THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

SLUHCV2017/0264

BETWEEN:

BARBARA VARGAS

Claimant

and

[1] ORGANISATION OF EASTERN CARIBBEAN STATES
[2] MAXINE ALEXANDER NESTOR

Defendants

Appearances:

Dexter Theodore QC for the Claimant
Renee St Rose for the First Defendant

2017: December 8th
2018: February 16th
March 5th

DECISION

[1] **Smith J**: The Claimant, Barbara Vargas, claims against the Organization of Eastern Caribbean States ("the OECS") and Maxine Nestor damages for breach of contract and defamation. Ms. Nestor was apparently never served with the claim form as she was not resident in the jurisdiction when the claim was filed. The claim and statement of claim was delivered and left at the headquarters of the OECS.

[2] The OECS, an international organization, filed an acknowledgement of service and then applied to the Court, under the Civil Procedure Rules 9.7 (1), for a declaration that the Court has no jurisdiction to try this claim against it since it enjoys immunity from suit and legal process.

[3] Ms. Vargas, in response to that application, contends that the applicable treaty, instruments and Acts, properly interpreted, do not provide the immunity from suit or legal process claimed by the OECS.

[4] The Court is therefore called upon to determine the nature and scope of the immunities and privileges enjoyed by the OECS in Saint Lucia. At the hearing of this application on 8th December 2017, the Court was able to shortly rule that it had jurisdiction to hear and determine the claim as to whether the OECS had breached its contract with Ms. Vargas since it had expressly waived any immunity from suit in that contract. The remaining issue of whether this Court has jurisdiction to try the defamation claim was adjourned to 31st January 2018. On that date, following a request for an adjournment by the OECS, the matter was rescheduled to 16th February 2018. On the 16th February 2018, the OECS requested that the hearing, which was scheduled for 9:00 a.m., be re-scheduled for the afternoon. The Court declined to reschedule the matter and the parties requested that the Court determine the matter on the basis of written submissions only.

Issues

[5] The broad issue which the Court must determine is whether the OECS enjoys immunity from suit or legal process in Saint Lucia. That broad issue encompasses the following specific issues:

(1) What is the scope of the immunity enjoyed by the OECS under and by virtue of the various instruments conferring immunity?

(2) Whether the OECS enjoys state immunity?

(3) Since, in the exercise of its legal personality, the OECS is represented by the Director General who is immune from the court's civil jurisdiction, is the OECS also immune from the Court's civil jurisdiction?

Scope of OECS Immunity

Revised Treaty of Basseterre

[6] The OECS was established by the **Revised Treaty of Basseterre Establishing the Organisation of Eastern Caribbean States Economic Union** ('the Treaty") as an international organization with legal personality. The treaty provides at section 21 that:

> "**ARTICLE 21: LEGAL PERSONALITY, PRIVILEGES AND IMMUNITIES**
>
> 21.1The Organisation, as an international organization, shall enjoy legal personality.
>
> 21.2 The Organisation shall have in the territory of each Member State –
>
> (a) The legal capacity required for the performance of its functions under this Treaty; and
> (b) Power to acquire, hold or dispose of real or personal, moveable or immoveable property.
>
> 21.3 In the exercise of its legal personality under this Article, the Organisation shall be represented by the Director-General.
>
> 21.4 The privileges and immunities to be granted to the members of the OECS Commission and to the senior officials of the Organisation at its headquarters and in the Member States shall be the same accorded to members of a diplomatic mission accredited at the headquarters of the Organisation and in the Member States under the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961. Similarly the privileges and immunities granted to the OECS Commission at the headquarters of the Organisation shall be the same as granted to diplomatic missions at the headquarters of the Organisation under the said Convention. Other privileges and immunities to be recognised and granted by the Member States in connection with the Organisation shall be determined by the OECS Authority."

[7] Section 21.4 of the Treaty therefore created privileges and immunities binding on its signatories in international law. The Treaty provisions are not enforceable in

Saint Lucia, however, unless given the force of law through local enactment. That basic point was made by Lord Templeman in the English House of Lords decision of **Arab Monetary Fund v Hashim and Others (No. 3)**[1]:

> "…when sovereign states enter into an agreement by treaty to confer legal personality on an international organization, the treaty does not create a corporate body. But when the AMF Agreement was registered in the UAE by means of Federal Decree No 35 that registration conferred on the international organization legal personality and thus created a corporate body which the English courts can and should recognize."

Organisation of Eastern Caribbean States Act

[8] Saint Lucia, as the host country and seat of the headquarters, could not recognize the OECS as an international organization having legal personality until that treaty was enacted into domestic law. With the passage of the **Organisation of Eastern Caribbean States Act** ("the Act"), the OECS became recognized in Saint Lucia as an international organization with legal personality. Again, as Lord Templeman explained in **Arab Monetary Fund**:

> "It seems to me that it would be unthinkable for the courts of the United Kingdom applying the principles of comity to reach any other conclusion. It will be observed that the reply of the Foreign and Commonwealth Office stipulates that the international organization for which recognition is sought must have acquired legal personality and capacity under the laws of one or more member states or the state wherein it has its seat or permanent location. This requirement is necessary because the courts of the United Kingdom cannot enforce treaty rights but they can recognize legal entities created by the laws of one or more sovereign states…There is every reason why the fund should be recognized as a legal personality by the courts of the United Kingdom and no reason whatsoever why recognition should be withheld."

[9] Section 3 of the Act provides as follows:

> "**3. Treaty and Protocol to have force of law**
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> The Treaty of Basseterre Establishing the Organisation of Eastern Caribbean States Economic Union and the Protocol of the Eastern Caribbean Economic Union to the Treaty of Basseterre Establishing the Organisation of Eastern Caribbean States Economic Union, the texts of which are set out in Schedule 1,

[1] [1991] 1 All ER 871

have the force of law in Saint Lucia."

[10] The conjoint effect of the Treaty and the Act is that the privileges and immunities granted thereunder are binding in international law and enforceable domestically in the courts of Saint Lucia.

[11] From article 21.4 of the treaty, it is clear that the immunities granted to the OECS Commission at the headquarters of the OECS shall be the same as those granted to diplomatic missions under the **Vienna Convention** ("the Convention"). It is therefore to the Convention that we must turn to discern the nature and scope of the immunities granted. In this regard, it is perhaps worthwhile to reproduce the remarks of Lord Sumption, in **Reyes v Al-Malki and another,**[2] in relation to the Convention:

> "[The Convention] has been perhaps the most notable single achievement of the International Law Commission of the United Nations. The text was the result of an intensive process of research, consultation and deliberation extending from 1954 to 1961. Draft articles were submitted to the governments of every member state of the United Nations, and were subject to detailed review and comment. Eighty one states participated in the final conference at Vienna in March and April 1961 which preceded the adoption of the final text. Since its adoption, it has been ratified by 191 states … As it stands, the Convention provides a complete framework for the establishment, maintenance and termination of diplomatic relations. It not only codifies pre-existing principles of customary international law relating to diplomatic immunity, but resolves points on which differences among states had previously meant that there was no sufficient concensus to found any rule of customary international law."

The Vienna Convention

[12] The relevant provisions of the Convention dealing with immunity are as follows:

> "Article 22
>
> 1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of mission.
> 2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or

[2] [2017] UKSC 61

damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving state shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 31

A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state. He shall also enjoy immunity from its civil and administrative jurisdiction …"

[13] What principles of construction should I bear in mind when seeking to interpret and apply the text of the Convention? Lord Sumption, in **Al-Malki**, also provided guidance on this:

> "It is not in dispute that so far as an English statute gives effect to an international treaty, it falls to be interpreted by an English court in accordance with the principles of interpretation applicable to treaties as a matter of international law…
>
> The primary rule of interpretation is laid down in art 31 (1) of the Vienna Convention on the Law of Treaties (1969):
>
> > 'A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'
>
> The principle of construction according to the ordinary meaning of terms is mandatory ("shall"), but that is not to say that a treaty is to be interpreted in a spirit of pedantic literalism. The language must, as the rule itself insists, be read in its context and in the light of its object and purpose. However, the function of context and purpose in the context in the process of interpretation is to enable the instrument to be read as the parties would have read it. It is not an alternative to the text as a source for determining the parties' intentions."

[14] Keeping these precepts in mind, I consider the effect of articles 22, 29 and 31 of the Convention. Article 22 is concerned with safeguarding the mission's inviolability from intrusion, damage, disturbance, search or execution. It does not speak to immunity from suit or legal process. Under the Treaty, the OECS

Commission at its headquarters in Saint Lucia enjoys the same immunities as that of a diplomatic mission under the Convention. There is therefore no difficulty in concluding that article 22 of the Convention does not provide the OECS with any immunity from suit or legal process.

[15] Similarly, article 29 concerns the inviolability of the person of the diplomatic agent from arrest or detention or any attack on his person, freedom or dignity. It does not address the question of immunity from jurisdiction.

[16] Article 31, however, specifically provides a diplomatic agent with immunity from both the criminal and civil jurisdiction of the receiving state. The Treaty is clear that the privileges and immunities to be granted to members of the OECS Commission shall be the same accorded to diplomatic agents under the Convention. Under article 12 of the Treaty, the OECS Commission includes the Director-General. The Director-General is therefore accorded immunity from the civil and criminal jurisdiction of the courts of Saint Lucia. Article 31 does not however accord the OECS Commission immunity from the criminal or civil jurisdiction of the courts. Ms. St. Rose's argument, however, is that since, in the exercise of its legal personality, the OECS is represented by the Director-General, it follows that legal process could only have been served on the OECS through the Director-General whose person is inviolable and who enjoys immunity from suit therefore the OECS is immune from the jurisdiction of the court. We shall return to this argument later in the judgment. For the moment we shall continue our examination of various instruments that deal with the question of immunity of the OECS.

The Headquarters Agreement

[17] The OECS also relied on Article V of the **Agreement between The Government of St. Lucia, The Government of Antigua and Barbuda and The Organisation of Eastern Caribbean States regarding The Secretariat of the Organisation** ("the Agreement"). Article V of this Agreement is an immunity clause similar to

immunity clauses found in headquarters agreements for many other international organizations. It appears to be a standard provision protecting international organizations. So, for example, the Eastern Caribbean Central Bank and the Caribbean Examinations Council are protected by a similar provision. Article V of the Agreement provides that:

> "The secretariat and its property, wherever located and by whomsoever held shall enjoy immunity from every form of legal process except in so far as the Secretariat may have expressly waived its immunity in specific cases. It is however understood that no waiver of immunity shall extend to any measure of execution."

[18] The language of Article V is clear and unambiguous. The secretariat (now the OECS Commission) enjoys immunity from every form of legal process. The difficulty for the OECS, as submitted by Mr. Theodore, counsel for Ms. Vargas, is that the Agreement has not been enacted domestically in Saint Lucia and therefore, at best, it creates a binding obligation in international law on the part of the Government of Saint Lucia to implement domestically the obligations created in it. Until that has been done, the Agreement has no effect in Saint Lucia. I agree with that submission. It does not appear to be disputed that, in Saint Lucia, treaties are not self-executing and require legislation passed by Saint Lucia's parliament to bring them into force.

[19] The principles established in **Maclaine Watson & Co. Ltd. v Department of Trade and Industry**[3] is equally applicable in Saint Lucia given the supremacy of the Constitution of Saint Lucia, the doctrine of separation of powers and the exclusive power of the legislature to enact the laws of the land. In that case, the English House of Lords held that treaties to which the United Kingdom government is a party are not self-executing. Lord Templeman put it in fairly stark terms:

> "Those submissions, if accepted, would involve a breach of the British constitution and an invasion by the judiciary of the functions of the government and of Parliament. The government may negotiate, conclude, construe, observe, breach, repudiate or terminate a treaty. Parliament may alter the laws of the United Kingdom. The courts must enforce those

[3] [1989] 3 All ER 523.

> laws; judges have no power to grant specific performance of a treaty or to award damages against a sovereign state for breach of a treaty or to invent laws or misconstrue legislation in order to enforce a treaty. A treaty is a contract between the governments of two or more sovereign states. International law regulates the relations between sovereign states and determines the validity, the interpretation and the enforcement of treaties. A treaty to which Her Majesty's government is a party does not alter the laws of the United Kingdom. A treaty may be incorporated into and alter the laws of the United Kingdom by means of legislation. Except to the extent that a treaty becomes incorporated into the laws of the United Kingdom by statute, the courts of the United Kingdom have no power to enforce treaty rights and obligations at the behest of a sovereign government or at the behest of a private individual."

International Organizations and Overseas Countries (Immunities and Privileges) Act

[20] The OECS relied on the 2015 Jamaican case of **Caribbean Examination Council v Industrial Disputes Tribunal & Gerard Phillip**[4] ("CXC") in which the High Court of Jamaica held that the decision of a labour tribunal against the CXC was quashed since it enjoyed international organization immunity. In that case, however, the Jamaican Diplomatic Immunities and Privileges Act empowered the minister to confer privileges and immunities on specified international organizations. Under that Act, an Order was promulgated which granted the Council immunity from every form of legal process, except where expressly waived. Article III (1) of the Order provided that: "The Council, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity…"

[21] In Saint Lucia, under section 3 of the **International Organisations and Overseas Countries (Immunities and Privileges) Act** ("International Organisations Act"), the Governor-General may, by order, provide that any international organization shall have, to such extent as may be specified in the order, the immunities and privileges set out in Part I of the Schedule. Section 1 of Part 1 of the Schedule

[4] [2015] JMSC Civ. 44

states: "Immunity from suit and legal process". It is not in dispute that the Governor-General of Saint Lucia has made no such order in relation to the OECS. The CXC case is therefore distinguishable from this case since the CXC could claim immunity under a specific order granting immunity. The Jamaican High Court could correctly conclude that: "The purpose of the Diplomatic Immunities and Privileges Act and the Order is clearly to grant an absolute immunity to the CXC from legal processes…" (underlining supplied). The OECS cannot claim similar immunity since, though the International Organisations Act exists, no order specific to the OECS has been by the Governor General as required by that Act.

[22] The OECS also sought to rely on 2014 case of **Charter Capital Limited v National Bank of Anguilla & Eastern Caribbean Central Bank**[5] in which it was held that the central bank enjoyed immunity from every form of the judicial process except where expressly waived. The Court held that the immunity was absolute and not subject to the discretion of the court. But once again, as in the CXC case, the immunity granted had a statutory underpinning. The agreement establishing the immunity for the Central Bank had been enacted into domestic law in Anguilla.

[23] Sir Denis Byron, CJ, in interpreting a similar provision in Grenada in **Capital Bank International Limited v Eastern Caribbean Central Bank and Sir Dwight Venner**[6] stated:

> "[6] The Eastern Caribbean Central Bank Law, 1983, Article 50, provides:
>
> "(1) To enable the Bank to fulfill the functions with which it is entrusted, the status, immunities and privileges set forth in this Article shall be accorded to the Bank in the territory of each Participating Government.
>
> (2) The Bank, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

[5] AXAHCV2014/0036

[6] Grenada, Civil Appeal Nos 13 & 14 of 2002

> (3) Property and assets of the Bank shall be immune from search, requisition, confiscation, expropriation or any other form of seizure...
>
> (7) The Governor, the Deputy Governor, the appointed Directors, officers and employees of the Bank shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity."
>
> [7] The language is clear and unambiguous and the statutory intention unmistakable. The intent of section 50 is that the first respondent cannot be sued or be subject to any legal process unless it expressly waives the immunities and privileges and even if it does, its property, assets and archives are protected from execution."

[24] Once again, it is immediately apparent that the Treaty establishing the Eastern Caribbean Central Bank was enacted into domestic law in Grenada. The issue was therefore put beyond question. Absent this kind of enactment in Saint Lucia, the immunity conferred in the Agreement remains a binding obligation in international law for the state of Saint Lucia to enact domestically when – and if – it chooses to do so.

[25] Having examined the provisions of the Treaty, Act, Convention, Agreement and the International Organisations Act, I conclude that, without more, they do not confer on the OECS immunity from suit or legal process. The Agreement would have to be given the force of law through enactment in Saint Lucia, or, the necessary Order would have to be made under the International Organisations Act.

Can the OECS claim state immunity?

[26] The OECS also seemed to be claiming state immunity. It relied on the case of **Holland v Lampen-Wolfe**[7] in which the court held that a defamation claim could not succeed against the Defendant protected by state immunity.

[7] [2000] 3 All ER 833.

[27] It was Bingham J, in **Standard Chartered Bank v International Tin Council and Others**,[8] who declared that international organisations do not enjoy sovereign status at common law and accordingly they were not entitled to sovereign or diplomatic immunity, except where such immunity was granted by legislative instrument, and then only to the extent of such grant. He provided the following useful outline on the evolution of sovereign immunity:

> "Historically, the doctrine of sovereign immunity developed, in this country and elsewhere, with reference to personal sovereigns and sovereign states and governments. Diplomatic immunity grew up in parallel to protect the persons and the work of sovereigns' international agents. Cases arose in which claims to sovereign immunity were made by government departments and state-owned enterprises and provincial governments, but in each case the argument was whether the body in question shared the sovereign quality of the state which begat it."
>
> …..
>
> …the absolute doctrine of sovereign immunity grew up in reliance on a theory that sovereign states were characterized by what Marshall CJ in Exchange (Schooner) v M'Faddon (1812) 7 Cranch 116 described as 'perfect equality and absolute independence'. It followed from this that one sovereign would not insult the dignity or undermine the independence of another by seeking to assert jurisdiction over him. Whatever the merits of this doctrine as between personal sovereigns or sovereign states, it is not obviously apt to be applied to a body such as the ITC of which sovereign states are no more than members and whose own sovereign status is said to have a certain Cheshire cat quality. The ITC could scarcely be seen an enjoying perfect equality with the United Kingdom or the same absolute independence. It is not therefore to be assumed that the strict principles established by authority would have been applied in these different circumstances or that such application would in 1972 have been expected. Second, and perhaps more importantly, international organisations such as the ITC have never so far as I know been recognized at common law as entitled to sovereign status. They are accordingly entitled to no sovereign or diplomatic immunity in this country save where such immunity is granted by legislative instrument, and then only to the extent of such grant. In the present case, the ITC enjoyed such immunity as was granted by s 6(1) of the 1972 order, no more and no less."

[8] [1986] 3 All ER 257.

[28] Lord Brown-Wilkinson put it this way in **R v Evans and others, ex parte Pinochet (No. 3)**[9]:

> "State immunity probably grew from the historical immunity of the person of the monarch. In any event, such personal immunity of the head of state persists to the present day: the head of state is entitled to the same immunity as the state itself. The diplomatic representative of the foreign state in the forum state is also afforded the same immunity in recognition of the dignity of the state which he represents. This immunity enjoyed by a head of state in power and an ambassador in post is complete immunity attaching to the person of the head of state in power and an ambassador in post is a complete immunity attaching to the person of the head of state or ambassador and rendering him immune from all acts or prosecutions whether or not they relate to matters done for the benefit of the state. Such immunity is said to be granted *ratione personae*."

[29] It is clear from those authorities that what international organizations enjoy is not sovereign or state immunity but rather organizational immunity. The nature and extent of that organizational immunity depends on the enactment conferring the immunity. The nature and extent of the organizational immunity that the OECS could be enjoying – but for the lack of the Governor-General's Order – is full immunity from suit and legal process.

Immunity of OECS through Director General?

[30] We now return to the question of whether the immunity of the Director-General covers the OECS in the circumstances of this case. One of the grounds of the OECS's application is that service of the claim form and statement of claim has not been effected on the OECS since it was left at the headquarters at the OECS and the legal personality of the OECS is only exercisable by the Director-General who is immune from any legal process. The Treaty indeed provides at article 21.3 that, in the exercise of its legal personality, the OECS shall be represented by the Director-General. In the preceding article 21.2, it is provided that the OECS shall have the capacity required for the performance of its functions under the Treaty and the power to acquire, hold or dispose of real or personal, moveable and immovable property. Given that context, if the OECS is expected to acquire or

[9] (1999) 6 BHRC 24.

dispose of property of any kind, it must be represented by an individual that has the authority to represent it and transact business on its behalf in much the same way as a director of a company executes transactions on behalf of a company. Should article 21.3 be interpreted to mean that any service of legal process upon the OECS must be effected through service on the Director-General personally?

[31] Mr. Theodore submitted that the right of the Director-General to represent the OECS in the exercise of its legal capacities does not include the exclusive right to receive service. His argument draws an analogy with corporations in Saint Lucia and is as follows: a body corporate under the **Civil Code** of Saint Lucia has various capacities none of which relate to service of process; the capacity to sue and be sued does not confer powers to receive or effect service but rather jurisdiction of the court over the body corporate; service, in contrast, relates to the process for obliging a person who, because of his legal capacity is a party to a suit, to appear in court, and is governed by rules of procedure; due to the character of a corporation, the personal service rule cannot apply and therefore rules for service that are particular to bodies corporate are prescribed; as an entity with legal personality, the OECS is subject to the rules governing service. He makes the further point that, under article 320 of the **Civil Code**, officers of a corporation are conferred with the authority to represent the corporation in the exercise of its legal capacities (just as the Director-General for the OECS), yet service of legal process on the corporation does not have to be effected through personal service on the officers.

[32] Ms. St. Rose's rebuttal was as follows: by virtue of the Treaty, the OECS's legal personality is only exercised through the Director-General and therefore the OECS is not to be treated as a body corporate with a general legal personality; since the Director-General is accorded immunities it was not necessary to accord the OECS who does not have separate legal personality any immunities separate from those accorded to the Director-General; the analogy drawn with corporations is misplaced since the OECS is not a corporation.

[33] There are some difficulties, as I see it, with the OECS's argument. Firstly, the Treaty states in clear, positive and absolute terms that the OECS shall enjoy legal personality. I interpret that to mean that it shall enjoy its own separate legal personality. Secondly, when the Treaty goes on to say that, in the exercise of its legal personality, the OECS shall be represented by the Director-General, that is not tantamount to saying that the OECS's legal personality shall be that of the Director-General. If the OECS is to carry out its functions it must be able to have an individual who can sign documents on its behalf. Having a representative is the unavoidable corollary of the legal fiction of according legal personality to organizations and corporations. But it does not mean that the OECS's legal personality becomes indivisible or indistinguishable from that of the Director-General like some kind of holy trinity. Thirdly, there is persuasive force in Mr. Theodore's analogy that a corporation, like the OECS, enjoys its own legal personality separate from that of its directors who represent it in its various legal capacities.

[34] I remind myself that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. The OECS contends that since the Director-General is accorded immunities it was not necessary to accord the OECS who does not have separate legal personality any immunities separate from those accorded to the Director-General. That argument seems to fly in the face of article 21.4 of the Treaty, which affords privileges and immunities to the OECS Commission (akin to those of diplomatic missions) separate from those accorded to members of the OECS Commission (akin to those of members of a diplomatic mission). The intention seems to be that the OECS and its members enjoy separate and distinct privileges and immunities.

[35] This intention behind the Treaty would appear to be buttressed by the fact that, in Saint Lucia, the privileges and immunities of diplomatic agents are conferred

under the **Diplomatic and Consular Services (Immunities and Privileges) Act**, while the OECS, as an international organization, could enjoy its immunities and privileges under a separate Act: **International Organisations and Overseas Countries (Immunities and Privileges) Act**. As already seen above, this Act provides for immunity from legal process for international organisations declared, by order of the Governor General, to be so immune. No such order has been made in respect of the OECS.

[36] I am therefore not persuaded that service of legal process on the OECS could only have been effected through personal service on the Director-General. If that were indeed the finding, it is perhaps arguable that personal service on the Director General would be a violation of his person. But since that is not the finding of this Court, we need go no further on that.

[37] Strictly speaking, the OECS did not seek any declaration from the Court that proper service was not effected on the OECS. What the OECS sought was a declaration that the Court had no jurisdiction to try the claim. The question of whether the OECS was properly served is a separate one from the question of whether this Court has jurisdiction to try a defamation claim against the OECS, assuming it is properly served. The point was made by Lord Sumption in the **Al-Malki** case when he said:

> "The present question is whether there is an immunity from service, or from certain modes of service, implicit in the inviolability of a diplomat's person and private residence. This immunity is distinct from an additional to his immunity from jurisdiction."

[38] While the question of service of legal process on the OECS at its headquarters arose in the arguments as to jurisdiction, I feel unable to make any finding, in this particular application, as to whether there was proper service of process on the OECS. I am prepared to accept that **Al-Malki** is good authority for the proposition that delivery by post of a claim form at a diplomatic mission or residence does not violate the immunity of the mission or residence. As Lord Sumption put it:

> "The mere conveying of information, however unwelcome, by post to the defendant, is not a violation of the premises to which the letter is delivered. It is not a trespass. It does not affront his dignity or affect his right to enter or leave or use his home."

[39] In the case at bar, however, service was not by post. The claim was delivered at the headquarters of the OECS. I am not aware of the manner of the delivery of the claim or who delivered it. The Court was not addressed on these matters. I therefore make no finding on whether there was proper service on the OECS.

Disposition

[40] Based on the conclusions reached above, I therefore make the following orders;

(1) The Defendant's Application for a Declaration that the Court has no jurisdiction to try this defamation claim is refused.

(2) Costs shall be in the Cause.

Godfrey P. Smith SC
High Court Judge

By the Court

Registrar