of execution or attachment to enforce payment by the Crown. It does not prevent coercing compliance with section 21(3). This makes sense in the context of an Act intended to facilitate proceedings against the Crown and eliminate the procedural pitfalls that had previously plagued such litigation.

[32] This section seems to me to be designed as a foolproof method of providing for the enforcement of court orders for the payment of money against the government. Had the appellants followed the procedure laid out in the section, the Permanent Secretary would have been under a statutory duty to perform, and the law is clear that mandamus will issue to compel the performance of a statutory duty. The Minister of Finance cannot be made accountable for the statutory duty of the Permanent Secretary (Finance).

The Constitution

[33] It was submitted that under the Constitution, judgment debts are charged on the Consolidated Fund and the officer responsible for making payments out of the fund is the Minister of Finance. It is necessary therefore to look at the import of section 76 of the Constitution, which reads:

> "Section 76
> (1) No moneys shall be withdrawn from the Consolidated Fund except-
> (a) to meet expenditure that is charged upon the Fund by this Constitution or by any law enacted by Parliament; or
> (b) where the issue of those moneys has been authorized by an Appropriation law or by a law made in pursuance of section 78 of this Constitution.
> (2) Where any moneys are charged by this Constitution or any law enacted by Parliament upon the Consolidated Fund or any other public fund, they shall be paid out of that fund by the Government of Grenada to the person or authority to whom payment is due.
> (3) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those withdrawals may be made from the Consolidated Fund or any other public fund.
> (4) Parliament may prescribed the manner in which withdrawals may be made from the Consolidated Fund or any other public fund."

[34] The constitutional provisions do not create any restriction of the power of the Legislature to identify some public official other than the Minister of Finance as the person who must be responsible for making the payment of judgment debts. I have not seen anything in the constitution, nor can I think of any constitutional theory, that prohibits the Permanent Secretary (Finance) from being a proper officer to be designated to make such payments. It is true that the legislature had not undertaken a revision of the Crown Proceedings Legislation since Independence, and it may well be that it is anachronistic, in an age when it may be more appropriate to have State Liability Legislation. Yet, Grenada is still a constitutional monarchy. The statutory nomination of the Permanent Secretary (Finance), as the public official charged with the duty to pay out money ordered by the court against the State, is not inconsistent with any provision of the Constitution. It would seem to me that the real import of section 76, in this context, is that it is for the Legislature to nominate the appropriate official designated to make withdrawals from the consolidated fund by virtue of Section 76(4) of the Constitution.

[35] I, therefore, conclude that the constitution does not require the Minister of Finance to be the public official obligated to make payment of the money which the Court has ordered the State to pay to the appellants.

Res Judicata

[36] Res Judicata was one of the planks of the application to dismiss the Motion for the order of Mandamus. Although the argument was not well developed before us, I think that I am permitted the observation, that the issue of the existence of a statutory duty imposed on the Minister of Finance to make prompt payment of the Judgment debt was already disposed of, or could have been have disposed of, by this court. This appears from the recitation of the background to this appeal (supra). In Civil Appeal No. 9 of 1994 the appellants consented to an order, the effect of which was to remove the direction of the court to the Minister of Finance to issue his warrant against the consolidated fund. This was, or could have been, a resolution of liability under the statutory duties imposed by the Land Acquisition Act. The motion for an order of mandamus against the Minister is a regurgitation of that issue, and of anything else that could be argued in support of the

allegation that it was for the Minister of Finance to make the payment of compensation. This encapsules the legal principles applicable under the res judicata rule. This, too, would justify the dismissal of the appeal.

The Dicta on Judicial Redress

[37] In the three power system of government which is applicable in our jurisdiction the executive, legislature and judiciary function separately and independently, in order to ensure harmonious government under the supreme law of the Constitution. I do not adopt the metaphor of teeth to describe the provisions for judicial redress in the Constitution, which nevertheless exist. The legal principles empowering the court to issue injunctive and mandatory orders against the executive, reflect the adherence of the legislature to the concept of implementing the rule of law. The provision of section 16 and 101 of the Constitution of Grenada confer unlimited jurisdiction on the court to fashion remedies to secure the enforcement of the fundamental rights and freedoms provisions of the Constitution and grant protection against the contravention of the other provisions in accordance with the law.

[38] The power to issue injunctive and mandatory orders against government officials is a judicial function conferred on the courts by law and in particular by the legislature itself by virtue of the Crown Proceedings Act. The exercise of this jurisdiction therefore is no usurpation of any legislative function.

[39] Contrary to the challenged obiter dicta, the courts are empowered by the Constitution and the legislature to ensure compliance with judicial orders for the payment of money by the State.

Conclusion

[40] In my judgment the decision to stop the proceedings in limine should not be disturbed. The applicant has failed to identify any statutory duty owed to him by the Minister of

Finance, and in any event that issue has already been the basis of a judicial ruling in this court.

[41] I would dismiss the appeal with costs to the respondent.

Dennis Byron
Chief Justice

I Concur

Albert Redhead
Justice of Appeal

I Concur

Albert Matthew
Justice of Appeal [Ag.]