

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 240 of 2023

BETWEEN:

[1] MICHAEL BELGRAVE

Applicant

and

[1] BRYAN LAWSON WEEKES

First Respondent

[2] JUDICIAL AND LEGAL SERVICES COMMISSION

Second Respondent

[3] MINISTER OF PUBLIC SERVICE  
CONSTITUTIONAL AND POLITICAL REFORM  
AND RELIGIOUS AFFAIRS

Third Respondent

[4] ATTORNEY GENERAL OF BELIZE

Fourth Respondent

**Appearances:**

Ms. Sharryn Dawson for the Applicant

Mr. Andrew Marshalleck SC for the First Respondent

Ms. Samantha Matute for the Second, Third and Fourth Respondents

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2023: November 2

2024: January 4  
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**JUDGMENT**

[1] **Nabie J.:** This is an application for permission to apply for judicial review of the decision of the Second and Third Respondent to appoint the First Respondent as a Judge of the Senior Courts of Belize without any proper due diligence and

investigation into the First Respondent's background, history and involvement in secreted offshore banking corporations.

- [2] The hearing of the application for leave was heard on 2 November, 2023. The Application for permission to apply for judicial review is hereby struck out for the reasons set out below.

### **BACKGROUND**

- [3] By Notice of Application filed on 27<sup>th</sup> April, 2023, the Applicant seeks permission to apply for judicial review and an urgent injunction. The application is supported by an affidavit of the Applicant filed on even date.

- [4] The Applicant is seeking several orders including inter alia:

- (1) An injunction to restrain the Judicial and Legal Services Commission (*hereinafter named "JLSC"*) and the Minister of Public Service, Constitutional and Political Reform and Religious Affairs (*hereinafter named "the Minister"*) from causing the First Respondent to be sworn in as a Judge until the JLSC clarifies certain issues regarding the First Respondent's association with certain entities.
- (2) Leave to challenge the decision of the Second, Third and Fourth Respondents to appoint the First Respondent as a Judge in Belize on the ground that there was no proper due diligence investigation into the First Respondent's background, history and involvement in secreted offshore banking companies.
- (3) An order of certiorari to quash the decision of the Second and Third Respondents to appoint the First Respondent as a Judge in Belize.

(4) An order of Mandamus directing the Second Respondent to perform its public duty to investigate the First Respondent's offshore banking activities.

(5) The First Respondent is asked to indicate the date on which his offshore banking activities as reported internationally ceased and to provide a comprehensive history of the client-based service worldwide and details of international anti-money laundering compliance.

**[5]** At a hearing on May 22<sup>nd</sup>, 2023, Mde. Justice Genevieve Chabot ordered that the leave documents be served on the First Respondent in Barbados.

**[6]** By Notice of Application dated 26<sup>th</sup> July, 2023 that was re-filed on 11<sup>th</sup> August, 2023, the First Respondent seeks inter alia the following reliefs:

(1) An order declaring that this Court does not have jurisdiction to hear the Application against the First Respondent.

(2) Alternatively, an order that the Court decline to exercise jurisdiction to hear the Application against the First Respondent.

(3) An order setting aside service of the Notice of Application, Affidavit in Support and the Draft Order effected on the First Respondent outside the jurisdiction.

(4) An order that the Application is summarily dismissed against the First Respondent as an abuse of process of the Court and/or disclosing no reasonable grounds for bringing the claim.

(5) That the Applicant pay the costs of the application.

- [7] Thereafter, at a second hearing, on 27<sup>th</sup> July, 2023, Mde. Justice Chabot gave directions for the hearing of the Applications (the details are set out later in this judgment).
- [8] The Second, Third and Fourth Respondents (*hereinafter called "Other Respondents"*) represented by the Solicitor General also filed a Notice of Application on the 25<sup>th</sup> of August, 2023. This Application is supported by the first affidavit of Alea Gomez and seeks the following:
1. An order declaring that the Application for leave is an abuse of process of the Court where this Court does not have the jurisdiction to hear this Application.
  2. An order that the Applicant pay the costs of this Application.
- [9] The Applicant filed an affidavit in reply on 9<sup>th</sup> September, 2023 in response to the Applications made by First Respondent and the Other Respondents filed on the 26<sup>th</sup> of July, 2023 and the 25<sup>th</sup> of August, 2023 respectively.
- [10] The Other Respondents filed the second affidavit of Alea Gomez on 19<sup>th</sup> September, 2023 in reply to the Applicant's affidavit in response.
- [11] On the 6<sup>th</sup> and 10<sup>th</sup> of October, 2023 respectively, written submissions were filed by the Other Respondents and the First Respondent in support of their Notices of Application/response to the Application for leave.
- [12] The Applicant filed Submissions in Reply to all the Respondents' Submissions/Preliminary Objections on 19<sup>th</sup> of October, 2023.
- [13] The First Respondent and the Other Respondents filed their reply to submissions on 23<sup>rd</sup> October, 2023 and the 27<sup>th</sup> of October, 2023 respectively.

## EVIDENCE

[14] The Applicant deposed that he was concerned about the JLSC and the Minister's lack of due diligence in making appointments to the Belize Judiciary. He became aware of the delays by the First Respondent in taking up duties and then investigated the First Respondent through the Internet. The Applicant was surprised that the First Respondent was named in "*The Paradise Papers: International Consortium of Investigative Journalists leaked offshore database seeking to identify corruption and wrongdoers*". He went on to identify the offshore entities and links. This led him to have concerns about the judicial appointments in Belize.

[15] In response to the Applicant, the First Respondent deposed that he was a national and a resident of Barbados and further stated in his first affidavit that:

*"None of the companies identified by the Claimant and with which I am associated are offshore banking corporations or are secreted offshore banking corporations. And, my involvement with formal filing on behalf of those companies was not only routine but entirely lawful in Barbados and entirely above board."*

Further, the First Respondent deposed that the reporting of his name in Paradise Papers does not constitute evidence of wrongdoing, and this was clear from the website used by the Applicant. He further indicated he had applied for and was interviewed and offered an appointment as Judge of the High Court of Belize but declined the offer for family reasons. He contends that the Applicant's investigation was confined to the internet and there is no real basis for the allegations in support of the claim for judicial review.

[16] The Other Respondents, all represented by the Solicitor General, filed two affidavits of Alea Gomez. Ms. Gomez exhibited the First Respondent's instrument of appointment as "AG1" and a letter dated 22<sup>nd</sup> February, 2023 from the First Respondent containing his decision not to take up the appointment as Justice, of the High Court of Belize as "AG2".

- [17] The Applicant filed an affidavit in reply on 9<sup>th</sup> September, 2023. This affidavit was in specific reply to both the First Respondent and the Other Respondents' applications. The affidavit focused on the service of documents by the Respondents which in his view, did not comply with the Court's direction regarding service on his attorney's physical address and time of service. He strongly contends that he believed that the Respondents' applications and supporting documents were not properly before the Court for non-compliance with the Court's order.
- [18] Alea Gomez's second affidavit dealt with the attempts to serve court documents on the Applicant's attorney. She indicates that the process server made several attempts on 25<sup>th</sup> August, 2023, but the location was locked, and it is not the practice to leave the documents at the premises. She further stated in the affidavit that Counsel made attempts to call the phone number asking where to leave the documents but to no avail. Counsel further advised her through WhatsApp communication that a response was given to leave the documents at the premises. These same events occurred on 28<sup>th</sup> August, 2023. Eventually, the documents were left by sliding them under a door on 29<sup>th</sup> August, 2023.

### **ISSUES**

- [19] This Court has to determine whether leave for judicial review ought to be granted. The Respondents have filed applications opposing the same. Based on the facts, the issues that arise are:
- (a) Whether the Application for leave for judicial review is an abuse of process?
  - (b) Whether the matter is academic?
  - (c) Whether the Respondents have not complied with the Court's Orders regarding service on the physical address of the Applicant's attorney and consequently whether there is any prejudice to the Applicant's case.
  - (d) Whether the Court had jurisdiction to order that the leave documents be served on the First Respondent in Barbados.
  - (e) Who are the proper Respondents?

## **Service**

### ***Service on the Applicant's Attorney?***

- [20] The Applicant complains that there was no proper service effected on him for the filed applications, affidavits and submissions that opposed the permission to apply for judicial review. As aforesaid, this is set out in the Applicant's affidavit of 9<sup>th</sup> September, 2023 and his submissions filed on 19<sup>th</sup> October, 2023. The Applicant deposes that the Respondents did not comply with the Order of the Court to effect service on the Applicant's Attorney's physical address. His affidavit sets out the manner in which the Respondents' two applications were eventually served on him. The rest of his affidavit sets out what, in my view, are his opinions and arguments against the Respondents' applications.
- [21] The Applicant argues that the First Respondent has failed to file an acknowledgement of service and additionally has amended the Notice of Application to strike out without the permission of the Court and failed to acknowledge service in the manner and time ordered by the Court. It is the Applicant's submission that the First Respondent's application is not properly before the Court. Similarly, the Applicant argued that the Other Respondents also failed to serve their application to strikeout within the time ordered by the Court. The Applicant also takes issue with the late filing of the Respondents' submissions on the 11<sup>th</sup> of October 2023. The Applicant questions whether the applications and submissions are properly before the Court as stated aforesaid.
- [22] On 22<sup>nd</sup> May, 2023, Hon. Mde Justice Chabot ordered inter alia that:
- (1) That the leave documents be served on the First Respondent out of the jurisdiction.
  - (2) The First Respondent file an acknowledgement of service on or before 14<sup>th</sup> July, 2023.
- [23] On 27<sup>th</sup> July, 2023, Mde. Justice Chabot further ordered that:

- (1) The First Respondent's Notice of Application be served on or before the 9<sup>th</sup> August, 2023;
- (2) The Fourth Respondent is permitted to file an application on or before 25<sup>th</sup> August, 2023;
- (3) The Applicant is to file an Affidavit in Response on or before 15<sup>th</sup> September, 2023;
- (4) The Respondents are to file affidavits before 22<sup>nd</sup> September, 2023;
- (5) Written submissions are to be filed by the Respondents on or before 6<sup>th</sup> October, 2023;
- (6) Written submissions by the Applicant are to be filed on or before 20<sup>th</sup> October, 2023;
- (7) Written submissions in reply are to be filed by the Respondents on or before 27<sup>th</sup> October, 2023;
- (8) Service of all documents on the Applicant are to be effected on the physical address provided in the notice of application for judicial review; and
- (9) Notice of Application to strike will be heard on or around 2<sup>nd</sup> November, 2023.

**[24]** The Applicant's affidavit and submissions in reply were largely a recount of the proceedings to date and issues dealing with service. The Applicant contends that the Respondents' applications and submissions were not properly before the Court because of failure to comply with the Order of Hon. Mde. Justice Chabot on 27<sup>th</sup> July, 2023. He further complained that the First Respondent's affidavit was not proper as it was not notarized in compliance with the rules.

**[25]** Despite the "*Objection*" to the Respondents' submission and/or application and the Applicant's queries about service on his Attorney, it was submitted by the Applicant that the Respondents' submissions on jurisdiction were misconceived.



- [26]** The Applicant's submissions are mainly objections to the service and he argues that the First Respondent failed to file any acknowledgement of service and accordingly should not be permitted to file any documents in the proceedings. The Applicant submits that the First Respondent's applications, amendments, submissions and evidence fail and are inadmissible for non-compliance with the Order of Mde. Justice Chabot.
- [27]** From the evidence, the Respondents were unable to meet the deadline and mode of service and this has been stressed by the Applicant over and over again. This difficulty was set out in the second affidavit of Alea Gomez. I do not doubt that the Respondents attempted to comply with the Court's orders. However, in the circumstances based on the contents of Applicant's affidavit in response, I am of the view that the applications and documents were served on him. I am satisfied that no unfairness has befallen him as a result of the manner in which the service was effected. In fact, his affidavit in response seeks to answer to those very applications and further, the Applicant filed his submissions in response to the applications by the Respondents. I have also reviewed the application filed by the First Respondent, in light of the Applicant's allegation that the First Respondent amended the said application. Upon perusal of the documents, there has been no amendment, but rather a re-filing or uploading of the same application on the 11<sup>th</sup> of August 2023.
- [28]** In these circumstances, time is extended to the First Respondent and the Other Respondents to serve their applications to strike out by electronic means or service on the Applicant Attorney's physical address by the 14<sup>th</sup> of August and 29<sup>th</sup> of August 2023 respectively. I also extend the time to the Respondents to file and serve written submissions to the 11<sup>th</sup> of October, 2023 by electronic means or to the physical address of the Applicant's Attorney. The Court notes with concern that Counsel for the Applicant has been unable to provide the Respondents with a 'proper' or any email address for service and additionally, a physical address that is convenient for service.

[29] In the absence of evidence to the contrary, I am satisfied that the First Respondent's affidavit has satisfied the requirements of the **Civil Procedure Rules** (CPR). Part 30 of the CPR states:

*"30(5) A person may make an affidavit outside the jurisdiction in accordance-*

*(a) This Part; or*

*(b) The law of the place where he makes the affidavit.*

*30(6) Any affidavit which purports to have been sworn or affirmed in accordance with the law and procedure of any place outside the jurisdiction is presumed to have been so sworn."*

[30] I hold that the Respondents' documents are properly before me in these circumstances. It is important that the issue of service of the documents was addressed given the Applicant's stance.

[31] This matter raises concerns about the appointment of Judges and allegations against the First Respondent (a non-national of Belize) for that position. The First Respondent's professional behaviour has been brought into issue by the Applicant. Judges play a significant role in society and the administration of justice. In that regard, it is important that the substance of the matter be dealt with.

[32] In considering the overriding objective and the Applicant's concerns, this Court must consider all the responses of Respondents who were invited to reply to the Application as it had been made inter parties by Mde. Justice Chabot. The Applicant has been able to respond to the Respondents' applications and affidavits. I am, therefore, satisfied that the Applicant had ample notice of the Respondents' documents in order to provide his replies by way of affidavit and submissions.

[33] In this regard, I bear in mind the words of Jamadar JA as he then was, in the case of *The Attorney General of Trinidad and Tobago v Marcia Ayers-Caesar* Civil Appeal No. S 304 of 2017 paragraph 22:

*“Indeed, in so far as the Civil Proceedings Rules 1998 (CPR, 1998) may have relevance, what a court is duty bound to do, is to deal with the matter justly and to manage it so as to have the real issues between the parties determined.....What matters is substance, and substance is not usually defeated by form, and this is especially so in public law matters where the goal is ultimately to achieve fairness and good public administration for the benefit of both litigants and community.”*

**Service out of the Jurisdiction/Proper Party**

[34] The Court ordered that the First Respondent be served the Applicant’s application for leave in Barbados and that he file an acknowledgement of service.

[35] The First Respondent has objected to this Order. In his written submissions filed on 10<sup>th</sup> October, 2023, he submitted that the service of applications for leave to apply for judicial review out of the jurisdiction is not provided for under Part 7 of the CPR. It was also posited that the First Respondent was not a proper respondent as he was not a public authority residing in Belize and neither did he make the decision attempted to be challenged.

[36] The relevant parts of the CPR are as follows:

*“Part 7 provides:*

- 7.1 (1) *This Part contains provisions about –*
  - a. *circumstances in which court process may be served out of the jurisdiction; and*
  - b. *the procedure for serving court process out of the jurisdiction.*
- 7.2 *A claim form may be served out of the jurisdiction only if –*
  - (a) *Rule 7.3 or 7.4 allows; and*
  - (b) *The Court gives permission.*

*Part 2.4 states:*

*“claim” and “claim form” are to be construed in accordance with*

*Part 8 states:*

8.1 (4) *A claim form must be in Form 1 except in the circumstances set out in paragraph 5.*

(5) *Form 2 (fixed date claim form) must be used-*

*(a) in proceedings for possession of land;*

*(b) in claims arising out of hire-purchase or credit sale agreements;*

*(c) whenever its use is required by a Rule or practice direction; and*

*(d) whereby any enactment proceedings are required to be commenced by originating summons or motion.*

*Part 56: Constitutional and Administrative Law*

56.3 (1) *A person wishing to apply for judicial review must first obtain permission;*

*(2) An application for permission may be made without notice.”*

**[37]** The First Respondent submits that permission must first be given for the fixed date claim form initiating the judicial review proceedings to be served abroad. Further that no such permission has been given nor can any such permission be given. He contends that the rules do not contemplate such permission to be given for any such service of an application for leave to apply for judicial review.

**[38]** The First Respondent further argued that none of the claims set out in *Part 7* include applications for leave for judicial review and there was no jurisdiction by the Court to order service out of the jurisdiction.

[39] The Applicant's response to this came by way of his affidavit in reply in paragraph 6 in which he simply stated that it was done through the inherent jurisdiction of the court to ensure fairness and justice by ensuring that the First Respondent be informed of the application and afforded the right of representation.

[40] The Applicant also found an issue with the fact that the First Respondent did not file an acknowledgement of service. *Part 9* of the *CPR* defines the scope as:

“9.1 (1) *This Part deals with the procedure to be used by the defendant who wishes to contest proceedings and avoid a default judgment being entered.*

9.2 (1) *A defendant who wishes –*  
(a) *to dispute a claim; or*  
(b) *to dispute the court's jurisdiction must file at the court office an acknowledgement of service.”*

[41] Before dealing with the issues of acknowledgement of service and service out of the jurisdiction, it would be prudent at this juncture to consider the issue of proper parties.

#### **Is the First Respondent a proper party?**

[42] I find that the First Respondent was not a proper party to be named in the Application for several reasons. The Application before the Court for leave to apply for judicial review concerns the appointment of the First Respondent as a Judge of the High Court of Belize. It is trite law that judicial review is a challenge to the decision-making process of a public body or authority. Further, there was no decision of the First Respondent to be challenged and he is not a public authority in Belize.

[43] Judicial Review is not available against the actions of a private citizen but is a supervisory jurisdiction over the decisions or functions of public authorities. Accordingly, it was improper for the First Respondent to be named in the leave application. The First Respondent exercises no statutory authority or no public

function at all. From the onset of the filing of the Application for leave, the First Respondent was an improper party.

[44] Accordingly, any issue concerning the service of the leave documents out of the jurisdiction and acknowledgement of service should not have arisen. I find no basis in law as aforesaid for the First Respondent to be named a Respondent in these leave proceedings. The First Respondent is accordingly struck out as a party. The Order to serve the leave documents out of the jurisdiction on the First Respondent is set aside.

[45] Further, on the issue of service of leave proceedings out of the jurisdiction, I note that *Part 56* stipulates that to apply for judicial review, a person may make an application without notice. However, an application for permission to apply for judicial review does not fall within the definition of a “Claim” as defined in *Parts 2* and *8*. Therefore, to order that the application be served outside of the jurisdiction would be contrary to the provisions of the *CPR*. The circumstances for service outside of the jurisdiction are encapsulated in *Part 7* of the *CPR*. I am of the view that the *CPR* does not provide for service at this stage. Parties/Respondents to a Leave Application may be invited by the Court to appear at the hearing of the Application. Leave Applications are made without notice or are to be dealt with ex-parte. Accordingly, the Applicant’s application could not fall under the provisions of *Part 7*. The Court had no power to order such service under *Part 7*.

[46] With respect to the inherent jurisdiction of the court, inherent jurisdiction was discussed in the decision of CJ Benjamin in *Claim No. 43 of 2018, International Liquidator Service Limited v. The Registrar of International Business Companies* in paragraphs 12 and 13:

“12. Learned Counsel relied extensively on the inherent jurisdiction of the Court as discussed in the article by I.H. Jacob entitled “Inherent Jurisdiction of the Court” (*Current Legal Problems 1970. Vol. 23, pp. 23 -52*). The following opening statement reads (at pp. 23 -24):

*“The general jurisdiction of the High Court as a Superior court of record is broadly speaking, unrestricted and unlimited in all matters of substantive law, both civil and criminal, except in so far as that has been taken away in unequivocal terms by statutory enactment. The High Court is not subject to supervisory control by any other court except by due process of appeal, and it exercises the full plenitude of judicial power in all matters concerning the general administration of justice within its area.” The learned author continued (at p. 24): “...the court may exercise its inherent jurisdiction even in respect of matters which are regulated by statute or by rule of court, so long as it can do so without contravening any statutory provision... the source of the inherent jurisdiction of the court is derived from its nature as a court of law, so that the limits of such jurisdiction are not easy to define, and indeed appear to elude definition.*

13. *It is important to note that such inherent jurisdiction is conferred on the Supreme Court of Belize by virtue of Section 18 of the Supreme Court of Judicature Act, Chapter 91, which reads: “18(1) There shall be vested in the Court, and it shall have and exercise within Belize, all the jurisdiction, powers and authorities whatever possessed and vested in the High Court of England...”*

*This provision embraces and includes the inherent jurisdiction of the Court as a superior court of record with unlimited original jurisdiction: (see: section 95 (1) & (3) of the Belize Constitution, Chapter 4).”*

- [47] **The Senior Courts Act 2022** has a similar provision in section 25 to what was provided in the **Supreme Court of Judicature Act** (now repealed).
- [48] I do not agree with the Applicant that the Court was able to make that order under its inherent jurisdiction. As stated above and later on, service on the First Respondent was unnecessary.
- [49] The Order runs contrary to the very nature of inherent jurisdiction as it is clear that limits to the service of documents outside of the jurisdiction are encapsulated in *Part 7* of the *CPR*. The Court should have to consider several factors when making such an Order (see *Part 7.5 (1)*) such as a realistic prospect of success and in what place and what country a “defendant” may probably be found. Further, the leave applications to apply for judicial review are to be made ex-parte unless made inter-parties by the Court. However, even if required to appear, respondents to such

applications, are there at the invitation of the court. At the leave stage, there are no parties to a claim.

[50] A practical course of action would have been to strike out the First Respondent and ensure that a courtesy copy of the leave proceedings is provided to him, and such an undertaking could have been made by the Applicant or the Other Respondents.

[51] Therefore in my view, the order to service the First Respondent out of the jurisdiction was not proper and ultimately unnecessary as he was not a proper party to begin with. The *CPR* provides for the participation of a person in the position of the First Respondent as an interested party.

[52] Concerning acknowledgement of service, this part deals with defending a claim. An acknowledgement of service is not required in an application for permission to apply for judicial review. I find no fault on the part of the First Respondent in this regard as there is no claim at this juncture. This Order was also unnecessary. The First Respondent could not file an acknowledgement since he was not a party to a claim, having no documents been served on him. Further, there was nothing that he could or could not dispute as there is no claim filed to date (see *CPR Part 9*). The order for the First Respondent to acknowledge service is therefore set aside.

### **Jurisdiction/Abuse of Process**

[53] The Respondents argue that the appointment of judges in Belize is made by the Governor General and she has not been named as a Respondent. Further, in any event, the Court is restrained from such an enquiry as a result of the ouster clause in the Constitution. The **Constitution of Belize** provides in *section 97(2)*:

*“Justices of the Supreme Court other than the Chief Justice shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission and with the concurrence of the Prime Minister given after consultation with the Leader of the Opposition.”*



[54] Further, it was submitted that the Court's jurisdiction is ousted by **section 34 (4) of the Belize Constitution** which provides:

*"Whereby in this Constitution the Governor-General is required to perform any function in accordance with the advice of, or after consultation with any person or authority the question of whether the Governor-General has so exercised that function shall not be enquired into by any court of law".*

[55] The Respondents submitted that the Governor General acted in accordance with *section 97(2)* and there is no challenge or evidence that she has acted to the contrary. The Respondents relied on the judgment of Justice James in **Ian Haylock v Prime Minister of Belize and the Attorney General** *Claim no. 43 of 2021*. It has been canvassed by all Respondents that if the decision fails to be reviewed within the jurisdiction of the Court, in any event, the First Respondent is not a proper party.

[56] Concerning the jurisdiction dispute, the Applicant states that the appropriate procedure to oust the Court's jurisdiction is to be found in *Part 9.7* of the *CPR* and as such, the Respondents have invoked improper methods to challenge the Court's jurisdictions. Therefore, it was further submitted that any attempt to oust the Court's jurisdiction is improper and void and of no effect.

[57] The Applicant submits that *Part 9* applies to all of *Part 56* proceedings. As aforesaid, the application for leave does not fall within the definition of "claim" and *Part 9(2)* speaks of a "*defendant*" wishing to dispute the court's jurisdiction". It is my view that *Part 9* cannot apply to the Application for leave before me and permission has not been granted and there is no defendant or claim at this time.

[58] From the jurisdiction of the Republic of Trinidad and Tobago, Kokoram J. (as he then was) had this to say on ouster clauses in the matter of *CV 2016- 00147, The University of Trinidad and Tobago v. Registration, Recognition and Certification Board*. Justice Kokoram states:

*"12. From a long line of cases beginning with Anisminic Ltd v Foreign Compensation Commission [1969] AC 147, it is now clear that ouster clauses are not sacrosanct and are virtually ineffective in ousting the*

*supervisory jurisdiction of the High Court. From judicial commentary from noting that "Courts jealously guard its supervisory jurisdiction" to Lord Phillips' observation in R (Cart) v Upper Tribunal [2011] UKSC 28 of the "controversial nature" of such ousters. In 1997 Professor Geoffrey Wilson (para 1.3.8 Fordham) commented that "nobody should be surprised if in a real case of legislative enormity the Court did not discover a higher principle of law but which they felt free or even obliged to ignore the current version of the doctrine not only in the name of constitutional convention but also in the name of the law."*

13. Fordham would also note the judicial hostility to ouster clauses:

*"Legislative provisions which suggest a curtailment of the Courts' powers of judicial review strike at the heart of the Courts' constitutional function of upholding the rule of law and access to justice testing the remits of the principle of legislative supremacy."  
Para 28.1*

14. In the Caribbean ousters have met a similar hostile climate. In the Caribbean Court of Justice *The Attorney General et al v Jeffrey Joseph and Lennox Ricardo Boyce* CCJ Appeal No. CV 2 of 2005 the Learned Justices in making reference to the House of Lords' decision in *Anisminic v Foreign Compensation Commission* [1969] 2 AC 147 emphasized that:

*"Courts have made it clear that they will not be deterred by the presence of such ouster clauses from inquiring into whether a body has performed its functions in contravention of fundamental rights guaranteed by the Constitution, and in particular the right to procedural fairness."*

[59] It is well-traversed that ouster clauses are not absolute and are not a complete bar to review a decision or action. The power to make appointments of Judges lies with the Governor General. In this case, there is no evidence that the Governor General acted contrary to her powers or that there was any abuse of process. I am of the view that the decision even if properly brought against the Governor General is not reviewable. The Governor General not being named also brings the proceedings into the realm of abuse of process.

[60] The Respondents being invited to appear at the leave stage thus making it inter partes can only be to assist the Court. There is no procedural irregularity. The Respondents are entitled to be heard on jurisdiction in the manner in which it was

raised. The Respondents were invited to provide their position on the leave application. In any event, the JLSC is not the decision maker in the challenged decision herein and is struck out as a party.

[61] The Minister also has no role in the appointment of judges in Belize and is also struck out as a party.

[62] This Application is an abuse of process and is struck out. This finding brings an end to the matter. However, for the sake of completeness, I will address the other issues raised in this Application.

### **Proper Party to Judicial Review – the Attorney General**

[63] In these proceedings, I have struck out the first three Respondents to the Application, being not proper parties for varied reasons. I would like to consider the issue of whether the Attorney General is a proper party.

### **Historical Development of Judicial Review**

[64] In the case of **Forbes v AG of Jamaica**, *Supreme Court Civil App No: 29/05*, the Jamaican Court of Appeal traced the historical development of judicial review, demonstrating that judicial review proceedings are not brought against the Attorney General unless he is the actual decision-maker:

*“Prerogative orders, such as certiorari, cannot be brought against the Crown because it is at the instance of the Crown that they are initiated. The Attorney-General, therefore, as representative of the Crown would not be subject to such an order. (Note however, that individual ministers or officials acting under statutory powers would be subject to orders of certiorari - see M v Home Office [1993] 3 WLR 433).*

[65] In a case from the jurisdiction of the Republic of Trinidad and Tobago, Persaud J.A. in **Sooknanan v Conservator of Forests and the Minister of Agriculture** CA 109 of 1985 traced the historical development of the writs certiorari, prohibition and

mandamus and concluded that prerogative remedies do not lie against the Crown since it is at the suit of the Crown they are sought. In **Gunness v Magistrate Langley Baiju** HCA S 1999/86, Blackman J. held that the Attorney General was improperly joined where similar relief was sought against the Attorney General.

- [66] The Privy Council in the seminal case of **AG v Carmel Smith** [2009] UKPC 50 held in paragraph 24 that while the Attorney General is the proper party to be a defendant to a claim for constitutional redress under *section 14* of the *Constitution*, the Attorney General does not represent public bodies in judicial review proceedings:

*“The Attorney General is to represent the State (in effect, Central Government). The Attorney General is also to represent (**except in judicial review proceedings**) statutory bodies which (presumably because of their core functions) are deemed by *section 19(8)* and *(9)* to be part of the State. Other statutory bodies, even if public authorities amenable to constitutional redress proceedings under *section 14* of the *Constitution*, are not part of the State, and are not deemed to be part of the State.”*

- [67] It is trite law that a claim in judicial review lies against the maker of the decision in question. If the Attorney General is not the decision maker, there is no claim against him in judicial review.

- [68] The recent case of **Stefan Mungalsingh v The Attorney General of Trinidad and Tobago** CV2022-00127 is highly instructive in this regard. In **Stefan Mungalsingh**, the Claimant sought to apply for a practising certificate pursuant to *section 23* of the **Legal Profession Act** on 16<sup>th</sup> November 2021 electronically. By notice, dated 6<sup>th</sup> December 2021, the Claimant was notified that his application was not processed as an “*Application pursuant to section 24 of the Legal Profession Act Chap. 90:03 [was] required*”. The Claimant argued that the referenced section was not applicable to him and sought to challenge the notice in judicial review, naming the Attorney General as the Defendant. The Court found that, *inter alia*, an action in judicial review must be brought against the relevant decision maker and that the claim before the Court demonstrated no challenge against any decision made by the

Defendant. The Court therefore struck out the Claimant's claim on the ground that the action was improperly instituted against the Attorney General.

[69] In **Stefan Mungalsingh**, Seepersad J. stated in paragraphs 16 to 18:

*"16. Section 2 of the State Liability and Proceedings Act defines "Civil proceedings" to include:*

*"Proceedings in the High Court of Justice or Petty Civil Court for the recovery of fines or penalties but does not include proceedings analogous to proceedings on the Crown Side of the Queen's Bench Division in England".*

*17. This definition of civil proceedings was examined by the Court of Appeal in the local decision of Civ. App. No. S\_244 of 2015 SS (by her next of kin Karen Mohammed) v. Sterling Stewart Commissioner of Prisons, Her Worship Marcia Ayers – Caesar & The Attorney General, and Jamadar JA as he then was, offered this explanation at paragraph 32:*

*"It is reasonably clear that by excluding proceedings analogous to proceedings on the Crown side of the Queen's Bench Division in England, what is intended, was to exclude what today we know as public law administrative actions, and a fortiori, what are now constitutional proceedings."*

*18. For public law matters especially matters challenging decisions of public law bodies, the proper party would be the decision maker."*

This by no means has any effect on the Attorney General and/or the Solicitor General's representation of these public authorities.

[70] Section 2 of the **Crown Proceedings Act** provides as follows:

*"civil proceedings" includes proceedings in the Supreme Court or a district court for the recovery of fines or penalties, but does not include proceedings such as are brought on the Crown's side of the Queen's Bench Division of the High Court of Justice in England.*

[71] The definition of "civil proceedings" in the Trinidad legislation is identical to that in the **Crown Proceedings Act**. I find that the Attorney General is not a proper party as well based on the guidance of Jamadar JA above. The Attorney General is also struck out as a party.

### **Whether the matter is academic?**

[72] In Auburn, Moffett and Sharland's, *Judicial Review Principles and Procedures*, pp 808 -809, spoke on the issue of academic matters:

*“If the court concludes that a claim is academic or hypothetical and there is no good reason in the public interest why it should be heard, the Court is likely to dismiss the claim without consideration of its substantive merits.*

*If however the Court concludes that, although the claim is academic or based upon hypothetical facts, there is a good reason in the public interest why the claim should be nonetheless be heard. It may refuse to grant a final remedy, or grant only a declaration, as any other form of final remedy is unlikely to be of any practical benefit.*

### **ACADEMIC CLAIMS**

*An academic claim is a claim where there was once, but is no longer, a live issue between the parties. In such cases, the Claimant no longer has any practical need of a final remedy. A claim for Judicial Review might become academic after a grant of permission but prior to the substantive hearing for a variety of reasons, including a change of position by the Defendant or the Claimant, the actions of a third party or the mere passage of time.*

*Whilst it is a matter within the Court's discretion as to whether it hears an academic claim, this discretion will be exercised with caution and the Court will not entertain an academic claim unless there is a good reason in the public interest why it should be heard. The role of the Courts is to decide the real issue and or to give advisory opinions. The Court's limited resources should not generally be used to determine claims where there is no live dispute and judgments in such claims may well only be obiter and therefore merely persuasive rather than binding.*

*Circumstances in which there has been held to be a good reason in the public interest for hearing an academic claim case include:*

- (1) where there is a discrete point of statutory construction which does not involve detailed consideration of the facts and where a large number of existing or anticipated cases turn on the point.*
- (2) where the case raises an issue of wider and ongoing importance.*
- (3) where the subject matter of the claim means that it is likely only ever to arise in academic claims.*

*In the absence of these or similar circumstances, a Court is likely to refuse to entertain an academic claim.*

### **ACADEMIC AND HYPOTHETICAL CLAIMS**

*The correct approach to academic or hypothetical claims where it is said that a claim for Judicial Review is academic or is based on hypothetical facts, which will usually be an issue that the court will address before considering the substantive merits of the claim. If such an issue is not addressed at the permission stage or if a claim only becomes academic after permission to apply for Judicial Review is granted, it will usually be addressed either at the outset of the substantive hearing or at the preliminary hearing held for the purpose.”*

[73] Given the factual scenario, this Application should not have gotten to this stage. Resources and costs are always an issue in useless litigation. The progression of this matter was unnecessary. At the second hearing, it was incumbent that the Respondents indicate that the First Respondent had declined the position. There was no public interest issue as the First Respondent declined the position. It should not have progressed much beyond that date save as to have that fact be put on oath before the Court. In reality, there was no live issue from the very filing of the Application. Once the First Respondent's position was made available, that should have brought the matter to an end. In other words, any challenge to the decision to appoint the First Respondent was academic. There was no reason to continue. This was, however, compounded by the fact that the Applicant named four Respondents, none of which had made the decision under challenge.

[74] The Respondents were required to follow strict Orders for service on the Applicant's Attorney of their applications, affidavits and submissions all of which they did. In my view that was unnecessary. Costs usually follow the event, and they are entitled to their costs.

#### **Disposition**

[75] It is ordered that –

1. The Order for service on the First Respondent is set aside.
2. The Order for the First Respondent to file an acknowledgement of service is set aside.

3. Time is extended to the First Respondent to serve their applications to strike out by the 14<sup>th</sup> of August, 2023 by electronic means or service on the Applicant Attorney's physical address.
4. Time is extended to the Other Respondents to serve their applications to strike out by the 29<sup>th</sup> of August, 2023 by electronic means or service on the Applicant Attorney's physical address.
5. All Respondents are struck out.
6. The Applicant is an abuse of process and is struck out.
7. Costs are awarded to the Respondents.

**NADINE NABIE**  
HIGH COURT JUDGE