2019-HC-DEM-CIV-FDA-1151

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
CIVIL JURISDICTION

BETWEEN:

CHRISTOPHER RAM

Applicant

-and-

1. **CHIEF ELECTIONS OFFICER**
2. **COMMISSIONER OF NATIONAL REGISTRATION**
3. **GUYANA ELECTIONS COMMISSION**
4. **ATTORNEY-GENERAL**

Respondents

5. **Guyana Bar Association, Amicus**

July 26, Aug 2, 14, 2019

Mr. H. N. Ramkarran SC, Mr. M. A. Nandlall, Mr. K. Ramkarran, Ms. M. Nadir and Mr. M. Narayan for the applicant.
Mr. Mr. R. McKay SC, Mr. N. Boston SC, and Mr. R. Forde for the first and second respondents.
Mr. S. Marcus, SC for the third respondent.
Mr. B. Williams SC, Attorney-General, Mr. N. Hawke, Solicitor-General, Ms. D. Kumar, Deputy Solicitor-General and Ms. B. Bishop-Cheddie, Assistant Solicitor-General, for the fourth respondent.
Mr. T. Housty and Mr. S. Datadin for the Guyana Bar Association

CORAM: JUSTICE ROXANE GEORGE, CHIEF JUSTICE (ag)

DECISION OF THE COURT

Introduction and background facts

[1] This Fixed Date Application (FDA) challenges the constitutionality and legality of the house to house registration of persons currently being conducted as a precursor to the

preparation of an electoral or voters' list for upcoming national and regional elections which have been occasioned as a result of the successful no confidence motion against the government that was passed by the National Assembly on December 21, 2018. Affidavits in support of the application were deposed to by the applicant and Mr. Zulficar Mustapha, the Executive Secretary of the People's Progressive Party, the sole opposition party in the National Assembly.

[2] As a consequence, the applicant seeks:

(1) declarations that the house to house registration exercise currently conducted by the first to the third named respondents:

(i) is in violation of articles 106(6) and 106(7) of the Constitution

(ii) is in violation of the letter and spirit of the Judgment of the Caribbean Court of Justice (CCJ) in the consolidated appeals of **Ram v AG & Ors** (No. GYCV2019/009), **Jagdeo v AG & Ors** (No. GYCV2019/010) and **Persaud v Reid & Ors** (No. GYCV2019/011);

(iii) is illegal, unlawful, unconstitutional, null and void and of no legal effect;

(iv) is contrary to Articles 161 A and 162 of the Constitution and the National Registration Act, Chapter 19:08 (NRA); and

(2) a conservatory order prohibiting the Guyana Elections Commission, Chief Elections Officer, and or the Commissioner of National Registration from conducting or continuing to conduct the current house to house registration process.

(3) a consequential order compelling the first, second and third respondents "to immediately take all steps and actions necessary and requisite to hold General and Regional Elections on or before the 18th day of September, 2019" in compliance with art 106(6) and 106(7) and the CCJ judgment.

[3] The Attorney-General (AG) is a party since issues of interpretation of the Constitution have been raised.

[4] The facts upon which this application is based are well known. There was a vote on a No Confidence Motion (NCM) in the National Assembly against the government on December 21, 2018 which was passed by a vote of 33 to 32 of the Members of Parliament. The NCM was challenged and ultimately on June 18, 2019, the CCJ ruled

that the motion was validly passed and made, *inter alia*, the following consequential orders on July 12, 2019 at para 9 of the judgment:

> "(e) The National Assembly properly passed a motion of no confidence in the Government on 21 December, 2018;
> (f) Upon the passage of this motion of no confidence in the Government, the clear provisions of Article 106 **immediately became engaged.**" (Emphasis mine)

[5] While the appeal was pending before the CCJ, the Guyana Elections Commission (GECOM) apparently continued to make decisions and as evidenced by the Official Gazette of June 11, 2019, an order was issued by the then GECOM Chairman, titled the National Registration (Residents) Order 2019, pursuant to s 6 of the National Registration Act, Chapter 19:08. This order, which was stated to come into operation on July 20, 2019, stated that it applied to the registration of persons, in accordance with the said s 6 under a process of house to house registration, who are qualified to be electors and who on the qualifying date of October 31, 2019 shall have attained the age of fourteen years.

[6] The house to house registration exercise has commenced and while the AG and the CEO/CR sought to emphasise the numbers of persons who have so far been registered, the sums budgeted and the expenditure incurred, if it is that it is all for nought because of this challenge, then so be it. These are not relevant to a determination of this application.

[7] In the Case Management hearing the parties were directed to file all affidavits and submissions in support of both the FDA and the Notices of Application filed.

Preliminary issues

Notices of Application by the AG and GECOM

[8] Preliminary applications were filed by way of Notices of Application (NOA) by the AG and on behalf of GECOM respectively. I will deal with the GECOM NOA first.

[9] The GECOM application contended that the Court should recuse itself from hearing the substantive case on the ground of bias due to a pre-determination of the issues raised in the FDA since the Court had stated that the CCJ decision indicated that elections should

be held on or before September 18, 2019 or such longer period as the National Assembly determines.

[10] Mr. Lowenfield, as Chief Elections Officer of GECOM and Commissioner of Registration under the National Registration Act, (CEO/CR) swore to the affidavit in support of GECOM's NOA, even though he had previously filed an affidavit in defence to the substantive FDA in these said capacities with no challenge to the Court's ability to hear this case. Inconsistent as these positions appear to be, I will nevertheless treat with the NOA as I am mandated to do.

[11] The CEO/CR stated that the Court had come to a position that the date of the elections is to be September 18, 2019.

[12] In this case, the applicant is contending that the election date must be by September 18, 2019. While I did indicate to counsel for the applicant at the hearing for the conservatory order that the CCJ decision indicates that the elections should be held by September 18, the main thrust of my intervention in this regard was to emphasise that the date could be extended by the National Assembly since the applicant's application has not referred to this part of art 106(7) at all.

[13] The statement was made in the context of a ruling in Chambers that denied the application by the applicant for a conservatory order to prevent the continued conduct of the house to house registration exercise. When the statement was made, GECOM was not represented at the hearing either by counsel or by an officer or employee, though Mr. Lowenfield was present. He did not at the time indicate that he was representing GECOM. While I expressed a view at what can only be said to be a preliminary stage of the hearing, it does not mean that with sound arguments to the contrary, another view would not be countenanced, a circumstance that is not uncommon during hearings of cases generally. In any event, since the statement raises two situations – a date for elections and importantly, that art 106(7) provides for an extension for elections to be held, it is unclear which aspect of the statement suggests bias.

[14] There is nothing to suggest that an interpretation of a decision of a court would amount to bias. If that were the case, such an allegation can potentially be made against all judicial officers. In addition, given the ruling against the applicant on the conservatory order, I do not agree that GECOM has established bias.

[15] I have therefore concluded that the GECOM NOA is without merit and merely wasted the Court's time especially in the context of Mr. Lowenfield also in his capacity as CEO/CR also advancing a lengthy affidavit in defence in which he sought to answer all that the applicant is contending. This refusal of this NOA will be dealt with in terms of costs.

[16] Given my finding in this regard, there is no need to determine the issue whether Mr. Lowenfield had authority to retain counsel or file the NOA since GECOM may not have been properly constituted at the time as it had no Chairperson and had not had a meeting since June 2019.

[17] However, I must comment that Mr. Nandlall's submissions challenging Mr. Lowenfield's bona fides to retain Mr. Marcus and to file the NOA on the ground that GECOM was not then a properly constituted body are disingenuous to say the least. Firstly, as pointed out by Mr. Marcus, the applicant named GECOM as a party. When he did so, he must have known that GECOM may not have been a properly constituted body such as to defend the application. In deciding to sue an entity that he says was not properly constituted, the applicant cannot complain if a senior functionary of the entity sought to come to its aid. Mr. Nandlall sought to say that Mr. Lowenfield should not have so acted and that another staff member should have e.g. a secretary. This submission, with due respect, makes no sense for it would still mean that a staffer of GECOM would have had to come to court to answer the application otherwise GECOM could have been subject to judgment in default. Mr. Lowenfield as the most senior functionary cannot be faulted for seeking to represent GECOM though his inconsistency is to be frowned upon.

[18] If the applicant had maintained this position, then GECOM would not have been a proper party at the time of filing this FDA. The applicant cannot have it both ways.

[19] Further, the CCJ invited GECOM to be a party to the consolidated appeals. At least at the time of the consequential orders judgment, GECOM would have been similarly without a chair given the CCJ's ruling. There is no record of an objection to GECOM's participation on behalf of the applicant who was one of the parties to the appeals.

[20] In the NOA filed by the AG, it was contended that the issues raised by the applicant are *res judicata* and therefore an abuse of the process of the Court. It was

contended that arguments were advanced before the CCJ that the date for elections should be September 18, 2019 and that the Court declined to accede to such submissions as can be gleaned from the consequential orders judgment of July 12, 2019. It was submitted that the applicant was a party to the appeals that were before the CCJ and as such these issues cannot be re-litigated as the applicant seeks to do in this FDA.

[21] Mr. Nandlall, refuted these submissions, arguing that this application is primarily a challenge to the house to house registration exercise and an invitation to the Court to interpret the CCJ decision as regards the period within which the elections are to be held.

[22] The application by the AG provides the greater challenge of the two NOAs because of the way in which the reliefs sought by the applicant are framed – this is to say, they can be severed into a challenge to the house to house registration exercise though it may be considered to be bound up with the other thorny issue of the date by which the elections are to be held – which was strenuously canvassed before the CCJ. Therefore, my ruling as regards this NOA will be dealt with in the context of the substantive FDA. As a result, a determination of this application is deferred.

Substantive issues

Facts and contentions of the applicant

[23] The applicant describes himself as a civil society advocate who has an interest in the rule of law and obedience to the Constitution. While the applicant advanced a number of contentions, in my view all are not relevant to the issues to be determined in this case. Those that are of relevance will be revealed as I go through this judgment. I gather from the submissions on behalf of the AG that there was a muted challenge to the applicant's *locus standi* to institute this public interest litigation. I have nevertheless concluded that although the applicant's application for the most part lacked supporting facts, except for the Official Gazette as referred to above and a spreadsheet to which I will refer later, which were exhibited to Mr. Mustapha's affidavit, the affidavits by and on behalf of the CEO/CR and the AG confirm general facts as deposed to by the applicant such as to raise issues of sufficiently significant constitutional and legal importance for a pronouncement to be made.

[24] Further, as regards public interest litigation, in **Quincy McEwan et al v The AG of Guyana [2018]CCJ 30 AJ**, (at para 88) the CCJ had this to say while approving of the judgment of Jamadar JA, as he then was:

> "In constitutional proceedings, courts should adopt a liberal approach in affording standing to individuals and entities. It is in the public's interest to ensure that the Constitution is properly interpreted and applied, and the rule of law vindicated. Jamadar JA stated in **Dumas v. The Attorney General** [Civil Appeal No. P 218 of 2014]:
>
> > '...the issue of standing in relation to the vindication of the rule of law, where there is alleged constitutional default, assumes great significance given the constitutional ethic of civic republicanism – that emphasizes the responsibility, even duty, of citizens to participate in creating and sustaining a vibrant democracy and in particular in upholding the rule of law."

[25] Thus, applying this dicta I do not consider that the applicant has failed to meet the criteria permitting him to file this application in the public interest.

[26] Let me say that the opinions of the parties as expressed in their affidavits, and the references to what the applicant considered to be views or gestures expressed by the learned judges of the CCJ, alleged internal advice at GECOM, as well as other emotive language, are of no consequence for the purposes of deciding this case. In my view, the main matters for consideration turn on an interpretation of the CCJ consequential orders judgment, that is, what was said in the judgment and more especially the orders at para 9 (e) and (f) which I quoted above.

[27] The applicant has founded his claims on the ground, *inter alia*, that the house to house registration exercise currently being conducted will result in the deadline for elections to be held by September 18, 2019, pursuant to the CCJ consequential orders judgment as he understands it, being missed such as to violate arts 106 (6) and 106(7). He also submits that the conduct of the house to house registration exercise is contrary to the NRA.

[28] As just noted above, the applicant's application lacked a factual basis as regards the following claims:

(1) that thousands of registered persons would be deregistered or removed from the list of registrants; and

(2) that as a consequence of (1), thousands of persons would not be registered.

[29] However, the affidavits in defence support the claims by the applicant that –

(1) the names of persons who are not registered during the on-going house to house registration exercise would be removed from the list of registrants;

(2) the existing data base would be replaced by a new data base; and

(3) the existing list of registrants from which a list of electors can eventually be culled is to be discarded and a new list compiled based on the house to house registration exercise.

[30] Mr. Nandall made the following submissions:

i. that house to house registration is not necessary and that GECOM can engage in continuous registration as provided for in s 6(1) of the NRA and s 3 of the Elections Laws (Amendment) Act, No. 15 of 2000 (ELA). Continuous registration is therefore the correct or preferred system under the NRA. It was stated that to do otherwise would be to retire the existing National Register of Registrants, thereby contravening the Constitution and the NRA as regards continuous registration.

ii. that house to house registration under section 6(4) of the NRA therefore is for the purpose of adding eligible persons who are resident in a registration division and who have become qualified to be included in the National Register of Registrants.

iii. that the NRA as amended does not give GECOM the authority to remove or de-register a registered elector from the National Register of Registrants and thereby create a new National Register of Registrants and official list of electors, except in specified circumstances, and that there is no requirement in the laws of Guyana for proof of residency in order to be so registered.

iv. that cancellation and or removal of registrants from the register are governed only by the NRA. Qualifications to be registered to vote as provided for in art 159 are attainment of the age of eighteen years, being a citizen of Guyana or a citizen of a Commonwealth country with a one year residency requirement, and any such qualifications prescribed by law. There are no additional laws prescribing qualifications to be registered to vote such as residency or presence during a house to house registration. Under the 1966 Constitution of Guyana residency was a requirement but this was excluded under the 1980 Constitution. As such it is apparent that when the provision was amended in the 1980 Constitution, residency was removed as a requirement.

v. that the right to vote should be protected and would be contravened by the proposed house to house registration if persons who do not register are removed from the National Register of Registrants. Therefore the applicant contends that the persons not registered during the house to house exercise would be ultimately removed from the Official List of Electors.

Facts and contentions of the CEO/CR

[31] Mr. Keith Lowenfield, CEO/CR, swore to the affidavits in defence on behalf of himself and GECOM. Except for some contradictions as regards which provisions they were relying on, the respondents all advanced the case for the validity of the current house to house exercise and that the CCJ decision is to be interpreted as holding that the NCM having been validly passed, the date for elections was March 21, 2019 and hence with the Court stating that the provisions of art 106 "**immediately became engaged**", that it is for the political actors to address the extension of the period for holding elections.

[32] The CEO/CR deposed that in 2016 GECOM formed the view that it was necessary to conduct house to house registration in 2017 but no budgetary allocation was received. This policy was again unanimously adopted by GECOM on July 24, 2018 for house to house registration to be done in 2019 prior to and in preparation for the next

general and regional elections. Budgetary allocation was made in the 2019 national budget which was approved for funding by Parliament on November 19, 2018. In 2019 GECOM approved the commencement of house to house registration and the Chairman of GECOM wrote so advising him and the Deputy CEO in March, 2019.

[33] He relied on art 162 of the Constitution (art 162) which provides for the powers and functions of GECOM and asserted that in the exercise of those functions "more than 10 years ago [it] decided in its own deliberate judgment that as a matter of policy, house to house registration would be conducted periodically as part of the operational procedures in the execution of its mandate." He referenced and exhibited the minutes of the 171st Statutory Meeting of GECOM held on February 27, 2007 in this regard which resulted in the 2008 house to house registration exercise.

[34] The CEO/CR sought to rely on the documents evidencing deliberations by the commissioners of GECOM but challenged the admissibility of the spreadsheet that Mr. Mustapha exhibited in support of the applicant's application on the ground that it was a document evidencing deliberations of the Commission and was therefore inadmissible under s 140 (2) of the Representation of the People Act, Chapter 1:03. On being confronted with the contradiction, Mr. Forde stated that he would leave it to the Court to decide. I have decided that all the documentation produced is evidence that can be considered since they are all relevant.

[35] The CEO/CR relied on the advice of his counsel that art 162 vests GECOM with the exercise, direction and control of the registration of electors, the preparation of the electoral roll and the conduct of elections, and operates independently in so doing. He said that GECOM is required to act in conformity with the relevant legislation but that GECOM has a residuary power to supplement the law in such circumstances as may be necessary.

[36] It was submitted that the NRA provides in s 6 (4) for electors to be added to the national register of electors and for a built in statutory mechanism to address cancellation of registration, and claims and objections, which would allow persons to challenge any attempt to remove their names from the list.

[37] It was also stated that GECOM has a duty to ensure that the electoral roll does not include persons who either do not exist or whose names are entered into the official list of

electors contrary to law. He did not say what law he was referring to specifically. In this regard he asserted that he had been advised that "the applicant's right as well as the right of every qualified elector is a right to be registered to be eligible to vote" pursuant to art 159 of the Constitution. He referred to various provisions of art 159 and also relied on art 160 of the Constitution (art 160) as well as the ELA and referred to decisions taken by GECOM to support the contention that the decision to conduct the house to house registration exercise is in accordance with the law and not optional, but compulsory.

[38] The ELA is a law which prescribes such other qualifications and provides for the registration of electors within the meaning of arts 159 (2)(c) and 160 (3)(a)(i) of the Constitution. Section 3 of the ELA stipulates that residency is the additional qualification referred to in art 159(2)(c).

Facts and contentions on behalf of GECOM

[39] Mr. Lowenfield, CEO/CR swore to the affidavit in defence on behalf of GECOM.

[40] Similar factual circumstances as relied on in his capacities as CEO/CR were raised by Mr. Lowenfield on behalf of GECOM though in much less detail. The oral submissions on behalf of GECOM were very brief, with Mr. Marcus relying on the submissions made by Mr. Forde on behalf of the CEO/CR. However, it is noted that while Mr. Forde said that s 7 of the NRA does not apply to this case, Mr. Marcus in his written submissions relied on this provision. Mr. Boston subsequently also contradicted Mr. Forde and said that s 7 was being relied on. The written submissions on behalf of GECOM also focused on the contention that the issues raised in this FDA are *res judicata* given the CCJ judgments and that pursuant to the doctrine of *stare decisis*, this Court is bound by these judgments.

Facts and contentions by and on behalf of the Attorney-General

[41] Ms. Deborah Kumar, Deputy Solicitor-General swore to the affidavit in defence on behalf of the AG.

[42] The arguments on behalf of the AG echoed those for the other respondents, though, as in the case of GECOM as mentioned above, where Mr. Forde submitted that s 7 of the ELA does not apply, the AG argues that it does.

[43] Mr. Hawke submitted that the declarations sought are vague and if granted cannot be acted on.

[44] In particular, as regards the fourth declaration, Mr. Hawke submitted that the references to arts 161A and 162 of the Constitution being contravened by the house to house registration exercise did not have merit as the former article referred to the appointment of GECOM staff and the secretariat, and the latter to the functions of GECOM. Mr. Nandlall withdrew the applicant's reliance on these articles of the Constitution and stated that he was relying on a contravention of the NRA only.

[45] However, Mr. Hawke further submitted that the reliance on a contravention of the NRA was also vague as there was no reference to any specific provisions that have been violated. Indeed, the applicant's affidavit made no mention of how this Act is being or would be contravened. Mr. Nandlall sought to fill this void in his submissions, stating that it is ss 8 and 15 of the NRA that are being violated. This will be discussed later.

[46] Mr. Hawke also submitted that with the withdrawal of a reliance on arts 161A and 162, in the absence of the reference to the Constitution in this declaration, it could not be granted on the basis of an alleged violation of ordinary legislation as the FDA invoked the Constitutional jurisdiction of the Court. While the latter submission may have merit since the implementation of the NRA is linked to the Constitution, I will consider such of its provisions as are relevant.

[47] As result of these submissions on the declarations, Mr. Hawke further stated that the consequential orders sought, at paras (v) for a conservatory order, and para (vi) as to the mandamus or compelling order, cannot be granted.

[48] The AG made submissions on the application of the NRA and ELA and why it is that reliance must be placed on GECOM in terms of ascertaining its preparedness to hold elections since this body must produce a credible list of electors. He submitted that the house to house registration exercise was the only means to facilitate this. He also submitted that the issues raised by the applicant are *res judicata.* He submitted that the applicant's contentions that elections must be held on or before September 18, 2019 are misconceived and not in keeping with the decision of the CCJ. He said that it is now for the National Assembly to address the issue of an extension of the period within which elections are to be held.

The Guyana Bar Association, amicus

[49] The Guyana Bar Association which was permitted to make submissions amicus, concentrated its submissions on the necessity to uphold the rule of law and obedience of orders of court.

Issues for determination

[50] There are three issues for determination:

(1) Did the CCJ by its consequential orders judgment fix or impliedly fix a date by which or period during which general and regional elections are to be held as a consequence of the validly passed NCM?

(2) Is the house to house registration exercise currently being conducted by GECOM in 2019 unconstitutional given the context of the validly passed NCM?

(3) Can the name of a person, whose name is currently on the list of registrants and electors, but who is not registered during the house to house registration exercise, be removed from the list of registrants and thereby the list of electors for the next general and regional elections which flow from the validly passed NCM?

Relevant provisions

[51] The relevant provisions of the law are as follows:

a. The Constitution of Guyana, (Constitution) arts 59, 106(6)(7), 159, 160 (3) (a)(i), 162

b. Elections Laws (Amendment) Act No. 15 of 2000 (ELA), s 3(1)(3), 4, 7, 18, 22

c. National Registration Act, Chapter 19:08 as amended by the National Registration (Amendment) Act No. 14 of 2005 and the National Registration (Amendment) Act No. 31 of 2007, (NRA) s 6 (1)(2)(4)(aa),(6A), 8, 9, 15, 16, and Regulations.

[52] Article 106(6) and (7) states as follows:

"(6) The Cabinet, including the President, shall resign if the Government is defeated by the vote of a majority of all the elected members of the National Assembly on a vote of confidence.
(7) Notwithstanding its defeat, the Government shall remain in office and shall hold an election within three months, or such longer period as the National Assembly shall by resolution supported by not less than two-thirds of the votes of all the elected members of the National Assembly determine, and shall resign after the President takes the oath of office following the election."

[53] Article 59 states:

"Subject to the provisions of article 159, every person may vote at an election if he is of the age of eighteen years or upwards and is either a citizen of Guyana or a Commonwealth citizen domiciled and resident in Guyana."

Article 159 (1) provides that "No person shall vote at an election unless he is registered as an elector." Article 159 (2) says:

"Subject to the provisions of paragraphs (3) and (4), a person shall be qualified to be registered as an elector for elections if, and shall not be so qualified unless, on the qualifying date, he is of the age of eighteen years or upwards and either –

(a) is a citizen of Guyana; or

(b) is a Commonwealth citizen who is not a citizen of Guyana and who is domiciled and resident in Guyana and has been so resident for a period of one year immediately preceding the qualifying date; and

(c) satisfies such other qualifications as any be prescribed by or under any law."

Sub-articles (3) and (4) restrict eligibility to be registered as regards persons who have been certified insane or adjudged to be of unsound mind and persons who have been convicted of any offence connected with elections during the five year period prior to the qualifying date which pursuant to art 159 (5) is the date fixed for the compilation or revision of the register of electors.

[54] Then art 160 (3)(a)(i) provides: "Subject to the provisions of this Constitution, Parliament may make provision – (a) for the registration of electors; ... ."

[55] Article 162 (1) outlines GECOM's functions as being "related to the registration of electors or the conduct of elections as conferred on it by the Constitution or any Act of Parliament." Article 162 (1)(b) enjoins GECOM to "take such actions that may appear to it necessary or expedient to ensure impartiality, fairness and compliance with the provisions of the Constitution or any Act of Parliament" by persons exercising powers or performing duties regarding the registration of electors and the conduct of elections.

[56] I must say here that I do not agree with the submission on behalf of CEO/CR that art 162 (1)(a) gives a residuary power to GECOM to supplement the law in such circumstances as it may be determined necessary. Article 162 (1), as outlined above, does not so state or permit. Section 22 of the ELA permits GECOM to issue an order to amend the said ELA, the NRA and the Representation of the People Act, Cap 1:03 and any subsidiary legislation to address any difficulty that may arise in the application of these legislation, but this section also clearly states that such order shall be subject to a negative resolution of the National Assembly so long as it has not been dissolved. So GECOM cannot operate *carte blanche* as contended. Indeed, GECOM has to operate within the confines of the legislative framework which has been enacted to permit its functioning.

[57] Section 3 (1) of the ELA provides for divisional registrars as instructed by GECOM to conduct house to house visits within their registration divisions in order to "obtain **as far as practicable** the application for registration of every person, who is on the appointed day of the age of fourteen years or above for the purposed of ascertaining every person qualified for registration as an elector for election to the National Assembly and is resident in that division, **to have his name included in the official list of electors for the registration division.**" (Emphasis mine.) Section 3 (2) stipulates that registration begins and ends on the dates specified by GECOM.

[58] Section 3 (3) of the ELA states that ss 6 (6) and (7), 8, 9, 10, 11 and 13 of the NRA are to apply mutatis mutandis to the registration of electors under the ELA. Section 6 (6) and (7) of the NRA provide for non-registration to be a criminal offence. Section 8 of the NRA provides for cancellation or alteration of the registration of a person pursuant to the regulations while s 9 states that a central register shall be established "which shall consist of a computerized data base of the information of the originals of the registration cards and the originals registration cards of all persons under the house to house registration

process mentioned in section 6, and the data so generated shall be utilised to effect the continuous registration process."

[59] Section 3 (4) and (5) of the NRA provide for the CEO/CR to establish a central register and the registrars to establish divisional registers of all registration cards of all electors which are to be prepared in conformity with s 7(1) of the NRA.

[60] Section 4 (1) provides for the preparation of the preliminary list of electors after the registration process would have ended with s 4 (2) of the ELA specifically incorporating the NRA regulations as part of its provisions, more particularly as regards the preparation of the said preliminary list of electors. It is from this list, after further vetting, that the final or Official List of Electors is prepared for the purposes of general and regional elections.

[61] Section 7 of the ELA as amended by Local Authorities (Amendment) Act 10 of 2018 provides for "Revision of official list of electors and non-resident electors' roll in certain circumstances". It says that where there is a six month interval after the last date when the official list of electors and the non-resident electors' roll were prepared and the day appointed for the next election, then these lists have to be revised. The revision is to be done by adding the names of persons who have become qualified for registration as electors, and by deleting those who were registered but had ceased to be qualified to be so registered. The revision of these lists is by way of annexation of supplementary lists containing the changes.

[62] While the non-resident electors roll is not in issue in this case, I nevertheless note that s 44 of the Representation of People Act, Chapter 1:03, defines non-resident electors as heads of mission and persons who work at Guyana's foreign missions and their families.

[63] The NRA provides for continuous registration of electors in cycles throughout the year. Section 6 (1) permits GECOM to order that from a specific date there shall be registration of all persons qualified to be electors and all other persons 14 years old and over, and that registration shall continue and be conducted as directed with suspensions for periods as prescribed by GECOM. It states:

> "6. (1) It shall be lawful for the Commission by Order with effect from a specific date to authorise the registration of-
>
> (a) All persons who are qualified to be electors; and

(b) All other persons in Guyana of the age of 14 years and over,

and such registration shall continue and be conducted in such manner and at such time as the Commission shall direct, suspending temporarily for periods prescribed by the Commission.

(2) Subject to subsection (3), such Order shall apply to all persons referred to in subsection (1) (b) who at the said date have attained such age as shall be specified in the Order and who at that date:-

(a) are resident in Guyana; or

(b) have such other connection with Guyana as may be specified in the Order."

(3) Any such order may exclude from its application any person or class of persons.

[64] Interestingly, by reference to subsection (1)(b), s 6 (2) indicates that the Order shall apply to persons who are 14 years and older who are resident in Guyana or who have other connections with Guyana as may be specified in the Order. It appears that the issue of residency may be restricted to all persons who fall outside the category of persons qualified to be electors. This may be because many of them would be first time registrants. However, this was not argued and I make no definitive finding in this regard.

[65] Section 6 (4) of the NRA provides for the Commission to establish district offices in registration districts so as to obtain "**so far as practicable** the registration of every person eligible therefor, resident at the qualifying date in a registration division of that district." (Emphasis mine.) Subparagraph 6 (4) (a) states that by notice published in the Gazette, the CR may also establish district offices to receive applications for registration of persons who are resident therein or in such part thereof.

[66] Then importantly, sub-para 6 (4)(aa) of the NRA includes a provision similar to that in s 3(1) of the ELA in that it provides for house to house registration. It states that:

"every registration officer shall, either by himself or an authorized officer, by house to house visits within the registration division or sub-division assigned to him, obtain **as far as practicable** the application for registration of every person, who is on the appointed date of the age of fourteen years or above for the purpose

of ascertaining every person qualified for registration to have his name included in the National Register of Registrants." (Emphasis mine.)

[67] Section 6 (6A) of the NRA states that –

> "The Elections Commission shall use the Official List of Electors from the 2001 General and Regional Elections as the base to commence continuing registration.
>
> Provided that at any stage the Commission may undertake such verification as necessary by a means to be determined by the Commission."

[68] The NRA and its regulations provide for how persons names may be removed from the list of registrants. Section 8 of this Act outlines how registration may be cancelled or altered while s 15 provides for claims and objections. Registration may be cancelled if (1) the registrar is satisfied that the person is dead, (2) a new registration has to be prepared for a person, for example if they have moved to reside in a new district or have a change of name, (3) the registrar is directed by the GECOM to do so pursuant to regulation 34 in relation to alterations, (4) such registration would be in contravention of s 11(1), that is, a person is registered in more than one division, or (5) the registrar is satisfied that the person is not qualified to be registered. There is a proviso that cancellation cannot occur if preparation of the list in which the person is named has commenced. In my view and I hold that as regards (5), whether the registrar is satisfied that the person is not qualified to be registered would have to be referable to the qualifying criteria in art 159 (2).

[69] Pursuant to s 16 of the NRA, GECOM has the responsibility for the supervision of the registration of persons qualified to be electors and in this regard art 162 is to apply to the NRA. It also states that GECOM is responsible for ensuring the effectiveness of the divisional and central registers of electors.

[70] Importantly, regulation 38 (3) to the NRA states that before the cancellation or alteration of the registration of a person, they must be notified of the time and reasons for such and would be required to produce any identification card issued as a consequence of the registration.

[71] In effect, the NRA provides the detailed mechanisms or procedures not only for the preparation of the National Register of Registrants, but also for the actual preparation of the list of electors, and has to be read in conjunction with the ELA.

Analysis of the Law

Preliminary points

[72] I am mindful of the separation of powers and the principles of this doctrine. However, the jurisdiction exercised in adjudicating in this case does not infringe the principles of the separation of powers as the Court does not seek to usurp the powers of the legislature or the executive. This is a case that requires, among other issues, the interpretation of the Constitution and statutory provisions regarding the registration of persons who are to be electors in the unusual circumstances for Guyana where elections must be held following a valid NCM. The Court has an inherent jurisdiction to so do.

[73] The right to vote as noted in **Cedric Richardson v Attorney-General & Ors** CCJ No. 8/2017 AJ is an essential feature of a democracy. Justice Claudette Singh also emphasized the importance of this right in **Esther Perreira v The Chief Elections Officer** & Ors, No. 36 – P / 1998 where her Honour said that the right to vote "is recognized as a constitutionally protected right." (See p 20 of the judgment.) Thus, in the context of a democratic society such as Guyana, I consider that there is a right to vote and not just a right to be registered to vote. And applying **Eddy David Ventose v The Chief Elections Officer CCJ Appeal BBCV2018/002 AJ**, the Court has the jurisdiction to adjudicate to ensure that the constitutional provisions and laws that permit and secure the right to vote are properly applied and followed.

[74] Secondly, there is no restriction on the jurisdiction of the Court to interpret a decision of another Court, in this case the consequential orders judgment of the CCJ.

Interpretation of the Consequential Orders Judgment of the CCJ - Did the CCJ by its consequential orders judgment fix or impliedly fix a date or period during which general and regional elections are to be held consequent on the NCM being held to be valid?

[75] The determination of this question lies in the CCJ consequential orders judgment of July 12, 2019. The applicant relies on para 6 while the respondents rely on paras 6 and 7 of the judgment in support of their respective contentions.

[76] Paragraph 6 states as follows:

> "6. Given the passage of the no confidence motion on 21 December 2018, a general election should have been held in Guyana by 21 March 2019 unless a two thirds majority in the National Assembly had resolved to extend that period. The National Assembly is yet to extend the period. The filing of the court proceedings in January challenging the validity of the no confidence vote effectively placed matters on pause, but this Court rendered its decision on 18 June 2019. There is no appeal from that judgment."

[77] And para 7 states:

> "7. Article 106 of the Constitution invests in the President and the National Assembly (and implicitly in GECOM), responsibilities that impact on the precise timing of the elections which must be held. It would not therefore be right for the Court, by the issuance of coercive orders or detailed directives, to presume to instruct these bodies on how they must act and thereby pre-empt the performance by them of their constitutional responsibilities. **It is not**, for example, **the role of the Court to establish a date on or by which the elections must be held**, or to lay down timelines and deadlines that, in principle, are the preserve of political actors guided by constitutional imperatives. The Court must assume that these bodies and personages will exercise their responsibilities with integrity and in keeping with the unambiguous provisions of the Constitution bearing in mind that the no confidence motion was validly passed as long ago as 21 December 2018." (Emphasis mine.)

[78] The applicant contends that para 6, with its reference to the effect of the NCM being on pause and to the Court rendering its decision on June 18, 2019 from which there is no appeal, is to be interpreted to mean that elections should be held on or before September

18, 2019, that is, within three months of June 18, 2019. It is argued that in effect the NCM is to be taken to be operational as from June 18, 2019.

[79] The respondents on the other hand say that in this paragraph the CCJ recognized the fact that the 3 (three) months period from the date of the NCM had expired, and that no election ought to be held without an extension of time by the National Assembly.

[80] The respondents also rely on the contention that similar arguments for fixing a date for or period by which elections are to be held that is to say September 18, 2019, were made before the CCJ in the hearing of the consolidated appeals to which the applicant was a party, and that the CCJ by its consequential orders declined to accede to the submissions in this regard. They contend that this Court cannot seek to make an order that the CCJ did not make and as a lower court it is bound by the order of the CCJ.

[81] There is an immediate flaw in the contentions on behalf of the applicant, and is an issue that I sought to highlight at the stage of the hearing on the conservatory order; it is this: nowhere in the application or in the submissions is there a recognition that apart from fixing a three month period for the holding of an election after a successful NCM, art 106(7) also includes an important proviso - that the National Assembly may extend the period for holding such elections.

[82] While referring to the NCM being put on pause, the CCJ also noted that "a general election should have been held in Guyana by 21 March 2019 unless a two thirds majority of the National Assembly had resolved to extend the period." There the CCJ noted that the election should have been held by March 21. Then the Court went on to say:"The National Assembly is yet to extend the period." Thus, the reference to matters being on pause has to be read in light of what was stated earlier in this paragraph.

[83] The NCM was on pause, but the date for holding elections had nevertheless passed and the National Assembly had not as yet extended the time for holding the elections. Indeed, Mr. Nandlall accepted that time did not stop running from the date of the NCM though Mr. Datadin on behalf of the Bar Association submitted that it did.

[84] An important aspect of the consequential orders judgment is the actual orders of the CCJ as regards the effect of the NCM which are set out at para [9] e) and f) (See para [4] *supra*) which flowed from the pronouncements of the Court.

[85] The words "**Article 106 immediately became engaged**" denote that the NCM having been passed on 21 December, 2018 – the requirements of art 106 immediately became operationalised. In so becoming immediately operationalised, as regards the holding of elections which is the foundational issue of this application, art 106(7) provides that such elections be held within three months of the date of the passage of the NCM "or such longer period as the National Assembly shall by resolution supported by not less than two-thirds of the votes of all the elected members of the National Assembly shall determine ... ."

[86] If the Court had said that art 106 'immediately becomes engaged' then maybe the June 18 date or even the July 12, 2019 date when the consequential orders judgment was made could have been dates from which the effect of the NCM could have been counted. But this language was not used.

[87] To hold otherwise than that art 106 "immediately became engaged" would have resulted in the CCJ refixing the date of the NCM and reconfiguring what the Court referred to as the "clear provisions of Article 106" of the Constitution. The CCJ could not and this Court cannot refix the date of the NCM to June 18, 2019, when it was validly passed on December 21, 2018. It is not within the jurisdiction of the Court to do so. To do so would be to disregard the rule of law and act contrary to the dictates of the Constitution which the Court is duty bound to uphold.

[88] The CCJ emphasized this in para 7 of the consequential orders judgment (as quoted at para [77] *supra*) where after noting that art 106 "invests in the President and the National Assembly (and implicitly GECOM) responsibilities that impact on the precise timing of the election which must be held", it was stated that:

> **It is not**, for example, **the role of the Court to establish a date on or by which the elections must be held**, or to lay down timelines and deadlines that, in principle, are the preserve of political actors guided by constitutional imperatives." (Emphasis mine.)

[89] The CCJ therefore did not explicitly or by implication in its pronouncements or in the declarations and orders in para 9 (e) and (f) order that elections are to be held within

three months of June 18, 2019. On the contrary, the CCJ explicitly stated that it is not the role of the Court to establish a date on or by which elections must be held.

[90] Further, the CCJ could not and this Court cannot order that elections be held by a fixed date because of the provision that the National Assembly can decide to extend the period for holding elections a provision which, as I mentioned earlier, the applicant has failed to acknowledge in his application. Hence the statement by the CCJ that any timelines or deadlines are the preserve of the political actors and the exhortation at the end of para 7 which I repeat that:

> "The Court must assume that these bodies and personages will exercise their responsibilities with integrity and in keeping with the unambiguous provisions of the Constitution bearing in mind that the no confidence motion was validly passed as long ago as 21 December, 2018."

[91] The language of the CCJ could not be clearer. A dispassionate and objective reading of the entire consequential orders judgment and not parts of it leads to the ineluctable conclusion that the Court could not and did not fix a date or period for the holding of elections. The applicant cannot cherry pick and or parse the judgment to suit his fixed views regarding when he thinks the elections should be held.

[92] The declarations are all framed with reference to or in the context of September 18, 2019. Mr. Nandlall in acknowledging that they did not include any reference to the extension proviso, sought to ask that the Court include it. However, I re-emphasise - para 7 of the CCJ decision as noted above is crystal clear. The Court cannot fix a date or period for the holding of elections. Apart from agreeing with the CCJ, I am also bound by the decision pursuant to the principle of *stare decisis* as submitted by Mr. Marcus on behalf of GECOM.

[93] Therefore, to the extent that no order can be made that refers to or includes a date or period for the holding of elections, the NOA filed by the AG is correct in urging that this issue is *res judicata*. So the declaration sought at para (ii) of the FDA cannot be granted.

Constitutionality of House to House Registration

[94] Although my decision regarding the effect of the consequential orders judgment goes to the pith of the applicant's contention regarding the house to house registration exercise, I will nevertheless consider whether it is constitutional or lawful in the context of the requirement for elections consequent on the NCM such as to permit the declaration sought at para (iii) of the FDA to be granted.

[95] The former Chairman of GECOM issued an Order on June 11, 2019, No. 25 of 2019 made pursuant to s 6 of the NRA which was published in the Official Gazette on June 11, 2019. This Order states as follows:

> "1. This Order may be cited as the National Registration (Residents) Order 2019 and shall come into operation on 20th July, 2019.
>
> 2. Persons to whom this Order applies shall in accordance with Section 6 of the Act, be registered under the process of house to house registration with reference to 31st October, 2019 and the registration of those persons shall begin on 20th July 2019 and end on the 20th October, 2019.
>
> 3. This Order shall apply to all persons who:
>
> (a) are qualified to be electors; and
>
> (b) on the qualifying date, 31st October, 2019 shall have attained the age of fourteen years."

[96] This Order speaks to the registration of persons who are qualified to be electors. This aspect of the Order provides a direct link to the ELA and for the purposes of this application is the more relevant of the two. The second category of persons to which it applies is to those who would attain the age of fourteen years as at October 31, 2019. Given the specific focus on electors in the Order, one can understand the contention for the applicant that the current house to house registration exercise as confirmed by the affidavits of the CEO/CR and on behalf of the AG could mean that persons who have been registered previously as electors but who do not so register again may consequently be excluded from the list of electors.

[97] As outlined earlier, art 160 (3)(a)(i) permits Parliament to make provision for registration of electors. Further, art 162 permits Parliament to make laws for the regulation of elections for which GECOM is to have administrative conduct in addition to its functions of exercising general direction and supervision over the registration of electors. The Constitution therefore allows for the enactment of provisions in relation to house to house registration as a registration and verification exercise as found in the ELA and the NRA as outlined above.

[98] In addition, the NRA permits the establishment of offices for the purpose of receiving applications for registration.

[99] So there are at least two methods of registration – (i) by house to house registration and (ii) at divisional or district offices. In this regard, the legislative provisions do not support the submission on behalf of the CEO/CR that there was a complete repeal of "the process of establishment of an office in the Districts as an alternative." Nor does the legislation support the contention that the house to house registration exercise is the only means to facilitate registration of persons.

[100] There is nothing to suggest that the ELA and the NRA are unconstitutional. Indeed, the NRA pursuant to which the Order was issued is an Act "to provide for the establishment of a National Register, for the issue of identification cards and for purposes connected therewith." The registration of persons for these purposes cannot be said to be unconstitutional or unlawful. Thus, for this reason it cannot be said that the house to house exercise as a method of registration in and of itself is unconstitutional or unlawful.

[101] It was conceded on behalf of the applicant that the order is not inconsistent with terms of the Constitution, but it was argued that "it is inconsistent with the effect of the provisions of Articles 106(6) and 106(7) which have been triggered."

[102] It was submitted that "To make such an order before the decision of the Caribbean Court of Justice decided on the matter was a precipitous act. This indicated an intention to disobey the decision of the Court and to proceed with house to house registration regardless of whether the Court found that elections should be held within a certain [time] or whether the Court found that the appointment of the Chairman of the Elections Commission was invalidly made."

[103] However, Mr. Nandlall conceded that there was nothing preventing the issuance of the Order on June 11, 2019 though the appeals before the CCJ were still pending. There was no conservatory or other restraining order preventing the then Chairman of GECOM from acting even though his chairmanship was still the subject of a challenge in one of the appeals. While the applicant may desire that the Order not have been issued, the fact remains that the Order merely confirmed a decision that had been taken since July 2018 to conduct house to house registration. It is however noted that there is a challenge to the validity of the Order in **FDA 1177/2019 Shuman v GECOM & The AG, FDA 1177/2019**, for which decision is being given on August 23, 2019.

[104] The gazetted order exhibited to Mr. Mustapha's supplementary affidavit clearly indicates that it was made on June 11, 2019 to conduct such an exercise from July 20 – October 20, 2019. This would have been before either the initial decision of June 18, 2019 validating the NCM and invalidating the appointment of the then GECOM chairman, and the consequential orders judgment of July 12, 2019 given by the CCJ. There was nothing stopping GECOM from so doing.

[105] I do not see how the house to house registration exercise violates art 106(6) and (7). The CEO/CR and GECOM have no role in the implementation of art 106(6). And as regards art 106(7), GECOM could conduct the house to house registration or any other registration or verification process for that matter in the context of the peculiar circumstances that are extant following the NCM. Indeed, there is no date fixed for the election since March 21, 2019 by which it was to be held has long gone. Article 106 (7) regarding the extension of the period for elections would have to activated. As noted earlier, the applicant's application did not take this into consideration.

[106] The speed and timeframe within which house to house registration may have to be conducted may be affected but it does not eliminate it as a verification process.

[107] Pursuant to art 162, the ELA and the NRA, the house to house registration therefore is not unconstitutional in and of itself or as a verification exercise.

[108] Much was made in the submissions for CEO/CR as regards art 159 (5) which defines the qualifying date at which persons must be registered. Qualifying date as defined in this sub-article means "such date as may be appointed by or under an Act of Parliament as the date with reference to which a register of electors shall be compiled or

revised." The house to house registration is a preliminary stage to the completion or revision of the register of electors. The house to house registration Order outlined above provides for October 31, 2019 as the specific date with reference to which the registration period is to relate. It is unclear whether this could be considered to be the 'qualifying date' for the purposes of art 159(5).

[109] Whether so or not, the October 31 date provides an important parameter as regards the registration of persons who are fourteen years or older because those who would become fourteen years old by October 31, 2019 can be registered.

[110] As noted above, it was submitted on behalf of the applicant that the violation of the NRA for which the declaration is sought speaks to the breach of ss 8 and 15 of this Act. These sections have been outlined above. These sections were not stated in the application as they should have been, but revealed in the submissions on behalf of the applicant. There is no evidence that there has been, is, or will be a breach of these sections which provide for the cancellation and alterations of the registration of registrants and for claims and objections. Thus the declaration sought that speaks to a violation of the NRA cannot be granted. Apart from the lack of evidence which would disallow a reference to a breach of these two provisions, such an order, if granted as framed would be vague and therefore incapable of being implemented. That said, these provisions and the regulations must be adhered to if there is to be the removal of the names of persons from the register.

[111] Subject to what I will say as regards the removal of registrants from the list if they do not register during the current house to house registration exercise, I agree with the submission on behalf of the CEO/CR that there is nothing in the CCJ decision that makes the conduct of house to house registration unlawful or unconstitutional.

[112] Given the evidence that there was a unanimous decision on July 24, 2018 to conduct house to house registration in 2019 prior to the holding of the next general and regional elections, GECOM has not been shown to have acted unreasonably in directing house to house registration as a means of verification of the list of electors given the requirement for the revision of the list after April 30, 3019 pursuant to s 7 of the ELA as amended by the Local Authorities Elections Act No. 10 of 2018.

[113] However, the fact is, that the July 2018 decision, and that made in 2007 at the 171st Meeting of GECOM, to conduct house to house registration, were not made in the context of an NCM. The NCM is an extraordinary circumstance that GECOM must bear in mind in its decision-making as it conducts the house to house registration and for that matter any verification process that has as the objective the compilation or revision of the list of electors for the required upcoming elections.

[114] As such, since GECOM is seeking to register electors, GECOM may have to consider other options including what other methods of verification of the list may have to be utilized whether in conjunction with or separately from the house to house exercise. Indeed, the CEO/CR deposed that the preparation of the Official List of Electors permits the registration of every qualified elector during the registration exercise or a claims and objections period. While pursuant to arts 160 and 162 GECOM is an independent body, that is not subject to the control or direction of any person or authority, and while it is incumbent on GECOM to produce a credible list and a credible election, it is subject to the Constitution and the laws and cannot act as though it is in a normal registration or election cycle.

[115] Nevertheless, it would not be for the court to determine whether house to house registration should or should not be conducted moreso as the Order includes the registration of persons who are fourteen years and over to whom would be issued national identification cards. This aspect cannot be ignored and is also not unconstitutional or unlawful.

[116] The CCJ consequential orders judgment at para 5 specifically exhorts that given the passage of the NCM and the requirement to hold elections within three months or such extended period as authorized by the National Assembly, GECOM has "the responsibility to conduct that election and GECOM too must abide by the provision of the Constitution". Then GECOM was identified (albeit stated as implicitly) as one of the bodies to act with integrity "in keeping with the unambiguous provisions of the Constitution bearing in mind that the NCM was validly passed as long ago as 21 December 2018."

[117] It is clear that despite the submissions as to its preparatory requirements, the Court was saying GECOM had to abide by the three month period or such longer period

as the National Assembly determines. Therefore, cognisance must be taken that an NCM has been passed and that elections must be held soonest.

[118] In sum, I have concluded that GECOM has the authority to direct the conduct of house to house registration and would not be acting *ultra vires* the Constitution or the NRA in so doing. The applicant may be concerned about the timelines for the conduct of the exercise, vis-à-vis the timeframe he envisages for the conduct of elections, but even in these circumstances, the house to house registration would not be unconstitutional or illegal. Therefore, subject to the determination of the issue of the removal of names of persons which has been raised in the affidavits and submissions, the claim for a declaration as in para (iii) of the FDA that the house to house registration exercise is unconstitutional or unlawful is not granted.

Removal of names of persons not registered in the house to house registration exercise from the list of registrants or electors for the next general and regional elections

[119] The other issue raised by the applicant, as regards the constitutionality of the house to house registration exercise, is the possibility of the removal of names of persons from the list of registrants and as a consequence from the list of electors if they do not register during the current house to house registration exercise.

[120] The applicant in challenging the residency requirement advanced by the respondents, did not provide evidence that thousands of Guyanese will not be registered if they are not at home or resident when the registration officers or enumerators visit and that thereby their names would be removed from the list of registrants from which the Official List of Electors is ultimately derived. However, the affidavits in defence and submissions on behalf of the CEO/CR and the AG, indicate that their view is that once a person is not registered during the house to house registration exercise such person would not be registered for the purposes of inclusion in the list of electors. In effect one's name could be removed from the Official List of Electors. Indeed, it is common knowledge that there are advertisements to the effect via the media that even if registered already, one must re-register during the house to house registration exercise and that anyone who fails to apply to be registered is liable to be charged criminally. Sections 6 (6) and (7) of the NRA make provision for this summary conviction offence.

[121] Ms. Kumar on behalf of the AG had this to say in this regard:

"31. That the process of house to house registration is a legal process which is sanctioned by the legislature and has a specific requirement for residency which is a regular feature of similar legislation throughout the Commonwealth. Section 6(2)(a) of the National Registration Act, CAP 19:08 expressly provides that a person for registration '**must be resident in Guyana**' in order to qualify under the house to house process." (Emphasis hers.)

[122] And this is what the CEO/CR on behalf of GECOM deposed at para 6 (c) of his affidavit in defence to the FDA as regards a residency requirement:

"6. There are numerous statutory provisions relating to elections and registration of electors and attention is directed to the following:

...

(c) **Section 6(2)(b) of the National Registration Act, Chapter 19:08 which stipulates a 'resident in Guyana' qualification for registration as an elector.**"

The reference should have been to s 6(2)(a) (as in Ms. Kumar's affidavit) as s 6(2)(b) refers to persons who "have such other connection with Guyana as may be specified in the Order." The section is quoted in its entirety at para [63] (*supra*).

[123] The laws that govern house to house registration and the addition and deletion of names from the National Register of Registrants and the Official List of Electors are the NRA and the ELA. By reference to the NRA, the ELA provides that the list of electors which must contain the names of persons who would have attained the age of 18 years old, is to be culled from the National Register of Registrants which is provided for by the NRA. Since both Acts provide for house to house registration, it would not be practical for GECOM, which is responsible for administering both Acts, to embark on two separate processes. It is clear from the provisions of both Acts that they are meant to be read together and to work in tandem, creating as they do the regime which leads to the creation not only of a national register of registrants, but also the official list of electors for elections.

[124] The CEO/CR outlined the process for the preparation of the Official List of Electors from the records of registrants produced beginning with the publication of a preliminary list of electors which would be subject to cancellations or alterations and claims and objections pursuant to ss 8 and 15 and the regulations to the NRA. He also said "that when a new National Register is prepared, it replaces the old one after due compliance with the statutory steps" that have to be taken and that GECOM "has the authority legally to create a new data base pursuant to the National Registration Act."

[125] In consonance with the affidavits in defence, the AG and Mr. Forde submitted that the words **"resident in that division" in s 3 (1) of the ELA and "resident in Guyana" in s 6 (2)(a) above** stipulate that residency is an additional requirement permitted by Article 159(2)(c) and so only qualified persons who are actually resident in Guyana and at their residence will be eligible to be registered during the house to house exercise and by extension, would be removed from the register if not so registered during this exercise. Conversely, counsel for the applicant argues there is no such requirement prescribed in any of our laws.

[126] The assertions by the AG and Mr. Forde, in my view, are not maintainable in the context of the provisions for continuous registration, if it is that whatever register and database are currently in existence would in effect be deemed obsolete. The ELA and the NRA include provisions for continuous registration, the process by which persons are registered and remain registered, with the list updated periodically to add persons who have become qualified and/or remove persons who have become disqualified to be registered.

[127] Further, s 7 of the ELA provides for the preparation of a supplementary list, and not an entirely new list, based on revision of the list by way of addition and deletion. Then as outlined earlier in the section highlighting relevant provisions, s 9 of the NRA provides for a central register by way of a computerized data base of all persons under the house to house registration process mentioned in section 6, with the data so generated being utilised to effect the continuous registration process. And this has to be read against the backdrop of s 6(6A) that provided that the 2001 house to house registration process was to be used as the baseline and the evidence in the affidavits of defence that there was another house to house registration exercise in 2008.

[128] To my mind, when one reads the combined effect of the provisions, including the schema that allows for continuous registration, a distinction has to be drawn between registration of a person for the first time and re-registration of a registered person when subsequent house to house registration or registration at the divisional offices is conducted. In my view, apart from previously registered persons who may wish to have changes made to their registration, s 3 (1) seeks to ensure that first time registrants, that is persons 14 years and older apply to be registered within their division of residence in order to ascertain if they are qualified for registration as an elector for national elections so that their names could be included in the official list of electors for the particular registration division. In order to facilitate this, one would expect that they would be at their place of residence when the house to house exercise is conducted or that they present themselves at a divisional or district office.

[129] The right to be registered to vote and the right to vote are sacrosanct and fundamental. The **International Covenant on Civil and Political Rights (ICCPR)** to which Guyana has acceded and which is incorporated into our Constitution, **(see art 154A (1) and the Fourth Schedule of the Constitution)** establishes the right to vote as a matter of international human rights law and provides that every citizen has a right to vote (See **art 25(b).**)

[130] Justice Claudette Singh, in the matter of **Esther Perreira v The Chief Elections Officer and others** (No.36-P of 1998) reviewed a number of leading authorities, highlighting the importance of the right to vote in a democratic society. Her Honour referred to the dictum of Hamilton J in the case of **Greidlinger v Davis 9887 Fed. 2d 1344 (4th Cir 1993)** which was cited before her:

> "It is axiomatic that no right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."

[131] And then Justice Singh observed thus:

> "It becomes clear then, that any prohibition, restriction or limitation on the right to vote must be viewed with a close and critical eye since any such encroachment

would be a bar to that voter's right to have a voice in the elections of his representatives in government."

[132] Approving, the dictum of Warren CJ in **Reynolds v Sims 377 US 554 at 1378** who described the right to vote as "a constitutionally protected right", as being instructive, Justice Singh held that in Guyana the right to vote of a qualified elector "is a constitutionally protected right."

[133] The St Kitts and Nevis case **Joseph Parry v Mark Brantley [2012] ECSC J0827-1** at paragraphs 49 and 50 similarly underscores the importance of the right to vote. Justice Mitchell, JA (ag) had this to say:

> "[49] The constitutional right of enfranchisement is not in doubt. In **Russell v Attorney-General of Saint Vincent and the Grenadines**, [(1995) 50 WIR 127] this Court underscored and explained the nature of the rights guaranteed by an almost identical provision in the St. Vincent and the Grenadines Constitution:
>
> > 'The constitutional right conferred by section 27 is two-fold. The first is the basic right to be registered as a voter in the appropriate constituency. That basic right is granted to every Commonwealth citizen of the age of 18 years or upwards, if he possesses the prescribed qualifications relating to residence or domicile in St Vincent and is not disqualified by Parliament from registration as a voter. The second is the concomitant right to vote in the appropriate constituency. That concomitant right is granted to every citizen who is entitled to the basic right. That concomitant right is a right to vote 'in accordance with the provisions of any law in that behalf'. This means that although the manner of voting is statutory or customary, the right to vote is inherently constitutional.'
>
> [50] The Canadian Supreme Court has emphasised the importance of the right to vote, not only as it relates to the system of democracy which it underpins, but also as an expression of the dignity of the individual. The South African Constitutional Court has made the point that the vote of each and every citizen is a badge of dignity and of personhood. Quite literally, it says that everybody counts. The provisions of the Act governing the exercise of the right to vote may be said to have a constitutional pedigree. In applying the law and the regulations, preference must be given to recognition of the right to vote, and the legislation must be construed in a manner which promotes enfranchisement and guards against

disenfranchisement. These concepts and principles apply to the states and territories of the Eastern Caribbean no less than they do in Canada and South Africa."

[134] Moreover, in the recent Canadian case **Frank & Duong v Attorney-General of Canada [2019] SCC 1,** the applicants who were Canadian citizens resident outside of Canada for employment purposes successfully challenged a provision in the **Canada Elections Act** which stated that non-residents may vote only if they have lived outside of Canada for less than five consecutive years. The Attorney General of Canada had argued that the objective of the limitation was to preserve the integrity of the electoral system and ensure fairness to voters living in Canada. The Supreme Court of Canada held (at p 5 & p 7) that:

> "**Since voting is a fundamental political right, and the right to vote is a core tenet of Canadian democracy, any limit on the right to vote must be carefully scrutinized and cannot be tolerated without a compelling justification.** Intrusions on this core democratic right are to be reviewed on a stringent justification standard. Reviewing courts must examine the proffered justification carefully and rigorously rather than adopting a deferential attitude." (Emphasis mine.)

[135] The Court further held that:

> "There is little to justify the choice of five years as a threshold or to show how it is tailored to respond to a specific problem. As well, the five-year limit is over inclusive. It improperly applies to people to whom it is not intended to apply, and it does so in a manner that is far broader than necessary. While it seeks to bar people from voting who lack a sufficient connection to Canada, no correlation has been shown between, on the one hand, how long a Canadian citizen has lived abroad and, on the other hand, the extent of his or her subjective commitment to Canada. **Many non-resident citizens maintain deep and abiding connections to Canada through family, online media and visits home, and by contributing taxes and collecting social benefits. Likewise, no correlation has been shown**

between residence and the extent to which citizens are affected by legislation. Non-resident citizens do live with the consequences of Canadian legislation: they are subject to Canadian legislation during visits home; Canadian laws affect the resident families of non-resident Canadians; some Canadian laws have extraterritorial application; government policies can have global consequences; and Parliament can alter the extent to which Canadian electoral legislation applies to non-resident citizens, which would make the constitutional right to vote subject to shifting policy choices." (Emphasis mine.)

[136] The Court concluded that it was unclear how the fairness of the electoral system is enhanced when long term non-resident citizens are denied the right to vote. Much of what the Court has stated above can be applied to Guyana.

Guyana's provisions

[137] The 1966 Independence Constitution and the 1970 Republican Constitution of Guyana both included a residency requirement as one of the qualifying criteria to be registered as an elector. Article 65 in each of these Constitutions provided as follows:

"65 (1) No person shall vote at an election unless he is registered as an elector.

(2) Subject to the provisions of paragraphs (3) and (4) of this article, a person shall be qualified to be registered as an elector for the elections if, and shall not be so qualified unless, on the qualifying date, he is of the age of twenty-one years or upwards and either –

(a) is a citizen of Guyana who is domiciled in Guyana or who is resident in Guyana and has been so resident for a period of one year immediately preceding the qualification date, or

(b) is a Commonwealth citizen who is not a citizen of Guyana or who is resident in Guyana and has been so resident for a period of one year immediately preceding the qualification date."

Sub-articles (3) and (4) had the same terms as the current sub-articles in the 1980 Constitution.

[138] The extant 1980 Constitution of Guyana sets out the requirements for eligibility to be registered as an elector for the purposes of voting in an election. As outlined above, art 159(2) (a) and (b) stipulate that to be qualified to be registered as an elector a person must be over the age of 18 and be a citizen of Guyana, or a Commonwealth citizen resident in Guyana for a period of one year prior to the qualifying date. Article 159(2)(c) also stipulates that additional qualifications may be prescribed by law.

[139] There are no laws setting out any additional requirements, more particularly residency, in relation to a person qualifying to be registered to vote. Thus, there are no laws requiring as a prerequisite for registration and thereby the right to vote the presence of a person during house to house registration once they would have been registered previously.

[140] In this regard, I agree with the contention for the applicant that the residency requirement having been removed when the 1980 Constitution came into force, the law, as it stands, therefore, is that in Guyana a residency requirement for citizens is no longer necessary for qualification for registration and by extension as an elector.

[141] By stipulating that a person who has already been registered must be at their residence at the time of the house to house registration exercise in order to be registered, suggests that another qualifying criterion is being added for registration as an elector. A reading of all the relevant provisions leads to the inevitable and ineluctable conclusion that GECOM does not have the discretion without more to remove the name of a person from the list of registrants or electors because such a person who was previously registered has not re-registered during a house to house registration exercise.

[142] Section 3 of the ELA regulates the process for registration of electors. Indeed, it merely sets out the procedure to be followed by registration officers in the matter of registration of electors in Guyana. That is, if you live in a particular division, you will be registered in that division, but it does not seek to exclude Guyanese citizens who are residing overseas or for that matter, registrants who for whatever reason are not able to return to their district of registration from wherever they may be within Guyana, they having been previously registered. Hence, if a person does not register in the division to which s/he may have moved after the last registration exercise, whether by house to

house or at a district office, s/he would have to return to the district or division of their original address in order to vote.

[143] Section 3(1) of the ELA speaks to a positive and not a negative, that is, it provides for adding persons, not removing persons who have already been registered. In this sense, it captures the concept of continuous registration as also provided for in ss 6 & 9 of the NRA. The reference to residence in s 3(1) of the ELA does not add a qualifying criterion as contended in the affidavits in defence and submissions, but is clearly for the purpose of preparing lists according to the electoral divisions as demarcated by GECOM.

[144] As stated in **Parry v Brantley** (supra) this is a "basic right to be registered as a voter in the appropriate constituency."

[145] Residency in the particular division where one was registered whether during a house to house exercise or at a district or divisional office or otherwise by any means to satisfy continuous registration is only important in the context of identifying where one would be registered to vote, that is to say, for a determination of one's polling place or station. Section 7 of the ELA, as outlined above, stipulates how the names of registrants are to be added and deleted from the register if an elector ceases to be qualified to be so registered with necessary safeguards being provided for in the NRA and the regulations thereto.

[146] As a consequence, I do not agree that s 3(1) imposes a residency requirement to be an elector in the sense that one must be present to be re-registered in a division where they have been already registered.

[147] It would therefore be unlawful and unconstitutional to impute a residency restriction into the law of Guyana in the absence of clear words to the effect. While Ms. Kumar deposed that other Commonwealth countries have similar legislation providing for a residency requirement, none was cited. In other Caribbean territories the legislative provisions which prescribe residency as a qualification to be registered to vote are framed in clear and precise terms.

[148] Section 40 (2) of the Antigua and Barbuda Constitution sets out the basic requirements for eligibility to be registered as an elector. However, the Constitution allows Parliament to prescribe more precisely the qualifications to be so registered as was done by s 16 of the Representation of the People (Amendment) Act No. 17 of 2001.

Section 16(1) states: a person is qualified to be registered as an elector for a constituency if, on the qualifying date he is a Antigua citizen or a Commonwealth citizen (other than a citizen of Antigua and Barbuda) who has resided in Antigua and Barbuda for a period of at least three years immediately before the qualifying date; and has resided in that constituency for a period of at least one month immediately preceding that qualifying date."

[149] Section 7 of the Representation of People Act, Chapter 12 of Barbados states that a person is qualified to be registered as an elector for a constituency if, on the qualifying date, he is a citizen of Barbados; or a Commonwealth citizen (other than a citizen of Barbados) who has resided in Barbados for a period of at least three years immediately before the qualifying date, is 18 years of age or over and has resided in that constituency for a period of at least 3 months before that qualifying date.

[150] For Trinidad and Tobago ss 12 and 13 of the Representation of People's Act, Chapter 2:01 provide for residence of at least two months in an electoral district preceding the qualifying date. Further, rule 66 of the Registration Rules, made under the Representation of People's Act, stipulates how residency is determined.

[151] In St Vincent and the Grenadines the Representation of the People Act, Chapter 6, s 5 stipulates that the period of residency is at least six months immediately preceding the qualifying date in order for a person to be registered in a constituency. In addition, s 7 states that a person remains registered unless his/her name is deleted with one of the reasons for deletion being that a person has been absent from the country "for a period exceeding five years, except in the case of approved studies abroad."

[152] Similar detailed provisions are made for registration of voters, including outlining residency requirements, in other CARICOM territories such as St. Christopher & Nevis, Jamaica and Dominica.

[153] Unlike these territories, our Constitution does not impose a residency qualification in order to be registered to vote, except in the case of Commonwealth citizens.

[154] Having concluded that residency in Guyana is not a qualifying requirement, it would follow that Guyanese citizens who are living overseas do not cease to be qualified to be registered by the sole reason that they are not residing in Guyana at the time of the

house to house registration once they have been registered before. For that matter, if for example, a person who has been registered in a district in Region 4, has, since the last registration cycle or the last 2015 general or 2018 local government election when he or she voted, become resident whether permanently or temporarily in Region 8, that person cannot be removed from the register of registrants and ultimately the list of electors because they did not return to the relevant district in Region 4 to be registered during the house to house registration process, moreso if they consider their residence to be in Region 4.

[155] If they have changed address and thereby change the division where they reside, then one would expect that they would apply to do so during the house to house exercise or at a divisional or district office. If they care to be re-registered in the Region in which they now reside, whether they are there permanently or not, they would have to re-register and the requisite provisions would apply for the removal of their names from the list for the district in which they previously resided pursuant to ss 8 and 11 of the NRA.

[156] I also note that both the ELA and the NRA state that the enumerators or registration officers are to obtain "as far as practicable" applications for registration within their divisions. The language of "as far as practicable" in my view suggests that the legislation recognizes that, for whatever reason, applications for registration from every eligible person may not be received. This is another reason why it would be unlawful to delete the names of persons without more, because they were not at their residence when the enumerator or registration officer chose to visit.

[157] And I also point out that the use of the word 'shall' in respect of the registration officer conducting the house to house registration does not make the exercise mandatory as claimed by Ms. Kumar. It is in GECOM's discretion whether to conduct house to house registration, but once it so decides, it then becomes mandatory for its officers and agents to conduct the registration exercise by this method.

[158] In order to assist in effecting changes to the register, the regulations provide for the Registrar General of the General Registration Office and the Chief Immigration Officer to provide reports to GECOM as regards the names of persons who would have died and those who would have left Guyana permanently. As regards the latter, I am of the view that it would not be for the purpose of removing the names of persons who

would have emigrated but to provide information to GECOM for its notification. Apart from removing the deceased, which the NRA permits, there is nothing permitting the removal of the name of a person because they have emigrated.

[159] This is especially so as there is no residency requirement for a Guyanese citizen to vote. The Canadian decision of **Frank & Duong v AG of Canada** cited earlier is instructive.

[160] In order for the names of persons already registered to be removed from the list of electors, they would have to be deceased or otherwise become disqualified, but failure of a registered person to be present or resident during the house to house exercise would not be such a disqualifier. As such a person's name can only be deleted if they no longer meet the qualifying criteria under art 159(2) or become disqualified under Article 159(3) and (4). To be pellucid, their names can only be deleted if they are not 18 years of age or older and they are not a citizen whether by birth, descent or naturalization or a Commonwealth citizen with one year residence pursuant to art 159(2); and if they are insane or been adjudged to be of unsound mind or have been convicted of an election offence pursuant to art 159(3) and (4).

[161] GECOM would have no legal authority to remove or de-register such persons who are otherwise qualified unless such registration can be cancelled pursuant to s 8 (cancellation and alteration of registration) and s 15 (claims and objections) of the NRA and the regulations thereto as outlined above. These persons may have to return to their districts to vote, but their names cannot ipso facto be removed from the register of registrants, which removal would then disqualify them from and deprive them of their right to vote. To do so would be unconstitutional and therefore illegal. In this regard, paras 67 and 69 of CEO/CR's affidavit correctly capture how the list is to be revised when he said:

> "67. During the process of revision names of persons are added who have or may have become qualified and names of persons who are registered electors are deleted who cease to be qualified to be registered.
>
> ...
>
> 69. That the removal from the Electoral Register or Roll has been provided for in

the Elections Laws (Amendment) Act No. 15 of 2000."

[162] I do not accept the argument advanced by the AG that if persons' names have been removed from the list that they have the claims and objections period to ensure that their names are included. This is to place an onus on someone to check a list and go through this exercise when s/he would have no reason to assume that her/his name would have been deleted.

[163] With respect to the list lapsing on 30th April 2019, s 7(1) of the ELA originally required that the official list of electors and a non-resident electors roll be updated every three months. This was amended by section 7 of the Local Authorities Elections Act 10 of 2018 which extended the three months period to six months. Therefore, an official list of electors is valid for a period of six months from the date it was last compiled or revised. However, in the context of continuous registration, this does not mean that a new list is necessary but merely that the list is updated every six months. This was specifically stated in the explanatory memorandum for Act 10 of 2018 which states that "Clause 7 amends section 7 (1) of the Election Laws (Amendment) Act 2000 **to facilitate the effective implementation of continuous registration and the availability of an electoral list which shall always be in force** and which shall be routinely updated every six months." (Emphasis mine.)

[164] In light of the foregoing, art 159(2) in sum sets out the constitutional right to be registered as an elector once one meets the qualifications as therein outlined, whereas section 3 of the ELA and s 6(2) (a) of the NRA set out the basic right and the mechanism to be registered in the appropriate district, based primarily on residence in the sense of where one lives for a determination of the district or division where one would vote.

Synopsis and Conclusion

[165] The answers to the questions identified earlier as the issues to be determined are answered as follows:

[166] **Did the CCJ by its consequential orders judgment fix a date by which or period during which general and regional elections are to be held as a consequence of the validly passed NCM?**

[167] The judgment did not fix a date by which or a period during which general and regional elections are to be held as a consequence of the validly passed NCM. The CCJ expressly declined to do so. Therefore, the Court did not fix September 18, 2019 as the date on or by which elections are to be held.

[168] The Court cannot decide on a date or period within which elections are to be held. The Court cannot usurp the powers of the executive or the legislature in this regard. The **Esther Perreira** case (*supra*), in which Justice Singh fixed a date for the elections can be distinguished, as there the 1997 elections were held not to have been conducted in accordance with the law, to wit the Representation of the People Act, Chapter 1:03 and arts 59 and 159 of the Constitution. Also art 106 which sets out what occurs on the passage of a NCM did not apply.

[169] As noted by the CCJ – it is for the political actors and other bodies and personages to "exercise their responsibilities with integrity and in keeping with the unambiguous provisions of the Constitution bearing in mind that the no confidence motion was validly passed as long ago as 21 December, 2018." The Court therefore assumed that they would so act within the bounds of the provisions of the Constitution and responsibly to ensure the well-being of the nation as a whole. There is no need for the Court to make coercive orders as sought by the applicant given that art 106 "immediately became engaged". Article 106 (6) and 106 (7) themselves provide the imperatives.

[170] I can only reiterate what the CCJ has so pellucidly stated at para 7 of the consequential orders judgment – that the setting of any timeline or deadline for elections is "the preserve of the political actors guided by constitutional imperatives."

[171] **Is the house to house registration exercise currently being conducted by GECOM in 2019 unconstitutional and unlawful given the context of the validly passed NCM?**

The house to house registration exercise currently being conducted by GECOM in 2019 is not unconstitutional or unlawful.

[172] **Can the name of a person, whose name is currently on the list of registrants and electors, but who is not registered during the house to house registration exercise, be removed from the list of registrants and thereby the list of electors for the next general and regional elections which flow from the validly passed NCM?**

[173] Residency is not an additional qualifying requirement for registration pursuant to art 159 (2)(c) and therefore the names of persons which are currently on the list of registrants and electors, but who are not registered during the house to house registration exercise, cannot be removed unless the persons are deceased or become disqualified pursuant to art 159 (2) of the Constitution with the provisions for such removal in the NRA to be complied with.

[174] This is to say, where persons are already registered, it would be unconstitutional if they are removed for the sole reason that they now reside in another jurisdiction or as I have pointed out, another part of the country vis-à-vis where they reside as regards their place or district of registration in Guyana where they would be able to vote. The same would apply if it is that they are simply not present for whatever reason when the registration officer or enumerator visited or visits. Once they fulfill the criteria in art 159(2) and are already registered, they are entitled to remain so unless it is proven that they are deceased or have become disqualified or that art 159 (3) or (4) applies.

[175] Pursuant to the ELA and the NRA the electoral system in Guyana is meant to be based on continuous registration, with additions being done by house to house registration as one of the methods of doing so. This is because inherent in a person's right to be registered as an elector is a concomitant right to vote.

[176] The legislation does provide a framework for ascertaining those who have died and those who have left the country permanently, though the fact of the latter does not mean that one would have renounced ones right to vote in Guyana. It is for the State and the policy makers to ensure that the statutory provisions in this regard are properly operationalised. The legislative framework leaves much to be desired. It is repetitive and convoluted and therefore, unnecessarily complicated, moreso as the ELA and NRA have to be cross-referenced to get a picture of how the laws are to be implemented. Any changes, e.g. by way of consolidating legislation, would be for the executive and legislature to determine. This is as much as the Court can say.

[177] I have also concluded that it would not be for the court to determine whether house to house registration should or should not be conducted. It is for GECOM, within the confines of the Constitution and the law and the timelines pursuant thereto for the holding of national and regional elections to determine how and when to hold house to house registration. This is to say, GECOM cannot seek to conduct such registration such as to vary the constitutional timelines for holding elections outside of what is permitted by the Constitution and relevant laws. If this would be a possibility then GECOM may have to consider other options including what other methods of verification of the list may have to be utilized. And given the exhortation of the CCJ, even though it has a duty to provide a credible voters' list, GECOM cannot operate as though it is in a normal elections cycle. To itself have credibility, it has to operate within the context of a NCM having been validly passed.

[178] Thus, whatever verification or revision exercise is undertaken to ensure a fair and credible election, whether house to house or otherwise, for the preparation of the list of electors for national and regional elections consequent on the NCM, must be conducted in the context of the order of the CCJ of July 12, 2019 that the provisions of art 106 immediately became engaged on the passage of the NCM on December 21, 2018. This means that the election should have been held on March 21, 2019 that is within 3 months of the passage of the NCM or such extended date as approved by two-thirds of all the members of the National Assembly.

[179] I agree with the submissions by Mr. Hawke that most of the declarations sought are vague and if granted would not have provided any clarity. This is especially borne out by this FDA in which there is much contention regarding what the CCJ has meant to convey by its pronouncements and orders.

[180] For the reasons outlined, the declaration sought at (i) that the house to house registration process is in violation of art 106(6) and (7) is not granted.

[181] The declaration that the CEO/CR and GECOM obey the letter and spirit of the CCJ's NCM judgment and consequential orders would have posed difficulties as to the meaning of 'letter and spirit". For the reasons given, it is not granted.

[182] The third declaration that the conduct of the house to house registration exercise is illegal, unlawful, ultra vires, unconstitutional, null, void and of no effect is not granted

given my conclusion that house to house registration is not in and of itself unconstitutional or unlawful. However, to be clear, I hold that the house to house exercise being conducted by GECOM is not in and of itself unlawful or unconstitutional, howsoever that the removal of the names of persons who are already on the list of registrants and who were not or have not been or are not registered in the current house to house registration exercise would be unconstitutional, unless they are deceased or disqualified pursuant to art 159 (2) (a) and (b) (3) and (4).

[183] I have dealt with the fourth declaration which requests a declaration that the house to house exercise currently being conducted is contrary to the NRA and have stated why it cannot be granted.

[184] As a consequence of my conclusions, the application by the applicant must fail for the most part. Thus, the consequential orders for a conservatory order cannot be ordered, though I tend to agree with Mr. Hawke that it is an interlocutory and not a final order. There is no need to address this submission in this instance.

[185] Similarly, an order compelling GECOM and the CEO/CNR to immediately take all steps and actions necessary and requisite to hold regional and general elections on or before the 18th day of September, 2019 in compliance with art 106(6) and 106 (7) and the CCJ judgments cannot be granted. This too is an order which would have been difficult to implement or enforce as this case demonstrates the subjectivity as regards what would be considered necessary steps and actions.

Costs

[186] I turn now to the issue of costs. While this is public interest litigation, the applicant sought to re-litigate an important aspect of the CCJ's decision that has been dealt with in the judgment of the Court. So he will have to pay the costs for doing so. To have re-litigated the issue of the date of elections is an abuse of the process of the Court.

[187] While this issue was not specifically argued, in the written submissions on behalf of the CEO/CR it was contended that he is not a proper party to this application. He is a functionary who can only act at the behest of GECOM. The ELA and the NRA clearly so state. The CCJ added GECOM and not the CEO or the CR as parties to the consolidated appeals. Although I have taken cognizance of Mr. Nandlall's submission on the issue of

costs that the CEO/CR is a proper party, I am not convinced of his argument in this regard given the provisions of the ELA and the NRA. More particularly, s 18 of the ELA states that the CEO and the CR shall be subject to the direction and control of GECOM and s 3(3) and 16 of the NRA provide that the CR is responsible to and under the authority and direction of GECOM which has general direction and supervision over registration. Therefore, the applicant will have to pay the CEO/CR costs for joining him when it was not necessary to do so.

[188] I must commend all counsel who clearly worked diligently to file the affidavits and submissions in the short timeframe given.

[189] The costs orders pursuant to Part 64:02 are as follows:

(i) Costs to the CEO/CR in the total sum of $500,000.

(ii) Costs to the GECOM in the sum of 75% of $500,000. The costs are so reduced to take account of the unmeritorious NOA and because the issue of the removal of the names of registrants who are already registered from the list of registrants has been decided in favour of the applicant.

(iii) Costs to the AG in the sum of 80% of $500,000 because the issue of the removal of the names of registrants who are already registered from the list of registrants has been decided in favour of the applicant.

.....

Roxane George

Chief Justice (ag)

August 14, 2019