EASTERN CARIBBEAN SUPREME COURT

IN THE COURT OF APPEAL

ANTIGUA AND BARBUDA

ANUHCVAP2017/0003

BETWEEN:

THE SUPERVISORY AUTHORITY

Appellant/Applicant

and

[1] CRESSWELL OVERSEAS S.A.
[2] MEINL BANK (ANTIGUA) LTD.

Respondents

Before:

The Hon. Dame Janice M. Pereira, DBE	Chief Justice
The Hon. Mde. Gertel Thom	Justice of Appeal
The Hon. Mr. Paul Webster	Justice of Appeal [Ag.]

Appearances:

Mr. Anthony Armstrong, Director of Public Prosecutions, for the Applicant
Mr. Frank Walwyn appearing with Ms. Jacqueline Walwyn for the First Respondent
Mr. Loy Weste for the Second Respondent

2019: September 16;
October 30.

Application for conditional leave to appeal to Her Majesty in Council – Antigua and Barbuda Constitution Order – Section 122(1)(a) – Appeal as of right – Whether the appeal lies as of right pursuant to section 122(1)(a) of the Antigua and Barbuda Constitution Order – Section 122(2)(a) – Great general or public importance – Whether the appeal involves some question of great general or public importance or otherwise pursuant to section 122(2)(a) of the Antigua and Barbuda Constitution Order

The applicant brought this application by way of notice of motion for conditional leave to appeal to Her Majesty in Council pursuant to sections 122(1)(a) and 122(2)(a) of the Constitution of Antigua and Barbuda ("the Constitution"), against the decision of the Court

of Appeal on 4th July 2019 which dismissed the applicant's appeal and affirmed that the High Court had no jurisdiction to register and give effect to a Brazilian freezing order.

These proceedings started out as a diplomatic request from the government of Brazil to the government of Antigua and Barbuda for the registration of a Brazilian freezing order referred to as "the Moro Order". In accordance with the Brazilian government's request, the Supervisory Authority (the applicant herein) made an ex parte application to the High Court on behalf of the government of Antigua and Barbuda to register the Moro Order pursuant to section 27 of the Mutual Assistance in Criminal Matters Act ("MACMA"). The application was granted, and the Moro Order registered and given full effect in Antigua and Barbuda (this order shall be referred to as "the Registration Order").

The first respondent applied to have the Registration Order set aside, principally on the ground that the judge had no jurisdiction to register the Moro Order under section 27 of MACMA, as the section pertains only to orders originating from Commonwealth countries. The application was granted, and the Registration Order set aside for lack of jurisdiction. On appeal, the Court of Appeal considered whether there was jurisdiction to register the Moro Order pursuant to: (i) MACMA; (ii) the Money Laundering Prevention Act; (iii) a number of international treaties; and (iv) the Black Swan principle. The Court dismissed the applicant's appeal, and agreed that the judge had no jurisdiction on any of the bases alleged by the applicant.

The applicant, being dissatisfied with the decision of the Court of Appeal, now seeks to appeal further to the Privy Council. The applicant's motion for conditional leave to appeal is presented on the grounds that the proposed appeal is as of right in accordance with section 122(1)(a) of the Constitution of Antigua and Barbuda and, alternatively, that the questions raised in the appeal are of great general or public importance per section 122(2)(a) of the Constitution.

Held: dismissing the application and awarding costs on the application to the respondents to be assessed if not agreed within 21 days, that:

1. The value threshold under section 122(1)(a) of the Constitution must be considered in relation to the effect that the judgment on appeal has on the applicant's property or rights. In these proceedings, there was no question of the existence of a proprietary right held by the applicant or any question of the applicant's right of disposal over the money held in Meinl Bank. Neither were there any confiscation or condemnation proceedings at play either in Brazil or in Antigua and Barbuda. The applicant's stake in these proceedings was merely to secure the registration of the Moro Order and nothing more. The applicant's proposed appeal is therefore automatically precluded from proceeding as an appeal as of right under section 122(1)(a) of the Constitution. In any event, there is no indication that the proposed appeal, relates directly or indirectly to the money purported to be frozen by the Moro Order. In all the circumstances, therefore, the grant of leave to appeal on the basis of section 122(1)(a) would not be appropriate.

ECCO Inc. v Mega-Plex Entertainment Corporation SLUHCVAP2017/0032 (delivered 4th July 2019, unreported) distinguished; **Bank Crozier Limited (In Liquidation) and another v Garvey Louison Liquidator of Bank Crozier Limited** [2008] ECSCJ No.80 distinguished; **Jacpot Ltd v Gambling Regulatory Authority** [2018] UKPC 16 considered; **Macfarlane et al v Leclaire et al** [1862] UKPC 22 applied.

2. The Court of Appeal's finding was not, as the applicant suggests, that the treaties relied upon were not ratified. Rather, the Court found that the treaties were, in fact, ratified, but not in a way that could confer jurisdiction to register the Moro Order. The question of whether the treaties were ratified was strictly a matter of interpreting the Ratification of Treaties Act to determine whether the procedural requirements of the Act had been satisfied. By its very nature this question was eminently procedural and a simple matter of statutory interpretation, which does not give rise to an issue of great general or public importance.

   Pacific Wire & Cable Company Limited v Texan Management Limited et al British Virgin Islands HCVAP2006/019 (delivered 6th October 2008, unreported) followed; **Barbuda Enterprises Ltd v Attorney General of Antigua and Barbuda** (1993) 42 WIR 183 distinguished; **Mutual Life and Citizens' Assurance Co. Ltd. And Anor v Evatt** [1971] AC 793 considered.

3. The state's obligation to give legal assistance to foreign states is uncontroversial as it arises from the texts of treaties which have been signed, entered into force and ratified by resolutions of Antigua and Barbuda's sovereign parliament. The Court of Appeal did not in any way purport to comment on the state's obligations to non-Commonwealth countries, as these obligations were never in issue or dispute. Rather, the heart of the issue before the Court was whether the procedure contained in MACMA, for discharging those obligations, had been complied with. No question of great general or public importance can therefore arise in this regard as the Court of Appeal's decision raises no question on the existence of obligations on the part of the state to provide mutual legal assistance to non-Commonwealth countries – the issue was simply one of whether the procedure had been followed for that assistance to be given.

4. The failure of the Court of Appeal to expressly address the applicant's argument on comity of nations is, of itself, not sufficient basis for the referral of an appeal to the Privy Council. The applicant must go further to demonstrate that the argument, which was not addressed, had some real possibility of changing the end-result of the appeal if it were considered by the Court of Appeal or the Privy Council. The applicant has not furnished the Court with any authority to the effect that comity of nations is a legal basis for the registration of the Moro Order, notwithstanding that the court's jurisdiction in this regard is very carefully regulated by legislation which does not permit the exercise of that jurisdiction in these circumstances. In the absence of such authorities, the ineluctable conclusion is that the applicant has failed to meet the threshold required by section 122(2)(a).

Pacific Wire & Cable Company Limited v Texan Management Limited et al British Virgin Islands HCVAP2006/019 (delivered 6th October 2008, unreported) considered; **ECCO Inc. v Mega-Plex Entertainment Corporation** SLUHCVAP2017/0032 (delivered 4th July 2019, unreported) considered.

JUDGMENT

[1] **PEREIRA CJ**: This is a contested application for conditional leave to appeal to Her Majesty in Council against the decision of the Court of Appeal on 4th July 2019, dismissing the applicant's appeal and affirming that the High Court had no jurisdiction to register and give effect to a Brazilian freezing order.

[2] These proceedings started out as a diplomatic request from the government of Brazil to the government of Antigua and Barbuda for the registration of a Brazilian freezing order referred to as "the Moro Order". The Moro Order sought to freeze monies in a number of bank accounts pending the outcome of money laundering investigations by Brazilian anti-money laundering authorities. Among the monies which the Moro Order intended to freeze was a sum of $50,000,000.00 USD held by Cresswell Overseas S.A. at Meinl Bank (Antigua) Ltd. (the respondents herein).[1] In accordance with the Brazilian government's request, the Supervisory Authority (the applicant herein) made an ex parte application to the High Court on behalf of the government of Antigua and Barbuda to register the Moro Order pursuant to section 27 of the **Mutual Assistance in Criminal Matters Act**[2] ("MACMA"). The application was granted and the Moro Order registered and given full effect in Antigua and Barbuda.

[3] Upon receiving notice of the registration order, the first respondent ("Cresswell") applied to set aside the order giving effect to the Moro Order ("the Registration Order"), claiming principally that the judge had no jurisdiction to register the Moro Order under section 27 of MACMA, as the section pertains only to orders originating from Commonwealth countries. Cresswell further argued that MACMA sets out a specific procedure for the registration of orders from non-Commonwealth countries,

[1] Meinl Bank (Antigua) Ltd has not actively participated in this matter at any stage of the proceedings.
[2] Act No. 2 of 1993.

like Brazil; that the procedure had not been followed; and therefore, that the Moro Order ought not to have been registered. The application was granted and the Registration Order set aside for lack of jurisdiction.

[4] The applicant appealed. The Court of Appeal considered four jurisdictional questions arising from the applicant's notice of appeal and skeleton arguments. The Court considered whether there was jurisdiction to register the Moro Order pursuant to: (i) MACMA; (ii) the **Money Laundering Prevention Act**;[3] (iii) a number of international treaties; and (iv) the Black Swan principle. The Court dismissed the appeal, and agreed that the judge had no jurisdiction on any of the bases alleged by the applicant.

[5] The applicant, being dissatisfied with this result, now seeks to appeal further to the Privy Council. The applicant's motion for conditional leave to appeal is presented on the grounds that the proposed appeal is as of right in accordance with section 122(1)(a) of the **Antigua and Barbuda Constitution Order 1981**[4] (or "the Constitution") and, alternatively, that the questions raised in the appeal are of great general or public importance per section 122(2)(a) of the Constitution. I will address each ground in turn.

Appeal as of right

[6] Section 122(1)(a) reads:

> "An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases-
>
> (a) final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards…". (Underlining added)

[7] As stated by Rawlins CJ in **William Martin v Ursil Peters**,[5] the function of the Court of Appeal, when faced with an application for leave to appeal to the Privy Council, is

[3] Act No. 9 of 1996.
[4] Vol. 1 Revised Laws of Antigua and Barbuda 1992.
[5] Antigua and Barbuda Civil Appeal No. 36 of 2004 (delivered 17th September 2007, unreported).

to satisfy itself that the case is one in which a right of appeal exists and, if so satisfied, to consider the exercise of the power to impose conditions upon which the appeal shall proceed. For the applicant's proposed appeal to proceed as of right under section 122(1)(a), the applicant must therefore prove that the decision appealed against is a final decision in civil proceedings; and that either (i) the matter in dispute is of the prescribed value or more; or (ii) the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value.

Final decision in civil proceedings

[8] There is no dispute as to the nature of the proceedings – the proceedings are clearly civil proceedings instituted under part 72 of the **Civil Procedure Rules 2000** ("CPR"). This criterion is therefore uncontroversial.

[9] As regards the nature of the decision, the application test is used by this Court to determine whether a decision is final or interlocutory. The test is set out in CPR 62.1(3), which states that 'an order or judgment is final if it would be determinative of the issues that arise on a claim, whichever way the application could have been decided.' As the decision on appeal flowed from Cresswell's application to set the Registration Order aside, the question therefore is whether that set-aside application, whichever way decided, would have finally determined the issues on the claim.

[10] The applicant's claim in the High Court was for registration of a foreign freezing order in support of criminal money laundering proceedings, and for nothing more. The issue arising at that stage was whether the order ought to have been registered or not. When the Registration Order was made and the set-aside application filed, the issue between the parties became whether the order should be set aside for the reasons Cresswell submitted. It is clear that the set-aside order made in the Cresswell's favour was determinative of the issues on the claim as there were no extant legal issues between the parties, and no possible further step which could have been taken in the circumstances. Had the set-aside application been refused as prayed by the applicant, the position would have been the same, for the same

reason. In other words, the issues between the parties would have been finally determined whichever way the set-aside application was decided. The decision which the applicant proposes to appeal to the Privy Council is therefore a final decision.

The value threshold

[11] The prescribed value is set at $1,500.00 by section 122(5) of the Constitution.

[12] The respondents rely on **ECCO Inc. v Mega-Plex Entertainment Corporation**[6] and **Bank Crozier Limited (In Liquidation) and another v Garvey Louison Liquidator of Bank Crozier Limited**[7] arguing that 'the issue before the court did not have a monetary value' and therefore cannot satisfy the value threshold as an appeal as of right. This submission is untenable for at least two reasons. First, section 122(1)(a) is framed broadly to include not just the monetary value of a claim, but also the value of property or a right to which the appeal directly or indirectly relates. Second, the cases cited do not in any way support the submission. In **ECCO**, the Court concluded that the proposed appeal to the Privy Council could not proceed as an appeal as of right in accordance with section 108(1) of the **Constitution of Saint Lucia** (which is identical to section 122(1)(a) of the **Antigua and Barbuda Constitution Order 1981**) as the decision appealed was interlocutory, and not final. The question of the value threshold therefore did not arise as a matter of law. The Court's discussion of the value threshold in **ECCO** arose by way of comment, owing to the fact that the appellant's claim in the High Court was one for unliquidated damages. Webster JA [Ag.], cited the Privy Council decision **Zuliani and others v Veira**[8] for the proposition that:

> "…the statutory right to appeal under the equivalent provision of section 108(1) of the Saint Lucia Constitution must be strictly construed and an application for leave to appeal against an award of unliquidated damages does not meet the monetary threshold in the section."

[6] SLUHCVAP2017/0032 (delivered 4th July 2019, unreported).
[7] [2008] ECSCJ No.80.
[8](1995) 45 WIR 188.

[13] Webster JA [Ag.] therefore observed that even if the decision appealed were final, the value of the claim was incalculable as a claim for unliquidated damages and was not contemplated under section 108(1) of the **Constitution of Saint Lucia**.[9] That is the proposition for which **ECCO** may be cited, and for which **Zuliani** stands: that appeals arising from claims for damages which are incalculable or of an unliquidated value are generally excluded from proceeding as appeals as of right. This is the clear intention of parliament by placing a specific monetary value threshold within the Constitutional provisions which speak to appeals as of right. It is not that only claims with a monetary value may give rise to an appeal as of right.[10] Similarly, **Bank Crozier Limited** may be cited with force for the proposition that claims for damages flowing from a breach of right are generally claims for damages which are unliquidated or incalculable, and therefore are not within the purview of the appeal as of right provisions. In sum, it is simply that neither **ECCO** nor **Bank Crozier Limited** support the submission made.

[14] The applicant submits that, in as much as the proceedings below concerned the registration of a freezing order affecting $50,000,000.00 USD of Cresswell's money, the appeal directly or indirectly involves a claim to or question respecting property. This is where the heart of the value threshold issue in this case rests. The applicant submitted the Privy Council decision of **Jacpot Ltd v Gambling Regulatory Authority**[11] which speaks directly to the assessment of the value threshold in relation to property under section 81(1)(b) of the Constitution of Mauritius. Section 81(1)(b) is identical in wording to section 122(1)(a) of the **Antigua and Barbuda Constitution Order**. On the question of the value threshold, the Board, after a brief analysis of two of its previous decisions in **Becker v Marion Corporation**[12] and **Meghji Lakhamshi & Brothers v Furniture Workshop**,[13] made the following remarks:

> "These decisions are authority for the propositions (i) that to pass the value threshold, it is not necessary for there to be a money claim; and (ii) that

[9] Cap. 1.01 Revised Laws of Saint Lucia 2013.
[10] See also Jacpot Ltd v Gambling Regulatory Authority [2018] UKPC 16, quoted at paragraph [14] herein.
[11] [2018] UKPC 16.
[12] [1977] AC 271.
[13] [1954] AC 80.

> where an appeal will determine the existence of a proprietary right or a proprietor's right of disposal over the property, there is an appeal as of right if the property's value exceeds the threshold."

[15] The statement in **Jacpot** must be read through the lens of the long-standing pronouncements of the Privy Council in **Macfarlane et al v Leclaire et al**[14] with respect to the approach to be taken to determining the value of property or rights. In **Macfarlane**, the Privy Council stated:

> "In determining the question of the value of the matter in dispute upon which the right to appeal depends, their Lordships consider the correct course to adopt is to look at the Judgment as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by an Appeal."

[16] The **Macfarlane** principle speaks to the party 'who seeks to relieve himself of [the effects of a judgment] by an appeal'. By this reference, **Macfarlane** is taken to require the question of value to be considered in relation to the effect of the relevant judgment on the applicant's property or rights.[15] Applying **Macfarlane**, the applicant's proposed appeal is automatically precluded from proceeding as an appeal as of right under section 122(1)(a). There was no question of the existence of a proprietary right held by the applicant or any question of the applicant's right of disposal over the money held in Meinl Bank. That was simply not the nature of the matter before the High Court. The applicant was merely acting as agent for the state of Antigua and Barbuda for the purpose of registering the Moro Order, and thereby providing legal assistance to the Brazilian government in accordance with the state's treaty obligations. Further, there were no confiscation or condemnation proceedings at play either in Brazil or in Antigua and Barbuda. As the respondents put it, the applicant's stake in these proceedings was merely to secure the registration of the Moro Order and nothing more. On this basis, I take the view that the proposed appeal ought not to proceed as of right under section 122(1)(a).

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[14] [1862] UKPC 22.

[15] This principle was repeated and affirmed in Allan v Pratt [1888] UKPC 47 and has been utilised by appellate courts across the Commonwealth in the determination of leave applications. See for Example Bill Chao Keh Lun v Don XIA [2004] HKCA 124 and Moller v Roy [1975] HCA 31.

[17] In any event, the common thread running through the cases which I have considered on the assessment of the value threshold under section 122(1)(a), and in particular the cases that speak to the assessment of the threshold in relation to property, is that the property under consideration, at all times, remained the subject of the appeal whether directly or indirectly. In this case, it has not been made clear that the proposed appeal is in any way still concerned with the sum of money which the Moro Order sought to have frozen. There is no mention of the money by either party in their submissions or in their arguments on appeal. The focus has entirely shifted to Antigua and Barbuda's ability to provide assistance to other states pursuant to international multilateral agreements or by virtue of comity between nations. The last formal mention made of the money was in a stay of execution order granted by the Court of Appeal on 27th March 2018, by which Meinl Bank was estopped from releasing money to Cresswell pending the determination of the appeal. Since the appeal was determined in February this year, and the stay of execution lifted, no application for interim injunctive relief has been made. In the absence of such an application, or any affirmative indication by the parties that the money is still within the jurisdiction, I have real doubts as to whether the appeal, at this stage, relates directly or indirectly to the money purported to be frozen by the order. I do not find it therefore to be satisfactory to grant leave on the basis of property which has some value, when there has been no suggestion that the property still exists in the form intended to be frozen by the Moro Order. In all the circumstances, the grant of leave to appeal on the basis of section 122(1)(a) is not, in my view, appropriate.

Great General or Public Importance

[18] The second limb of the application is made pursuant to section 122(2)(a) of the Constitution, which states:

> "Subject to the provision of section 44(8) of this Constitution, an appeal shall lie from a decision of the Court of Appeal to Her Majesty in Council with leave of the Court of Appeal in the following cases —
>
> (a) decisions in any civil proceedings where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council…"

[19] This Court has routinely had recourse to the guidance expressed in **Martinus Francois v The Attorney General**[16] when determining whether an appeal raises a question of great general or public importance. In **Martinus Francois**, Saunders JA said:

> "In construing the phrase 'great general or public importance', the Court usually looks for matters that involve a really serious issue of law; a constitutional provision that has not been settled; an area of law in dispute, or, a legal question the resolution of which poses dire consequences to the public."

[20] The applicant has set out in its motion, the following features of its proposed appeal that it says raises questions of great general or public importance:

(i) Whether certain international treaties which govern the rendering of mutual assistance between nations in relation to money laundering and/or organised crime and/or corruption are properly ratified within the jurisdiction of Antigua and Barbuda pursuant to section 3 of the **Ratification of Treaties Act**;[17] and,

(ii) Whether, notwithstanding the provisions of MACMA and the MLPA, Antigua and Barbuda is obliged as a matter of legal policy and/or public policy and/or the comity of nations to render mutual legal assistance to non-Commonwealth nations.

[21] As regards the first question, the treaties under consideration by the Court of Appeal were the United Nations Convention Against Transnational Organised Crime, the Inter-American Convention for Mutual Assistance in Criminal Matters, and the Inter-American Convention Against Corruption. I observe that the finding of the Court of Appeal was not that the treaties mentioned were 'not properly ratified… pursuant to section 3 of the Ratification of Treaties Act'. Quite differently, the Court found that the international treaties were properly ratified under the **Ratification of Treaties Act**,

[16] Saint Lucia Civil Appeal No. 37 of 2003 (delivered 7th June 2004, unreported).
[17] Cap. 364, Revised Laws of Antigua and Barbuda 1992.

but that they were not ratified in a way that could confer jurisdiction on Antigua's domestic courts to register the Moro Order. At paragraph 51 of the judgment, the Court of Appeal explained the effects of ratification under the various sections of the **Ratification of Treaties Act** and distinguished the ratification regimes under sections 3(1) and 3(2) on the one hand, and section 3(3) on the other hand. First, in relation to the procedural differences between the two regimes the Court said:

> "Under subsections (1) and (2) a treaty is ratified by the passage of an Act of Parliament (section 3(1)(a) and (b)) or by parliamentary resolution (section 3(1)(c)), whereas under subsection (3), a treaty is ratified 'by or under an Act of Parliament'."

[22] The Court then examined the substantive effect of both regimes of ratification, saying:

> "Ratification under subsections (1) and (2) results in a treaty's entry into force. In other words, the procedure set out in the subsections results in a treaty being recognised by the Government of Antigua and Barbuda as enforceable in international law as between Antigua and Barbuda (on the one hand) and other parties to the treaty (on the other hand). Accordingly, a treaty ratified in accordance with subsections (1) and (2) does not become part of the laws of Antigua and Barbuda but merely creates enforceable rights, powers and obligations between Antigua and Barbuda and the other parties to the treaty. Quite differently, ratification under subsection (3), as clearly indicated by the words of the subsection, results in a treaty becoming "enforceable as part of the law of Antigua and Barbuda". This process is elsewhere referred to as the incorporation or transformation of a treaty into domestic law. Put differently, the procedure set out in subsection (3) results in a treaty being made part of the domestic law of Antigua and Barbuda, thus creating enforceable rights, powers, and obligations within the legal system of Antigua and Barbuda."

[23] The Court found that the only evidence that the treaties were ratified under the Act was the passage of three resolutions of parliament.[18] These resolutions expressly stated that the treaties were ratified in accordance with section 3(1)(c) of the **Ratification of Treaties Act**. Accordingly, the Court held that the treaties had not

[18] Resolution Ratifying United Nations Convention Against Transnational Organized Crime S.I. No. 54 of 2002; Resolution of the House of Representatives Ratifying the Inter-American Convention on Mutual Assistance on Criminal Matters S.I. No. 15 of 2003; and Resolution Ratifying the Inter-American Convention Against Corruption S.I. No. 16 of 2003.

become part of the domestic law of Antigua and Barbuda and did not give the court jurisdiction to register the Moro Order.

[24] It is clear from the above, that the court's discussion on the effect of the treaties was a matter of interpreting the **Ratification of Treaties Act** to determine whether the procedural requirements of the Act had been satisfied and therefore whether the court could derive a registration jurisdiction from the treaties. This question is inherently not one of great general or public importance suited for determination by the Privy Council. In this regard, I align myself with the observation of Carrington JA [Ag.] in **Pacific Wire & Cable Company Limited v Texan Management Limited et al**,[19] that the Privy Council has, on several occasions, indicated its preference not to deal with questions of this nature. As Carrington JA [Ag.] observed: '…where the question to be decided on the proposed appeal is [eminently] procedural, this should be best left to the courts of the jurisdiction to decide'.

[25] Indeed, this is not a case in any way like **Barbuda Enterprises Ltd v Attorney General of Antigua and Barbuda**[20] where leave could properly be granted on the basis that the interpretation and application of legislation could have some draconian effect or serious implications for the public, for the simple reason that the procedural gateway to arriving at the end-result which the applicant seemed to desire (which is for the treaties to confer jurisdiction to register the Moro Order) is expressly set out in section 3(3) of the **Ratification of Treaties Act**. Borrowing from the language of **Mutual Life and Citizens' Assurance Co. Ltd. and Anor v Evatt**,[21] the issue before the Court was merely determining whether there had been compliance with the 'procedural niceties' of the **Ratification of Treaties Act**. In my view, the first question is, therefore by its very nature, eminently procedural and a simple matter of statutory interpretation, which does not give rise to an issue of great general or public importance.

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[19] British Virgin Islands HCVAP2006/019 (delivered 6th October 2008, unreported).
[20] (1993) 42 WIR 183.
[21] [1971] AC 793.

[26] The second question posed seeks to determine whether Antigua and Barbuda has an obligation to give legal assistance to non-Commonwealth countries by virtue of legal or public policy, or principles on comity of nations. In my view, there is really no need to refer to policy or any legal principles as the applicant suggested. The state's obligation to give legal assistance to foreign states is uncontroversial as it arises from the texts of the treaties which have been signed, entered into force and ratified by resolutions of Antigua and Barbuda's sovereign parliament. There is therefore no real dispute as to the existence of the state's obligations to provide this kind of assistance. Furthermore, the Court of Appeal did not in any way purport to comment on the state's obligations to non-Commonwealth countries, and rightly so, as these obligations were never in issue or dispute. Rather, the heart of the issue before the Court was whether the procedure contained in MACMA, for discharging those obligations, had been complied with. The second question presented therefore is moot as there was no issue of the existence of obligations on the part of the state to provide mutual legal assistance to non-commonwealth countries. The question was simply one of whether the procedure had been followed for that assistance to be given.

[27] The foregoing analysis has led me to the conclusion that the issues raised were matters of statutory construction in relation to the procedural requirements of the **Ratification of Treaties Act** and do not involve any difficult question of law having far-reaching implications for the members of the public or requiring clarification or the guidance of the Privy Council. This was a simple matter for the government of Antigua and Barbuda to take the appropriate steps, which its sovereign parliament has set out in MACMA, to permit it to properly give the mutual legal assistance it is obliged to give in accordance with its treaty obligations.

Reasonable doubts about the Court of Appeal's decision

[28] The applicant also argues that the proposed appeal falls within the exceptional category of cases which require consideration by the Privy Council because there are reasonable doubts about the correctness of the Court of Appeal's decision. In

particular, the applicant points to the fact that the Court of Appeal's judgment did not address its submission that principles on comity of nations were a basis upon which the Moro Order could be registered.

[29] This exceptional category of proposed appeals has been recognised by this Court in **Pacific Wire & Cable Company Limited v Texan Management Limited et al** and in **ECCO Inc. v Mega-Plex Entertainment Corporation**.[22] For this argument to succeed, an applicant is required to put in reasonable doubt the decision of the Court of Appeal which is the subject of the application. As regards the applicant's specific argument, I would say that a failure of the Court of Appeal to expressly address an argument is, of itself, not sufficient basis for the referral of an appeal to the Privy Council. In other words, it is not enough to show that the Court failed to expressly address an argument raised before it. Rather, the applicant must go further to demonstrate that the argument which was not addressed, had some real possibility of changing the end-result of the appeal if it were considered by the Court of Appeal or the Privy Council.

[30] On the facts of this application, the applicant would have to show that comity of nations is a legal basis for the registration of the Moro Order, notwithstanding that the court's jurisdiction in this regard is very carefully regulated by legislation which does not permit the exercise of that jurisdiction in these circumstances. The applicant has not furnished the Court with any authority to that effect. This is, to my mind, an insurmountable hurdle for the applicant. In the absence of such authorities, and having taken the view that the matter in the court below and before the Court of Appeal was mostly a matter of statutory construction, I am constrained to find that the applicant has failed to meet the threshold required by the section 122(2)(a).

[22] See also Attorney General of Trinidad and Tobago v Lennox Phillip et al, Trinidad and Tobago Civil Appeal No 155 of 2006.

Disposition

[31] For all the foregoing reasons, I would dismiss the application with costs to the respondents to be assessed unless agreed within 21 days.

I concur.
Gertel Thom
Justice of Appeal

I concur.
Paul Webster
Justice of Appeal [Ag.]

By the Court

Chief Registrar