EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2013/0090

In the Matter of Section 52 (6) of the Constitution of Saint Christopher and Nevis

and

In the Matter of an Application for Declaratory Injunctive and other Relief pursuant to Section 96 of the Constitution of Saint Christopher and Nevis

BETWEEN:

[1] HON. MARK BRANTLEY
(Leader of the Opposition)
[2] HON. EUGENE HAMILTON
[3] HON. SHAWN K. RICHARDS
[4] HON. VANCE AMORY
[5] HON. SAM CONDOR
[6] HON. TIMOTHY HARRIS

Claimants

and

HON. CURTIS MARTIN
(Speaker of the National Assembly)

Defendant

THE HON. ATTORNEY GENERAL OF SAINT CHRISTOPHER AND NEVIS

Intervening Party

AND

CLAIM NO. SKBHCV2014/0231

In the Matter of Section 50 and Section 52 (6) of the Constitution of Saint Christopher and Nevis

and

In the Matter of an Application for Relief pursuant to Section 96 of the Constitution of Saint Christopher and Nevis

BETWEEN:

DR. HON. TIMOTHY HARRIS

Claimant

and

[1] **HON. CURTIS MARTIN**
(Speaker of the National Assembly)
[2] **THE HON. ATTORNEY GENERAL OF SAINT CHRISTOPHER AND NEVIS**

Defendants

Appearances:

Mr. Douglas Mendes SC, with him Ms. Talibah Byron for the Claimants
Mr. Anthony Astaphan SC, with him Mr. Sylvester Anthony and Ms. Angelina Sookoo for the Defendant, Hon. Curtis Martin
Mrs. Simone Bullen -Thompson, and Ms. Nisharma Rattan Mack for the Intervening Party in Claim No. SKBHCV2013/0090 and the 2nd Defendant in Claim No. SKBHCV2014/0231

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2017: April 6; November 7

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JUDGMENT (Re-issued November 13, 2017)

Introductory

[1] **LANNS, J. [AG]:** In these two cases before me, I have to decide whether there is, under section 52-(6) of the Constitution of Saint Christopher and Nevis, an implied right in every elected member or elected representative in the National Assembly, to bring and move a resolution of no confidence in the government of Saint Christopher and Nevis, and to have that resolution scheduled, debated and voted on as a matter of urgency, and without undue delay, and accorded priority over other motions and business**.** If I find that there exists an implied constitutional right, I have to decide whether I have jurisdiction to determine whether that right was infringed by the failure of the Speaker of the National Assembly to schedule the motion of no confidence for debate and ensure that it is debated and voted on urgently, without undue delay and in priority over other

business of the Assembly. If I conclude that I do have jurisdiction and that the right has been infringed, I must then decide whether I have jurisdiction to grant relief for the infringement of that right, under section 96 of the Constitution of Saint Christopher and Nevis, and if so, what the nature of the relief should be.

[2] A sub-issue is whether, in view of section 52(6) of the Constitution, the court has jurisdiction to declare that Standing Orders should be amended to provide expressly for a motion of no confidence.

[3] After consideration of the parties' arguments and for the reasons that follow, the court concludes that every elected member or elected representative in the National Assembly has an implied right under section 52-(6) of the Constitution of Saint Christopher and Nevis to bring a motion of no confidence, and to have that motion listed, debated and voted on without undue delay and within a reasonable time. I also conclude that this court has jurisdiction and that the rights which are implicit in section 52-(6) had been violated by the failure of the Speaker to schedule the motion of no confidence for debate, and to be voted on without undue delay and within a reasonable time of the motion being handed to the Clerk, or sent, or left at the Clerk's office. Finally, I conclude the court has jurisdiction under section 96 of the Constitution to grant relief for that violation, and that the claimants are entitled to the declarations sought, except those which the claimants are no longer pursuing because they are now academic.

Chronology and Relevant Factual Background[1]

(1) The Parties

[4] The claimants are the majority of the elected representatives in the National Assembly (6 out of 11). Two of those claimants[2] were formerly elected members the St. Kitts and Nevis Labour Party; (SKNLP) headed by Dr. the Rt. Hon. Denzil Douglas (Dr. Douglas; or Hon. Dr. Denzil Douglas). In the General Elections of 25th January 2010, the SKNLP won 6 seats out of the 11 constituencies in St. Kitts and Nevis. Dr. Douglas was appointed Prime Minister by the Governor General to form the

[1] The background facts and chronology of events are also helpfully detailed in certain decisions in this matter, especially the judgment of Ramdhani J [Ag] dated 12th February 2014, which decision was upheld by the Court of Appeal of the Eastern Caribbean Supreme Court on the 27th October 2014, and the decision of Carter J dated 20th January 2015, given on an application to dismiss the claims in their entirety.

[2] Dr. the Hon. Timothy Harris and Hon. Sam Condor

government. Hon. Sam Condor was appointed Deputy Prime Minister and Minister of Foreign Affairs, National Security, Labour and Social Security. Dr. Harris was appointed Minister of International Trade, Industry and Commerce. The opposition benches were made up of four elected representatives in the persons of the Hon. Mark Brantley who was appointed the leader of the opposition, the Hon. Shawn Richards, the Hon. Vance Amory, and the Hon. Eugene Hamilton. At the first meeting of the National Assembly, Curtis Martin was nominated and subsequently elected as Speaker of the National Assembly.

(2) Disenchantment set in: First Motion of No Confidence

[5] It is said that by the year 2012, the Hon. Sam Condor and the Hon. Dr. Timothy Harris had become disenchanted with the direction in which Prime Minister Dr. Douglas was taking the government. These disenchantments manifested themselves in disagreements and public expressions of opposition.

[6] On 7th December 2012, Hon. Mr. Brantley, in his capacity as leader of the opposition, after consultation with Dr. Harris and Hon. Sam Condor, and other elected members of the opposition benches, lodged a motion of no confidence in the government of St. Kitts and Nevis. The motion was headed as follows:

> "Resolution of the National Assembly of Saint Christopher and Nevis for a Vote of No Confidence in the Government of St. Kitts and Nevis caused by the poor Leadership of Prime Minister the Rt. Hon. Dr. Denzil L. Douglas."

The motion, after making several preambular statements[3] called upon the National Assembly to pass the following resolutions:

[3] Including: the allegation that since the installation of Dr. Douglas as Prime Minister, the Federation has been governed in a manner which has undermined the constitution, and has led to disastrous economic outturns and lack of public confidence in his leadership and government; the alleged constant and willful disregard by the Prime Minister for the Constitution; the alleged undermining of the ministerial system of government as prescribed in the constitution; the alleged failure of the Prime Minister to consult the country prior to the Land for Debt swap agreement with the St. Kitts Nevis Anguilla National Bank Ltd; the alleged refusal of the Prime Minister to effect a decrease in electricity rates in St. Kitts; the alleged refusal of the Prime Minister to uphold a system of good governance; the alleged mismanagement of the financial affairs of St. Kitts and Nevis; the alleged refusal of the Prime Minister to have full ventilation with the Nation on the IMF conditions relative to the public debt; the alleged display by the Prime Minister of unruly parliamentary behaviour; the alleged attempt by the Prime Minister to further increase the number of senators I parliament in the face of the IMF calls for a lessoning of public expenditure; the alleged institution by the Prime Minister of the SIDF as an alternative to the consolidated fund to receive moneys which constitutionally are to be paid into the consolidated fund; the alleged public support of the Prime Minister of the previous Supervisor of Election in defying the directive

"**BE IT RESOLVED** that this Honourable House expresses its concern and lack of confidence in the Government of St. Kitts and Nevis caused by the poor Leadership of Prime Minister, the Rt. Hon. Dr. Denzil L. Douglas.

BE IT FURTHER RESLOVED that this Honourable House calls for the immediate resignation of the Rt. Hon. Dr. Denzil L. Douglas as Prime Minister of St. Kitts and Nevis."

[7] A series of correspondence passed between Hon. Mr. Brantley and the Speaker concerning, among other things: scheduling of the motion for debate; the failure of the Speaker to so schedule the motion for debate; and whether the motion was lodged in accordance with the rules. Pursuant to one of the replying letters of the Speaker as to how the motion should be lodged, and consistent with Standing Order 27,[4] Hon. Mr Brantley, on the 11th December 2012, duly resubmitted the motion of no confidence. This time around, it was lodged with the Clerk of the National Assembly, as opposed to the Speaker himself. The Clerk of the National Assembly, Mr. Jose Lloyd (Mr. Lloyd) in an affidavit sworn to on the 16th April 2013, deposed that upon receipt of the resolution, he recorded the date and time he received the motion, passed the original to the Speaker and copies to the Attorney General, the Prime Minister and Secretary to the Cabinet. According to Mr. Lloyd, as of the date of his affidavit, he had not received any instructions from the Speaker to place the motion on the Agenda for debate in the National Assembly. Notably, what Mr. Lloyd did not say was whether he had entered the resolution in the Order Book setting it down for a future day as is required under Standing Order 11(4). It is noteworthy too, that the Speaker in a letter to Hon. Mr. Brantley dated 10th December 2012 had acknowledged that he was required to schedule the motion for debate, at the earliest convenient time, and initially promised to schedule the motion for debate after it had been properly lodged. The Speaker went on to inform Hon. Mr. Brantley that

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of the electoral Commission with the result that hundreds of registered voters in Nevis were illegally removed from the voters list in Nevis causing tremendous harm and damage to the reputation of the electoral system in St. Kitts and Nevis.

[4] Standing Order 27 provides the form of notice required under a standing order:

> (1) Where under any Standing Order notice is required, such notice shall be given in writing, signed by the member and addressed to the Clerk.
> (2) Such notice shall be handed to the Clerk or sent to, or left at, the Clerk's Office.
> (3) If the Speaker is of the opinion that any notice of motion which has been received by the Clerk infringes the provisions of the Standing Order, or is in any other way out of order, he or she may direct
> (a) That the member concerned be informed that the motion is out of order; or
> (b) That the notice of motion be entered in the Order Book with such alterations as he or she may direct.

scheduling of the date was subject to the exigencies of government business. However, months passed, and the motion was not scheduled for debate. Tellingly, the Clerk deponed, that as of 16th April 2013, he had not received any instructions from the Speaker to schedule the motion for debate.

(3) Defections and Other Developments

[8] By then, certain developments/game changers had emerged: (i) There were two defections from the government in the persons of Dr. Hon. Timothy Harris and Hon. Sam Condor; (ii) On the 31st January 2013, Hon. Sam Condor resigned as a Minister of Government with immediate effect; (iii) Subsequently, Dr. the Hon. Timothy Harris and Hon. Sam Condor launched a new political party called the Peoples Labour Party led by Dr. Harris: (iv) On 26th February 2013, three political parties in the Federation, namely the People's Action Movement (PAM), the Concerned Citizens Movement (CCM), and the Peoples Labour Party (PLP) launched a coalition group called Team Unity. These new developments meant that if the motion of no confidence was scheduled and debated, it would have carried, since there were only eleven elected representatives in the National Assembly, and six of them had indicated an intention to vote in favour of the motion. Indeed, Team Unity, by letter dated 1st March 2013, advised His Excellency the Governor General (the Governor General) that all six of them intended to vote in favour of the motion lodged by the leader of the opposition. They called upon the Governor General to advise the Prime Minister to act in accordance with the rule of law. Continuous letters requesting the scheduling of the motion were written to the Speaker. Nothing happened.

(4) Involvement of Civil Society

[9] Civil society got involved, sending letters to the Prime Minister, urging him to "do all within his power to ensure that the motion of no confidence in the government is brought before the National Assembly without further delay."[5] In the same vein, another entity called upon the Prime Minister to "bring to Parliament and have debated the motion of no confidence without further delay, and before any other business is brought to the Parliament."[6] Then, the St. Kitts and Nevis Bar Association wrote a letter dated 11th February 2013. It was a letter with a difference, although the

[5] See letter to the Prime Minister from the Board of the St Kitts and Nevis Chamber of Industry and Commerce dated 31st January 2013

[6] See letter to the Prime Minister from the St Kitts Christian Council and the Evangelical Association dated 3rd February 2013.

message was essentially the same. Unlike the two previous letters, however, that letter was correctly addressed to the Speaker and not to the Prime Minister. It called upon the Speaker to bring the motion of no confidence before the Assembly without further delay. Significantly, the letter pointed out that any further delay would undermine the democratic principles on which the Federation is founded.

[10] On 9th March 2013, a coalition of Non-Government Organisations (NGO's) comprising the Chamber of Industry and Commerce, the Hotel and Tourism Association, the Christian Council and the Evangelical Association issued a press release stating that they had written to the Secretary General of the Commonwealth Parliamentary Association informing him of the government's failure to schedule a date for the debate of the motion of no confidence.

[11] Still, the Speaker did not see it fit to schedule the motion for debate. As far as the Speaker was concerned, the motion was not a true or valid motion of no confidence in the government for the purposes of section 52-(6) of the Constitution; and in any event, he would only schedule the motion for debate as far as the convenience of the House is concerned. Naturally, the claimants were very disappointed and displeased at the Speaker's failure to schedule the motion. By then, they had formed the view that there was a deliberate effort on the part of the Speaker and the government side, in Parliament, to delay and or thwart the tabling and debating of the motion of no confidence. As a result of the circumstances described above, the claimants instituted these proceedings.

. **First Originating Motion (Claim No. SKBHCV2013/0090)**

[12] On 3rd April 2013, six members of the Parliament of Saint Christopher and Nevis, namely, the Hon. Mark Brantley, (then leader of the Opposition), Hon. Eugene Hamilton, Hon. Shawn K. Richards, Hon. Vance Amory, Hon. Sam Condor (then an elected member) and Hon. Timothy Harris, filed an originating motion (along with a certificate of urgency). These claimants seek the following declarations and orders:

1. A declaration that the claimants and each of them are entitled as of right to bring a motion of no confidence in the government of Saint. Christopher and Nevis before a National Assembly, pursuant to section 52(6) of the Constitution of Saint. Christopher and Nevis;

2. A declaration that the claimants and each of them are entitled as of right to move a motion of no confidence before a National Assembly pursuant to section 52(6) of the Constitution;

3. A declaration that the National Assembly must debate and decide a motion of no confidence as a matter of urgency;

4. A declaration that a motion of no confidence must be scheduled for debate in the National Assembly as a matter of urgency and within a reasonable time of the motion being handed to the Clerk or sent to or left at the Clerk's Office;

5. A declaration that the first defendant as Speaker of the National Assembly, and or the other defendants, collectively as the Cabinet, is obliged to schedule the debate on a motion of no confidence as a matter of urgency and within a reasonable time of the motion being handed to the Clerk or sent or left at the Clerk's office

6. A declaration that the claimants' right to bring and or move a motion of no confidence has been, and is being violated by the failure of the first defendant and or other defendants to schedule the motion of no confidence sent to and or left at the office of the Clerk on 11th December 2012 for debate in the National Assembly;

7. An order directing the defendants to take whatever steps are necessary to ensure that the motion of no confidence sent to or left at the office of the Clerk on the 11th December 2012 be scheduled for debate in the National Assembly on or before 9th April 2013, or so soon thereafter as may be practicable, and in any event before any other business, with exception of the Budget, is dealt with by the Assembly;

8. An interim order restraining the defendants, whether by themselves or their servants or agents, or by the Clerk to the Assembly from scheduling any business of the Assembly, other than the Budget to be dealt with by the Assembly, before debate on the said motion of no confidence.

The claimants also pray the usual prayer for "such other relief as may be just" and for costs.

[13] Hon. Mark Brantley, on behalf of all the claimants (who gave their consent to do so), swore to and filed an affidavit in support of the originating motion, with 22 documents exhibited thereto.

[14] For reasons that will be explained below, the claimants are no longer seeking reliefs numbered (7) and (8).[7] They say those reliefs have now become academic.

Intervention of the Attorney General

[15] The learned Solicitor General Mrs. Simone Bullen Thompson ("The Solicitor General or Mrs. Bullen-Thompson") has stated that the Attorney General has intervened[8] in this matter on the ground that it raises serious issues of constitutional importance which concern the procedure of the National Assembly, and the relationship between two important arms of the government -- the judiciary and the legislature. According to the Solicitor General, "the Attorney General is concerned with the proper interpretation of the constitutional provision in issue, as this matter is one of significant importance in the constitutional history of Saint Kitts and Nevis, and the decision of the court will serve as an important guide to Speakers of the National Assembly and of the English speaking Caribbean."

Applications to strike out the Claimants' Originating Motion

[16] On the 15th April 2013, the defendants and the Attorney General applied to strike out the claimants' originating motion in its entirety on the basis that the court had no jurisdiction to determine any of the issues raised in the claim, or to grant any of the reliefs sought because the claim, and the reliefs sought contravened the powers, privileges, and immunities of the National Assembly at common law, and under the National Assembly (Powers and Privileges) Act, and the separation of powers doctrine. The defendants, in their application, also challenged the joinder of the 2nd to 9th defendants, on the ground that there was no cause of action against them.

[17] The substantive application to strike et al, eventually came up for hearing on the 16th December 2013, before Ramdhani J. [Ag]. After having heard the submissions of the respective parties,

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[7] These are the normal reliefs sought in any Constitutional motion.

[8] It is noted that in the heading of Claim No 0090 of 2013 the Attorney General appears as an intervening Party; while in Claim No 231 of 2014, the Attorney General is named a defendant. In as much as Ramdhani J had ruled that the Attorney General need not be a party, I do not treat the Attorney General as a defendant in Claim No. 231 of 2014. I treat the Attorney General an intervening party in both matters.

Ramdhani J [Ag] refused to strike out the motion, holding there is a constitutional right to move a motion of no confidence and to have a motion of no confidence debated as a matter of priority over other government business. He further ruled that on the face of it, the Leader of the Opposition's motion of no confidence is a proper motion of no confidence for the purposes of section 52(6) of the Constitution, and the Speaker should treat it as such.

[18] In relation to the misjoinder issue, Ramdhani J. [Ag) found (1) there was no reasonable cause of action against the 2nd to 9th defendants; and (2) there was no need for the 10th defendant (the Attorney General), to remain as a party to the originating motion, as the issues are between the claimants and the Speaker, the 1st defendant. Ramdhani J. [Ag] therefore ruled, in relevant part, that the originating motion will be allowed to continue against the Speaker in relation to all the reliefs sought, and that the 2nd to 10th defendants be removed as parties to the originating motion.

[19] Subsequently, an appeal filed by the Speaker and the Attorney General was dismissed with costs, and the matter was sent back for trial.[9] The Court of Appeal remitted the case to the High Court on the clear understanding and condition that this court is not bound by the earlier rulings/judgment of Ramdhani J.[Ag]. As it stands then, the matter is back before the High Court for determination of the issues raised in the originating motion filed by the claimants in Claim No SKBHCV2013/0090.

Second Motion of no Confidence Lodged by Dr. Harris and Second Originating Motion Filed in the High Court

[20] In September 2014, about one month before the Court of Appeal heard the appeal by the Defendants[10] in SKBHCV2013/0090, Dr. Harris lodged with the Clerk of the National Assembly a new Resolution[11] for a vote of no confidence in the government of Saint Christopher and Nevis.[12]

[21] Mr. Mendes SC in his oral presentation stated that this resolution was more focused and was drafted to take into account the criticisms made about the first resolution. Dr. Harris, in his supporting affidavit, stated, among other things, that he informed the Speaker that he had lodged a motion with the Clerk, and that in framing the motion, he took into account concerns expressed on

[9] Ramdhani J had decided that there was a prima facie case to be determined by the High Court.
[10] The Speaker and the Attorney General
[11] The grounds for the second resolution were similar to those alleged in support of the first resolution for a vote of no confidence.
[12] It does not appear that Dr. Harris withdrew himself as a party from the extant first Motion, but no issue has been taken on that point for me to decide.

his (the Speaker's) behalf as to the wording of the motion lodged by the Leader of the Opposition. He asked the Speaker to let him know if the motion was in order. The Speaker never did so. As happened in the first case, the Speaker failed to schedule the second motion for debate. He was not prepared to rule on any motion of no confidence until the Court of Appeal had rendered a decision on the pending appeal.

[22] The failure to schedule the second motion for debate gave rise to the second originating motion numbered SKBHCV2014/0231, filed in the High Court in November 2014, by Dr. the Hon Timothy Harris as Claimant, naming Hon. Curtis Martin (Speaker of the National Assembly) and the Attorney General of St. Christopher and Nevis as defendants. Dr. Harris swore to and filed a lengthy affidavit in support of his originating motion, with 20 documents exhibited thereto.

[23] It is noted, and there is no dispute that the issues raised in the second motion are essentially the same as those raised in the first originating motion; hence the reason for one hearing and one judgment.

[24] Before turning to the submissions of the parties, it is helpful to set forth the constitutional provisions at issue here.

The Constitutional and Legislative Framework Governing the Issues Arising on the Originating Motions

(1) The Constitution of the Federation of Saint Christopher and Nevis

[25] Section 41 of the Constitution provides that questions of no confidence in the Government shall be determined by a majority of the votes of all the Representatives.

[26] Section 52(6) of the Constitution reads:

> "(6) The Governor General shall remove the Prime Minister from office if a resolution of no confidence in the Government is passed by the National Assembly and the Prime Minister does not within three days either resign from office or advise the Governor General to dissolve Parliament."

[27] Sections 52(9)(b) and 59(2) inform what is to happen if a motion of no confidence is passed and when certain offices become vacant:

[28] By section 52(9)(b) of the Constitution, "The office of a Minister other than the Prime Minister shall become vacant . . . if the Prime Minister resigns from office within three days after a resolution of no confidence in the Government has been passed by the National Assembly or is removed from office under subsection (6) or (7) . . . ."

[29] By section 59(2) of the Constitution, the office of a Parliamentary Secretary becomes vacant if (a) the Governor General, acting in accordance with the advice of the Prime Minister, so directs; or (b) if the Prime Minister resigns from office within three days after a resolution of no confidence in the Government has been passed by the National Assembly or is removed from office under section 52(6).

[30] Section 44(1) of the Constitution empowers, and gives exclusive right to the National Assembly to regulate its own internal proceedings: "Subject to the provisions of the Constitution, the National Assembly may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings."

(2) The Statutory Provisions

[31] Section 20 of the National Assembly Elections Act allows any member of the National Assembly to propose a motion for debate, which "shall be debated and disposed of according to the Standing orders of the National Assembly." Section 21 of the same Act states the National Assembly "may regulate its own procedures" and may make rules for the conduct of its own proceedings, including making Standing Orders.

[32] Section 22 of the National Assembly (Powers and Privileges) Act provides that '[t]he powers of the Speaker under this Ordinance shall be supplementary to any powers conferred on him by … the Standing Orders." Under Section 23 of this Act, "[n]either the Speaker, nor any officer of the National Assembly shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred or vested in the Speaker or such officer by or under this Act.

(3) The Standing Orders

[33] Standing Order 20 provides in relevant part: "The right to ask a question shall be subject to the following general rules, as to the interpretation of which the Speaker shall be the sole judge. … a question shall not be asked … about any question then pending before any Court of Justice or which reflects on the decision of a Court of Justice."

[34] Standing Order 25 addresses the scope of motions and states in pertinent part:

"The procedure in respect of motions shall be in accordance with section 20(2)(b) of the National Assembly Elections Act, that is to say, except on the recommendations of the Governor-General signified by a Minister, the National Assembly shall not proceed upon any motion, the effect of which, in the opinion of the Speaker, would dispose of or charge any public revenue or funds of the territory or alter any disposition thereof or charge thereon or impose, alter or repeal any rate, tax or duty."

[35] Standing Order 85 states:

"In any matter not herein provided for, resort shall be had to the usage and practice of the commons house of Parliament of Great Britain and Northern Ireland, which shall be followed as far as the same may be applicable to the National Assembly, and not inconsistent with these Standing Orders nor with the practice of the National Assembly."

[36] I turn now to the submissions put forward by counsel for the respective parties on the issues raised in the two cases.

ISSUE 1: Whether there is an Implied Right in Elected Representatives to Bring a Motion of no Confidence in the Government and to have it Scheduled for Debate and Voted on in the National Assembly as a Matter of Urgency and Without Undue Delay, and Accorded Priority Over Other Motions and Business

(1) Submissions of Mr. Mendes SC on Behalf of the Claimants

[37] In summary, the submissions of the claimants in both originating motions on the implied right issue are grounded on the following points:

(1) There is to be implied from the terms of section 52(6) and the structure of the constitution a right in every representative in the National Assembly to move a

resolution of no confidence in the government of Saint Christopher and Nevis and to have that resolution scheduled, debated and voted on within a reasonable time and accorded priority over other motions and business. Without such a right, section 52(6) would be rendered illusory.

(2) Section 52(6) is clearly premised upon the existence of such a right. It would make absolutely no sense to solemnly require that a Prime Minister resign or call an election within three days of the successful passage of a vote of no confidence, if this could be avoided by simply not listing the motion for debate, more particularly where it is clear that the motion will succeed.

(3) It is unthinkable that the framers of the Constitution would have intended that a high constitutional mandate that the government must maintain majority support among the elected representatives of the National Assembly, could be so easily circumvented without any recourse to a court of law.

(4) The implication of enforceable rights from other provisions of a written constitution is not new to the jurisprudence of Westminster constitutions, such as the constitution of Saint Christopher and Nevis. The separation of powers doctrine is the product of such implication. (**Hinds v R**[13]; and **Surrat v Attorney General of Trinidad and Tobago**[14] and **Sharma v the Attorney General of Trinidad and Tobago**[15], relied on).

(5) As in the cases cited at (4) above, the constitutional right contended for is properly to be implied in the present case. The decisions of Ramdhani J [Ag] in Hon. **Mark Brantley et al** v **Hon Curtis Martin et al** [16]; the decision of the Solomon Islands Court of Appeal in **Speaker v Phillip**[17] and the judgment of the Constitutional Court of South Africa in the case of **Mazibuko v Sisulu**[18] are

[13] [1977] AC 195
[14] [2008] 1 AC 655
[15] [2007] 1 WLR 2223 at paragraphs 8 and 13.
[16] Claim No SKBHCV2013/0090
[17] [1991] SBCA 1.
[18] [2013] ZACC 28

persuasive authorities for the implication of a constitutional right to move a motion of no confidence.

(6) The basic assumption of the Saint Christopher and Nevis Constitution, embodied in particular in section 52(6), is that so long as the elected Assembly is in being, a majority of its elected members is entitled to determine the effective leadership of the government of the day. It recognises also that a Prime Minister ought not to remain in office once it has been established that he has ceased to command the support of the majority of the Assembly.

(7) The clear premise of section 52(6) is that a majority of the elected representatives would be provided with the opportunity to express their majority position against the government in the halls of the Assembly. This must necessarily entail the lodging of a motion of no confidence, the scheduling of a date on which the motion will be debated, the actual debating of the motion, and the taking of a vote on it.

(8) It would make nonsense of section 52(6) which enshrines the fundamental principle that the tenure of government depends on the continued support of a majority of the elected representatives if, at someone's whim, a resolution of no confidence could be kept off the Order Paper, thereby creating a scenario where a Prime Minister, whose government has lost the support of the majority of the representatives in the Assembly, is permitted to stay in office, even though the clear intention of section 52(6) is that he either resigns, call election or be removed.

(9) Where the possibility exists that a government has lost the majority support among the elected representatives, it is also implicit in section 52(6) that the question of majority support be determined as a matter of priority and therefore without undue delay. It would clearly be against the spirit and or letter of the constitution that a government which lost the majority support in the Assembly should continue to run the country and push through a policy of legislative agenda.

(10) In **Speaker v Phillip,** the Solomon Islands Court of Appeal considered it "unsatisfactory and inconsistent with the principle … of majority rule in a

Parliamentary democracy that a Government which does not have the confidence of the House may continue in an unchallenged position for many months".

(11) It is accordingly implicit in section 52(6) that each and every elected member of the National Assembly is entitled as of right to bring a motion of no confidence in the government and to have it scheduled, debated and voted on without undue delay, and in priority over other government business.

(2) Submissions of Mr Astaphan SC on Behalf of the Speaker

[38] In summary, the position of the Speaker is grounded on the following points:

(1) There is no basis in the Constitution for the implied rights relied on by the claimants, which have the effect of, among other things, overriding sections 44 of the Constitution and the doctrine of separation of powers.

(2) No such rights were expressly conferred by the Constitution.

(3) Such implied rights would: (a) undermine the exclusive jurisdiction vested in the National Assembly to regulate its procedure by section 44 of the Constitution; and (b) would conflict with the rights and regime created by the Parliament under the existing laws enacted for the purpose of regulating the procedure and business of the National Assembly;

Alternative position:

(4) The standing orders do not expressly provide for motions of no confidence, therefore, the jurisdiction of the High Court would be, and is limited to a declaration that the standing orders ought to be amended by the National Assembly to expressly provide for motions of no confidence and give effect to section 52(6) of the Constitution.;

(5) There exist laws and standing orders made under section 44 of the Constitution which govern the procedure and internal proceedings of the National Assembly. These laws and standing orders provide for the right of a member to bring a motion in the National Assembly, and require that a motion is to be dealt with in

accordance with the standing orders made by the National Assembly. These laws exist prior to the enactment of the 1983 Independent Constitution, and have continued in force after the 1983 Independence Constitution. Consequently, a substantive or procedural right ought not to be implied which would conflict with section 44 of the Constitution and/or substantive laws made by the National Assembly for the purpose of regulating the procedure of the National Assembly;

(6) The National Assembly has the right to make standing orders, and the Speaker of the National Assembly is given discretion under the standing orders, which he is required or ought to exercise. The right of the National Assembly and the Speaker's discretions under the standing orders ought not to be whittled away or 'repealed' by the implication of alleged implied, procedural and substantive rights;

(7) No constitutional, procedural or substantive rights ought, or should be implied and certainly none, which would intrude into the internal affairs of the National Assembly and emasculate the doctrine of separation of powers. In addition, no constitutional or substantive rights which could be directly enforceable by the High Court under section 96 of the Constitution by mandatory declaration or coercive order against the Speaker of the National Assembly ought or should be implied

(8) There is no law or standing order made by the National Assembly which deals specifically with motions of no confidence. Provision is made for priority to be given to motions of privilege, but not motions of no confidence. This is a clear omission and may very well be by design. However, the High Court ought not to seek to remedy this omission or lacunae in the standing orders by implying constitutional rights, which will have the effect of leapfrogging section 44 of the Constitution and creating a procedure or standing order for the National Assembly.

(9) In the event the High Court holds that the standing orders are inadequate in that they make no specific provision for motions of no confidence, and therefore require amendment to give effect to section 52(6) of the Constitution, the amendments ought to be made by the National Assembly and not the High Court.

(3) Submissions of the Solicitor General Mrs. Simone Bullen Thompson on Behalf of the Attorney General

[39] The Solicitor General, citing and quoting critical passages and statements from a number of cases, prefaced her submissions with a discourse as to how the court should approach the interpretation of the Constitution, and in particular, the approach the court should take in determining whether there is an implied constitutional right existing under section 52(6) of the Constitution.[19] In summary, the position of the Attorney General as put forward by the learned Solicitor General is grounded on the following submissions:

(1) When looking to interpret a constitutional provision, the court should not only look at the constitution itself in terms of the text of the Constitution and the structure of the Constitution, but the court must have regard also to the common law, the statute law and the Constitution that it involves (Paragraph 42 of the decision of Ramdhani J in **Hon Mark Brantley et al** v. **Hon Curtis Martin et al;** and **Amalgamated Society of Engineers v Adelaide Steamship Co Ltd,** [1920] HCA 54, relied on).

(2) The right that the claimants are seeking to have the court declare has its genesis in a constitutional convention. (Document entitled 'Confidence Motions'[20], page, 3, paragraph 2; page 4, paragraph 2; page 6, (quotation from Erskine May, **Parliamentary Practice**, 23rd edition, 2004, pp 329-330)[21], **Conacher v the Prime Minister of Canada**, paragraph 34, relied on)

(3) Section 52(6) seems to give effect to one aspect of the convention in the sense that it says what is to happen if a motion of no confidence is passed

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[19] See for example, the case of McGinty and Others v State of Western Australia, para 2, pages 602-603, on the Australia approach to the concept of implied constitutional rights

[20] Source: House of Commons Library

[21] From time to time the Opposition puts down a motion on the paper expressing lack of confidence in the government or otherwise criticizing its general conduct. By established convention the government always accedes to the demand from the Leader of the Opposition to allot a day for the discussion of a motion tabled by the official Opposition which, in the government's view, would have the effect of testing the confidence of the House. In allotting a day for this purpose the government is entitled to have regard to the exigencies of its own business, but a reasonably early day is invariably found. This convention is founded on the recognised position of the Opposition as a potential government, which guarantees the legitimacy of such an interruption of the normal course of business. For its part, the government has everything to gain by meeting such a direct challenge to its authority at the earliest possible moment.

(3) The practice that would have been the tradition that St. Kitts Nevis would have known in terms of motions of no confidence is that of the UK Parliament. Prior to the UK Fixed Term Parliament Act of 2011, there was no requirement that a motion of no confidence should be worded in specific terms.

(3) The National Assembly Elections Act, section 20(1) outlines the procedure to be adopted in the National Assembly. No specific mention is made of motions of no confidence in the National Assembly Elections Act. However, the term "any motion" in section 20(1) of the Act is wide enough to cover motions of no confidence. Section 20(1) gives members of the National Assembly the right to propose a motion and have it debated and disposed of in accordance with the standing orders of the National Assembly.

(4) The standing orders do not specifically mention, or set out the specific procedure for dealing with such motions. However, Standing Order 85 allows the court to consider the practice in the United Kingdom as was done in the case of **Sharma et al v Attorney General of Trinidad and Tobago**, where a similar standing order (Standing Order 91) (which is in similar terms to Standing Order 85) was invoked, and reliance was placed on the practice of the House of Commons, although neither the Constitution nor any other legislation conferred on members of the House an express right to be paid, but ought to be paid as they had received their salaries since 1911, and based on the practice of the House.

(5) The courts will not readily imply rights into a Westminster Model Constitution. The Constitution does not contain any right to debate a motion of no confidence, still less no right to have a motion of no confidence debated as a matter of urgency and in priority to all government business in the National Assembly. The courts in the Commonwealth Caribbean only rarely imply constitutional rights, and have only done so in the **Sharma** case. Section 52(6) does not fall within the category of any constitutional provisions from which the courts will imply justiciable rights. The courts have refused to treat ordinary constitutional provisions as if they were all fundamental rights provisions. (**Gaston Browne v Attorney General & Others** ANUHCVAP20130028 relied on**).** What the claimants are asking for is the

unprincipled judicial elevation of constitutional conventions into enforceable individual rights. Such implied rights have no basis in the text, structure or history of the Constitution of St. Kitts and Nevis, and to hold such a right exists would constitute impermissible judicial legislation in breach of the separation of powers.

(5) The assertion of an implied right under section 52(6) entirely disregards the history, context and structural antecedents of the Constitution of St. Kitts and Nevis. Section 52(6) was not premised on the existence of a right; it was premised on convention. (Margaret De Merieux, The **Codification of Constitutional Conventions in Commonwealth Caribbean Constitutions**, (1982) 31 (International and Comparative Law Quarterly, 262, 265, relied on).

(6) The purpose of section 52(6) is to codify those constitutional principles and conventions existing in the United Kingdom prior to independence and to ensure continuity in the constitutional systems and structures in the Commonwealth Caribbean. (Decision of Ramdhani J, paragraph 117 cited). Section 52(6) ought to be interpreted and applied not only in accordance with its words, but in light of the nature and status of the constitutional principles to which it seeks to give effect.

(7) Section 52(6) must be looked at from a contextual interpretative approach as was done in the case of **Hinds v R.**

(5) The **Mazibuko** case on which the claimants rely to ask the court for the declarations did not see the necessity of an order in the terms sought by the claimants. It is doubtful whether a declaration in similar terms is necessary as the factual matrix in the **Mazibuku** case and the instant case, differ. In the South African context of **Mazibuku**, there was a lacuna in the rules, in that the rules made no provision for the procedure in relation to motions of no confidence. Further, there was a lack of consensus between the parties as to the draft rules so that there were still no rules in place. Additionally, the Constitutional Court was keen to point out that the exercise of the entitlement to bring a motion of no confidence can be regulated by the Assembly. This entitlement, the court said, flows readily from section 102(2) and its exercise may be regulated by the

Assembly, but its rules may not deny, frustrate, unreasonably delay or postpone the exercise of the right.

(6) Given the express provision of Standing Order 85 and the established conventions which exist in Great Britain, it cannot be said that there is a lacuna in the laws of St. Kitts and Nevis as it relates to the procedure for dealing with all motions of no confidence. What the Speaker would be required to do in the absence of an express provision is to look to the usage and practice of the Commons House of Parliament of Great Britain and Northern Ireland. This would have led to the established convention which would provide guidance on the way the matter should be dealt with. If Standing Order 85 is applied, it will provide the procedure for dealing with motions of no confidence. Timing of the motion of no convention is part of the convention.

(7) If the court is minded to declare a right based on section 52(6), the terms of the right should be informed by the legislative position as outlined above by the intervening party. Any declaration granted should be in such form that it would not have effect of doing what the Constitution authorises the National Assembly to do by section 44, that is, to make rules governing its procedure. The Solicitor General urged the court to pay regard to the warning given by Davis J in the **Mazibuko** case at paragraph 67, in regard to the wording of any relief the court may declare. The learned Solicitor General was not of the view that words such as "urgency" should be used, but rather words that wouldn't be seen that the court is trespassing on the jurisdiction of the National Assembly by telling it what to do.

(4) Replying Submissions of Mr. Astaphan SC and Mr. Mendes SC

[40] In replying to the submissions of Mrs. Bullen Thompson, Mr. Astaphan SC took a differing view in relation to Standing Order 85. Learned senior counsel pointed out that Standing Order 85 would have come into existence in or about 1967, and we should not have to look to the United Kingdom as a matter of constitutional policy to see whether we have complied with our constitutional provisions. Learned senior counsel reiterated his alternative argument that to meet the test under the Constitution, the Standing Orders need to be amended. Senior counsel pointed out that when

these matters came up, the question of no confidence in the United Kingdom was not one of usage or practice; it was by statute. In developing that point, learned senior counsel referred to the UK Fixed Term Parliaments Act 2011, section 2, which senior counsel submitted will trigger early elections. If the situation in the United Kingdom since 2011 is now one of statute as opposed to usage and practice under the Fixed Term Parliaments Act, then one cannot look to the United Kingdom under Standing Order 85, because it does not permit the incorporation of statute law of the United Kingdom, senior counsel reasoned. It was learned senior counsel's further submission that Standing Order 85 should be interpreted to mean that if rules concerning motions of no confidence are now governed by statute, then Standing Order 85(2) ought not to extend to apply the statute. Unless the statute was expressly incorporated by the House, one cannot look to the statute, learned senior counsel further submitted.

[41] Finally, submitted Mr. Astaphan SC, the usage and practice of the United Kingdom, if it applies, cannot be applied simply by quoting from "some document."

[42] In replying to the submissions of Mrs. Bullen Thompson and Mr. Astaphan SC, Mr. Mendes SC stated that he was in agreement with Mrs. Bullen Thompson's submission as to the terms of any order the court might decide to make declaring rights of the claimants, that is to say, the court ought not to use the word "urgency" but rather the words "without undue delay" and "within a reasonable time of the motion being handed to the Clerk."

.[43] In response to the replying submissions of Mr. Astaphan, SC, Mr. Mendes SC agreed with Mr. Astaphan SC to the extent that he submits that the court has jurisdiction to declare Standing Orders to be unconstitutional to the extent that they abrogate or abridge or frustrate constitutional rights, just as the constitutional court did in South Africa.

[44] However, Mr. Mendes SC was not in agreement with Mr. Astaphan SC on his submission that the rules as they stand do not accord with the right that the claimants are asking the court to decide. Rather, Mr. Mendes SC was of the view that it was eminently possible, feasible and reasonable for the Speaker, under the present arrangements, to comply with the formulation of constitutional rights determined by the South Africa Constitutional Court. All the Speaker has to do as he receives the motion of no confidence is to put it on the Order Paper and schedule it for debate. It was the further submission of Mr. Mendes SC that there is nothing in the rules, on their face, that

abrogate the rights in any way whatsoever; unlike the South African rules which provided for a procedure for determining when motions are to be scheduled. Inbuilt in that procedure, however, was the possibility of deadlock because the parties may not agree. And it was that procedure itself (that had inherent deadlock in it), the constitutional court held to have abridged or abrogated the right, and therefore, the rules had to be struck down and new rules had to be put in place

.[45] Mr. Mendes SC further submitted that at this point in time, in the instant case, there is no need for new rules under the standing order; what is needed, submitted Mr. Mendes SC, is a new attitude towards the constitutional right. When properly construed in accordance with Standing Order 85, the rules already provide for the need to schedule motions of no confidence without undue delay so they can be debated. Mr. Mendes SC then proceeded to quote the provisions of Standing Order 85, and a passage from the 24th Edition of **Erskine Mays Parliamentary Practice** at p. 344 headed "Confidence Motions," and went on to submit that as far as notices for the debate of a no confidence motion is concerned, the practice is that the government always makes time for the debate of a motion of no confidence, and it is done as early as possible.

[46] In countering Mr. Astaphan SC's submission that the court cannot look at the parliamentary practice in England anymore because we now have an Act[22], Mr. Mendes SC stated that in the United Kingdom, the Act does not govern the practice of listing and scheduling no confidence motions; all it deals with is the result of a no confidence motion. Senior counsel pointed out that the Act was designed to fix a date on which Parliamentary elections were to be held, thereby doing away with the discretion vested in the Prime Minister to dissolve Parliament whenever he or she wanted. But, explained senior counsel, the law makers had to deal with the possibility that short of that fixed parliamentary date, there may be a motion of no confidence; so, having fixed the parliamentary date, they had to deal with the convention, which is, if you have a no confidence motion that is passed, then you resign or call elections as soon as the case may be.

[47] Mr. Mendes SC then offered an elaborate discourse on the history of, and an in-depth analysis of the provisions of the Fixed Term Parliament Act, and in the end, submitted that the Act does not say anything about when a no confidence motion is to be scheduled in Parliament; so as far as the House of Commons is concerned, they have to go back to their practice by putting the motion on the Order Paper, and the government will make time for it to be debated early. The Act does not

[22] Referring to the Fixed Term Parliaments Act

deal with that convention at all; what it does is to codify the convention which it already had, that is, if there is a vote of no confidence, then you have to have elections. The Act does not in any way affect the exercise which must now be undertaken of interpreting the Standing Orders in accordance with the practice, which practice is to schedule the motion right away.

[48] In relation to Mr. Astaphan SC's submission that the Standing Orders should be amended to give full effect to the constitutional right, Mr. Mendes SC replied that in order for the court to find the Standing Orders to be inconsistent with the implied constitutional right, and in order to determine or to order that the Standing Orders must be amended to give full effect to the right, the court must give a declaration as to what the rights of the claimants are; the court has to spell out and detail what those rights are.

Discussion and Finding on the Implied Right Issue

[49] The starting point is that it is for the court, and not the parties, to decide what is the proper interpretation of section 52(6) of the Constitution. As the Privy Council reaffirmed in **Briggs v Baptiste**,[23] the interpretation of the Constitution is a matter for national courts, and the courts should adopt a generous approach to the interpretation of constitutional provisions.

[50] The Solicitor General has correctly noted that the concept of implied constitutional rights is most common to Australia. Thus in the Australia case of **McGinty and Others v State of Western Australia** [1996] 1 LRC 599, Brenman CJ stated that the provisions of the Constitution could either be expressed in its text or implied in its text and structure.[24] The guiding principle which the court applies is that, in interpreting the Constitution, the court must seek to ascertain and give effect to the intention of the framers of the Constitution. Generally, the intention of the framers must be ascertained from the language and structure of the Constitution. However, as Professor Zines, an Australian constitutional scholar points out, the nature of a written constitution, and the typical brevity of its language, imposes on the court the responsibility of construing and applying the text, a task far beyond purely verbal analysis. Judges in Australia were not reluctant, when it mattered,

[23] Privy Council Appeal No 31 of 1999
[24] See pages 602 to 603 of the judgment for a full exposition on implied rights

to reach conclusions based upon implications drawn by the judges from the structure and purpose of the Constitution, although not spelt out in its terms.[25]

[51] Thus, in a controversial Australia decision, (**Re: Wakim, Ex parte McNally**, (1999) 193 C.L.R., Sir Owen Dixon, inferred the presence in the Constitution of rules that were not spelt out explicitly in the document's text.

[52] Closer home, rights were implied in the cases of **Hinds v R** and **Sharma** v **Attorney General of Trinidad and Tobago**. What the court takes from these two cases, especially the **Hind**s case (which the Solicitor General sought to distinguish), is that constitutional principles may be derived from the text and structure of the constitution, and that, in construing the constitution, it is to be taken that those who drafted it were nurtured in the traditions of the Westminster model constitution, and that accordingly, in drafting practice, a great deal is left to necessary implication.

[53] From a reading of section 52(6), it seems clear, and it has not been disputed, that this section does not confer an express right on members of the National Assembly to bring a motion and have it debated without undue delay or within a reasonable time. To my mind, however, based on various authorities, the absence of express words to that effect in section 52(6) does not prevent the existence of a right, by implication, of members of the National Assembly to bring a motion of no confidence and have it debated without undue delay, and within a reasonable time. In my view, and I am satisfied that, the language and structure of section 52(6) is assuming (a) that a motion of no confidence has found its way to the National Assembly; (b) that the motion of no confidence has been listed on the Order Paper for debate; and (c) that the motion of no confidence has been debated on and passed by a majority of the votes. This process is the very purpose of section 52(6) of the Constitution.

[54] In my judgment, the framers of the Saint. Christopher and Nevis Constitution, having provided that if a government lost a motion of no confidence, the Prime Minister must either resign or call an election, the drafters left to necessary implication the existence of the right of elected representatives/members of the National Assembly to properly lodge a motion of no confidence and have it debated. Furthermore, the framers left to necessary implication the obligation of the

[25] (See Judicial Activism: Authority, Principle and Policy in the Judicial Method, The Hamlyn Lectures, Fifty-Fifth Series, by The Hon Justice Michael Kirby, AC CMG, Thomson, Sweet and Maxwell, 2004

Speaker to allot a day and time for the debate to happen. In this way, the Constitution ensures that a Prime Minister has confidence of the majority of the democratically elected members of Parliament to enable him or her to stay in office and continue to run the country. In this country, the Prime Minister is identified with an absolute majority through an electoral procedure set out in the Constitution. If he loses that support on a motion of no confidence, the Governor General must remove him from office, if he does not resign or call an election. As was pointed out in **Speaker v Phillip** it is the duty of the court to interpret the constitution in a way that advances, rather than impedes the principles of majority government.[26]

[55] The Court of Appeal in the Solomon Islands in the case of **Speaker v Phillip**[27] as well as the South African Constitutional Court in the case of **Mazibuko v Sisulu**[28] and the Naura Court in the case of **Keke v Scotty** [29] considered comparable constitutional provisions and interpreted the Constitution as implicitly providing for the right to move a motion of no confidence. Admittedly, the Constitution of South Africa is not a Westminster model constitution. However guidance can be taken from the case of **Adegbenro v Akintola** [1963] AC 614, wherein the Privy Council found that the very purpose of the no confidence vote in the comparable Westminster context is to ensure that the president of the national executive was accountable to the elected representatives. The electors voted their representatives, but it is the representatives in Parliament who determine who the government is or who is to lead the government. If the elected representatives think the government has failed to represent the interest of the people, then a motion can be moved by the elected representatives. The point is that the government can only continue to be the government if it continues to have the support of the majority of the elected representatives in the National Assembly. That is the fundamental principle of representative democracy in St. Kitts and Nevis.

[56] Relying on the learning developed in **Akintola**, in **Hinds v R**. **Sharma v Attorney General** of **Trinidad and Tobago** et al, and the approach taken by the Court of Appeal in the Solomon Islands and the South African Constitutional Court and ultimately by Ramdhani J. [Ag], I am satisfied that there exists in section 52(6) of the Constitution an implied right in each elected member of the National Assembly to move a motion of no confidence in the government of Saint. Christopher and

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[26] Ulufa'Alu (Prime Minister v Governor General [2001] 1 LRC 425 at page 12
[27] (Civ App No 5/1990, unreported), Sol Is CA; [1990] SILR 227
[28] [2013] ZACC 28
[29] [2013] NRSC 3

Nevis, and to have that motion debated without undue delay within a reasonable time. Without such a right, section 52(6) would be rendered illusory. Moreover, if section 52(6) were construed otherwise, it would clearly be against the spirit and or letter of the Constitution that a government which has lost the majority support in the Assembly should continue to run the country and push through a policy of legislative agenda. This result would be inconsistent with the principle of majority rule in parliamentary democracy and therefore unconstitutional.

[57] I turn now to the question as to whether there has been an infringement of that implied constitutional right

Issue 2: Have the Implied Constitutional Rights of the Claimants Been Infringed by the Speaker?

[58] The next issue to be decided is whether the implied rights of the claimants have been infringed or violated by the failure of the Speaker to schedule the motions of no confidence without undue delay and within a reasonable time of the motions being handed to the Clerk of the National Assembly.

[59] The power to schedule a motion for debate vests exclusively in the Speaker. If the principle is that a government must continue to have the support of the majority of the representatives in Parliament, then a motion of no confidence which seeks to test whether the government continues to have that support must necessarily be scheduled for debate without undue delay. Two years had passed since the motions of no confidence were lodged with the Clerk, and the Speaker failed to take action to schedule them, so that they could be moved, debated and voted on. In my judgment, this failure or inaction on the part of the Speaker is an infringement of the implied right to bring a motion of no confidence and to have it scheduled and debated and voted on within a reasonable time and without undue delay.

[60] The motions were lodged in December 2012, and September 2014 respectively. As to the first motion, the Speaker promised to schedule it after it had been reissued. He never did. In the second motion, the Speaker explained that he would not deal with that motion while the first motion was pending before the Court of Appeal. One can hardly fault the Speaker for taking that position. In my judgment, it would have been inappropriate for the second motion of no confidence to be listed for debate while the first Originating Motion was pending before the Court of Appeal, and

where one of the parties is the claimant in the second motion, and, importantly, where the issues that arise for determination are essentially the same.[30]

[61] That being said, one cannot have a government remaining in office indefinitely, when that government has lost the support of the majority of elected representatives; so notwithstanding that there might have been no bad faith on the part of the Speaker to schedule the motion for debate, it does not mean that he did not have an obligation to schedule it. It follows from the existence of the right to bring and move a motion of no confidence, that there is an obligation imposed on the Speaker in order for the right to be fulfilled. The Speaker was under a duty to ensure that the procedural mechanisms are put in place, to ensure that the right is vindicated. And he was under a duty to do so without undue delay.

[62] There is no dispute that it is the Speaker who will determine when a motion is to be put on the order paper and when it is to be scheduled for debate. Here, the Speaker simply did not list it, forcing the claimants to come to court for its intervention. Then the Speaker decides that the matter is in court, and this was preventing him from listing it. When the claimants in SKBHCV2013/0090 decided to withdraw the matter as it appeared to be an obstacle to its being listed, the Speaker decides to revive it; and having revived it, he decides that the matter is still pending in court so he cannot list it. Indeed, when one looks at the sequence of events, it appears the Speaker had no intention of listing the motion for debate.

[63] In **Speaker v Phillip**, the obstacle to the listing of the motion was a wrong decision by the Speaker ruling that the motion of no confidence was out of order. In the instant, case, the obstacle was the wrong decision of the Speaker not to list the motions for debate and vote. In my judgment, this decision was an infringement of the implied right which exists under section 52(6) of the Constitution.

Jurisdiction

[64] Mr. Astaphan SC has raised the issue of jurisdiction. His position is that the court has no jurisdiction to imply rights or to declare that the rights have been infringed. He relies on the doctrine

[30] It bears noting, as Mr. Astaphan SC pointed out that there was a concession that there was no allegation of bad faith or fraud on the part of the Speaker. Indeed, at paragraph [2] of her ruling, dated 22nd December 2014, Justice Carter stated that "Learned Senior Counsel agrees that there is no allegation of bad faith on the part of the Defendant was being alleged …" .It seems too that it would have been impermissible for that motion to have been debated and voted on by virtue of Standing Order 20

of separation of powers. Mr. Mendes SC disagreed and took the view that the court does have the jurisdiction to declare that the rights have been infringed and ought to make a determination to that effect.

[65} The jurisdiction that is being invoked in these two cases is section 96 of the Constitution, which so far as relevant reads:

> "**96**.--- (1) … [A]ny person who alleges that any provision of this Constitution (other than a provision of Chapter II)[31] has been or is being infringed may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section."
>
> (2) The High Court shall have jurisdiction on an application made under this section to determine whether any provisions of this Constitution (other than a provision of Chapter II) has been or is being contravened and to make a declaration accordingly."

[66] The claimants have come under section 96 and contend their right to move a constitutional motion has been or is being contravened. The Constitution says they are entitled to apply to the High Court for a declaration and for relief; and this is exactly what the claimants have done in these two cases. Clearly, the jurisdiction of the High Court, which I am being asked to exercise, is found in sub-sections 1 and 2 of section 96 of the Constitution.

[67] As noted, however, Mr. Astaphan SC asserts the court's assumption of jurisdiction of this matter violates the doctrine of separation of powers. The courts have interpreted the concept of separation of powers to mean that as far as the legislature and the judiciary are concerned, the judiciary will respect the domain of Parliament's power and not interfere in its internal workings. However, there is authority for the view that one instance where the courts will interfere in the internal workings of Parliament is to vindicate a constitutional right. As Justice Saunders has observed:

> "The court must ensure that a claim of privilege does not immunize from the ordinary law the consequence of conduct by Parliament or its officers (which includes the Speaker) and employees that exceed the necessary scope of the category of privilege" or that violates fundamental rights. Constitutional supremacy requires that in appropriate cases, the judiciary should have the right and the duty ultimately to assess whether a particular claim

[31] This provision is headed "Protection of Fundamental Rights and Freedoms."

or privilege should or should not succeed. The reality of the constitution is that there is a tenuous separation of powers between the executive and the legislative branches of government. … The judiciary must therefore be astute to ensure that privilege is not used as a means of placing either of these branches or their officers above and beyond the reach of the law."[32]

[68] Justice Saunders was there referring to fundamental rights, and Mr. Astaphan SC and the Solicitor General have correctly pointed out that this case does not involve fundamental rights. However, this case does involve a constitutional right, and that constitutional right should not be frustrated by putting those infringing that right beyond the reach of the law. That is precisely what section 96 of the Constitution ensures will not happen, and that provision is not limited to fundamental rights. Thus, I am in agreement with Mr. Mendes SC that the court is not violating the separation of powers doctrine when all it is seeking to do is to uphold the Constitution itself.

[69] While I accept that a motion of no confidence is a matter to be debated on the floor of Parliament, I cannot agree that its listing is to be regarded as purely an internal matter ousting the court's jurisdiction under the separation of powers doctrine. As I see it, the motions at issue affect the entire Federation, the OECS and the wider Caribbean. The court may intervene in such matters to settle a dispute between members of the National Assembly and the Speaker or any aggrieved elected representative who claims to have suffered the infringement of a constitutional right by the inaction of the Speaker. The court does, therefore, have jurisdiction to make a declaration under section 96 of the Constitution.

[70] Having determined that there is a constitutional right to move a motion; that that right imposes obligations on the Speaker to schedule the motion within a reasonable time; that the court under section 96 does have jurisdiction to declare the existence of the constitutional right and the breach of it; that the jurisdiction has been properly invoked; and that the Speaker violated those rights by not listing the motions for debate, what is the remedy, if any, to be given for such violation?

What is the Remedy, if any to be Given for Such Violation?

(1) Can the court bypass the separation of powers doctrine under section 44 of the Constitution to give a Remedy?

[32] Third Annual Lloyd Barnet Lecture to the Council of Legal Education, 4th September 2008, page 18

[71] Where there is a right, there the law gives a remedy to vindicate that right.[33] The claimants have a constitutional right under section 52(6) of the Constitution and the Constitution, the supreme law of the land, gives a remedy for breach of that right.

[72] Section 96-(3) of the Constitution provides:

> "Where the High Court makes a declaration under this section that a provision of this Constitution has been contravened, and the person on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under any law in proceedings in the High Court."

[73] The claimants ask for various declarations. Those reliefs fall within section 96, so here again the court's jurisdiction is properly invoked.

[74] Learned Senior Counsel Mr. Astaphan has urged that should the court find an implied right to bring a motion, the court should make a declaration that the Standing Orders of Parliament do not effectively provide for motions of no confidence, and that it would be for the National Assembly of the Federation, by a specific time prescribed by the court, to ensure that the Standing Orders are amended to give the fullest possible effect to the right to bring a motion of no confidence. He asserts this deference to Parliament is required by Section 44(1) of the Constitution that gives exclusive right to the National Assembly to regulate its own internal proceedings.

[75] To develop his point, Mr. Astaphan SC called my attention to the observations of Mr Justice Davis in the **Mazibuko** case and quoted the learned judge as saying at paragraph 84:

> "That observation connects to another aspect, namely the remedy. In Ambrosini's case the Chief Justice said this about remedy:
>
> > "A declaration of invalidity in respect of those Rules that impede the exercise of the applicant's power to initiate, prepare or introduce legislation is sufficient to address the consequences of the barriers imposed by the permission requirement. In any event, a mandamus would not be appropriate. The power to determine what process to be followed falls within the constitutional domain of the National

[33] This principle was laid down by Holt, C.J. in Ashby v. White (1 704) 2 Ld. Raym, 938

Assembly. It is not for this court to dictate to the Assembly how to go about regulating its own business,"

"It is necessary to say something in this regard about this particular application. Courts do not run the country; nor were they ever intended to govern the country. Courts exist to police the constitutional boundaries as I have sketched them. Where the constitutional boundaries are breached or transgressed, courts have a clear and express role, and must then act without fear or favour. There is a danger in South Africa however of the politicisation of the judiciary, drawing the judiciary into every and all political dispute, as if there is no other forum to deal with a political impasse relating to policy or disputes which clearly carry polycentric consequences beyond the scope of adjudication. In the context of this dispute, judges cannot be expected to dictate to Parliament when and how they should arrange its precise order of business matters. What courts can do, however, is to say to Parliament you must operate within a constitutionally compatible framework; you must give content to section 102 of the Constitution; you cannot subvert this expressly formulated idea of a motion of no confidence. However, how you allow this right to be vindicated, is for you to do so, not the courts to so determine"

[76] What I take from Senior Counsel Mr. Astaphan's submission is that (based on Justice Davis' dicta) should I find an implied right, I would only have jurisdiction to make a declaration requiring specific amendments to give effect to the rights of members to bring a motion of no confidence. Further, as was stated by Justice Davis and agreed to by the Constitutional Court of South Africa, how that issue is to be formulated in the standing orders is a matter for the Parliament and not the court.

[77] Mr. Astaphan argues there is no standing order made by the House to deal specifically with, and to give effect to the right which the claimants say exist. But should I find such a right, then there should be a declaration to say 'put your House in order' and that way, the court would not be invasive; it would be properly requiring the Assembly to remedy the constitutional defect that threatens the right of members of the Assembly. Mr. Astaphan SC was of the view section 96(3) does not permit the court to bypass section 44 of the Constitution.

[78] The question which comes to the fore is whether the Standing Orders are adequate to give effect to the implied rights, or is there a lacuna in the Standing Orders as suggested by Mr. Astaphan SC. Both Mr. Mendes SC and Mrs. Bullen Thompson, unlike Mr. Astaphan SC, submitted that there is no lacuna in the rules, nor is there any conflict. For the reasons that follow, I conclude there is no lacuna and the Standing Orders are sufficient, if followed, to give effect to the constitutional rights implied in section 52(6).

[79] The claimants have established the existence of a practice in St. Kitts and Nevis to list motions of no confidence. Mr. Mendes SC invited the court to look at the evidence of Ural Swanston and Michael Powell deposing that there were two motions of no confidence before the House on two different occasions in the 1980's both of which were being scheduled, although they never came to a vote. Paragraphs 25 to 29 of the affidavit of Mr Jose Lloyd, Clerk of the National Assembly filed on 16th April 2013, are very instructive on the point. At paragraph 29, the Clerk deposes that from the recordings in the Order Book, the 1981 and 1982 resolutions were never debated by the National Assembly, or voted on, but they were scheduled for debate. Documentary evidence was produced showing that the motions were in fact recorded in the Order Book. Based on the evidence, I find and hold that there is a practice of listing motions of no confidence for debate for St. Kitts and Nevis.

[80] Standing Order 85 is applicable to this issue and provides:

> "In any matter not herein provided for, resort shall be had to the usage and practice of the commons house of Parliament of Great Britain and Northern Ireland, which shall be followed as far as the same may be applicable to the National Assembly, and not inconsistent with these Standing Orders nor with the practice of the National Assembly."

[81] Pursuant to Standing Order 85, the Speaker was required, in the absence of express provision, to look to the usage and practice of the Commons House of Parliament of Great Britain and Northern Ireland. Compliance with the Standing Order would have led to the established convention, which would have provided guidance on how to deal with the matter. While this course may be unacceptable at this time in the Federation's development, this is what is clearly expressed by the legislation. If Standing Order 85 was invoked, (as apparently done in the 1981 and 1982 motions) it would have guided the procedure for dealing with the motions of no confidence. Once the motion

is put in, it is supposed to be put on the Order Paper at some point. But somebody has to put it there. It is as simple as that. Ordinarily, the Clerk would be given instructions by the Speaker to list the motion, but the Clerk received no such instructions.

[82] In all the circumstances, there is no need for the court to make a declaration as to the insufficiency of the rules or for the rules to be amended. The procedure is already there, and there is in existence a practice in St. Kitts and Nevis of scheduling motions of no confidence in accordance with that procedure. Clearly, what happened in this case was contrary to that practice.

Conclusion

[83] The court has come to the conclusion that the claimants have made out a persuasive case for the declarations sought, save and except those which they are no longer pursuing by reason that events have overtaken them and they are now academic. The defendants on the other hand have failed to convince me that there is no implied right under section 52(6) of the Constitution of Saint Christopher and Nevis to bring a motion of no confidence, and to have that motion listed, debated and voted on without undue delay and within a reasonable time of the motion being handed to the Clerk, or sent, or left at the Clerk's office.[34]

[84] The defendants have also failed to convince me that the standing orders are inadequate to give effect to those implied rights. Arguably, if the court were to declare that the rules are inadequate or invalid, and should be amended to give effect to the implied right, the court will be effectively interfering in the affairs of Parliament. It is recognised that section 44(1) of the Constitution empowers the National Assembly to regulate its own procedure, and in particular to make rules for the orderly conduct of its own proceedings. But this power is declared in the selfsame section 44(1) to be subject to the provisions of the Constitution. This includes section 52(6) which, along with section 41 (limiting the right to vote on a question of no confidence in government to representatives only), vests in a majority of the elected representatives the power to determine the fate of a Prime Minister and his government. Implicit in this power is a procedure leading to the exercise of that power. If it were otherwise, the power of the elected representatives would be

[34] Notably, the court declines to use the words/language 'as a matter of urgency' or the words 'accorded priority over other government business' and the court makes no finding as to whether the motions should be 'accorded priority over other government business'. At the hearing, I got the distinct impression that senor counsel for the claimants was content that this type language be not used, in any declarations which the court might give, given the language used in the Mazibuku case, although they were included as part of the reliefs sought.

wholly nugatory. The procedure must necessarily include the bringing of the motion, the listing of the motion, debate and voting on it. The right to bring the motion, the listing of it and voting on it imposes a duty on the Speaker to facilitate the exercise of this important constitutional power given to the elected representatives. Where, as in this case, the Speaker failed to facilitate the process by listing the motion for debate, and vote, then he is in violation of the rights conferred by section 52(6) of the Constitution of Saint Christopher and Nevis, and I so find.

[85] For the reasons stated herein, I grant the following reliefs

1. A declaration that the claimants and each of them are entitled, as of right, to bring a motion of no confidence in the government of Saint Christopher and Nevis before a National Assembly, pursuant to section 52 (6) of the Constitution of Saint Christopher and Nevis;

2. A declaration that the claimants and each of them are entitled as of right to move a motion of no confidence in the government of Saint Christopher and Nevis before a National Assembly pursuant to section 52 (6) of the Constitution of Saint Christopher and Nevis;

3. A declaration that the first defendant as Speaker of the National Assembly, was obliged to take prompt and reasonable steps to ensure that the motion of no confidence is scheduled debated and voted on without undue delay and within a reasonable time of the motion being handed to the Clerk, or sent, or left at the Clerk's office;

4. A declaration that the claimants' right to bring and or move a motion of no confidence in the government of Saint Christopher and Nevis had been violated by the failure of the Speaker to schedule the motions of no confidence in the government of Saint Christopher and Nevis, sent to, and or left at the office of the Clerk on 11th December 2012 and 15th September 2014 for debate in the National Assembly;

5. A declaration that there is no reason for the court to make any declaration as to the insufficiency of the rules, or the need for the rules to be amended, as Standing Order 85 sets out the procedure for dealing with motions of no confidence.

6. An order that the defendants pay costs to the claimants, and each of them, such costs to be assessed if not agreed within 21 days of today's date.

[86] Counsel for the respective parties have provided me with well written and helpful submissions and authorities. I am grateful for their assistance.

Pearletta E. Lanns
High Court Judge [Ag]

By the Court

Registrar