

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

GRENADA

GDAHCVAP2016/0038

BETWEEN:

THE ATTORNEY GENERAL OF GRENADA

Appellant

and

FINANCIAL INVESTMENT & CONSULTANCY SERVICES LTD.

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste
The Hon. Mde. Gertel Thom
The Hon. Mr. Paul Webster

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Thomas Astaphan, QC with him Mr. Dwight Horsford, Solicitor General
and Ms. Marissa Johnson, Crown Counsel for the Appellant
Mr. James Bristol for the Respondent

2017: April 7;
2018: April 18.

Civil appeal – Interlocutory appeal – Provisional attachment of debt – Enforcement of judgment against the Crown by way of attachment – Rules 50 and 59 of the Civil Procedure Rules 2000 and section 21(4) of the Crown Proceedings Act, Cap. 74 of the Laws of Grenada – Principle upon which a Court of Appeal will hear constitutional point – Absence of judge’s reasons for decision — Whether the Government of Grenada can contract out of or waive its immunity from execution against its property granted by rules 50.2(3) and 59.7(1) of the Civil Procedure Rules 2000 and section 21(4) of the Crown Proceedings Act

Between 2001 and 2004 the Government of Grenada issued bonds to the respondent and other persons to secure the repayment of monies advanced to the Government. The bonds were issued pursuant to a trust deed dated 7th November 2001 between the Government and the National Commercial Bank of Grenada (“The Trust Deed”). By

clause 7.03 of the Trust Deed the Government agreed to waive immunity from execution against its property. The trustee was empowered to enforce the terms of the bonds in the event of default in repayment by the Government. The Government defaulted on the repayments to the respondent and on 21st May 2015, the respondent obtained a judgment in default against the Permanent Secretary in the Ministry of Finance for the sum of \$3,807,073,00 plus interest at 6% per annum (“the judgment debt”). On 9th March 2016, the learned judge granted an order of mandamus ordering the Permanent Secretary in the Ministry of Finance to pay the judgment debt to the respondent.

The Government did not comply with the order of mandamus and the respondent filed two applications in the High Court against the appellant. In the first application, the respondent applied, without notice to the appellant, for a provisional attachment of debts order under rule 50 of the Civil Procedure Rules 2000 (“CPR”). The learned judge made the provisional order and directed a further hearing inter partes on 15th December 2016.

The second application was for an order committing the Permanent Secretary in the Ministry of Finance to prison for his failure to comply with the terms of the order of mandamus. On 20th July 2016, the Government made a part-payment of \$403,252.00 on account of the judgment debt. On the same day, the learned judge made an order on the committal application directing the Government to liquidate the balance of the judgment debt within one year.

The appellant was granted leave to appeal against the Provisional Attachment Order. The main complaints of the appellant are that the learned judge erred in law and misdirected herself in: (a) granting the Provisional Attachment Order without considering provisions for the Crown’s rights under CPR rules 50.2(3), 59.7(1), and 21(4) of the Crown Proceedings Act (“the CPA”); (b) making the provisional attachment order having already made the order of mandamus for payment of the judgment debt; and (c) making a provisional attachment order on the same day as making an order for the liquidation of the judgment debt in one year in the committal proceedings. Further, the appellant disputed the respondent’s right to raise a constitutional point for the first time on appeal.

Held: dismissing the appeal and awarding to the respondent 80% of its costs to be assessed if not agreed within 21 days of the date of this order, that:

1. The attachment of debts provisions in rule 50.1(1) of the CPR do not, by virtue of rules 50.2(3) and 59.7(2), apply to the payment of debts due or accruing due from the Crown and such debts are immune from execution. Section 21(4) of the CPA is to the same effect.
2. The immunity provided by the CPR and the CPA is not absolute and can be waived by the Crown. The Crown and its officers are the sole

beneficiaries of the immunity and the Crown can contract out of or waive its right to the restriction against enforcement contained in the rule and the section. By agreeing to clause 7.03 of the Trust Deed the Crown expressly waived its right to rely on the immunity that it enjoys from execution against its property by the bondholders.

Rules 50.1(1), 50.2(3), 59.7(1), 59.7(2) of the **Civil Procedure Rules 2000** applied; Section 21(4) of the **Crown Proceedings Act**, Cap. 74 of the Laws of Grenada considered; **Guardians of the Poor of Salford Union v Dewhurst** [1926] AC 619 considered; **Aribisala v St James Homes (Grosvenor Dock) Ltd** [2007] EWHC 1694 (Ch) applied; **Wilson v McIntosh** [1894] AC 129 applied; **Bahamas Oil Refining Company International Ltd. v the owners of the Cape Bari Tankschiffahrts GMBH & Co KG** [2016] UKPC 20 followed; **Gairy (Jennifer) v The Attorney General of Grenada** (1999) 59 WIR 174 followed.

3. This Court does not have jurisdiction to entertain an appeal on a constitutional point unless it has been dealt with in the High Court. The point can only be considered by this Court by way of appeal from the lower court's decision. There is no transcript or evidence of what transpired in the lower court and therefore no way to determine if the issue was even raised. Further, there is no counter-notice of appeal by the respondent to the effect that this is an additional ground for upholding the learned judge's decision and there is no decision by the learned judge on this issue from which to appeal.

Walker and another v R [1994] 2 AC 36 applied.

JUDGMENT

- [1] **WEBSTER JA [AG.]**: This appeal considers the issue whether the Government of Grenada can contract out of or waive the immunity from execution against its property granted by rules 50.2(3) and 59.7(1) of the **Civil Procedure Rules 2000** ("CPR") and section 21(4) of the **Crown Proceedings Act** ("CPA").¹

¹ Cap. 74, Laws of Grenada.

Background

- [2] On 9th March 2016, the learned judge granted an order of mandamus ordering the Permanent Secretary in the Ministry of Finance to a pay to the respondent the sum of \$3,807,073.00 plus interest at 6% per annum, being the amount of a judgment obtained by the respondent against the Permanent Secretary on 21st May 2015 (“the judgment debt”). There is no appeal from this order although there was an appeal against the learned judge’s decision to dismiss the appellant’s preliminary objection to the hearing of the application for an order of mandamus. That appeal was dismissed in a judgment delivered by this Court on 13th March 2018.²
- [3] Following the grant of the order of mandamus the respondent filed two applications in the High Court against the appellant. In the first application the respondent applied without notice to the appellant for a provisional attachment of debts order under CPR 50. The learned judge granted the Provisional Attachment Order on 22nd July 2016. The provisional order had the effect of attaching in the hands of the named garnishees monies due and accruing to the Government in order that such sums be made to answer the judgment debt. The provisional order directed a further hearing inter partes on 15th December 2016.
- [4] The second application was for an order committing the Permanent Secretary in the Ministry of Finance to prison for his failure to comply with the terms of the order of mandamus. On 20th July 2016, the Government made a part payment of \$403,252 on account of the judgment debt. On 22th July 2016, the same day as the Provisional Attachment Order, the learned judge made an order on the committal application directing the Government to liquidate the balance of the judgment debt within one year which effectively meant by 22nd July 2017.

² Permanent Secretary of the Ministry of Finance v Financial Investment Consultancy Services Ltd GDAHCVAP2016/0001 (delivered on 13th March 2018, unreported).

[5] On 29th November 2016, a single judge of this Court extended the time for applying for leave to appeal and granted leave to appeal against the Provisional Attachment Order.

[6] The learned judge did not give reasons for her decisions and, as in the related appeal about the preliminary objection to the mandamus order,³ this Court must decide the issues in this appeal de novo without the benefit of the judge's views.

The appeal

[7] The notice of appeal lists the following grounds of appeal:

- (1) The learned judge erred in law and misdirected herself entirely in granting the provisional garnishee order without having regard to the provisions of CPR 59.7(1) which expressly removes attachment of debts proceedings from money judgments against the Crown. The learned judge thereby made the garnishee order without the relevant jurisdiction to do so.
- (2) The judge erred in law and misdirected herself in making the provisional garnishee order having already made an order of mandamus on 9th March 2016 to secure payment of the judgment debt.
- (3) The judge erred in law and misdirected herself in making the provisional garnishee order on 22nd July 2016 in circumstances where the court on the same day in the committal proceedings made an order for the liquidation of the judgment debt by a specific date in 2017.

³ Ibid.

- (4) The judge erred in law and misdirected herself entirely in granting the attachment order in all circumstances.

Issues

[8] The issues that arise from the grounds of appeal and counsels' submissions are:

- (a) The Crown's rights under CPR 50.2(3) and 59.7 and section 21(4) of the CPA and the effect of waiver on those rights (ground 1).
- (b) The timing of the Provisional Attachment Order (grounds 2 and 3).
- (c) The constitutionality of section 21 of the CPA.

Issue 1 – CPR 50.2(3) and 59.7(1) and section 21(4) of the CPA and the effect of waiver

[9] In addressing the first issue, lead counsel for the appellant, Mr. Thomas Astaphan, QC, submitted that the learned judge erred in law and misdirected herself when she granted the Provisional Attachment Order without having regard to the provisions of CPR 50.2(3) and 59.7(1). The combined effect of these two parts of the CPR is that an order for attachment of debts cannot be made against the Crown and the learned judge acted without jurisdiction when she made the attachment order. Further, that section 21(4) of the CPA is to the same effect as CPR rules 50.2(3) and 59.7(2) in that it creates a statutory duty and an ouster of the court's jurisdiction. The individual and conjoint effects of the CPR provisions and section 21(4) is that the appellant cannot contract out of or waive their effect.

[10] CPR Part 50 deals with attachment of debts and provides a procedure by which a judgment creditor can obtain payment of all or part of a judgment debt from a

person who owes the judgment debtor money.⁴ However, rule 50.2(3) provides that “An attachment of debts order may not be made to attach debts due from the Crown”. This is clear enough and the rule means what it says – Crown debts cannot be attached. Rule 50.2(3) is reinforced by CPR Part 59 which deals with proceedings by and against the Crown. Rule 59.7(1) under the heading “Enforcement against Crown” provides that “Parts 44 to 53 do not apply to any order against, or money due or accruing due, or alleged to be due or accruing due from the Crown”.

[11] Section 21(4) of the CPA was not raised by the appellant in his grounds of appeal. The section was raised by counsel for the respondent, Mr. James Bristol, in his written and oral submissions to the effect that insofar as the section provides Crown immunity from execution it is unconstitutional. I will deal with the constitutional point later in this judgment. Unsurprisingly, Mr. Astaphan, QC raised the other point relating to section 21(4), mainly in his oral submissions, that section 21(4) is to the same effect as CPR 50.2(3) and 59.7(2) in that it creates a statutory duty and an ouster of the court’s jurisdiction, and the appellant cannot contract out of its effect. Section 21(4) is set out in paragraph 14 below.

[12] Mr. Bristol did not dispute that the effect of CPR 50 and 59 and section 21(4) of the CPA is that money due or owing from the Crown cannot be attached. However, he submitted that the immunity provided by these provisions does not apply in this case because the Crown had expressly waived its right to rely on the immunity provided by the provisions. The waiver was first raised by the respondent in the affidavit of Lorne Theophilus filed in the proceedings in the High Court on 13th July 2016 in support of the application for the attachment order. Mr. Theophilus deposed that the Government had issued bonds to the respondent in 2001 and 2004. The bonds were issued pursuant to a trust deed

⁴ Rule 50.1(1).

dated 7th November 2001 between the Government of Grenada as the issuer of the bonds and the National Commercial Bank of Grenada as trustee (“the Trust Deed”). By clause 7.03 of the Trust Deed the trustee was empowered to enforce the terms of the bonds in the event of a default by the Government. The waiver is contained in clause 7.03 under the heading “Sovereign Immunity” as follows:

“The Government shall not be entitled to claim or otherwise be accorded for itself or its property, assets or revenues immunity from suit or attachment (whether in aid of execution, before judgment or otherwise) or other legal process, and to the extent that there may be attributed to the Government, or its property, assets or revenues such immunity (whether or not claimed) the Government hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the fullest extent permitted by the law.”

The respondent, as a bondholder, was not a party to the Trust Deed but there was no suggestion or submission by the appellant that the respondent could not rely on clause 7.03 to say that the appellant had waived its right to rely on the protection given to the Crown by the immunity provisions.

- [13] The issue of waiver resurfaced in the respondent’s written submissions in response to the appellant’s case that CPR 50 and 59 were a complete bar to any enforcement action against the Crown. The respondent submitted that the effect of clause 7.03 is that the Government had waived its right to immunity from execution of the judgment debt.

Discussion

- [14] In considering the issue of waiver as it arises in this case, I will deal firstly with section 21(4) of the CPA and then apply my findings to the relevant provisions of the CPR. Section 21(4) reads:

“Save as aforesaid no execution or attachment or process in the nature thereof shall be issued out of any court for enforcing payment by the Crown of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Crown, or in a ministry or government department, or any officer of the Crown as such, of any such money or costs.”

[15] It is common ground between the parties that section 21(4) of the CPA creates a statutory scheme for the protection of the Crown's property from execution. The disputed issues are whether the section, on a proper construction, allows the Crown to waive that immunity and, if so, whether the Crown, by signing the Trust Deed containing clause 7.03, actually waived its immunity.

Construction of section 21(4) of the CPA

[16] Useful guidance on how the courts should approach the issue of waiver, and by extension the construction of the relevant statutory provision (in this case section 21(4)), can be found in many cases and texts. I relied mainly on the text that was cited by both counsel, **Bennion on Statutory Interpretation**,⁵ for the general principles. The principle that is common to all issues of waiver is that the relevant statutory provision must be carefully examined to determine the intention of Parliament. On the one hand, if the provision states that waiver is not possible, that is the end of the matter and the right or duty that is created cannot be waived. That situation does not apply in this case because section 21(4) does not make reference to any issue of waiver.

[17] The more common situation and the one that applies in this case is where the provision does not make reference to waiver and it becomes necessary to construe the provision carefully to determine if Parliament intended to rule out waiver. There are several general principles of construction that obtain in this situation. I will deal with only those that are immediately relevant to this appeal.

[18] The first situation is where the statute creates a public duty for the benefit of a wide or diverse group of persons. Generally, this duty cannot be waived by private agreement by any of the persons entitled to the benefit of the duty. The learned editors of **Bennion** describe this principle in the following terms:

“Where a person is entitled by virtue of legislation to the performance of a duty by another person, and the case is within the principle *“pacta privata*

⁵ 5th edn., Butterworths Law, 2007.

juri publico derogare non possunt (a public right is not overridden by the agreements of private persons), then the person under the duty cannot effectively contract out of performing it and the beneficiary cannot effectively waive its performance.”

This principle was applied by the House of Lords in **Guardians of the Poor of Salford Union v Dewhurst**.⁶ A compulsory scheme for providing superannuation pensions for poor law officers and servants was established by the Poor Law Officers' Superannuation Act, 1896. Obligatory pensions were payable by the guardians and by the officers and servants. The pensions were expressly made inalienable, but there was no express provision against contracting out. It was held by the majority of the House of Lords that upon the construction of the Act it was not open either to the guardians or to their officers or servants to contract themselves out of the statutory obligations and rights respectively imposed or conferred upon them by the Act.

[19] This case is a good example of a statute that does not make specific provision for contracting out but, on a proper construction of the Act, even the beneficiaries could not contract out of the statutory pension scheme. The guardians were under a public duty to provide the pension scheme and that duty could not be waived by any private agreement with the beneficiaries.

[20] Another situation where waiver is generally not permitted is where a statutory provision confers jurisdiction on the courts and that jurisdiction necessarily involves interference with contractual rights agreed between the parties and it would be inconsistent “... for the legislature at the same time to allow for the parties to contract out of that interference”. This quotation is taken from **Aribisala v St James Homes (Grosvenor Dock) Ltd**,⁷ the case that is cited in **Bennion** for the proposition. However, this case is distinguishable from the present appeal. The statute in question conferred jurisdiction on the courts to

⁶ [1926] AC 619.

⁷ [2007] EWHC 1694 (Ch) at para. 36..

give relief to a purchaser of land where no such relief was available by statute. In my opinion, section 21(4) does not confer jurisdiction on the courts to restrict the enforcement of judgments against the Crown. Rather, the section takes away jurisdiction that would otherwise be available to a judgment creditor to enforce his judgment against the Crown.

[21] **Bennion** also makes reference to the criminal law and the fact that accused persons should not be able to effectively waive procedural requirements that are in the law for their protection.

[22] The issue that appears to come closest to the issue in this appeal is where the statute in question confers rights on a party as opposed to the public duties. In this situation the court is far more likely to find that the right conferred by the statute can be waived by the person entitled to its benefit. Mr. Bristol relied on **Bahamas Oil Refining Company International Ltd. v the owners of the Cape Bari Tankschiffahrts GMBH & Co KG (“Cape Bari”)**⁸ and **Wilson v McIntosh**⁹ to support this position.

[23] In **Wilson v McIntosh**, the appellant was found to have waived his right by conduct to object to a caveat which had lapsed pursuant to section 23 of the Real Property Act of New South Wales. The decision of the Board is consistent with the general principle that a man may, by his conduct, waive a provision in a statute that is intended for his benefit.

[24] The Privy Council came to a similar conclusion in **Cape Bari**. The vessel “Cape Bari” collided into and damaged a berth at port facilities owned by the appellant. The owners of the vessel sought to limit their liability relying on the Merchant Shipping (Maritime Claims Limitation of Liability) Act 1989 which incorporated into Bahamian law the Convention on Limitation of Liability for

⁸ [2016] UKPC 20.

⁹ [1894] AC 129.

Maritime Claims 1976 which limited the liability for damage caused to the appellant's port facilities. Prior to the collision the owners of the vessel had entered into an agreement with the appellant which had the effect of contracting out of the limitation of liability contained in the 1976 Convention thereby exposing them to liability on the full amount of any damage caused to the appellant's berthing facility. On appeal to the Privy Council the Board found that upon a proper construction the 1976 Convention conferred rights on the ship-owners, not duties, and it was permissible for the owners of the Cape Bari to contract out of or waive their statutory right to limitation under the 1989 Act and the 1976 Convention. The opinion of the Board was delivered by Lord Clarke who adopted the dictum of Lord Justice Davey in **Wilson v McIntosh** when he stated at paragraph 23:

“The conclusion that the Board has reached is consistent with the general principle that ‘a man may by his conduct waive a provision of an Act of Parliament intended for his benefit’: *Wilson v McIntosh* [1894] 129 at 133-134.”

[25] Upon my review of the authorities and the learning in **Bennion**, I am satisfied that on a proper construction section 21(4) of the CPA created a right for the Crown to resist any attempt by a judgment creditor to enforce payment of a judgment debt. The section did not create a duty for the Crown or the judgment creditors to do anything. The Crown and its officers were the sole beneficiaries of the right created by the section and it could contract out of or waive its right to the restriction against enforcement contained in section 21(4).

[26] This finding is sufficient to dispose of the issue whether the Crown can contract out of the restriction in section 21(4). For completeness, I should add that I came to the same conclusion applying a purposive construction to section 21(4) which is set out in the following paragraphs.

[27] From as early as 1947, when the Crown Proceedings Act was passed in England, it was recognised that the Crown no longer enjoyed the position of immunity from suit that it had enjoyed historically.¹⁰ The Act itself is a recognition that the Crown in England, and in the states and territories of the Eastern Caribbean where the CPA was enacted in substantially the same terms as in England, now engages in commercial transactions and should not enjoy special privileges when it is participating in the world of commerce. This reality was recognised by the Privy Council in the appeal from this Court in **Gairy (Jennifer) v The Attorney General of Grenada**.¹¹

[28] The issuing of bonds by the Government of Grenada to secure funding was a pure commercial transaction. The Government needed funds at the turn of the millennium and it entered the market to obtain financing using the procedure of investment bonds. Potential investors or lenders would naturally have been concerned about their ability to recover their investment in the event of a default by the Government. A bar to execution would have been a serious hindrance to any investor. It is obviously for this reason that the Trustee of the bonds, representing the investors, would have insisted on the inclusion of clause 7.03 in the Trust Deed. It is idle to speculate at this stage but one can only wonder whether they would have purchased the bonds if the restriction in section 21(4) had remained in place.

[29] Why then should the Government be saddled with this impediment in negotiating and settling commercial transactions which are for its benefit and the people of Grenada. The ability to waive the restriction in section 21(4) is an obvious advantage to the Government as and when it becomes necessary to waive the restriction in order to achieve a beneficial result.

¹⁰ Permanent Secretary of the Ministry of Finance v Financial Investment Consultancy Services Ltd GDAHCVAP2016/0001 (delivered on 13th March 2018, unreported) at paras. 13 and 14.

¹¹ (1999) 59 WIR 174 at para. 29.

[30] Approaching the matter in this way, I am fortified in my view that the proper construction of section 21(4) of the CPA is that the Crown can waive the immunity provided by the section.

Rules 50.2(3) and 59.7(1) of the CPR

[31] The preamble to the CPR states that the Rules are made under section 7 of the **Supreme Court Order 1967** for regulating the practice and procedure in the Court of Appeal and the High Court. The Rules are subsidiary legislation. Rules 50.2(3) and 59.7(1) reflect the rights granted to the Crown by section 21(4) of the CPA. There is no suggestion that they create any rights that are different from or in addition to the right created by section 21(4). In fact, Mr. Bristol submitted, and I agree with him, that the Rules are supportive of the right granted to the Crown by section 21(4). Having found that the Crown can waive the right granted to it by the primary legislation, I have no hesitation in making the further finding that the Crown can contract out of or waive the rights granted to it by rules 50.2(3) and 59.7(1).

Clause 7.03 of the Trust Deed

[32] Clause 7.03 of the Trust Deed is set out above in paragraph 12. The clause is clear and unambiguous and presumably was signed by the Government after receiving legal advice. The deed reflects Government's understanding that it was waiving its rights under the immunity provisions in the CPA and the CPR. Counsel for the appellant has not suggested otherwise. This is sufficient to satisfy the third requirement for waiver that the Crown was aware that it was abandoning its right to insist on its immunity from execution in respect of any enforcement procedures arising out of the issuing and subsequent default on the bonds.

[33] I am satisfied that the Crown had the power to contract out of or waive the prohibition on execution against its property in section 21(4) and that it did so in

the clearest terms by agreeing to clause 7.03 of the Trust Deed. Accordingly, I would dismiss ground 1 of the notice of appeal.

Timing of the Provisional Attachment Order

[34] Grounds 2 and 3 of the notice of appeal deal with the apparent inconsistency in the orders made by the learned judge. As stated above, she made three orders relating to the payment of the judgment debt, namely:

- (a) on 9th March 2016 the order of mandamus ordering the appellant to pay the judgment debt (with no date for payment specified);
- (b) on 22nd July 2016 the Provisional Attachment Order with a return date of 15th December 2016 for the hearing of the application to make the order final; and
- (c) also on 22nd July 2016 a direction to the Government in the contempt application to pay the judgment debt within one year (by the 22nd July 2017).

[35] The timing of the hearing of the application to make the Provisional Attachment Order obviously conflicts with the time granted for payment of the judgment debt by the order made in the contempt proceedings. On 29th November 2016, the appellant was granted leave to appeal against the Provisional Attachment Order. On 5th December 2016, the appellant applied to this Court for a stay of the Provisional Attachment Order pending the determination of the appeal against the order. There is no evidence that this application was heard or that the Provisional Attachment Order was made final on the scheduled date of 15th December 2016, or at any other time.

[36] In the circumstances, I am satisfied that the appellant did not suffer any prejudice by the judge's orders on 22nd July 2016 and grounds 2 and 3 of the notice of appeal are also dismissed.

Constitutionality of section 21(4) of the CPA

[37] Mr. Bristol submitted that section 21(4) of the CPA restricts or reduces access to the courts and is a breach of a person's constitutional right to access to the courts and a fair hearing. The difficulty that I have in dealing with this submission is that the constitutional claim was not pleaded in the lower court and in the absence of a transcript of the hearing before the learned judge and/or affidavit evidence there is no way to tell if the issue was even raised. Further, there was no counter-notice of appeal by the appellant to the effect that this was an additional ground for upholding the learned judge's decision and there is no decision by the learned judge on the issue from which to appeal. It appears from the material before this Court that the point was first raised by counsel for the respondent in his submissions in opposition to the appellant's application for leave to appeal the attachment order filed on 25th November 2016. This being the case I accept the submission of counsel for the appellant that the situation is covered by the decisions of the Privy Council in **Walker and another v R**¹² and **Hunte and Khan v R**¹³ that the Court of Appeal does not have jurisdiction to entertain an appeal on a constitutional point. The point has to be dealt with by the High Court and can only be considered by the Court of Appeal by way of an appeal from the lower court's decision.

[38] It follows from my findings on grounds 1-3 and on the constitutional point that I would also dismiss ground 4 that the learned judge misdirected herself in granting the Provisional Attachment Order.

[39] In making the order for costs below I take into consideration that the respondent failed on the constitutional point

¹² [1994] 2 AC 36.

¹³ [2015] UKPC 33.

Order

[40] I would dismiss the appeal and award the respondent 80% of his costs to be assessed if not agreed within 21 days of the date of this order.

I concur.
Davidson Kelvin Baptiste
Justice of Appeal

I concur.
Gertel Thom
Justice of Appeal

By the Court

Chief Registrar