IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANIGUILLA CIRCUIT
(CIVIL)
A.D. 2017

CLAIM NO. AXAHCV 2017/0028

In the matter of the Constitution of Anguilla, Anguilla Constitution Order 1982

AND

In the matter of the Marriage Act, Chapter M40 of the Revised Statutes of Anguilla

AND

In the mater of the Registration of Births, Deaths and Marriages Act, Chapter R35 of the Revised Statutes of Anguilla

AND

In the matter Part 56 of the Civil Procedure Rules

BETWEEN:

[1] CHANDRA HUGHES
[2] JOSE GARCIA RODRIQUEZ
CLAIMANTS

AND

[1] REGISTRAR OF BIRTHS DEATH AND MARRIAGES
[2] THE ATTORNEY GENERAL
DEFENDANTS

Appearances

Ms. Lauri Smikle instructed by Alex Richardson & Associates for the Claimants
Mr. John McKendrick Q.C. Attorney General for the Defendants

2017: June 16,
July 7.

Reissued 21st July 2017

Judicial Review – Administrative claim challenging decision of Registrar to Marriages to strike out a marriage from the Register on the basis that it was void – Claim including claim for declarations – Leave only granted to pursue challenge to the decision – Part 56 of CPR 2000 allowing relief in the nature of declarations to be joined on claim without leave.

Family Law - Marriage - Marriage struck off Register because person conducting marriage ceremony not an authorized marriage officer - Whether decision bad in law and in excess of the jurisdiction of the Registrar – Registrar failing to give due regard to section 64(b) of the Marriage Act - Section 64(b) operating to save the validity of a marriage if parties to a marriage do not 'wilfully and knowingly' consent to, or acquiesce in being married by an unauthorized person once the marriage has otherwise complied with the Act and is in all essentials a marriage – Where a marriage has been registered and a question arises as to whether it may have been solemnized by an unauthorized person, the Registrar having regard to section 64(b), ought to give the parties to the marriage, notice of her intention to strike the marriage off the Register - Where the issue not resolved to the mutual satisfaction of the Registrar and parties, the Registrar ought to seek an order from the Court on the question of the validity of the marriage – Where questions of compliance arise before a marriage is registered, the Registrar retains the good faith discretion, after proper investigation, to refuse to register a marriage in substantial breach with the Act.

Family Law - Marriage - Question as to whether the marriage may have been solemnized outside of the statutory hours within which marriages are to be performed – No positive evidence that this was so – Marriage not voided on such unproven allegation.

Obiter - The fact that a marriage may have occurred outside the statutory prescribed hours is not sufficient to invalidate or void an otherwise valid marriage.

DECISION

[1] **RAMDHANI, J.: (Ag.)** This is a Fixed Date Claim filed by the claimants for judicial review of a decision of the Registrar of Births, Deaths and Marriages to strike out from the Marriage Register the marriage of the claimants. A number of declarations are also sought on the Claim. This matter was heard on the 16th June 2017 and the substantive relief being sought by the claimants is hereby granted in the terms set out in this judgment for the following reasons.

The Parties

[2] The claimants are Chandra Hughes and Jose Garcia Rodriquez who claim that they followed all the formalities required of them by the Registrar of Marriages and solemnized a marriage between themselves on the 24th July 2014, which marriage was then registered but later struck from the Register by the Registrar of Marriages.

[3] The Registrar of Births, Death and Marriages is that statutory authority with responsibility for the registration of all births, deaths and marriages in Anguilla. Her authority is derived from the Marriage Act. It is her decision to strike the claimants' marriage from the Register that grounds the main claim in these proceedings.

[4] The Attorney General, the legal representative of the Crown is joined to the proceedings in relation to the declarations, including constitutional relief which are being sought.

The Fixed Date Claim

[5] By a Fixed Date Claim filed on the 2 of May 2017, the claimants are seeking the following relief, namely:

1. An order to quash the decision of the Registrar to strike out the marriage of the Applicants on the 24 July 2014 from the Registry of Marriages.

2. A Declaration pursuant to the Marriage Act, Chapter M40 of the Revised Statutes of Anguilla, that the marriage celebrated between the Applicants on the 24 July 2014 was a valid marriage at its inception.

3. A Declaration that the Applicants did not, pursuant to section 64(b) of the Marriage Act C. M40 knowingly and wilfully consent to, or acquiesce in the solemnization or celebration of their marriage by a person not being a marriage officer and that the marriage not be null and void to all intents and purposes whatsoever.

4. A Declaration that the Registrar acted in excess of her powers and disproportionately under the provisions of the Marriage Act, by striking out the marriage between the Applicants.

Further and/or in the alternative

5. A Declaration that the Registrar and or her agents at the Court Registry erred and or failed to verify that Pastor Samuel D. Richardson, of Eglesia De Vios de Vendicion Church, Blowing Point Anguilla, was registered to marry the Applicants in a timely manner.

6. A Declaration that the Registrar acted unreasonably when she communicated to Pastor Samuel D. Richardson, by letter dated 29 July 2016, two (2) years after the Applicants celebrated and registered their marriage, and indicated that the said Pastor was not 'appropriately registered' to perform or officiate the wedding in accordance to the Marriage Act.

7. A Declaration that the Registrar, by virtue of section 1(c) of the Anguilla Constitution Order 1982, SI 1982 No. 334, infringed on the Applicants' right to family life.

The Facts

[6] The claim was grounded on a number of matters which affidavits filed by the claimants supported in all material respects. The defendants also filed affidavits but did not dispute the underlying factual matrix in any material way. These will now be set out.

[7] Prior to the 24th July 2014, the claimants desirous of being lawfully married visited the Registry and enquired of the requirements for obtaining a marriage licence. The first claimant at that time also enquired whether a 'Pastor Samuel Richardson' was licensed to marry individuals. It was confirmed by a Registry officer that Pastor Samuel Richardson was licensed to marry persons.

[8] On the 21st July 2014, the claimants completed the necessary documents and filled out in particular a Petition in accordance with section 35(3) of the Marriage Act. The material part of that Petition to the Registrar was as follows:

> *"The Humble Petition of Jose Smith Garcia Rodriquez Bachelor native of Dominican Republic residing at South Hill and Chandra Corsica Hughes Spinster*

Native of Anguilla residing at South Hill, Anguilla Respectfully sheweth that your first named Petitioner is the age 27 years and your second named Petitioner is of the age of 37 years.

That Jose Smith Garcia Rodriquez and Chandra Corsica Hughes has/have for the space of 15 days immediately preceding the date of this Petition had his or her/their usual place of Abode within Anguilla. That your Petitioners are desirous of being married without publication of banns or notice or marriage and know of no cause or impediment to prevent the proposed marriage, and therefore pray for the grant to them a special licence whereby any marriage officer shall be authorized to solemnize or celebrate the same. That your petitioners desire the marriage to be solemnized/celebrated MEADS BAY VILLAS BEACH by PASTOR SAMUEL RICHARDSON[1]

And your petitioners as it duly bound will ever pray.

[Signed by both]

[9] At the time this Petition was being presented the claimants enquired from the Registry whether Pastor Samuel Richardson was an authorized marriage officer. An officer of the Registry confirmed at the time there was a 'Pastor Samuel Richardson' who an authorized marriage officer. (A copy of the page from the Register of Marriage Officers was produced in court and it showed that 'Pastor Samuel Richardson' of the 'Awakening Ministries Tabernacle' had been a registered officer since the 3rd March 1981.) It was undisputed that when the Petition was made, the officer from the Registry consulted this Register of Marriage Officers and responded to the claimants' query. It appeared that it was then on this basis the name of the Pastor which was written in hand on the Petition was approved to perform the marriage. No information was given to the Registry about the Church which Pastor Richardson being presented by the claimants was associated with. There has been no dispute that the claimants presented information which was being requested of them. Even without this information, the Registrar and the staff at the Registry did not doubt that

[1] The name of the Pastor was handwritten in on the form.

the Pastor Samuel Richardson being presented was the same Pastor who was named in the Register of authorized officers.

[10] The Petition was examined by the Registrar who satisfied herself that all the information and supporting documents were in order.[2] On the 23rd July 2014, the claimants having paid the required $100 in stamps, the Registrar issued to the claimants, a licence under section 36 of the Marriage Act. This licence was in the following terms:

> *"LICENCE*
>
> *By the Registrar General of Anguilla*
>
> *To all whom these presents shall come:*
>
> *Be it known that JOSE SMITH GARCIA RODRIQUEZ Bachelor of age 27 years, born in the DOMINICAN REPUBLIC residing at South Hill and CHANDRA CORSICA HUGHES Spinster of age 37 years, born in Anguilla residing at South Hill having petitioned me for a license to marry without publication of banns or notice of marriage, and they the said Jose Smith Garcia Rodriquez and CHANDRA CORSICA HUGHES having made it appear that there does not exist any lawful cause or impediment to their marriage, licence is hereby granted to PASTOR SAMUEL RICHARDSON marriage officer to solemnize/celebrate a marriage between the said JOSE SMITH GARCIA RODRIQUEZ and CHANDRA CORSICA HUGHES without publication of banns or notice of marriage according to the provision of the Marriage Act, provided no lawful impediment to be known to the contrary.*
>
> *This licence will be void unless the marriage between the parties herein named to be solemnized or celebrated within 3 calendar months from the date hereof.*
>
> *Given under my hand, at the Registrar-General's office, Anguilla, this 23rd day of July 2014 in the year of Her Majesty's reign.*

[11] It is accepted that at the Registry, the claimants were then read an oath by the Court Officer, who had the claimants declare themselves to each other.

[12] On the next day, the 24th July 2014, the claimants participated in a wedding ceremony at the Iglesias de Dios Valle de Vendicion Church at Blowing Point officiated by Pastor

[2] Affidavit sworn to by the Registrar on the 25 May 2017 at paragraph 7

Samuel Richardson and a Minister Candice Niles. There were about fifty guests in attendance.

[13] There is an affidavit filed by the Pastor Samuel Richardson. He deposed that he is from the Dominican Republic living in Anguilla since 1989. He stated that he is the Pastor of the Iglesia de Dios de Vendicion Church, Blowing Point. He stated that this church was registered as a company since 2001.

[14] Pastor Richardson states that in the Dominican Republic it is customary to marry at the court house and then go and get blessings from a Pastor at a church. He stated that he presumed that as he had registered his church he was authorized to marry couples as is done in the Dominican Republic.

[15] He deposed that he was asked by the claimants to officiate at their wedding. The second claimant's mother had been a member of his church and so he agreed to officiate the wedding. He was informed by the first claimant that she had checked at the Registry to see if he was licensed to marry and the clerk had informed her that Samuel Richardson was in their books.

[16] Pastor Richardson officiated at the church ceremony. He led them through exchanging their vows and asked if they would take each other as husband and wife. They both said 'yes'. After they had kissed, the Pastor announced to the congregation that they were now husband and wife. After that announcement, one Ms. Candice Niles, a Minister in the Methodist Church came to the altar and blessed the claimants.

[17] About a week after the marriage ceremony, the Pastor and the claimant attended the Registry. The first claimant informed a clerk at the Registry that the claimants had gotten married the week before and that the Pastor present at the Registry had married them. The Clerk asked the Pastor if he had a marriage book. When he informed her that he did not possess such a book, she gave him one, and asked the claimants and the Pastor to

complete the necessary information. The clerk issued them with an original copy of a marriage certificate.

[18] The claimants have been living as and regarding themselves as lawfully married husband and wife since that time. After the marriage ceremony, the first claimant adopted the second claimant's daughter from the Dominican Republic. The claimants took out life and health insurance policies, each placing the other in addition to the 2nd claimant's daughter as beneficiaries. They also opened joint bank accounts.

[19] In early July 2016, the Registrar was informed by a staff member Ms. Ruan that an application had been made by a couple to be married and they had indicated that Pastor Samuel Richardson would be the officer to marry them, but that she, Ms. Ruan had been told that Pastor Samuel Richardson was deceased. This led to investigations and the Registrar met with the Pastor Richardson who the couple had identified. She soon realized that this Pastor was not the Pastor Samuel Richardson who was authorized to marry persons. The Pastor was questioned through an interpreter and he explained that he had never applied to be authorized to perform marriage as he was not aware he had to make such an application.

[20] It was discovered that the Pastor had married two couples, these claimants in 2014 and another in 2015. The Registrar advised the Pastor that he should contact the couples and inform them that they were not properly married. She advised him to bring the two couples to the court so that they could be properly married.

[21] She also advised the police that that the Pastor was holding himself out as a marriage officer.

[22] On the 20th July 2016, after the meeting with the Pastor, the Registrar struck both marriages including the claimants' marriage from the Marriage Register, the reason being

that the Pastor was not a 'marriage officer'; this being the decision being challenged.[3] About a week after the meeting, the couple who had been married by the Pastor in 2015 attended the Registry. They were informed that the Pastor had not been authorized to marry them and they agreed to be married at the court house by the Registrar a few days later.

[23] In July of 2016, the Registrar held a meeting with some sixty or more Pastors who were registered marriage officers and others who were desirous of being marriage officers. The purpose of the meeting was to determine whether unauthorized persons were performing marriages and to answer questions from authorized persons relating to their obligations under the Act. Pastor Richardson was in attendance and the Registrar took the opportunity to remind him to inform the claimants to attend the Registry. A few days later she gave him a letter directing him to contact the claimants.

[24] Up to early January 2017, the claimants still knew nothing about the fact that the Pastor was not an authorized marriage officer. It happened that the first claimant needed a copy of her marriage certificate and attended the Registry to secure that original copy. Much to her shock and surprise, she was told that her marriage had been struck from the Register. The Registrar had a meeting with the first claimant at that time and explained to her what had happened and that their marriage was not a valid marriage. The Registrar offered to perform a proper marriage for the claimants. The first claimant left very upset.

[25] About a week later, both claimants attended the Registry together with Ms. Smikle, their attorney. Again the Registrar explained what had happened and advised that the marriage was not valid. The attorney at that stage insisted that the marriage was lawful. Matters went nowhere and the claimants and their attorney left.

[3] A copy of the page from the Register showing the striking out was attached as exhibit 4 of the Registrar's affidavit.

[26] The Registrar has deposed that: "I did not and do not consider that the Marriage Act give me any power or discretion with regards validating a marriage where it is illegal from the onset. Pursuant to the Marriage Act, the only persons who qualify to perform marriages on Anguilla are the Registrar General and all Ministers of Religion who are granted licence under the hand of Her/His Excellency the Governor of Anguilla."

[27] She stated that while she believes that the claimants believed their marriage was lawful and that they were not involved in any complicity, the marriage was nonetheless void from the beginning as Mr. Richardson, the Pastor never made any application to be a marriage officer and is not a marriage officer.

[28] To round her objections to the marriage being declared valid, she pointed out a photograph of the claimants at the wedding ceremony which was filed as part of the claimants' case and noted that it appeared that the clock on someone arm showed the time past 8 p.m. She offered that "[i]f this was indeed the time that the marriage was solemnized then it may very well be that this is another reason for the invalidity of the marriage.

The Submissions

[29] The Claimants through their attorney argued that the claimants took all steps to ensure that they were about to enter a lawful and valid marriage. They sought and obtained a marriage licence and they were assured that the Pastor, whose name they submitted to the Registry was lawfully authorized to marry them. Learned counsel argues that it is first the Registry which caused the claimants to be married by the named Pastor, as the Registry failed to properly verify that the Pastor was not the authorized marriage officer.

[30] Learned Counsel also argued that having regard to the undisputed evidence that they had done all which had been asked of them and honestly believed that the Pastor was an authorized marriage officer, section 64(b) of the Marriage Act operates to save this marriage notwithstanding that it was not solemnized by an authorized Marriage Officer.

This is so because, such a marriage is only void if the parties 'knowingly and wilfully' got married by an unauthorized person. Learned counsel contended that if they lacked that mental element the marriage remained valid though it was performed by an unauthorized person.

[31] Learned Counsel argued that the Registrar acted in excess of her powers and disproportionately and unreasonably under the provisions of the Marriage Act. It is further argued that the decision should also be quashed on the basis that it offends against the constitutional right to family life.

[32] The Attorney General took a preliminary point. He pointed to the Order granting leave and noted that leave had only been granted related to one relief, and that no leave had been granted to seek declarations which had now been joined on the fixed date claim. Learned Queen's Counsel stated that this was impermissible.

[33] Learned Queen's Counsel as his substantive arguments, contended the Marriage Act has established certain formalities to ensure the validity of marriages. An essential requirement of the Act is that all marriages are to be performed only by persons who are duly authorized under the Act. He points out section 33 which states that marriages 'shall' be performed only by authorized persons to make the point that this is a mandatory requirement. The Attorney General pointed out that the effect of the claimants' argument was that essentially, it is being contended that 'if a couple go through a ceremony and comply with some of the requirements of the Marriage Act, if they believe the person who married them was a marriage licence officer then that is enough.' That, the Learned Attorney General states "is run a coach and horses through the careful statutory scheme of the Marriage Act."

[34] The Learned Attorney General argued that section 64(b) of the Act did not operate to validate this marriage. The AG contends that the section 64(b) operates only in cases where the parties knowingly and wilfully allowed an unauthorized person to marry them, and then it operates to deem the marriage void for 'all intents and purposes'.

[35] He stated that the operating provisions which must be read in the context of the Act are sections 45 and 4. These sections, he says applies to cases of this kind and allows the Registrar to strike the marriage from the Register. Where the parties did not 'wilfully and knowingly' but they nonetheless enter into a marriage performed by an unauthorized person, section 45 and 4 operates to require that the marriage be struck from the Register. He made the point that where the marriage is shown to be void, the court has no discretion to deem such a marriage valid.

[36] As far as the arguments related to family life is concerned, the Learned Attorney General agreed that the claimants had a constitutional right to the enjoyment of family life. He effectively argued, however, that since the marriage was invalid there could be no breach of such a right.

The Issues

[37] The preliminary issues raised is whether the claimant is entitled to seek by including on the claim form declaratory relief in relation to which leave of the court had not been granted.

[38] The primary issue in this case is whether the marriage between the parties is valid in law notwithstanding that the marriage ceremony was performed by a person who was not authorized as a marriage officer in accordance with the Marriage Act.

[39] If this issue is answered in the affirmative, the second issue is whether by striking off the marriage from the marriage register, interfered with the claimants' right to family life as is envisaged by the Anguilla Constitution.

The Court's Analysis and Findings

Issue No. 1 - Preliminary Issue – Whether leave is required for other declaratory relief included on Claim Form

[40] The Attorney General has argued that it was improper for the claimants to seek certain declarations on the claim as no leave was sought or obtained to allow them to claim these relief. He points to the order granting leave which was made in the following terms:

> *"(1) Leave is granted to apply for judicial review of the Registrar of Birth, Death and Marriage's decision to strike out the marriage of the Applicants from the Marriage Register on the 24th July 2014 on the ground that the same is unreasonable and made in excess of jurisdiction being ultra vires her powers under the Marriage Act of Anguilla.*
>
> *(2) The Fixed Date Claim for Judicial Review with the additional relief as set out in the draft fixed date claim, is to be filed and served by the 11th May 2017 together with affidavits in support and together with the Application for Leave and supporting documents and Order granting leave.*
>
> *(3) The Respondents to file and serve affidavits in response on or before the 25th May 2017.*
>
> *(4) The Applicants to file and serve affidavits in reply if necessary by 29th May 2017.*
>
> *(5) The 1st Hearing of the Fixed Date Claim is set for 16th June 2017 at 9 a.m.*

[41] This point is without merit. An applicant who seeks judicial review of any administrative decision or action is required by Part 56 of the Civil Procedure Rules 2000 to seek and obtain leave of the court to pursue such remedies. There is no such requirement to seek leave where an applicant seeks declarations. As was held by the Eastern Caribbean Court of Appeal in **The Hon. Attorney General and another v D. Gisele Isaac** [2016] ECSCJ No. 35

> *Under CPR 2000, applications for declarations are regarded as a distinct category from applications for judicial review even though they are both applications for administrative orders. In contrast to an application for judicial review where the leave of the court first has to be obtained, there is no requirement for a claimant who wishes to make an application for other types of administrative orders apart from judicial review to first seek the leave of the court. CPR 56.7(1) is clear in that*

regard. The rules do not stipulate that a claimant who wishes to obtain a declaration must first obtain the leave of the court. If the rule makers wished to require a claimant who seeks an administrative order in the nature of a declaration to first obtain the leave of the court they would have said so clearly.

[42] Thus, an applicant who has been granted leave to proceed to seek judicial review of a certain decision is entitled, without obtaining leave, to include on such a claim relief in the nature of declarations. The order granting leave in this case expressly recognized this right of the claimant as the declarations themselves were contained in the draft fixed date claim which had been attached to the application for leave. It really would have been inappropriate for the court at that application to grant leave to the applicant to seek declaration when no such leave was necessary; it would have been an unnecessary and even an impermissible expression of judicial discretion.

Issue No. 2 - Whether the marriage between the claimants is valid in law notwithstanding that the marriage ceremony was performed by a person not authorized as a marriage officer under the Marriage Act?

[43] The bond of a marriage between two persons is considered one of the most significant social and legal contract by most societies in the world. This legal principles of the common law which have grown up around this social and contractual union have created social norms, and have granted rights and imposed obligations on the partners of the union. Society has long recognized that the State has a public duty in the regulations of marriages to ensure that there is proper enforcement of those obligations and protections of those rights. Additionally, English law in making it clear that marriage is ultimately a social and contractual union, it has nonetheless accepted that for many persons, religion continues to have a real role in the marriage structure. It is society's recognition of the solemn nature of marriage within the context of social and legal rights and obligations.

[44] The Anguilla Marriage Act reflects the English Law approach, and there is no doubt that the bond of marriage as a legal contract is viewed as a significant social and legal event. It is the public declaration between two persons committing themselves to each other for life

and so doing accepting that the other has acquired rights and been imposed with obligations as regards the other and the State.

[45] The provisions of the Marriage Act are grounded in traditionally acceptable standards that marriage should be between a single man and a single woman. These very provisions ensure that certain persons may not marry each other and that institution of marriage is to be accorded a certain level of dignity and solemnity.

[46] This Act is marked by a number of features today associated with such laws. One of the underlying aims of such laws is to ensure that only eligible persons are entitled to marry, and there is a structure which ensures that these checks are done and verified. Another significant aspect of the Act seeks to ensure that persons who desire to be married are so married within the context of a legally binding contract and if they so desire to have a social and religious component to cater for traditional beliefs. A main aspect of the Marriage Act seeks to ensure marriages are properly recorded and that records are kept of all marriage.

[47] It is to these ends that the provisions of the Act makes provisions as to how marriages are to be solemnized and who are to perform such marriage and be responsible for the various tasks under the Act including the performing of such marriage.

[48] What then are the consequences of non-compliance with these provisions? The answer must be with reference to relevant provisions and the nature of the breach.

[49] There are really two methods of solemnization or celebration of a marriage in Anguilla. This is provided for by section 45 of the Act which states:

> ***Solemnization or celebration of marriage***
>
> *45. Every marriage shall, except in the cases mentioned in Part 7, be solemnized or celebrated— (a) between the hours of 6:00 a.m. and 8:00 p.m., if solemnized by a marriage officer other than the Registrar-General, and between the hours of 10:00 a.m. and 3:00 p.m. if celebrated by the Registrar-General;*

(b) by a marriage officer in the presence of 2 or more credible witnesses beside such marriage officer, and, if such marriage officer is the Registrar-General, then such marriage shall be celebrated in the office of the Registrar-General appointed for the purpose; and

(c) according to such form and ceremony as the parties may see fit to adopt, but in some part of the ceremony the consent of each party to accept the other as his or her wife or husband is clearly expressed in the presence of the marriage officer and the witnesses, and, if a marriage is celebrated in the office of the Registrar-General, each of the parties shall say to the other—

"I call upon these persons here present to witness that I (A.B.) do take thee (C.D.) to be my lawful wedded wife (or husband)."

Addition of religious ceremony to civil if desired

46. If the parties to any marriage contracted at the office of the Registrar-General desire to add the religious ceremony ordained or used by any church or persuasion to the marriage so contracted, they may present themselves for that purpose to any minister of such church or persuasion, and such minister, upon the production of their certificate of marriage before the Registrar-General, may, if he thinks fit, perform the marriage service of the church or persuasion to which he belongs, but nothing in the performance of such service shall supersede or invalidate any marriage so previously contracted, nor shall the performance of such service be entered as a marriage among the marriages in any marriage register provided under this Act, but at no marriage celebrated at the office of the Registrar-General shall any religious service be used at such office. Fee for celebration of marriage 47. For every marriage celebrated in his office the Registrar-General shall be entitled to demand and receive from the parties married the prescribed fee, but no fee shall be claimed or paid in the case of the marriage of a pauper.

[50] Sections 45 and 46 prescribe the manner in which all marriages are to be performed. There is the civil union which has no religious element, and this is performed by the Registrar as a public event in her office at the Registry. Two witnesses are required and in practice a few persons are allowed to witness the marriage. The Act allows the parties where they so desire, to complement the legal aspect of this union with a religious ceremony. This of course is not required nor does it affect the validity of the civil marriage; the parties are married on the completion of the civil marriage by the Registrar.

[51] Second, marriages may be by religious solemnization or celebration which is performed by a marriage officer who is authorized under the Act. The parties are not married until that Act is completed.

[52] In both methods, registration of the marriage follows. Where the marriage officer performs the marriage, he is expected to fill out the particulars of the marriage in a marriage book given to him as part of his duties and responsibilities under the Act. This is to be submitted to the Registry and an original certificate of marriage is issued to the parties. They are married.

[53] The Attorney General's argument is to the effect that section 45, is a mandatory provisions having regards to imperative 'shall' which is used. He has asked that this court consider carefully the entire Act and in particular the provisions which govern the appointment of a 'marriage officer' and their responsibilities under the Act.

[54] There is no doubt that under the Act, the 'marriage officer' is viewed as being necessary for the formalities of a marriage. Part 2 of the Act provides for 'marriages officers'.

> *3. (1) Every—*
>
> *(a) minister of the Christian religion ordained or otherwise set apart to the ministry of the Christian religion, according to the usage of the denomination to which he belongs; and*
>
> *(b) such minister who although not ordinarily resident in Anguilla is the recognized head within Anguilla of the denomination to which he belongs;*
>
> *shall be entitled to be appointed by the Governor as a marriage officer for Anguilla unless the Governor is satisfied that he is unfit to be so appointed.*
>
> *(2) The Governor may in any case require any applicant for appointment to prove that he is a minister of the Christian religion so ordained or set apart as aforesaid.*
>
> *(3) The Registrar-General shall be ex officio a marriage officer.*
>
> *(4) Every minister of the Christian religion, ordained or otherwise set apart to the ministry of Christian religion according to the denomination to which he belongs, who is lawfully a marriage officer in Antigua, the British Virgin Islands, Montserrat*

or Saint Christopher Nevis may solemnize a marriage in accordance with the provisions of this Act, and shall, save as provided in subsection (5), be deemed to be a marriage officer appointed under this Act, but such solemnization shall take place in the presence of a marriage officer appointed under this Act.

(5) Where any marriage is solemnized by a marriage officer of Antigua, the British Virgin Islands, Montserrat or Saint Christopher Nevis under the provisions of subsection (4), the marriage officer appointed under this Act in whose presence such marriage is solemnized shall comply with the requirements of sections 50 and 51 as to the keeping of marriage registers and the making of duplicates thereof, and shall be deemed to be the marriage officer for the purposes of such sections, and shall enter upon the original register and duplicate register, being in Forms 10 and 11 respectively in Schedule 1, that the marriage was solemnized in his presence by a minister of religion, stating the name and address of such minister and the original register and duplicate register shall be signed by the minister of religion solemnizing the marriage.

[55] Various other provisions impose duties on marriage officers. These include that they are required to take steps to comply with the provisions of the Act and to ensure the parties intending to be married have complied with all of the requirements of the Act. They also have duties to ensure that the marriage is performed in accordance with the Act and that proper records are made and that the marriage is registered. Section 66 of the Act makes it an offence for any Marriage Officer to fail to comply with the Act. There could be no doubt that the underlying purpose of a marriage officer is to ensure that the formalities and requirements of the Marriage Act are complied with and that marriages are properly recorded and registered so that rights and obligations arising from every marriage are protected and enforced as the case may be.

[56] Whilst the Attorney General has argued that a marriage must be performed by a marriage officer authorized under the Act, he has accepted that where an unauthorized person has performed the marriage section 45 does not provide for the effect that would have on the marriage. Learned Queen's Counsel submits that the answer is found in a conjoined reading of section 45 and section 4 of the Act, which he asserts demonstrates that if the parties are married by an unauthorized person the marriage is to be struck from the Register. Section 4 reads as follows:

Power to refuse to act

4. (1) No marriage officer being a minister of a Christian religion shall be required to act as such with respect to any marriage which is contrary to, or desired to be solemnized in any manner other than is prescribed by, the rules of the religious denomination to which he belongs.

(2) Nor shall a marriage officer being a minister of the Christian religion be liable to any penalty for solemnizing with consent in writing of the recognized head, if any, within Anguilla of the denomination to which he belongs, according to the rules and rites of his denomination, the marriage of parties who are desirous of being religiously united in accordance with the rules of such denomination, but are unable to comply with the requirements of this Act, but the performance of such ceremony shall be and be deemed to be totally void and of no effect as a marriage in law and such marriage ceremony shall not be entered in the marriage register book required to be kept by this Act.

[57] The Attorney General contends that the section may be divided into three components. The first component he says is contained in section 4(a) and it speaks for itself. The second and third component is contained in section 4(b). The first of these components he says protects a marriage officer *being a minister of the Christian religion from any penalty "for solemnizing with consent in writing of the recognized head, if any, within Anguilla of the denomination to which he belongs, according to the rules and rites of his denomination, the marriage of parties who are desirous of being religiously united in accordance with the rules of such denomination, but are unable to comply with the requirements of this Act".* The last component he says relates to '*the marriage of parties who are desirous of being religiously united in accordance with the rules of such denomination, but are unable to comply with the requirements of this Act'.* He says that when such persons are unable to comply with the requirement of the Act, *'the performance of such ceremony shall be and be deemed to be totally void and of no effect as a marriage in law and such marriage ceremony shall not be entered in the marriage register book required to be kept by this Act.'*

[58] The Attorney General has sought to distinguish section 64(b) pointing out that that section only applies where the parties have 'wilfully and knowingly' consented or acquiesced to being married by a person who is not an authorized marriage officer. In such a case the marriage is 'void for all intents and purposes'. He says that the use of the phrase 'void for

all intents and purpose' makes the difference. He says that by section 4(2), where the parties fail to comply with the Act, the marriage is 'void' and it is to be struck from the register, but where they breach section 64(b), the marriage is void for all intents and purposes. He submitted that this distinction is important as a marriage voided under section 4(2) is different from a marriage which is 'void for all purposes and intent'; some consequences of such a marriage may continue to retain their validity. Learned Queen's counsel was prepared to agree that a child born of the section 4(2) marriage which was deemed void, would continue to be considered as being born in wedlock.

[59] This Court cannot agree with the Attorney General's conclusions on section 4(2). This section relates to marriages which are performed by 'a marriage officer who is a minister of the Christian religion'. An examination of the section 4(1) reveals that its intention is to allow Ministers of the Christian faith to first refuse to perform marriages which are contrary to or required to be performed in a manner which is contrary to the rules of the denomination to which he belongs. The expressed words of section 4(2) shows that this theme has not been abandoned. Here the Act recognizes that some ministers who are marriage officers may decide to marry persons of certain denomination who because of the rules and norms of their denominations make them unable to comply with the Act. Ordinarily if marriage officers marry parties who they know have failed to comply with certain provisions of the Act, they might be subjected to a penalty[4]. Section 4(2) recognizes that it is important to accord respect to the wishes of the head of such denomination where that person gives approval to the Minister (who is a marriage officer) to perform that ceremony, and in so recognizing the approval of the head of the denomination, the law protects the Minister from penalty. What it does however, is to declare that any such marriage is void and is to be struck from the Register. This section

[4] See section 55 of the Act which provides – "55. Any person who knowingly and wilfully— (a) solemnizes or celebrates marriage at any other time than between the hours fixed by section 45(a), save in the cases mentioned in section 4(2) and Part 7; (b) solemnizes or celebrates any marriage save in the cases mentioned in section 4(2) and Part 7 without due publication of banns, or licence of marriage from the Registrar General, or certificate from the Registrar-General first had and obtained; (Act 4/2001, s. 15) (c) solemnizes or celebrates any marriage save as aforesaid more than 3 months after the last publication of banns, or the issue of a licence by the Registrar-General, or the entry of a notice of such marriage by the Registrar-General; or (Act 4/2001, s. 15) (d) falsely pretending to be a marriage officer solemnizes or celebrates marriage; is guilty of an offence and is liable on conviction to imprisonment for a term of 2 years but all prosecutions for any such offence shall be commenced within 3 years after the offence was committed."

cannot be given any wider construction as it express words do not permit it. It cannot be extended to cover all persons who are married but have not complied with the Act. It speaks only to marriages performed by marriage officers who have performed marriages for persons whose faith and beliefs make them 'unable to comply with the Act'.

[60] That being said, I am of the view that section 64(2) applies to determine the status of this marriage in the context that Pastor Richardson was not a duly authorized marriage officer. Section 64 reads:

> ***Invalidation of certain marriages***
>
> *64. If—*
>
> *(a) any persons, save in the cases mentioned in Part 7— (i) knowingly and wilfully intermarry in any other place than the building wherein marriages may be lawfully celebrated, or (ii) knowingly and wilfully intermarry without due publication of banns, or licence from the Registrar-General, or a certificate from the Registrar-General first had and obtained; or (Act 4/2001, s. 17)*
>
> *(b) any person knowingly and wilfully consents to, or acquiesces in the solemnization or celebration of their marriage by any person not being a marriage officer;*
>
> *the marriage of such persons shall be null and void to all intents and purposes whatsoever.*

[61] There has been no doubt in this case, that the claimants did not knowingly and wilfully consent to or acquiesce in the solemnization or celebration of their marriage by a person who was not a marriage officer. On the contrary there is positive evidence which is undisputed that shows that they honestly believed that the Pastor Samuel Richardson who married them was duly authorized to do so. This was a belief which was fostered by the strange circumstances which took place and the understandable human errors of the Registry and Registrar. The claimants visited the Registry and made enquiries about what they had to do to be able to get married. They supplied the name of the person who they wanted to marry them for the singular reason that the Registry could verify that this person was indeed a marriage officer. The Registry staff examined the Register of Marriage Officers and saw the name 'Pastor Samuel Richardson'. The Registry was there trying to fulfill its obligation to verify that this was indeed the same Pastor. It was confirmed to the

claimants that 'Pastor Samuel Richardson' was an authorized marriage officer. It must have been human error. It is an understandable one.

[62] As matters would have it, a second error took place the following week, when the claimants and Pastor Richardson turned up at the Registry and the latter was given a marriage book by a staff member of the Registry and told to fill out the particulars of the marriage. He did so, and the claimants were issued with a marriage certificate.

[63] These events have made it clear that the claimants proceeded with an honest belief that this Pastor was a properly authorized person.

[64] In my view, section 64(b) operates to avoid considerable hardship which might otherwise occur where persons might have fully complied with the Act in all other respects and are married by an unauthorized person through no fault of their own and with a belief that the person is authorized. I find that such a marriage cannot be invalidated for this reason. I draw support from the case law examining a provision in the 1823 Marriage Act of the UK which similarly provided that a certain default by the parties to a marriage would operate to render their marriage 'void for all intents and purposes'.

[65] This is section 22 of the English Marriage Act 1823 (now repealed) which provided in part:

> *'Provided always, that if any persons shall … knowingly and wilfully inter-marry without due publication of banns or licence … the marriages of such persons shall be null and void to all intents and purposes whatsoever.'*
> [emphasis supplied]

[66] This provision came under scrutiny in **Chipcase v Chipcase** [1939] P. 391 where the court stated:

> "It is required by s 7 that the true christian name and surname shall be given to the parson for the purpose of publication of banns. Our attention has been called to *R v Tibshelf (Inhabitants)* and *R v Wroxton (Inhabitants)*, which show quite plainly that the words "knowingly and wilfully" were deliberately introduced into s 22 of the Act of 1823 in order to mitigate the hardship which had arisen under the earlier Act and was exemplified by the case of *R v Tibshelf (Inhabitants)*, that it was quite immaterial whether the falsity in the declaration had arisen by accident or design and whether such design be fraudulent or not. I am content for the purposes of directing the minds of the justices to the points they have to decide, to call

attention to the fact that, in *R v Wroxton (Inhabitants)*, Denman CJ cited with approval the case of *Wiltshire v Prince* decided in the Ecclesiastical Courts after the Act of 1823 had passed, in which Dr Lushington expressly founded his judgment of nullity on the fact that both the man and woman were aware that banns had been published in a manner calculated to conceal the identity of one of the parties. The same appears even more emphatically in the judgment of Sir H Jenner Fust in *Orme v Holloway*, where he says the construction of this Act is that, in order to set aside a marriage on the ground of undue publication of banns, it is necessary for both the parties to be cognisant of fraud; it is necessary first to prove that there has been a fraud and secondly that both parties were cognisant of the fraud and knowingly and wilfully entered into the marriage without due publication of banns. The other authorities, to which our attention has been called, such as *Midgley (falsely called Wood) v Wood*, are to the same effect. The object of this Act was to prevent clandestine marriages; there must be an element of intentional concealment of identity before it can be said that the marriage is void for undue publication of banns."

[67] Making the point more forcefully is the case of **Dancer v Dancer** [1948] 2 All ER 731. The headnote of this case reads: 'A wife, who was the legitimate daughter of Mr and Mrs K was christened JK and registered in that name. When she was 3, her mother began to live with a man, R, and continued to do so for 14 years until he died. The wife was brought up as the child of "Mr and Mrs R" was always known by the surname "R" and was not told her real name until she was 16. Before her marriage she told her intended husband her real name and it was agreed, on the advice of the vicar, that the banns should be published in the name of R since to use any other name would mislead the public. On a petition by the husband for the nullity of the marriage it was argued that the marriage was void since the true surname had not been given and the banns had, therefore, not been duly published as required by the Marriage Act, 1823, ss 7 and 22. It was held (i) as the wife had consented to her name being stated as 'R' in the banns not with any fraudulent intention or to conceal any fact, but in order to avoid concealment, there had been due publication of banns within s. 22 of the Act of 1923; (ii) the name 'R' had been by usage become the true surname of the wife within s 7 of the Act, and, therefore, again, there had been due publication of the banns; (iii) consequently the marriage was valid."

[68] What these cases show is that where the offending conduct is not present, <u>not only</u> is the marriage <u>not void</u> for all intents and purposes, but it is in fact **<u>valid for all intents and purposes</u>**.

[69] In my view therefore, the interpretation being pressed for by the Attorney General cannot be given to section 64(b). Where it is shown that the parties have not knowingly and wilfully consented to or acquiesced to being married by an unauthorized person, their marriage would be a valid marriage under the Act, subject always to there being no other matters which goes the validity of the marriage. There is also no need to show long cohabitation as that only arises where there is some question about the validity of the marriage following a ceremony of marriage of which some doubt may arise. The Act does not require that to be shown for section 64(b) to operate.

[70] I address the point of 'other matters' as the Registrar has also raised the possibility that this marriage may have taken place after 8 p.m. in breach of section 45. She asserts that this in another reason why this marriage may be void. First, this would have to be proved, and if the Registrar was asserting that this was so, she would have the burden of proof. The photograph that the Registrar points to does not prove this matter. Therefore, the court could not invalidate this marriage on the basis of a speculation.

[71] In any event, I am of the view that proof that the marriage may have taken place after 8 p.m. is not such a serious breach of the Marriage Act which ought to render this marriage void. My reasons for this view are as follows.

[72] That certain formalities are considered of considerable significance relating to the validity of a marriage has also been identified by section 12 of the **Matrimonial Proceedings and Property Act, R.S.A. c. M60** which provides for a number of situations where a marriage would be void and voidable. These relate generally to where persons fall within the groups of persons ineligible to be married. Interestingly, section 12 (1) (iii) however, provides that a marriage is void where 'the parties have intermarried in disregard of certain requirements as to the formation of the marriage'. The Matrimonial Proceedings and Property Act however, does not detail what those 'certain requirements' are.

[73] It must therefore be that the 'certain requirements' must be those matters which go to the root of the marriage and against the fundamentals of a true contract of marriage so much so that it would be improper to consider that such marriage would be valid. The Act itself has pointed to certain matters which would have the effect that the marriage is void from the inception, but has not identified all such situations. In this regard it is useful to turn to the case law for some guidance. This view is supported by the case law.

[74] The very question came up for consideration in the context of the English Marriage Act 1949 in **MA v JA** [2012] EWHC 2219 (Fam). In that case, 'the applicant and respondent asserted that they were validly married pursuant to a ceremony of marriage which took place at a mosque in England. The mosque was registered for the solemnization of marriages under s 41 of the Marriage Act 1949 (the 1949 Act). The applicant made arrangements for the marriage. He knew nothing of the formal requirements of the 1949 Act and made no enquiries beyond his discussion with the chairman of the mosque. He accepted the chairman's response that the parties could marry at the mosque. During the ceremony, the parties were asked words to the effect of whether there was any reason why they could marry and whether they both freely consented to marry. Each party agreed to take the other as husband/wife. After the ceremony the Imam assured the applicant that the parties were now married and that there was nothing further they needed to do. The parties signed a register book and were provided with a document signed by the Imam and headed 'Contract of Marriage'. The document certified that the 'Marriage Contract was concluded according to Islamic Sharia…' and that the marriage was 'proposed by' the petitioner and 'accepted by' the respondent in the presence of two named witnesses. The parties failed to give notice to the superintendent registrar and there was no certificate. However, the parties intended to conduct a marriage which was valid under English law and believed that they had done so as a result of the ceremony. They lived together as a married couple since the date of the ceremony. The respondent was subsequently advised by the Register Office that the marriage was not registered. The applicant supported by the respondent sought a declaration under s 55(a) of the Family Law Act 1986 that the marriage had been a valid marriage at its inception.'

'The issues which fell to be determined were: (i) whether the ceremony of marriage had been capable of creating a valid marriage under English law; and (ii) if so, whether it had created such a marriage. The intervener, the Attorney General, contended that the purported marriage was void under s 11(a)(iii) of the Matrimonial Causes Act 1973, in that the parties had 'intermarried in disregard of certain requirements as to the formation of marriage', or alternatively, that it was a 'non-marriage' on the basis that the ceremony had not even purported to be of the kind contemplated by the 1949 Act.'

The court ruled:

> *(1) The answer to the question of when a ceremony in England was not wholly outside the provisions of the 1949 Act and would accordingly create a potentially valid marriage should be determined by reference to the provisions of that Act applied in a manner which was consistent with the principles summarised in Collett and taking into account the factors referred to in Hudson v Leigh. It was an established principle that the failure to comply with the preliminaries, the publication of banns or obtaining a licence, did not, by itself, affect the validity of the marriage. Such a failure would only result in the marriage being void if the failure was deliberate. Further, it was clear that the failure to give notice or obtain a certificate did not prevent a marriage from being within the scope of the 1949 Act.*
>
> *(2) In the instant case, the ceremony of marriage had been within the scope of the 1949 Act. It had been a ceremony of marriage conducted in a registered building in the presence of an authorised person. It had been 'of the kind' permitted by English law and in a form capable of producing a valid marriage. The actual ceremony of marriage had been properly performed and had been in all essentials a marriage. Accordingly, the ceremony had created a potentially valid marriage (see [101] of the judgment).*

[75] The UK Family Court in **MA v JA** examined a number of authorities all of which had one underlying theme, namely that the court must be concerned, in the context of this issue, whether all of the essential requirements of a marriage were present. Attention was drawn to **Gereis v Yagoub** [1997] 1 FLR 854 in which the court was called on to rule on the validity of a marriage ceremony in a Coptic Orthodox Church. For all intents and purposes the court considered that the marriage had all the hallmarks of a marriage and would have been a valid marriage had it not been for section 49 of the 1949 Marriage Act which provided that a purported marriage would be void if the parties had knowingly and wilfully

intermarried without having given due notice to the superintendent registrar. It was common ground that no such notice had been given.

[76] Further along in **MA v JA,** the court addressed the effect of the parties' failure to comply with all the form and ceremony that are indicated by the legislation and was prepared to find a marriage valid where all the essential requirements of a marriage were present. The court pointed to **Hill v Hill** [1959] 1 WLR 127 where the Privy Council was called upon to decide on the validity of a marriage in Barbados solemnised by a Christian Minister. The court stated:

> *"What must be made clear was that 'each party intended to contract a Christian marriage and there must be in the service passages which make it plain the necessity for the absence of lawful impediment and the taking of one another to be the lawful wedded wife or husband'.*

[77] That approach is also consistent with the authorities referred to earlier in this judgment to the effect that a marriage is not a nullity 'if the Act did not expressly create a nullity'.[5]

[78] I am of the same view, that unless there are specific provisions which treat with the particular breach or non-compliance, the question really is whether the marriage has all the hallmarks of a marriage complying with the essential requirements which ground a valid marriage. It is really whether *'the actual ceremony of marriage had been properly performed and had been in all essentials a marriage.'*

[79] Requiring that a marriage be solemnised before 8 p.m. came out of canonical law and the need to prevent clandestine marriages[6]. Such provisions are remnants from the past more grounded in tradition than any present need to prevent clandestine marriages. Today, there is no fundamental underlying jurisprudential basis which shows that it is one of those

[5] Paragraph 94 of MA v JA

[6] Before 1753 there was no regulated marriage ceremony except by the Church of England which imposed canonical hours on marriages. Marriages in the 13th century were simply required to be done between 8 and 12 noon and in public at the church. When clandestine marriage became rampant in the 18th century, Lord Hardwicke Marriage Act of 1753 was passed. The reforms within Lord Hardwicke's Act of 1753 – 'An Act for the better preventing of clandestine marriages' – included severe penalties on clergy who contravened its provisions, echoes of which still remained in the 1949 Marriage Act. The introduction of civil marriages in 1837 applied the same time restrictions as Canon 62." - http://www.lawandreligionuk.com/2012/07/30/247-marriage-in-uk/ See also "The Scottish Case That Led to Hardwicke's Marriage Act" Leah Leneman *Law and History Review*, Vol. 17, No. 1 (Spring, 1999), pp. 161-169

matters which goes to the root of the marriage. I offer the view therefore, the fact that a marriage may have been performed after 8 p.m. cannot be regarded as a fundamental essential of a marriage. There is accordingly no reason today why a marriage should be invalidated simply because it takes place after 8 p.m. Today even in the UK, these prescriptions as to time have been removed; a marriage may take place at any time, day or night.[7] It still remains the law in Anguilla, and persons who conduct marriages may be penalised if they breach the law, but, if all the essentials of marriage are present, this ought not to invalidate this marriage. It would be sufficient, if prosecutorial discretion considers it necessary in any given case, that the persons who causes such a breach are penalised under the offence creating section of the Act.

[80] This marriage had all the essentials of a valid marriage. There was full compliance with the Act except that everyone, it seemed, believed that this Pastor was authorized to perform marriages. I will accordingly, in all the circumstances of this case, hold this marriage to be a valid marriage.

[81] In coming to this finding I have had careful regard to the arguments of the Attorney General about 'running a horse and carriage' through the Marriage Act if persons are allowed to be married by unauthorized persons and be otherwise in breach of the Act. In my view, there is no danger of this happening from this ruling as this was a case in which the marriage was already registered. This court is concerned that the Marriage Act is complied with but this Act must be construed in a purposive manner. That marriages must be performed in accordance with the Act. Where there is breach of, or non-compliance with Act the nature of such breach or non-compliance must be considered. Persons who are unauthorized to perform marriages may be liable to be charged with an offence if they perform marriages, this being in breach of the Act. Marriage officers who fail to comply with the Act may find themselves guilty of an offence. There is no automatic effect, however, that for any breach whatsoever, the marriage itself becomes void.

[7] Section 114 of the UK Protection of Freedoms Act 2012 – which makes it possible for marriages to be performed at any time of the day or night.

[82] The Registrar is therefore wrong to have struck this marriage from the Register for the reasons given. In any event in such cases, the Registrar should not in such a case (where the marriage is already registered), act unilaterally on her own volition. When faced with an issue such as this, the Registrar should call on the parties to attend and seek to initially resolve this matter to their mutual satisfaction having regard to section 64(b). Where there is a dispute arising, the Registrar should seek an order of the court on the validity of the marriage. On such an application the parties to the marriage must be given an opportunity to be heard. In all other cases, where registration of a marriage is being sought, the Registrar retains the discretion to decide in good faith whether a marriage is in substantial compliance with the Act.

Whether an Interference of the claimants' family life?

[83] The claimants have contended that when the Registrar struck their marriage from the Registrar, it amounted to an interference with their family life. They seek a declaration to this effect.

[84] The Attorney General for his own part, has effectively agreed that the claimants' right to 'family life' is at stake but has contended that the Registrar acted in accordance with the laws, and so any interference with the claimants' family life is in accordance to law; there is no constitutional breach he says.

[85] The claimants ground this aspect of their claim in section 1 of the **Constitution of Anguilla** which states:

> ***Fundamental rights and freedoms of the individual***
>
> *1. Whereas every person in Anguilla is entitled to the fundamental rights and freedoms of the individual, 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, the enjoyment of property and the protection of the law;

(b) freedom of conscience, of expression and of peaceful assembly and association; and

(c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid 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 an individual does not prejudice the rights and freedoms of others or the public interest.

[86] The enforcement provision of the **Anguilla Constitution** is section 16 which provides as follows:

Enforcement of protective provisions

16. (1) If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, or is being, contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 2 to 15 (inclusive) to the protection of which the person concerned is entitled:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

[87] Section 16 excludes section 1 from its operation. Presumptively, it would seem that I am unable to enforce section 1 of the Constitution as the right to family life is not detailed in sections 2 to 15. I will say no more about that but in any event even if this court were able to grant orders to enforce section 1 of the Constitution, I would decline to do so in this case having regard to the **Belfonte (Damian) v Attorney-General** 68 WIR 413. In this case, the

Trinidad and Tobago Court of Appeal re-stated the court's approach to granting relief in the context of alternative remedy. It was held:

> *Where complaint is made of a breach of a constitutional right, it is an abuse of process if an applicant who has a parallel common-law remedy issues a constitutional motion for redress unless there is a special feature which indicates that in the particular circumstances the common-law remedy would not be adequate. Such special feature may be found in the existence of a claim for breaches of several rights (some being common-law rights and protection for others being only available under the Constitution); in such a case it is not fair, convenient or conducive to the proper administration of justice to require the applicant to abandon his constitutional remedy or to file a separate writ for the vindication of his common-law rights.*[8]

[88] In this case, the claimants' rights have already been properly vindicated by the grant of other orders. The remedies granted adequately address the wrongful striking off of their marriage from the Register. There is no special reason in this case, why the court should go any further even if it were able to, to grant additional declarations relating to effectively the same remedy.

Disposition and Order

[89] The order of the court is as follows:

1. An order is hereby granted to quash the decision of the Registrar made on the 20th July 2016, to strike out the marriage of the claimants from the Registry of Marriages.

2. A Declaration is granted that the Registrar acted in excess of her powers and disproportionately under the provisions of the Marriage, by striking out the marriage between the Applicants.

3. A Declaration is granted that the Applicants did not, pursuant to section 64(b) of the Marriage Act Chapter R35 knowingly and wilfully consent to, or acquiesce in the solemnization or celebration of their marriage by a person not being a marriage officer.

4. A Declaration is granted pursuant to the Marriage Act, Chapter M40 of the Revised Statutes of Anguilla that the marriage celebrated between the Applicants on the 24 July 2014 was a valid marriage at its inception.

[8] The Court of Appeal applied Thakur Persad Jaroo v Attorney-General (2002) 59 WIR 519 and Attorney-General v Siewchand Ramanoop (2005) 66 WIR 334.

[90] The claimants would be entitled to costs on a prescribed basis.

[91] This Court expresses its gratitude to both sides for their assistance, especially in their willingness to assist the court in expediting the hearing of this matter.

Darshan Ramdhani
High Court Judge (Ag.)

By The Court

Registrar