

ST. VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HCVAP 2010/019

BETWEEN:

[1] KENT ANDREWS
[2] WINSTON ROBINSON
[3] ANTONIO GELLIZEAU

Appellants

and

THE ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal
The Hon. Mr. Tyrone Chong, QC	Justice of Appeal [Ag.]
The Hon. Mr. Jefferson Cumberbatch	Justice of Appeal [Ag.]

Appearances:

Mr. Theodore Guerra SC, Mrs. Kay Bacchus Browne
Mr. Alberton Richelieu and Mr. Stephen Williams for the Appellants
Mr. Gilbert Peterson, SC and Ruth Ann Richards for the Respondent

2010: November 24;
2011: November 7.

Appeal – Constitutional motion – Proceeds of Crime and Money Laundering (Prevention) Act, No 39 of 2001 S. 41(2)(a), 25, 26(1), 26(4), 26(5), 67 – whether Act and amendments ultra vires the Constitution – whether Act should have been passed in accordance with s. 38 of Constitution – whether fundamental rights under section 1 of Constitution violated – Criminal Assets Recovery Act 1990 Act 23 of 1990 of New South Wales – St. Vincent and the Grenadines Constitution Order 1979, s. 6 (1), 6(6), 16(1), 38, whether s.1 of the Constitution is separately enforceable

In April of 2008, on searching the yacht Jo Tobin, members of the St. Vincent and Grenadines Coast Guard found 1.6 million United States Dollars on board concealed in

vacuum packed bags. The first and second appellants were on board the yacht at the time and they were charged with breaches of section 41(2)(a) of the Proceeds of Crime and Money Laundering (Prevention) Act, No 39 of 2001 ("the Proceeds of Crime Act"). The yacht was owned by the third appellant; the court granted an order restraining him from transferring, selling, parting with or otherwise charging all realisable assets owned or controlled by him, whether in his name or not, whether solely or jointly owned or held, whether located within or without St. Vincent and the Grenadines.

In the court below, the appellants filed constitutional motions contending that the Proceeds of Crime Act and its amendments were ultra vires the St. Vincent and the Grenadines Order 1979. They claimed that they were an amendment to the Constitution and ought to have been enacted in accordance with section 38 thereof. The appellants also claimed that the ex parte procedure associated with the initial stage of seizure deprived a party of the right to be heard. Further, their rights under section 1 of the Constitution were violated. The learned trial judge dismissed the claims, holding that they were brought, in part, pursuant to section 1(c) of the Constitution, which, as a general provision, is not justiciable. The trial judge also held that the Proceeds of Crime Act did not amend the Constitution and as such it was unnecessary to enact it in accordance with section 38 thereof (this section provides for the alteration of the constitution). The learned judge rejected the submission that section 41 of the Proceeds of Crime Act violated the Constitution on the ground that the ex-parte procedure associated with the initial stages of seizure deprived a party of the right to be heard.

On appeal, the appellants contended, among other things, that the learned trial judge erred in holding that section 38 of the Constitution does not apply to Acts which affect fundamental rights and freedoms. They argued that the Proceeds of Crime Act violated, altered, or affected the fundamental rights under the Constitution and it proposed to amend the constitution; and that as such, it ought to have been passed in accordance with section 38 of the Constitution. Further, sections 26, 49 and 50 of the Proceeds of Crime Act are repugnant to the Constitution in that they violate the principles of natural justice, due process and equal protection before the law. The appellants contended that the learned judge erred in holding that there was no breach of the protection of the law and also pointed out that no regulations have been made to regulate the procedure to be followed upon seizure of property pursuant to the Proceeds of Crime Act.

Held: dismissing the appeal, that:

1. The **Proceeds of Crime Act** does not infringe the appellants' rights under the Constitution. It does not have the effect of adding to, varying, or repealing any provision of the Constitution. Consequently, section 38 of the Constitution was not engaged. Sections 26, 49 and 50 of the **Proceeds of Crime Act** make provisions for the making of orders which the Constitution contemplates as exceptions to the right against deprivation of property. These sections do not violate the applicable principles of due process and protection of the law provided for by the Constitution.

2. A restraint order to prohibit any person from dealing with realizable property, made pursuant to section 26 of the **Proceeds of Crime Act** does not violate the principles of natural justice, due process and equal protection before the law. Section 26 confers a discretion on the Director of Public Prosecutions to make an application for a restraint order ex parte and the court in the exercise of its discretion will decide whether to grant the application. Furthermore, the section does not impose a fetter on the manner in which the court may exercise its discretion; hence, it does not deprive the court of the power to ensure, so far as practicable, fairness between the parties. The grant of a power to make ex parte order is not unusual but should always be regarded as exceptional. It involves a departure, albeit temporary, from the general requirement of procedural fairness that no order adverse to a party should be made without that party having an opportunity to be heard. Mareva or assets preservation orders are often sought ex parte on the basis that notice to the affected party is likely to result in concealment or dissipation of assets which it is intended the proposed order will protect

International Finance Trust Company Limited v New South Wales Crime Commission [2009] HCA 49 applied in part and also distinguished; **Mootoo v Attorney General of Trinidad and Tobago** [1979] 1 WLR 1334, at 1338 – 1339 applied; **The State v Boyce** [2006] UKPC1 mentioned; **Ferguson v The Attorney General of Trinidad and Tobago** [2001] UKPC considered.

3. The process contemplated by section 50 of the **Proceeds of Crime Act** is not in the nature of a criminal charge. It is a civil process. Section 8(8) of the Constitution applies to proceedings determining the existence or extent of civil rights or obligations. A restraint order is preemptive and provisional. It is an interim measure, protective in nature, does not determine civil rights and obligations and would not normally fall within the protection afforded by section 8(8) of the Constitution. At the restraint order stage, the court makes no final decision as to the defendant's "benefit" or "realizable property". As a general rule, the right to fair hearing does not apply to interim measures. It can only apply if the practical effect of the interim measure is to determine the rights in question. In the present case, it is clear in that the practical effect of the restraint order was not to determine any civil right or obligation. In the circumstances, the restraint order would not engage section 8(8) of the Constitution.

J v Crown Prosecution Service [2005] EWCA Civ 746 applied; **Trent Strategic Health Authority v Jain & Anor** [2009] UKHL4 applied.

4. Sections 26, 49 and 50 of the **Proceeds of Crime Act** have to be read contextually; the context here is section 6 of the Constitution. Sections 6(1) and 6(6) of the Constitution contemplate the existence or enactment of a statute dealing with forfeiture of property either by way of penalty for breach of any law or for forfeiture in consequence of a breach of law within subsection 6(6)(a)(ii). They further contemplate action, inclusive of the taking of possession of or acquisition of property for as long as may be necessary for the purposes of examination, investigation, trial or enquiry: section 6(6)(a)(vii). An enactment in the nature of

the **Proceeds of Crime Act** is clearly authorized by the Constitution and falls within the ambit of section 6(6) thereof.

5. The expression “reasonably justifiable in a democratic society” concerns whether the provision in question “arbitrarily or excessively invades the enjoyment of the guaranteed rights according to the standards of a society that has proper respect for the rights and freedoms of the individual”. The court uses a three fold analysis to determine whether a limitation is arbitrary or excessive: (i) Is the legislative objective sufficiently important to justify limiting a fundamental right? (ii) Are the measures designed to meet the legislative objective rationally connected to it? (iii) Are the means used to impair the right or freedom no more than is necessary to accomplish the objective? The **Proceeds of Crime Act** provides for the prevention of money laundering and related matters. Looking at the Act in the round and applying the three fold analysis, it cannot be said that its provisions either arbitrarily or excessively invade the enjoyment of the guaranteed rights according to the standards of a society like St. Vincent and the Grenadines that has proper respect for the rights and freedoms of the individual. The **Proceeds of Crime Act** is reasonably justifiable in a democratic society like St. Vincent and the Grenadines. The appellants have not demonstrated that the Act was not reasonably justifiable.

de Freitas v Permanent Secretary of the Ministry of Agriculture, Fisheries, Lands and Housing and others [1998] UKPC 30 applied.

6. The general statement of fundamental rights and freedoms in section 1 of the Constitution is not separately enforceable and does not confer any free standing rights. It is not included in the enforcement provision. Section 16(1) of the Constitution gives a right to apply for redress to any person alleging a contravention of sections 2 to 15 (inclusive). Significantly, it omitted section 1. The rights and freedoms enforceable under section 16 are those set out in sections 2 to 15 inclusive.

Blomquist v The Attorney General of the Commonwealth of Dominica [1987] AC 489 applied; **Campbell Rodrigues and Ors. v Attorney General of Jamaica**, [2007] UKPC 65 applied.

7. Section 67 of the **Proceeds of Crime Act** is a general regulation making provision and does not provide for specific regulations to be made. The section is not a mandatory provision; rather, it is permissive in terms. It has not been demonstrated that the absence of regulations made pursuant to section 67 of the **Proceeds of Crime Act** affects due process or makes the Act inoperable.

JUDGMENT

- [1] **BAPTISTE, J.A.:** On 5th April 2008, members of the St. Vincent and the Grenadines Coast Guard searched the yacht Jo Tobin and found 1.6 million United States dollars on board concealed in vacuum packed bags. The Jo Tobin was owned by Antonio Gellizeau. At the time of the search, Kent Andrews and Winston Robinson were on board. Kent Andrews and Winston Robinson were charged with breaches of section 41(2)(a) of the **Proceeds of Crime and Money Laundering (Prevention) Act**¹, (“the Proceeds of Crime Act”). The court granted an order restraining Gellizeau from transferring, selling, parting with or otherwise charging all realisable assets owned or controlled by him, whether in his name or not, whether solely or jointly owned or held, whether located within or without St. Vincent and the Grenadines.
- [2] The appellants filed constitutional motions on the ground that the **Proceeds of Crime Act** and its amendments were ultra vires the **St. Vincent and the Grenadines Constitution Order 1979** (“the Constitution”) claiming that they were an amendment to the Constitution and therefore should have been passed in accordance with section 38 of the Constitution. They further alleged that their rights under section 1 of the Constitution were violated. Bruce Lyle J dismissed the claims and pronounced that all three claims were brought in part pursuant to section 1(c) of the Constitution, a general provision which was not justiciable. Further, the claims were intrinsically defective and fundamentally flawed as they were not brought substantially under section 6 of the Constitution and mere reference in the claims to section 6 was inadequate. Bruce Lyle J also held that the **Proceeds of Crime Act** did not offend the Constitution; consequently, it was unnecessary to pass it in accordance with section 38 thereof. Bruce Lyle J rejected the submission that section 41 of the **Proceeds of Crime Act** was unconstitutional on the ground that the ex-parte procedure associated with the initial stages of seizure was offensive in that it deprived a party of the right to be heard.

¹ Act No. 39 of 2001.

- [3] The appellants appealed on the grounds that:
- (i) The learned judge erred in holding that section 38 of the Constitution does not apply to acts which affect the fundamental rights and freedoms and has wholly misconstrued submissions made on that behalf.
 - (ii) The learned judge erred in holding that there was no breach of the protection of the law and did not appreciate the submission that provisions are made in the **Proceeds of Crime Act** for regulations to be made as to the carrying out of the acts and no such regulations have been made to regulate the procedure to be followed upon seizure of property.

[4] After hearing submissions from both sides, the court dismissed the appeal. We now give reasons for our decision. In as much as the appellants seek to assail the constitutional integrity of the **Proceeds of Crime Act**, they undoubtedly face a difficult task. The constitutionality of a parliamentary enactment is presumed unless it is shown to be unconstitutional and the burden on a party seeking to prove that such an enactment is invalid is a heavy one: **Mootoo v Attorney General of Trinidad and Tobago**².

Ex parte Procedure and Due Process

[5] The appellants argue that sections 26, 49 and 50 of the **Proceeds of Crime Act** are repugnant to the Constitution in that they violate the principles of natural justice, due process and equal protection before the law. In **The State v Boyce**³, at paragraph 14 Lord Hoffman stated that due process of law encompasses those fundamental principles which are necessary for a fair system of justice. In **Ferguson v The Attorney General of Trinidad and Tobago**⁴, Lord Steyn opined at paragraph 14 that there is a strong link between the constitutional guarantees of due process, protection of the law and fair hearing since the fundamental concept

² [1979] 1 WLR 1334, 1338–1339.

³ [2006] UKPC1.

⁴ [2001] UKPC.

of a fair trial is common to them all. The issue whether there has been a breach under any of these guarantees must be judged on a realistic assessment of the proceedings considered as a whole.

[6] An important thrust of the attack on the **Proceeds of Crime Act** concerns the ex parte procedure associated therewith. In **International Trust Company Limited v New South Wales Crime Commission**⁵ French CJ stated at paragraph 39 that ex parte procedures are not unusual but should always be regarded as exceptional. They involve a departure, albeit temporary, from the general requirement of procedural fairness that no order adverse to a party should be made without that party having an opportunity to be heard. That includes the right to test and or rebut evidence relied upon by the party moving the court and to make submissions on matters of fact and law. French CJ further explained that Mareva or assets preservation orders are often sought ex parte on the basis that notice to the affected party is likely to result in concealment or dissipation of assets which it is intended the proposed order will protect. Nevertheless, courts have long had the power to require that notice of an application made ex parte to be given to the party affected.

[7] Section 26(1) of the **Proceeds of Crime Act** gives the court a discretion to make a restraint order to prohibit any person from dealing with realizable property, subject to such conditions and exceptions as may be specified in the order. Section 26(4) provides that a restraint order may be made only on an application by the Director of Public Prosecutions; may be made on an ex parte application to a judge in Chambers and shall provide for notice to be given to persons affected by the order. Section 26(5) provides that a restraint order may, on the application of any person affected by the Order, be discharged or varied in relation to any property, and shall be discharged when proceedings for the offence are concluded. Section 25 dictates the circumstances in which such an application can be made ex-parte.

⁵ [2009] HCA 49.

[8] In **International Finance Trust Company Limited v New South Wales Crime Commission**⁶, section 10 of the **Criminal Assets Recovery Act 1990** Act 23 of 1990 of New South Wales was considered. Section 10(2) provides that the Commission may apply to the Supreme Court ex parte for a restraining order. Section 10(3) ordained that the Supreme Court must make the order applied for under sub-section (2) if the application is supported by an affidavit of an authorized officer stating the officer's suspicion that the person has engaged in a serious crime related activity and the court considers that having regard to the matters contained in any such affidavit, there are reasonable grounds for such suspicion. The Court found that section 10 was repugnant to the Constitution. The repugnance was not a consequence of the power granted to make restraining orders ex parte. The court recognized that the grant of a power to make ex parte restraining orders was a very well known aspect of Australian judicial process in relation to injunctions, although the power should only be exercised in exceptional or special cases, where there is some special hazard or cause of urgency. A risk of dissipation of assets in such a fashion as to frustrate the objects of the law can be in that category: see Heydon J at paragraph 156. French CJ also recognized at paragraph 54 that an official can be validly authorized by statute to bring an ex parte application without that statute violating procedural fairness or natural justice.

[9] The problem French CJ found with section 10 was that it required a court, not only to receive an ex parte application but also to hear and determine it ex parte, if the executive so desires. This was in fact directing the court as to the manner in which it exercises its jurisdiction and as such deprived the court of an important characteristic of judicial power that is, the power to ensure, so far as practicable, fairness between the parties. Section 10 of the Act was consequently declared invalid.

⁶ [2009] HCA 49.

- [10] It can be seen that the **Criminal Assets Recovery Act** mandated the court to grant a restraining order at the behest of the New South Wales Crime Commission provided that the conditions stipulated in section 10(3) were satisfied. As pointed out by Mr. Peterson SC, section 10 left no textual space within which the court was empowered to impose a condition requiring that notice be given. Section 10(3) effectively deprived the court of its power and effectively placed that power in the hands of the executive.
- [11] The **Proceeds of Crime Act** does not suffer from any of the vices identified in **International Finance Trust Company Limited**. The **Proceeds of Crime Act** is, textually, materially different. Section 26 bestows a discretion on the Director of Public Prosecutions to make an application for a restraint order ex parte. The court in the exercise of its discretion will decide whether or not to grant the application. The court is empowered to grant the order in accordance with such conditions and exceptions as it may specify or it may refuse to grant the order. Section 26 does not impose a fetter on the manner in which the court may exercise its discretion. It also contains provisions for notice to be given to the person affected by the order and for the order to be varied or discharged. The grant of a power to make an ex parte restraining order is a familiar and significant feature of the legal landscape and the ex parte restraint order provided for by the **Proceeds of Crime Act** does not violate procedural fairness or natural justice.

Sections 49 and 50 of the Proceeds of Crime Act and the Constitution

- [12] Section 49 of the **Proceeds of Crime Act** makes provision for a police officer not below the rank of Inspector to seize and detain for a period not exceeding forty-eight hours cash, which he has reasonable grounds for suspecting directly or indirectly represents the proceeds of criminal conduct. The provision also empowers the court to grant an order for the detention of the seized cash provided that the Magistrate entertains reasonable grounds for the suspicion and further to facilitate among other things, investigations into the origin or derivation of the funds.

- [13] Section 50 of the **Proceeds of Crime Act** provides for the forfeiture of cash seized pursuant to section 49. The order may be made whether or not proceedings are brought against any person for an offence with which the cash is connected. This forfeiture jurisdiction is premised on the assumption that the court is satisfied that the cash in question directly or indirectly represents any person's proceeds of or benefit from or is intended for use by any person in criminal conduct. Further, section 50 does not authorize automatic forfeiture. Forfeiture may be ordered at the conclusion of the determination of the application. The process contemplated by section 50 is not in the nature of a criminal charge. It is a civil process. The question is whether section 8(8) of the Constitution is applicable.
- [14] Section 8(8) of the Constitution provides that any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time. Textually, section 8(8) applies only to proceedings determining the existence or extent of civil rights or obligations. In **J v Crown Prosecution Service**⁷, Laws LJ articulated, at paragraphs 43 and 47, that a restraint order is pre-emptive and provisional. At the restraint order stage the court makes no final decision as to the defendant's "benefit" or "realizable property". The court is concerned only to make a protective order so that in the particular case the satisfaction or fulfillment of any confiscation order made or to be made will be efficacious.
- [15] An interim measure such as a restraint order, which is pre-emptive, provisional and protective in nature, does not in principle determine civil rights and obligations and would not normally fall within the protection afforded by section 8(8). In **Trent**

⁷ [2005] EWCA Civ 746

Strategic Health Authority v Jain & Anor⁸, the House of Lords considered in part article 6(1) of the European Convention on Human Rights. The article provides that:

"In the determination of his civil rights and obligations everyone is entitled to a fair hearing within a reasonable time by an independent and impartial tribunal established by law."

Baroness Hale stated at paragraph 43 that as a general rule article 6(1) does not apply to interim measures; it can so apply if the practical effect of the interim measure is to determine the rights in question. In this case it is pellucid that the practical effect of the restraint order was not to determine any civil right or obligation. In the circumstances the restraint order would not engage section 8(8) of the Constitution.

[16] Sections 26, 49 and 50 of the **Proceeds of Crime Act** have to be read contextually and the context here is section 6 of the Constitution. The Constitution provides in section 6(1) that:

"No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be acquired, except for a public purpose and except where provision is made by a law applicable to that taking of possession or acquisition for the payment, within a reasonable time of adequate compensation."

Section 6(6) states that:

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection 1 of this section –

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right –

...

(ii) by way of penalty for breach of any law or forfeiture in consequence of breach of any law;

...; or

(vii) for so long as may be necessary for the purposes of any examination, investigation, trial or inquiry or ...

⁸ [2009] UKHL4

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;”

- [17] Mr. Peterson SC submitted and I agree that the above subsections contemplate the existence or enactment of a statute dealing with forfeiture of property either by way of penalty for breach of any law or for forfeiture in consequence of a breach of law within subsection 6(6)(a)(ii). They further contemplate actions inclusive of the taking possession of or acquisition of property for as long as may be necessary for the purposes of examination, investigation, trial or enquiry: section 6(6)(a)(vii). An enactment in the nature of the **Proceeds of Crime Act** is clearly authorized by the Constitution and falls within the ambit of section 6(6) thereof. The only question is whether it is “reasonably justifiable in a democratic society” like St. Vincent and the Grenadines.

Reasonably justifiable in a democratic society

- [18] That expression “reasonably justifiable in democratic society” concerns whether the provision in question “arbitrarily or excessively invades the enjoyment of the guaranteed rights according to the standards of a society that has proper respect for the rights and freedoms of the individual”. In **de Freitas v Permanent Secretary of the Ministry of Agriculture, Fisheries, Lands and Housing and others**⁹ the Privy Council accepted and adopted a three fold analysis for determining whether a limitation is arbitrary or excessive. The court has to consider whether: (i) the legislative objective is sufficiently important to justify limiting a fundamental right; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective. I note that the **Proceeds of Crime Act** provides for the prevention of money laundering and related matters. Looking at the Act on a whole and applying the three fold analysis the Act is clearly reasonably justifiable in a democratic society like St. Vincent and

⁹ [1998] UKPC 30

the Grenadines. The appellants, in my judgment, have not demonstrated that the Act was not reasonably justifiable in a democratic society like St. Vincent and the Grenadines.

Section 38 of the Constitution

- [19] Section 38(1) of the Constitution empowers the Parliament to alter any provision of the Constitution in the manner specified in the provisions of section 38. As far as is material, section 38(3)(b) provides that a bill to alter the schedule to the Constitution or any provision of the Constitution specified in part 1 of the schedule shall not be submitted to the Governor General for his assent unless after it has been passed by the House the bill has been approved on a referendum by not less than two-thirds of all the votes validly cast on that referendum. In their skeleton arguments, the appellants submit that the court must look at the Act being passed and determine whether it affects any fundamental rights and freedoms. If the Act does affect, alter or amend rights under the Constitution, the question is what procedure was followed by Parliament in passing that Act. If it does not follow the required procedure, can it be said to have been passed in accordance with the provisions of the Constitution? The appellants' position in a nutshell is that an examination of the **Proceeds of Crime Act** shows that it violates, alters, or affects fundamental rights under the Constitution. It proposed therefore to amend the Constitution and ought to have been passed in accordance with the dictates of section 38 to preserve its constitutional integrity. Failure to do so rendered the Act and the amendments thereto unconstitutional.
- [20] The respondents submit that section 38 of the Constitution has no application to enactments which makes provisions which fall within the ambit stipulated by the Constitution. I agree. The respondents contend, quite properly, that sections 26, 49 and 50 of the **Proceeds of Crime Act** make provisions for the making of orders which the Constitution contemplates as exceptions to the right against deprivation of property. These sections do not in any way violate the applicable principles of due process and protection of law provided for by section 8 of the Constitution.

[21] The **Proceeds of Crime Act** does not infringe the appellants' rights under the Constitution. It does not have the effect of adding to, varying or repealing any provision of the Constitution. Consequently, the special procedures contemplated by section 38 of the Constitution could not be engaged. In the circumstances section 38 of the Constitution is inapplicable to the **Proceeds of Crime Act**.

Is Section 1 of the Constitution justiciable?

[22] Section 1 of the Constitution states:

"1. Whereas every person in Saint Vincent is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following namely -

(a) life, liberty, security of the person and protection of the law;

(b) ...

(c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest."

This is followed by sections 2 to 15 which contain particular rights and freedoms, then section 16, which provides in subsection 1 that:

"If any person alleges that any of the provisions of sections 2 to 15 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him ... then, without prejudice to any other action with respect to the same matter that is lawfully available, that person ... may apply to the High Court for redress."

[23] The question is whether the general statement of fundamental rights and freedoms in section 1 is separately enforceable. The Constitution itself provides the answer. It is evident from a reading of the Constitution that section 1 is not separately enforceable. It is not included in the enforcement provision. Section 16(1) of the Constitution gives a right to apply for redress to any person alleging a

contravention of sections 2 to 15 (inclusive). Significantly, it omitted or did not mention section 1. On a clear interpretation of the Constitution, it is seen that the rights and freedoms enforceable under section 16 are those set out in sections 2 to 15 (inclusive). Section 1 does not confer any free standing rights. That was the position held by the Privy Council in **Blomquist v The Attorney General of the Commonwealth of Dominica**¹⁰ and **Campbell Rodriques and Ors. v Attorney General of Jamaica**¹¹, .

[24] Section 6 of the Constitution of Dominica, like St. Vincent and the Grenadines, provides for protection from compulsory acquisition without compensation. Likewise, section 6(2) provides that every person having an interest in or right over property that is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for the purposes enumerated in the section. Again, like St. Vincent and the Grenadines, section 16 gives a right to apply for redress to any person alleging a contravention of any of the provisions of sections 2 to 15 (inclusive) but did not refer to section 1. In **Blomquist** the Privy Council held that the power to provide such redress was limited to that provided for in section 6 and rejected the argument that section 1 conferred an independent and wider power which was separately enforceable.

[25] Section 13 of the Constitution of Jamaica is the kindred section to section 1 of the Constitution of St. Vincent and the Grenadines. In **Campbell Rodriques and Ors. v Attorney General of Jamaica**¹², the Court of Appeal had rejected the argument that section 13 had the function of an instrument for providing redress. It relied, in particular, on the wording of section 25(1) which provides for redress in the event of contravention of any of the provisions of section 14 to 24 of the Constitution, without reference to section 13 (See paragraph 7 of the judgment of the Privy Council). At paragraph 12, the Privy Council stated:

¹⁰ [1987] AC 489

¹¹ [2007] UKPC 65

¹² [2007] UKPC 65

"Their Lordships are satisfied that section 13 does not confer any freestanding rights and that on the clear interpretation of the provisions of Chapter 111 the rights and freedoms enforceable under section 25 are to be those set out in sections 14 to 24 (inclusive).

Absence of Regulations

[26] Section 67 of the **Proceeds of Crime Act** states that regulations may be made for prescribing anything which is required to be prescribed under the Act and generally for carrying out the purposes and provisions of the Act by the Minister of Finance. The appellants have taken issue with the absence of regulations, pointing out that no regulations have been made to regulate the procedure to be followed upon seizure of property. A few observations can be made about section 67. The section is not a mandatory provision, it is permissive in terms. It gives the Minister of Finance the power to make regulations for the purposes stated therein. Further, it is a general regulation making provision and does not provide for specific regulations to be made. It has not been demonstrated that the absence of regulations affects due process or makes the Act inoperable.

[27] For all the above reasons, the appeal was dismissed.

Davidson Kelvin Baptiste
Justice of Appeal

I concur.

Tyrone Chong, QC
Justice of Appeal [Ag.]

I concur.

Jefferson Cumberbatch
Justice of Appeal [Ag.]