SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 1024 OF 2001

In the Matter of the Constitution of Saint Lucia contained in the Saint Lucia Constitution Order S.I. No. 1901 of 1978

And

In the Matter of an Application of MARTINUS FRANCOIS (a person alleging that certain provisions of Chapters one and three of the said Constitution to wit: Sections 10(1), 11(1) and 13(1) (2) (3) and (4), 55(1), (2) and 4(a) and 56(1) have been, are being or likely to be contravened in relation to him) for redress in accordance with Sections 16(1) and 105(1) of the said Constitution.

MARTINUS FRANCOIS
Secretary/Member
St. Lucia Freedom Party

Claimant/ Applicant

-and-

PETRUS COMPTON
Attorney General of Saint Lucia
[sued herein by virtue of Section 13(2) of the Crown Proceedings Ordinance Chapter 13 of the Revised Laws of Saint Lucia 1957]

Defendant/ Respondent

Appearances:

Mr. Martinus Francois in person.
Ms. Louise E. Blenman, Solicitor-General. With her is Ms. Vicki Ann Ellis, Crown Counsel for the Defendant/ Respondent.

2002: March 22
April 22

CONSTITUTIONAL LAW…ORIGINATING MOTION TO DECLARE GENERAL ELECTIONS UNCONSTITUTIONAL AND UNLAWFUL…WHETHER GOERNOR-GENERAL ACTING ON ADVICE OF PRIME MINISTER CAN DISSOLVE PARLIAMENT AND CALL GENERAL ELECTIONS BEFORE FIVE YEARS…SECTION 55 OF ST. LUCIA CONSTITUTION…PREROGATIVE POWERS…JUSTICIABILITY…WHETHER COURT HAS JURISDICTION TO ENTERTAIN PROCEEDINGS…WHETHER SECTION 105 OF CONSTITUTION CONTRAVENED…FUNDAMENTAL RIGHTS…FREEDOM OF EXPRESSION…FREEDOM OF ASSEMBLY AND ASSOCIATION…FREEDOM FROM DISCRIMINATION…WHETHER THERE WERE BREACHES OF FUNDAMENTAL RIGHTS AND FREEDOMS PROVISION …WHETHER SECTION 16 OF CONSTITUTION CONTRAVENED…NO REASONABLE CAUSE OF ACTION…LEGITIMATE EXPECTATION…WHETHER MOTION IS SCANDALOUS, VEXATIOUS AND AN ABUSE OF THE COURT…AWARD OF COSTS TO ATTORNEY GENERAL.

JUDGMENT

[1] HARIPRASHAD-CHARLES J: The Claimant, Mr. Martinus Francois is a well-known Attorney-at-Law practising in the State of Saint Lucia. He is also the Secretary and a Founding Member of the political party known as The St. Lucia Freedom Party. This Party is a recognized political party within the meaning of Section 58 of the House of Assembly (Elections) Regulations, No. 41 of 1973. It was one of the five political parties that contested the General Elections in Saint Lucia held on 3rd day of December 2001. On 20th day of November 2001, the Claimant gave notice to the Supervisor of Elections that his Party comprising four members will be contesting the forthcoming General Elections in four electoral districts. On the day of General Elections, only two members of the St. Lucia Freedom Party contested the said elections. The Claimant was not one of the two members.

[2] Before attempting to deal with the technical points of law raised in the Originating Motion, it is essential that I chronologize important events leading to the 3rd December 2001 General Elections. Most of what I now outline reflects uncontradicted and unchallenged evidence of the parties. To the extent that there is a departure from any agreed facts, then what is expressed must be taken as positive findings of fact made by me.

[3] The previous General Elections were held on 23rd day of May 1997. The Saint Lucia Labour Party won convincingly. The Governor-General acting in accordance with the Saint Lucia Constitution Order 1978 appointed Dr. Kenny Anthony, the Political Leader of the Party as the Prime Minister. The first sitting of the House of Assembly took place on 17th day of June 1997. The Saint Lucia Labour Party governed Saint Lucia continuously from that date until the dissolution of Parliament by the Deputy Governor-General on the 12th day of November 2001.

[4] Throughout the years and more specifically in 2001, citizens of Saint Lucia who were eligible to vote were registered on a continuous basis at the Electoral Department. In order to facilitate the registration of persons during the months of July to September 2001, the Electoral Department caused an Intensive Out Registration Programme to be carried out throughout Saint Lucia indicating to persons the said ongoing registration process.

[5] Prior to the aforementioned Out Registration Programme, there was widespread publication of its itinerary both in English and Creole in the print and electronic media. Campaigning by contesting political parties continued during the year 2001 and gained momentum towards the latter months of that year.

[6] On 26th day of March 2001, a revised list of voters was published by the Electoral Department. On 30th day of June the said Department published the First Supplementary List of Electors for New Registrations and Change of Names and Addresses. On 12th day of November, the Second Supplementary List of Electors for New Registrations and Change of Names and Addresses was published. On 26th day of November, the aforementioned Revised List was published. Based on the Revised List of Voters, 119,844 persons were registered at the Electoral Department. According to the Chief Elections Officer, Mr. Carson Raggie, from September 2001, his Department was in a state of readiness for the holding of General Elections.

[7] On 12th day of November 2001, the Deputy Governor-General acting in accordance with the advice of the Honourable Prime Minister issued two Proclamations: one dissolving the

Parliament of St. Lucia and the other, appointing Friday, 23rd day of November 2001 for the nomination of candidates and Monday, 3rd day of December 2001 for the holding of a poll for the General Election of members of the House of Assembly.

[8] The Saint Lucia Labour Party won a landslide victory capturing 14 of the coveted 17 seats. There was however a remarkably steep decline in voter turnout at the said poll. The St. Lucia Freedom Party of which the Claimant is a Founding Member captured an aggregate of 12 votes out of the overall of 62,490 votes which were cast. It is therefore accurate for me to say that the St. Lucia Freedom Party failed woefully in gaining a seat at the said General Elections.

[9] On 20th day of December 2001, the Claimant commenced legal action by Originating Motion on a Fixed Date Claim Form against the Honourable Prime Minister of St. Lucia and the Honourable Attorney General. By the time the said Originating Motion was amended, one of the Defendants, namely, the Honourable Prime Minister was struck out *pro tanto* as a party to the Claim by an Order of the Court.

[10] The Claimant seeks the following Declarations under Sections 16 and 105 of the Constitution namely:

(i) A DECLARATION that the decision of the Defendant, in particular, Dr. Kenny D. Anthony, Prime Minister of St. Lucia which was made known to the nation on 11th day of November 2001 in a radio and television address to advise the Deputy Governor-General to dissolve the Parliament of St. Lucia effective Monday, 12th day of November 2001 and to issue the Writ for the calling of General Elections on Monday, 3rd day of December 2001 some nine (9) months and three (3) weeks before they were constitutionally due was unconstitutional and unlawful in that it was made in contravention of the Claimant's right not to be hindered in the enjoyment of the Claimant's freedom of assembly and association with other persons, and in particular to form or belong to political parties, or other political associations guaranteed to the Claimant by virtue of Section 11(1) of the Saint Lucia Constitution Order 1978 (the Constitution) and that none of the derogations in favour of the Defendant as set out in Section 11(2) (a) (b) or (c) of the Constitution is applicable to the facts of this case and/or that the matters complained of herein are not reasonably justifiable in a democratic society.

(ii) A DECLARATION that the decision of the Defendant, in particular, Dr. Kenny D. Anthony, Prime Minister of St. Lucia which was made known to the nation on 11th day of November 2001 in a radio and television address to advise the Deputy Governor-General to dissolve the Parliament of St. Lucia effective Monday, 12th day of November 2001 and to issue the Writ for the calling of General Elections on Monday, 3rd day of December 2001 some nine (9) months and three (3) weeks before they were constitutionally due was unconstitutional and unlawful in that it was made in contravention of the Claimant's right not to be hindered in the enjoyment of the Claimant's freedom of expression as guaranteed to the Claimant by virtue of Section 10(1) of the Constitution and that none of the derogations in favour of the Defendant as set out in Section 10(2) (a) (b) or (c) of the Constitution is applicable to the facts of this case and/or that the matters complained of herein are not reasonably justifiable in a democratic society.

(iii) A DECLARATION that the decision of the Defendant to advise the Deputy Governor-General to dissolve the Parliament of St. Lucia effective Monday 12th day of November 2001 and to issue the Writ for the calling of General Elections on Monday 3rd day of December 2001, some nine (9) months and three (3) weeks before they were constitutionally due was unconstitutional and unlawful in that it was made in contravention of the Claimant's right not to be treated in a discriminatory manner in particular by reason of the Claimant's political party or opinion guaranteed to the Claimant by virtue of Section 13(1) (2) (3) and (4) of the Constitution and the same is not reasonably justifiable in a democratic society.

(iv) A DECLARATION that the decision of Mr. Victor E. Girard, Deputy Governor-General of St. Lucia acting on the advice of the Prime Minister and purportedly pursuant to Section 55 (1) and (4) of the Constitution to issue a Proclamation dated 9th day of November 2001 which proclaimed the dissolution of the Parliament of St. Lucia on 12th day of November 2001 and on 12th day of November to issue a Proclamation appointing Friday, 23rd day of November 2001 for the nomination of candidates and Monday, 3rd day of December 2001 for holding of a poll for General Elections of members of the House of Assembly purportedly pursuant to Section 56 (1) of the Constitution was unconstitutional and unlawful in that it was made in contravention of the Claimant's right not to be hindered in the enjoyment of the Claimant's freedom of assembly and association with other persons, in particular to form and belong to political parties and other political associations guaranteed to the Claimant by virtue of Section 11 (1) of the Constitution and that none of the derogations in favour of the Defendant is applicable or relevant to the facts of this case and/or that the matters complained of herein are not reasonably justifiable in a democratic society.

(v) A DECLARATION that the decision of Mr. Victor E. Girard, Deputy Governor-General of St. Lucia acting on the advice of the Prime Minister and purportedly pursuant to Section 55 (1) and (4) of the Constitution to issue a Proclamation dated 9th day of November 2001 which proclaimed the dissolution of the Parliament of St. Lucia on 12th day of November 2001 and on 12th day of November to issue a Proclamation appointing Friday, 23rd day of November 2001

for the nomination of candidates and Monday, 3rd day of December 2001 for holding of a poll for General Elections of members of the House of Assembly purportedly pursuant to Section 56 (1) of the Constitution was unconstitutional and unlawful in that it was made in contravention of the Claimant's right not to be hindered in the enjoyment of the Claimant's freedom of expression guaranteed to the Claimant by virtue of Section 10 (2) (a) (b) or (c) is applicable or available on the facts of this case and/or that the matters complained of herein are not reasonably justifiable in a democratic society.

(vi) A DECLARATION that the decision of Mr. Victor E. Girard, Deputy Governor-General of St. Lucia acting on the advice of the Prime Minister and purportedly pursuant to Section 55 (1) and (4) of the Constitution to issue a Proclamation dated 9th day of November 2001 which proclaimed the dissolution of the Parliament of St. Lucia on 12th day of November 2001 and on 12th day of November to issue a Proclamation appointing Friday, 23rd day of November 2001 for the nomination of candidates and Monday, 3rd day of December 2001 for holding of a poll for General Elections of members of the House of Assembly purportedly pursuant to Section 56 (1) of the Constitution was unconstitutional and unlawful in that it was made in contravention of the Claimant's right not to be treated in a discriminatory manner in particular by reason of the Claimant's political party or opinion as guaranteed to him by virtue of Section 13 (1) (2) (3) and (4) of the Constitution and the same is not reasonably justifiable in a democratic society.

(vii) A DECLARATION that the issuance of the Proclamation on 12th day of November 2001 by the Deputy Governor General, Mr. Victor E. Girard acting on the advice of the Prime Minister purportedly pursuant to Section 55 (1) and (4) of the Constitution proclaiming the dissolution of Parliament on 12th day of November 2001 and contained in Statutory Instrument No. 123 of 2001 and the issuance of the Proclamation on 12th day of November 2001 by the Deputy Governor-General aforesaid appointing Friday, 23rd day of November 2001 for the nomination of candidates and Monday, 3rd day of December 2001 for holding of a poll for General Elections of members of the House of Assembly and contained in Statutory Instrument No. 122 of 2001 were unconstitutional and unlawful in that the Proclamation contained in Statutory Instrument No. 122 of 2001 was made BEFORE the Proclamation contained in Statutory Instrument No. 123 of 2001 in contravention of Section 55 (1) and (4) and 56 (1) of the Constitution which has accordingly been breached in relation to the Claimant who has a relevant interest herein and the Claimant is entitled to relief in accordance with Section 105 of the Constitution.

(viii) A DECLARATION that as a result of the matters complained of herein Sections 55 (1) (2) (4)(a) and 56 (1) of the Constitution has been contravened in relation to the Claimant who has a relevant interest herein and the Claimant is entitled to relief in accordance with section 105 of the Constitution.

(ix) A DECLARATION that in order to comply fully with the requirements of Sections 55 (1) (2) (4) and 56 (1) of the Constitution and in order to provide an effective

(x) remedy herein new elections should be held between seven (7) months and ten (10) months from the date of the Court's ruling.

(xi) A DECLARATION that the matters hereinbefore complained of were arbitrary, oppressive and unconstitutional and the Claimant is entitled to exemplary damages.

(xii) Such Orders, Writs or Directions as may be necessary or appropriate to secure redress by the Claimant for contravention by the Defendant and/or the said Dr. Kenny D. Anthony, Prime Minister of St. Lucia and/or the said Victor E. Girard, Deputy Governor-General or either of them of the fundamental and other rights and freedoms guaranteed to the Claimant by virtue of Sections 10, 11. 13, 55 and 56 of the Constitution.

[11] In a nutshell, the Claimant alleged that the Honourable Prime Minister in tendering his advice to the Deputy Governor-General to issue the Proclamations for the dissolution of the Parliament of St. Lucia and the holding of General Elections infringed his fundamental rights guaranteed by Sections 10 (1), 11 (1) and 13 (1) (2) (3) and (4) of the Saint Lucia Constitution Order 1978 (The Constitution) and that he is entitled to redress in accordance with Section 16(1) of the said Constitution.

[12] He further alleged that the Deputy Governor-General acted in breach of his fundamental rights in issuing the Writ for the dissolution of Parliament and the holding of General Elections on Monday, 3rd day of December 2001. He sought Declarations that Sections 55 (1) (2) and (4) and Section 56 (1) of the Constitution have been contravened and that he is entitled to further or alternative redress in accordance with Section 105 of the Constitution.

[13] In addition to the redress sought under Sections 16(1) and 105 of the Constitution, the Claimant is asking the Court to declare the 3rd December 2001 General Elections unconstitutional, unlawful, null and void and to order that fresh elections be held between seven and ten months from today's date. The Claimant also seeks exemplary damages.

GENERAL ELECTIONS

[14] The conduct of General Elections is provided for in the Saint Lucia Constitution Order 1978 read in conjunction with the House of Assembly (Elections) Act No. 8 of 1979. Section 55 of the Constitution provides as follows:

> (1) "The Governor-General may at any time prorogue or dissolve Parliament.
>
> (2) Subject to the provisions of subsection (3) of this section ***Parliament unless sooner dissolved, shall continue for five years from the date of the first sitting of the House*** after any dissolution and shall then stand dissolved (Emphasis mine).
>
> (3) At any time when Saint Lucia is at war, Parliament may extend the period of five years specified in subsection (2) of this section for not more than twelve months at a time.
>
> *Provided that the life of Parliament shall not be extended under this subsection for more than five years.*
>
> (4) In the exercise of his powers to dissolve Parliament, the Governor-General shall act in accordance with the advice of the Prime Minister."

[15] The Learned Solicitor-General for the Defendant began her impressive argument by submitting that it is lawful for General Elections to take place ***at any time during the five years*** from the date of the first sitting of the House which was on 17th day of June 1997. She asserted that there is no requirement in law for General Elections to be held on the exact date of the expiration of the five-year period. According to her, General Elections could be held even one year or two years after the first sitting of the House.

[16] The real grievance of the Claimant in my view, is that his St. Lucia Freedom Party and the other Opposition Parties were caught 'off the cuff' to contest the 3rd December General Elections which he alleged are constitutionally due between 17th day of June 2002 and 17th day of September 2002 in accordance with Section 55 (2) of the Constitution. He contended that the Deputy Governor-General acting on the advice of the Prime Minister in issuing the Proclamations to dissolve Parliament and for holding of a poll of General

Elections contravened certain provisions of the Constitution as it relates to him. The Claimant alleged that the Deputy Governor-General acted unconstitutionally and unlawfully by his premature acts of calling General Elections nine (9) months and three (3) weeks before they were constitutionally due.

[17] The issue as to whether the Deputy Governor-General acted unconstitutionally or otherwise by issuing the two Proclamations calls for an interpretation of Section 55 of the Constitution and more particularly, Section 55(2) and (4). The Claimant acknowledged that Section 55 is clear and that Section 55 (2) is mandatory. So also is Section 55 (4).

[18] He submitted that Section 55 (2) has confined or limited or even negated the discretion contemplated under Section 55(1) and has in fact made the dissolution of Parliament automatic and independent and even beyond the Governor-General's discretion. He argued somewhat diffidently that the word "dissolution" is automatic and natural and it is beyond the discretion of the Governor-General or even the "advice" of the Prime Minister. In the end, he concluded that Section 55 (1) and (4) must be read together and that in these matters specified therein that the Governor-General has a discretion.

[19] The Claimant next submitted that the requirement of clarity is a desideratum of a valid law so that the rule of law could be struck down if it is so vague either that it does not give those subjected to it adequate guidance as to what their legal rights are or that it is impossible to say whether it is properly related to the purposes for which the law-making power was given. He asserted that this definition of vagueness fits the scheme of Statutory Instruments Nos. 123 and 122 of 2001. In his usual tedious style, he alluded to a plethora of judicial authorities which were helpful but none of which is directly on point. I must confess that I found it extremely difficult to comprehend the submissions made by the Claimant.

[20] Be that as it may, I find no ambiguity or complexity or vagueness in the interpretation of Section 55 (2) or Section 55 per se. Indeed, it is the most straightforward and intelligible piece of legislation. In its ordinary and natural meaning, it means "it is lawful for General

Elections to take place anytime during the five years from the date of the first sitting of the House." I am in total agreement with the submissions advanced by the Learned Solicitor General that General Elections could be held anytime within the five-year period from the date of the first sitting of the House, be it one year or two years or three years and so forth.

[21] Section 56 (1) of the Constitution states that a General Election of members of the House shall be held within three months after any dissolution of Parliament as the Governor-General may appoint. There has been full compliance with this section of the Constitution.

[22] In my respectful view, both the dissolution of Parliament and the issuance of the Proclamation for the holding of General Elections were carried out in accordance with Sections 55 and 56 of the Constitution and the House of Assembly (Elections) Act respectively.

[23] The Learned Solicitor-General next submitted that the question as to the date on which Parliament should be dissolved and the date for the holding of General Elections are issues which could only be properly determined by the Executive. The Claimant obviously does not think so and as such, he invokes the jurisdiction of the Court to determine the said issues.

[24] Ms. Blenman vigorously argued that the issuing of Proclamations declaring a date for the dissolution of Parliament and the holding of General Elections is part of the prerogative power that inheres in the Executive. She next argued that the exercise of the Executive's prerogative power is not a matter which is justiciable. Therefore, the issue whether the Deputy Governor-General has properly exercised his prerogative power is not a justiciable issue.

[25] In Re Blake (1994) 47 WIR 174 at page 180, Sir Vincent Floissac, Chief Justice (delivering the judgment of the Court) declared:

> "The decision to appoint a Prime Minister or any other Minister of Government is one of the many decisions which are made in the exercise of the prerogative powers and which are not justiciable or subject to judicial review for the simple

reason that the subject matter of the decision is not amenable to the judicial process. In Council of Civil Service Unions v Minister for the Civil Service (1985) AC 374 at page 418, Lord Roskill said:

> "Many examples were given during the argument which as at present advised I do not think could properly be made the subject of judicial review. Prerogative powers such as those relating to the making of treaties, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of Ministers as well as others are not, I think, susceptible to judicial review because their nature and subject matter are such as not to be amenable to the judicial process. The Courts are not the place wherein to determine whether a treaty should be concluded or the armed forces disposed in a particular manner *or Parliament dissolved on one date rather than another"* [My emphasis].

[26] To this, it is fitting to add, "or for the holding of a poll for the General Election of Members of the House of Assembly". The power conferred on the Executive to dissolve Parliament enables it also to determine a date for such dissolution to take effect. In the exercise of his prerogative power, it is for the Governor-General, acting on the advice of the Prime Minister to determine the date on which General Elections should be held and the date on which Parliament should be dissolved.

[27] In Regina v Secretary of State for Foreign and Commonwealth Affairs ex parte Rees-Mogg (1994) QB 552 it was held that the Court had no jurisdiction to consider the government's ratification of Title V of the Treaty on European Union which established a common foreign and security policy and involved no question of domestic law, but that, in any event, the ratification of Title V was an exercise of the prerogative power and that, accordingly judicial review should be refused.

[28] The Claimant in response submitted that the Constitution is the supreme law of the land and if any other law is inconsistent with the Constitution, the Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void. This is not novel. He argued that UK laws are inapplicable in this situation therefore the case of Council of Civil Service Unions v Minister for the Civil Service (1985) AC 374 has no relevance in

determining the issue of prerogative powers and justiciability. He next submitted that there is no such thing as unlimited prerogative power and that the notion of wide prerogative power is inconsistent with the rule of law. In this regard, he cited the Privy Council case of Attorney General of St. Christopher, Nevis and Anguilla v Reynolds (1979) 3 All ER 129.

[29] The Claimant asserted that Section 116 (2) of the St. Christopher and Nevis Constitution is fundamentally different from Section 121 (3) of the St. Lucia Constitution and therefore the Re Blake (supra) principles should not be applied to the instant case. Section 116 (2) of the St. Christopher & Nevis Constitution states:

> "Where by this Constitution the Governor-General is required to perform any function ***in his own deliberate judgment*** or in accordance with the advice or recommendation of, or after consultation with, any person or authority, the question whether the Governor-General has so exercised that function shall not be enquired into in any court of law."

[30] The Claimant accepted that if the phrase ***"in his own deliberate judgment***" were present in the equivalent section of the St. Lucia Constitution, he would have been unable to successfully bring a case before the Court. Section 121 (3) of the St. Lucia Constitution provides that:

> "Where by this Constitution the Governor-General is required to perform any function in accordance with the advice of, or after consultation with, any person or authority, the question whether the Governor-General has so exercised that function shall not be enquired into in any court of law."

[31] A comparison of the two Constitutions expressly reveals that the phrase ***"in his own deliberate judgment"*** is notably absent from the St. Lucia Constitution. But, in my opinion, even if the phrase were present in the St. Lucia Constitution, it would not have made any difference to its present meaning. I pause to observe that the word ***"or***" is conspicuously placed between the two phrases of ***"in his own deliberate judgment*** or ***"in accordance with the advice of*** so as to connote a disjunctive use. The argument

advanced by the Claimant, in my opinion is devoid of substance. As Sir Vincent Floissac, Chief Justice said in Re Blake, at page 181:

> "If the decision of the Governor-General to appoint a Prime Minister was made subject to judicial review, the results could be horrendous. It would mean that the Head of State might be required to divulge sensitive confidential opinions and information imparted by the Representatives and other persons and would be exposed to all the undesirable consequences of such disclosure. Public Policy dictates that the Head of State should be spared those consequences."

[32] In my considered opinion, the decision to dissolve Parliament and to issue new writs for General Elections are decisions made in the exercise of prerogative powers and discretions which the Constitution has specifically conferred upon the Governor-General. The Governor-General's decision to act on the advice given is protected by Section 121 (3) of the Constitution and is not a justiciable issue. It is therefore outside the ambit of the Court to review the exercise of the Deputy Governor-General's discretion in issuing the relevant Proclamations to dissolve Parliament and for the holding of a poll for General Elections.

[33] The Defendant raised submissions *in limine* to strike out and dismiss the amended Originating Motion of the Claimant on the following grounds namely:

(a) That the Court does not have jurisdiction to entertain the Motion.
(b) That the Claimant's pleadings have failed to disclose any cause of action against the Defendant.

[34] The Learned Solicitor General for the Defendant argued that both of these grounds go to the root of the matter and should they be entertained by the Court, the effect would be a disposal of the matter.

[35] I wish to adopt the famous words of Salmon, LJ in Nagle v Feilsen (1966) 1 All ER 689 at page 691:

> "It is well settled that a statement of claim should not be struck out and the plaintiff driven from the judgment seat unless the case is arguable. Accordingly, it is necessary to consider whether or not the plaintiff has an arguable case."

[36] Against this background and by an Order of the Court, the Claimant was permitted to argue his case in its entirety.

[37] The Claimant sought redress under Sections 16 (1) and 105 of the Constitution. The breaches alleged under Section 16 (1) relates to his fundamental rights under Chapter 1. I propose to examine the alleged breaches of Section 55 (1) (2) (4) (a) and 56 (1) and whether the Court has jurisdiction under Section 105 of the Constitution to entertain this matter. I shall deal with the alleged breaches under Section 16 (1) in due course.

JURISDICTION

[38] It is trite law that any tribunal entertaining a matter must first establish that it has the jurisdiction to do so. See: Dhajoo v Thom (1939) LRBG 262.

[39] Learned Counsel for the Defendant argued that the Court has no jurisdiction to entertain this matter. She exhorted the Court to proceed cautiously and not to exceed the jurisdiction given under the "Westminster Model" Constitutions as promulgated by Lord Diplock in Hinds v The Queen [1977] 1 AC 195. According to her, it is not the function of the Courts to interfere with the prerogative powers of the Executive to dissolve Parliament unless the Court was satisfied that Parliament was dissolved in a manner that contravened or was inconsistent with the express provisions of the Constitution. She next submitted that there is no evidence of any breaches of the fundamental rights provisions of the Constitution either by the Deputy Governor-General or the Honourable Prime Minister and any attack mounted against the constitutionality of the actions of the Deputy Governor-General must be rejected.

[40] The gist of the Claimant's application for redress under Section 105 is for the Court to declare the 3rd December 2001 General Elections null and void and for fresh elections to

be held. The contention is that General Elections are not constitutionally due until 17th day of June 2002 to 17th day of September 2002 and therefore, the issuance of the two Proclamations by the Deputy Governor-General acting on the advice of the Honourable Prime Minister was in contravention of Sections 55 (1) (2) and (4) and 56 (1) of the Constitution. This he alleged, affected him as a person who has a relevant interest.

[41] Section 105 of the Constitution provides as follows:

> (1) "…Any person who alleges that any provision of this Constitution (other than Chapter 1 thereof) has been or is being contravened may, if he has a relevant interest, apply to the Court for a declaration and for relief under this section.
>
> (2) The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter 1 thereof) has been or is being contravened and to make a declaration accordingly……..
>
> (7) Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in Section 39 of this Constitution."

[42] In Russell (Randolph) and Others v Attorney-General of St. Vincent and the Grenadines (1995) 50 WIR 127, Sir Vincent Floissac, Chief Justice, in delivering the Judgment of the Court in a similar case, said at pages 135-136:

> "The jurisdiction conferred upon the High Court by Section 96 of the Constitution (equivalent Section 105 of the St. Lucia Constitution) is available and exercisable whenever an Applicant who has *locus standi* by way of a relevant interest alleges that a constitutional provision (other than one relating to a fundamental right or freedom or to membership of the House of Assembly) has been or is being contravened. The jurisdiction is in the nature of a judicial review of the justiciable decisions and actions of public authorities where those decisions or actions contravene those residual provisions of the Constitution.
>
> I will assume (without deciding) that at any time before a general election, a person with *locus standi* may apply under Section 96 of the Constitution to prohibit the holding of the general election before the appointment of a Constituency Boundaries Commission or before a review of the boundaries of the constituencies, if the failure of such review contravenes Section 33 of the Constitution. ***But after such general election has been held, the High Court has no jurisdiction under Section 96 to determine any question as to the validity of the election.*** Such jurisdiction is expressly excluded by section 96 (7)

which provides that "Nothing in this section shall confer jurisdiction on the High Court to hear or determine any such question as is referred to in Section 36 of this Constitution." (equivalent Section 39 of the St. Lucia Constitution).

[43] Section 39 provides as follows:

> "The High Court shall have jurisdiction to hear and determine any question whether-
>
> (a) any person has been validly elected as a member of the House."

[44] Section 105 (7) of the St. Lucia Constitution excludes from the jurisdiction conferred by Section 105 "any such questions as are referred to in Section 39." One of those questions is "whether (a) any person has been validly elected as a member of the House." This, in my mind, is precisely the question that the Claimant asked the Court to determine when he applied for eleven (11) declarations to declare the General Elections held on 3rd December 2001 and the election of all candidates thereat null and void except that he has done so in a circuitous manner. But the ultimate question to be determined was whether persons have been validly elected as Representatives. This is caught by Section 39 and therefore excluded from the jurisdiction conferred by Section 105.

[45] Sir Vincent in Russell (Randolph) and Others v Attorney-General of St. Vincent and the Grenadines [supra] at page 137 continued:

> "The jurisdiction to determine questions as to the validity or otherwise of elections to the House of Assembly and the other questions referred to in section 36 of the Constitution has been excluded from the jurisdiction conferred by section 96 because the former jurisdiction is a peculiar and special jurisdiction. It is essentially a parliamentary jurisdiction conveniently assigned to the judiciary by the Constitution and by legislation."

[46] Sir Vincent went on to enumerate three fundamental differences between constitutional jurisdiction conferred by Section 96 (our Section 105) and parliamentary jurisdiction conferred by Section 36 (our Section 39).

[47] Based on the legal principles expounded by our Court of Appeal in Russell v Attorney-General of St. Vincent and the Grenadines, it is crystal clear that Section 105 of the Constitution of Saint Lucia is not the appropriate jurisdiction for the entertainment of the Claimant's Originating Motion in so far as it relates to the 3rd December 2001 General Elections or the alleged invalidity thereof.

[48] I make a further observation. If the Claimant were entitled to apply under Section 105 of the Constitution to have the 3rd December General Elections declared null and void on the ground that the said General Elections are not constitutionally due, the Claimant was entitled to institute antecedent legal proceedings to prohibit the said General Elections from taking place. The Claimant did not do so. He tolerated the holding of the said General Elections and thereafter sought to annul it on the premise that they were prematurely called.

[49] I will go a step further. An order to hold fresh elections could be made when the circumstances leading up to and surrounding the holding of a poll for the General Election of members of the House of Assembly are so fraught with irregularities that it cannot be said to be the true expression of the collective will of the electorate. This is certainly not the case here. The only aggrieved person is the Claimant.

FUNDAMENTAL RIGHTS AND FREEDOMS [CHAPTER 1]

[50] Before examining the fundamental rights provisions of the Constitution (Chapter 1) which is alleged by the Claimant as having been contravened, my attention is drawn to the Privy Council case of Kemrajh Harrikissoon v Attorney General (1979) 31 WIR 348. At page 349, Lord Diplock said:

> "The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms, but its value will be diminished if it is allowed to be

misused as a general substitute for the normal procedures for invoking judicial control of administrative action."

Section 10 (1) of the Constitution

[51] The Claimant alleged that the Honourable Prime Minister and the Deputy Governor-General infringed his fundamental rights as guaranteed by Section 10 (1) of the Constitution which provides as follows:

> "Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence."

[52] Section 10 (1) of the Constitution provides, subject to the derogations in subsection (2) (a) (b) and (c) that no person shall be "hindered" in the enjoyment of his freedom of expression. These Sections of the Constitution must be read in the light of the judgment of the Privy Council in Minister of Home Affairs v Fisher (1980) AC 319 where Lord Wilberforce said at page 328:

> "These antecedents, and the form of Chapter 1 itself, call for a generous interpretation avoiding what has been called 'the austerity of tabulated legalism' suitable to give to individuals the full measure of the fundamental rights and freedoms referred to."

[53] In Attorney-General of The Gambia v Momodou Jobe (1984) AC 689 at page 700, Lord Diplock said:

> "A constitution, and in particular that part of it which protects and entrenches fundamental rights and freedoms to which all persons in the state are to be entitled, is to be given a generous and purposive construction."

[54] There are obviously limits to the exercise of this freedom even without a law falling within Section 10 (2) of the Constitution. Thus no one has a right in all circumstances to insist on

holding a meeting in another individual's house or in the middle of a highway in a way which impedes traffic or to use language intended to stir up violence or a breach of the peace. But the circumstances of each case have to be looked at.

See: Lord Slynn of Hadley in John Benjamin et al v The Honourable Minister of Information and Broadcasting and the Attorney-General of Anguilla (Privy Council Appeal No. 2 of 1999) in paragraph 32 at page 12.

[55] In Lingens v Austria (1986) 8 EHRR 407, the European Court of Human Rights recalled in paragraph 41 at page 418:

> "that freedom of expression, as secured in paragraph 1 of Article 10, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society."

[56] I have no hesitation in accepting that freedom of expression concerning the activities of the political party in power and of the opposing parties should be protected from hindrance. This is essential to the proper functioning of a democratic society. Any abridgement affects the right of the people to be informed, through sources independent of government, about matters of public interest. Political parties contesting for ascendancy ought not to be limited by over-stringent legislative measures in their capacity to engage in dialogue as widely as deemed necessary. They must be unfettered in their ability to communicate arguments and opinions, from diverse and antagonistic sources, so as to enable the populace to make an informed judgment as to how they should be governed.

[57] But the circumstances of each case have to be looked at. The mere allegation that a human right or fundamental freedom of a Claimant has been or is likely to be contravened is not of itself sufficient to entitle a Claimant to invoke the jurisdiction of the Court if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the Court.

[58] So, in order to be able to successfully invoke the jurisdiction of the Court, the Claimant is therefore obliged to plead sustainable allegations of the breach of his fundamental rights as guaranteed under Sections 2 – 15 of the Constitution.

[59] In the instant matter, at paragraph 24 of his affidavit in support of the Amended Originating Motion, the Claimant deposed:

> "We were so hindered in the enjoyment of the said protected rights as a result of the matters aforesaid and that Section 10 (1) has been breached in relation to us as aforementioned."

[60] I pause to remark that the Originating Motion is brought by the Claimant in his capacity as a person who has a relevant interest. As such, I cannot comprehend who is "us" in his deposition. Be that as it may, this is the extent of his evidence as it relates to an infringement of Section 10 of the Constitution. In his submissions to the Court, the Claimant was resolute in arguing that is not his business to prove any breaches of the Constitution. He shifted the burden of proof to the Defendant and relied on the cases of Attorney-General of Antigua v Minister of Home Affairs and Antigua Times (1975) 3 WLR 232 and Cable & Wireless (Dominica) Ltd v Marpin (Civil Appeal No. 5 of 1999) (unreported) per Judgment of Redhead JA. These cases discussed the burden of proof but in a different context with different facts and circumstances. And rightly so, the burden shifted to the Respondent to show that the enactment followed a legitimate aim and is reasonably required. In my opinion, it is specious for the Claimant to twist the facts and circumstances of those cases so as to shift the burden on the Defendant. The well-known adage of "he who asserts must prove" holds good.

[61] Freedom of expression, as summarized by the Learned Solicitor-General means the right to express one's conviction and opinions freely by word of mouth, writing or gestures. It is not to be understood however, that the freedom of expression includes the liberty to express or propagate one's own views only. It included the right to propagate or publish the views of other persons.

See: United Parties v Minister of Justice, Legal and Parliamentary Affiars and Others (1998) 1 LRC 614.

[62] In short, "freedom of expression" includes the idea of "publication" and "distribution" or "circulation" as well as the right to receive the matter distributed. It follows therefore, that for the Claimant to sustain the allegation of breach of his freedom of expression, he must adduce evidence of a restriction, for example, a ban on voting or some requirements demanding that a precondition be met before one can vote. There is not a scintilla of evidence to support his allegation that the Honourable Prime Minister in advising the Deputy Governor-General to dissolve Parliament and appointing a date for the holding of a poll for General Elections infringed the Claimant's freedom of expression as guaranteed by Section 10 (1) of the Constitution. Further, there is no sustainable allegation that either the Honourable Prime Minister or the Deputy Governor-General breached the Claimant's freedom of expression.

Section 11 (1) of the Constitution

[63] I now proceed to examine the Claimant's complaint that the Honourable Prime Minister and the Deputy Governor-General misdirected themselves in law and their actions were unconstitutional and unlawful and amounted to a contravention of Section 11 (1) of the Constitution in relation to himself, members and endorsed candidates and potential candidates of the Freedom Party and "we were so hindered in the enjoyment of the said protected rights as a result of the matters aforesaid and that Section 11 (1) was breached in relation to us."

[64] Section 11 (1) of the Constitution provides as follows:

> "Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests or to form or belong to political parties or other political associations."

[65] Freedom of association is a well-known and highly prized freedom in our society. In Collymore and Another v Attorney-General (1969) 15 WIR 229, Wooding CJ at page 234 defined freedom of association as follows:

> "In my judgment, then, freedom of association means no more than freedom to enter into consensual arrangements to promote the common interest objects of the associating group. The objects may be any of many. They may be religious or social, political or philosophical, economic or professional, educational or cultural, sporting or charitable. But the freedom to associate confers neither right nor licence for a course of conduct or for the commission of acts which in the view of Parliament are inimical to the peace, order and good government of the country."

[66] There is no doubt however that this freedom embraces the right to form an association for any lawful purpose and that it is one of the essentials of a democratic society. It lies at the foundation of a free society in much the same way as freedom of speech.

[67] The Claimant asserted that the right of freedom of association includes the right to form and join a political party. The freedom of association does not merely concern the right to form a political party, but also guarantees that, once such party has been formed, it has the right to carry on its political activities in freedom. See: The Socialist Party and Others v Turkey (1998) 27 EHRR 51. According to the Claimant, the term "association" presupposes a voluntary grouping for a common good. See: Vogt v FRG (1995) Series A No. 323, 21 EHRR 205.

[68] In paragraph 23, the Claimant alleged that section 11 (1) of the Constitution was breached. He has a basic and insurmountable burden of establishing that his freedom of association as guaranteed by the Constitution has been breached. In my respectful view, the Claimant has not adduced any evidence to show that his fundamental right to assembly and associate had been contravened.

Section 13 of the Constitution

[69] The Claimant launched his final attack on the fundamental rights and freedoms provisions of the Constitution as it relates to section 13. This Section protects Saint Lucians from discrimination.

[70] Section 13 (3) of the Constitution defines the expression "discriminatory" as:

> "affording different treatment to different persons attributable wholly or mainly to their respective descriptions by sex, race, place of origin, ***political opinions,*** colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description."

[71] The Claimant alleged that Section 13 (1) (2) (3) and (4) of the Constitution have been contravened in that:

> "we were treated in a discriminatory manner attributable wholly to our different party political opinions in relation to the political opinions of the said Prime Minister's own political party aforesaid whereby members of the Freedom Party and other political parties and Independents which contested the said elections were subjected to the disabilities and /or restrictions hereinbefore complained of to which the said Prime Minister's own political party was accorded privileges or advantages which were not accorded to the Freedom Party and the said others a result of the matters hereinbefore complained. In particular, the Prime Minister's governing party was placed in an unfair advantage compared to the other competing parties in that it alone knew the date when the said elections would be held and that it used this advantage to surprise the other parties who had a legitimate expectation that the said elections would be held between 17th June 2002 and 17th September 2002."

[72] The Claimant argued that he as well and members of the Freedom Party and others were treated in a discriminatory manner because of their political opinions. The category of discrimination alleged is "political opinions."

[73] In order for the Claimant to succeed, he must adduce sustainable evidence of discrimination based on their political opinions. In the final analysis, the resolution of this issue must be based on the interpretation of the constitutional provision. It is my opinion that the words are clear and unambiguous and there is no difficulty in giving them their plain and ordinary meaning. The idea was well expressed in Nielsien v Barker (1982) 32 WIR 254 by Massiah JA at page 280:

> "What I am endeavouring to develop is the notion that it is a misconception to think that the Constitution is panacean in character, capacitated for the eventual solution of all legal problems. This process of magnification has led to attempts being made to fit a variety of rights into the framework of fundamental rights and freedoms, although the former often lacked the attributes essential for such categorization…
>
> The word 'discriminatory' in article 149 does not bear the wide meaning assigned to it in a dictionary. It has a precise and limited connotation. Although it contains the elemental constituent of favouritism, or differentiation in treatment, its application is confined only to favouritism or differentiation based on 'race, place of origin, political opinions, colour or creed." No other kind of favouritism or differentiation is 'discriminatory' within the narrow constitutional definition of that word in article 149(2). It is to be profoundly in error to think that there has been a contravention of a person's fundamental rights under article 149 where the alleged discrimination is based on some ground other than those referred to above, no matter how reprehensible such grounds may appear to be. Such a situation clearly does not come within the purview of the constitutional guarantee, although there may well be other means for its investigation and for securing redress."
>
> See also:
>
> (1) Baldwin Spencer v Attorney General of Antigua & Barbuda [Civil Appeal No. 20A of 1997 [unreported].
>
> (2) Rambally & Sons Limited et al v Attorney-General of St. Lucia [Civil Suit No. 355 of 1999] [unreported].

[74] As persuasive as the submissions of the Claimant were, he was unable to demonstrate any alleged discrimination as outlined in Section 13(3) of the Constitution. The only allegation by the Claimant in respect of discrimination was a bare assertion of a statement contained in paragraph 25 of his affidavit. The allegation speaks of unfair advantage by members of the ruling party over his Freedom Party and the other political parties. This is

not evidence but mere speculation. And this is not a court of speculation. No evidence has been adduced by the Claimant to prove that the Prime Minister's party knew of the date when General Elections would have been held. This argument is most untenable.

NO CAUSE OF ACTION

[75] The Defendant submitted that the Claimant has failed in his affidavit to adduce any evidence that there has been any contravention of the fundamental rights and freedoms provisions of the Constitution, as alleged or at all. This is also the conclusion of the Court.

[76] The Claimant has failed in his pleadings to establish that he has a cause of action. In short, the Claimant has not stated such material facts in his pleadings so as to disclose a cause of action. The Defendant has applied to the Court to strike out the pleadings on the ground not only that it disclosed no cause of action against the Defendant pursuant to the fundamental rights provisions contained in Sections 2 – 15 of the Constitution but also that the action herein is scandalous, frivolous, vexatious and an abuse of the process of the Court.

[77] It seems logical to me that it follows as a matter of course that where no cause of action is disclosed in the pleadings against a Defendant, it would be thereby embarrassing for him to be called upon to answer that about which he knows nothing.
See: (1) Arnos Vale Ltd v Kitson (1963) 5 WIR 532.

[78] The Defendant submitted that the Claimant's pleadings are prolix, scandalous, vexatious, irrelevant and an abuse of the process of the Court and should be struck out.

[79] In Rossage v Rossage and Others (1960) 1 All ER 600 at page 602, Hudson LJ had this to say:

> "There has been some discussion as to what is meant by 'scandalous'. It is quite clear that we cannot strike out matters in a pleading or an affidavit simply because they are scandalous because scandalous matters may be relevant and may be the very matters which have to be investigated by the court. If however, the matters

> are plainly irrelevant, as they are here, there is no doubt that the Court can strike them out, either by virtue of its inherent power or by virtue of the power contained in R.S.C. Ord. 38 r. 11."

[80] In Frater v The Queen [1981] 1 WLR 1468, Lord Diplock at page 1470 said:

> "In Harrikissoon v Attorney-General of Trinidad and Tobago this Board had occasion to point out the danger of allowing the value of the right to apply to the High Court for redress for contravention of his fundamental rights and freedoms which is conferred upon the individual by Section 6 of the Constitution of Trinidad and Tobago… to become debased by lack of vigilance on the part of the courts to dispose summarily of applications that are plainly frivolous or vexatious or are otherwise an abuse of the court."

[81] In my judgment, the Originating Motion herein clearly offends against the principles under consideration and I accordingly order that it be struck out as being scandalous, vexatious, an abuse of the process of the Court and of disclosing no reasonable cause of action.

LEGITIMATE EXPECTATION

[82] The Claimant submitted that if a person claims to have a legitimate expectation, this would give that person standing to make an application for review of an administrative action unless the case is totally frivolous. In his affidavit, the Claimant deposed to certain situations in which a legitimate expectation arose. For example, he deposed at paragraphs 11 and 12 that a legitimate expectation had thus been created by the Government of St. Lucia since 1951 that General Elections would be held after the expiration of the full term in accordance with Section 55 (2) of the Constitution save and except in special circumstances. He further deposed that there are no special circumstances in this case.

[83] The Learned Solicitor-General argued that the principles of legitimate expectation has no relevance to the matter before the Court. In support of her submission, she alluded to the cases of Schmidt v Secretary of State for Home Affairs [1969] 2 Ch. 149 and Attorney-General of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629.

[84] A legitimate expectation is a reasonable expectation of a fair hearing before a decision adversely affecting a person's interest is taken. Legitimate expectation arises in circumstances in which some statement or representation or undertaking by or on behalf of the public authority which has the duty of making the decision which would make it unfair or inconsistent with good administration to deny the person an inquiry into his case.

[85] In Attorney-General of Hong Kong v Ng Yuen Shiu [1983] 2 AC 629 at page 634, Lord Fraser of Tullybelton (delivering the judgment of the Privy Council) said:

> "There is no doubt that the Director of Immigration had power under section 19 (in the substituted form provided for in the Ordinance of 1980) to order removal of illegal immigrants. There is also no doubt that neither that section, nor any other statutory provisions, expressly requires an inquiry to be held before such an order is made. The only question raised in the appeal is whether, at common law, the applicant was entitled to have a fair inquiry held before a removal order was made against him."

[86] Lord Fraser then answered the question in these words (at page 636):

> "The narrower proposition for which the applicant contended was that a person is entitled to a fair hearing before a decision adversely affecting his interests is made by a public official or body, if he has 'a legitimate expectation' of being accorded such a hearing. The phrase ' legitimate expectation' in this context originated in the judgment of Lord Denning MR in *Schmidt v Secretary of State for Home Affairs [1969] 2 Ch 149 at page 170.* It is in many ways an apt one to express the underlying principle, though it is somewhat lacking in precision. In *Salemi v MacKellar (No 2) (1977) 137 CLR 396 at page 404*, Barwick CJ construed the word 'legitimate' in that phrase as expressing the concept of 'entitlement or recognition by law.' So understood, the expression (as Barwick CJ rightly observed) 'adds little, if anything, to the concept of a right." With great respect to Barwick CJ, their Lordships consider that the word 'legitimate' in that expression falls to be read as 'reasonable.' Accordingly 'legitimate expectation' in this context are capable of including expectations which go beyond enforceable legal rights, provided that they have some reasonable basis: see *Reg. v Criminal Injuries Compensation Board, Ex parte Lain [1967] 2 QB 864.* So it was held in *Reg. v Board of Visitors of Hull Prison, Ex parte St. Germain (No. 2) [1979] 1 WLR 1041* that a prisoner is entitled to challenge, by judicial review, a decision by a prison board of visitors, awarding him loss of remission of sentence, although he has no legal right to remission, but only a reasonable expectation of receiving it."

[87] In Chief Immigration Officer v Burnett [1995] 50 WIR 153, Sir Vincent Floissac, CJ [delivering the majority judgment stated at page 161:

> "In the present case, the respondent may not have any legal right to enter and remain in the Territory. But in the special circumstances of this case, he certainly had legitimate expectations that he would be granted permission to do so and that at least some of the formalities required by the *audi alteram partem* rule of natural justice would have been observed before any decision or action was made or taken by way of refusal of such permission.
>
> The respondent must have legitimately expected notice of the grounds on which the Minister of Immigration (contrary to his 'position') directed and the Chief Immigration Officer formed the opinion (if any) that the respondent is "a person whose presence in the territory would… be undesirable and not conducive to the public good." ***The respondent must have legitimately expected a fair and reasonable opportunity to answer or rebut those grounds and to make representations in persuasion of the grant of permission for him to enter and remain in the Territory and in dissuasion of the refusal of such permission [My emphasis].*** In my judgment, the failure on the part of the Minister of Immigration and the Chief Immigration Office to give the said notice and opportunity to the respondent was a breach of the *audi alteram partem* rule of natural justice and a procedural irregularity which nullified the refusal of permission for the respondent to enter and remain in the Territory."

[88] I am also of the view that 'legitimate expectation' has no relevance in this matter and the Claimant has not fully grasped its meaning and application.

OTHER ISSUES

[89] Other issues were raised by the Claimant which I have not specifically addressed. This is deliberate. I feel that they were unnecessary for the purpose of deciding this Motion and as a consequence, did not warrant my consideration.

[90] The only one I wish to comment on relates to Statutory Instrument No. 122 of 2001 and Statutory Instrument No. 123 of 2001. The Proclamation dissolving Parliament (Statutory Instrument No. 123 of 2001) was dated 9th day of November 2001 while the Proclamation appointing the day for General Elections (Statutory Instrument No. 122 of 2001) was dated 12th day of November 2001. It is obvious that there was a mistake in the numbering of the

two Statutory Instruments. What number is ascribed to a Statutory Instrument is an administrative function carried out by a specialized Government Department namely, the Printery and the Defendant, in my opinion has no control over this. I cannot see how the Claimant could seek an Order to declare the Statutory Instruments unconstitutional and unlawful because Statutory Instrument No. 123 of 2001 preceded Statutory Instrument No. 122 of 2001 when the most important consideration is the date of the Statutory Instruments and not its numbering. In my opinion, this argument is most unconvincing.

COSTS

[91] The Defendant has asked for Costs of $30,000.00. In Constitutional matters, it is accepted that if a claim made by an unsuccessful citizen against the State was brought in good faith to test a matter of public interest, the Court should be hesitant to award Costs against the suppliant citizen seeking the sanctuary of the Courts.

See: (1) John Benjamin v The Attorney-General of Anguilla [supra].
(2) Daniel Mussington et al v Attorney-General of Anguilla (Miscellaneous Suits Nos. 0044 and 0045 of 2001) (unreported).
(3) Baldwin Spencer v The Attorney-General of Antigua and Barbuda et al (Civil Appeal No. 20A of 1997) (unreported).

[92] However, this is not such a case. The Claimant alleged that his fundamental rights as guaranteed by the Constitution were infringed. He further alleged that the Deputy Governor General and the Honourable Prime Minister acted in breach of his fundamental rights in issuing the Writ for the dissolution of Parliament and the holding of General Elections on Monday, 3rd day of December 2001. There is not a scintilla of evidence that his fundamental rights were infringed. There is no scintilla of a cause of action in relation to any breach of any provision of the Constitution.

[93] The Claimant never contested the said General Elections. The content of his amended Originating Motion and numerous affidavits included unparticularized and speculative allegations. For example, the Claimant alleged that a substantial and significant number of young persons between 17 –18 years would have qualified to vote had the said General

Elections been held when they were in fact constitutionally due and that his Party would have successfully canvass and enlist the votes of the said persons.

[94] There is no doubt that the motive of the Claimant was political. This is evident when the Claimant joined the Honourable Prime Minister as a Party to the Claim and he sought to diminish the sacrosanct Office of the Deputy Governor-General by his mischievous allegations. The Motion contained the frivolous and vexatious relief praying for exemplary damages claiming that the matters complained of were arbitrary, oppressive and unconstitutional.

[95] It is manifestly clear that the Claimant argued a surplus of irrelevant issues before the Court; some of which were scandalous, to say the least. He saddled the Court with numerous irrelevant judicial authorities. He wasted the Court's time rendering these proceedings an abuse of the process of the Court.

[96] For all these reasons I would order that the Claimant pay the Costs of $20,000.00 to the Defendant not later than 31st day of July 2002.

INDRA HARIPRASHAD-CHARLES
High Court Judge