

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE  
APPELLATE JURISDICTION

CIVIL APPEAL NO. 38 OF 2020

BETWEEN

ULITA GRACE MOORE

Appellant

- and -



1. THE GUYANA ELECTIONS COMMISSION
2. CHAIRMAN OF THE GUYANA ELECTIONS COMMISSION
3. THE CHIEF ELECTIONS OFFICER
4. MARK FRANCE
5. DANIEL JOSH KANHAI
6. JOHN FLORES
7. BHARRAT JAGDEO

Respondents

BEFORE THEIR HONOURS:

Hon. Mme. Dawn Gregory - Justice of Appeal  
Hon. Mr. Rishi Persaud - Justice of Appeal  
Hon. Mr. Justice Brassington Reynolds - Additional Judge

APPEARANCES:

Dr. Francis Alexis QC, Mr. John S. Jeremie SC, Mr. Keith Scotland, Mr. Mayo Robertson and Mr. Roysdale Forde for the Appellant.  
No appearance by or for the first-named Respondent.  
Ms. Kim Kyte-Thomas for the second-named Respondent.  
Mr. Neil Boston SC for the third-named Respondent.  
Mr. Timothy Jonas and Mr. Kamal Ramkarran for the fourth, fifth and sixth-named Respondents.  
Mr. Douglas Mendes SC, Mr. Mohabir Anil Nandlall and Mr. Devindra Kissoon for the seventh-named Respondent.

DATES:

2<sup>nd</sup>, 3<sup>rd</sup> April, 2020

MAJORITY DECISION - Gregory JA and Reynolds J

## Background

- [1] Ulita Grace Moore filed a Fixed Date Application (FDA) in the High Court challenging the lawfulness of a proposed recount of votes cast in the General and Regional Elections held in Guyana on 2<sup>nd</sup> March 2020. She claimed several declarations, orders of mandamus and prohibition and injunctions against the Guyana Elections Commission (GECOM) and its Officials, the first to third respondents.
- [2] This application was not the only action filed in the High Court during GECOM's management of the processes leading to the declaration of the results of the elections. The first was Holladar v Returning Officer, Clairmont Mingo & Ors 2020 -DEM-FDA-CIV-360 which was concluded in the High Court on 11<sup>th</sup> March 2020. In that case the High Court granted orders quashing a declaration of results made by the Returning Officer (RO) for electoral district 4 on 5<sup>th</sup> March 2020 and made orders to ensure compliance with the requirements of section 84(1) of the Representation of the People Act Cap 1:03. An application for Contempt of Court was filed by the applicant inHolladar on 12<sup>th</sup> March for alleged breaches of the orders of court made on 11<sup>th</sup> March. The Contempt proceedings were not yet determined when this FDA was filed on 17<sup>th</sup> March.
- [3] The FDA was placed for hearing before Mr Justice Holder who granted interim injunctions which restrained the holding of the recount about to be undertaken by GECOM. Subsequently Holder J granted permission to the fourth to seventh respondents to be added as parties. In the course of the hearing, Bharrat Jagdeo, the seventh named respondent applied to the Judge to be heard on the issue of jurisdiction, contending that the High Court had no jurisdiction to grant the several orders being sought by Ulita Moore.
- [4] In short, Mr Jagdeo argued that the High Court was precluded by the legislative ouster in section 140 (1) of the Representation of the People Act (RPA) from granting the reliefs which were being sought in the FDA. He argued that the reliefs which were being claimed had to be sought by way of an election petition since the matters raised concerned the conduct of the elections and fell within the class of cases set out in Article 163 (1) of the Constitution of Guyana.
- [5] Article 163 (1) provides, so far as is material:

Subject to the provisions of this Article, the High Court shall have exclusive jurisdiction to determine any question -

- (a) ...
- (b) whether -
  - (i) either generally or in any particular place, an election has been lawfully conducted or the result thereof has been, or may have been, affected by any unlawful act or omission;
  - (ii) the seats in the Assembly have been lawfully allocated ...

- [6] Article 163(4) empowered Parliament to make provision for the practice and procedure to be used in invoking the jurisdiction of the High Court to obtain relief in the cases listed in Article 163(1). That regime, set out in the National Assembly (Validity of Elections) Act Cap 1:04 and Rules, regulates the proceedings in the High Court in relation to election petitions. Crucially, proceedings by way of a petition have to be instituted within 28 days after the official declaration of the results.
- [7] In resisting the contentions on jurisdiction, Ms Moore argued that the matters raised in her FDA touched upon the constitutional powers of GECOM in its conduct of the elections, which matters were to be resolved at the current time and did not warrant the filing of an election petition after the official announcement of the results.
- [8] Holder J ruled that the High Court had jurisdiction to hear the issues raised in the FDA and fixed the matter for hearing on its merits. Holder J found that the legislative ouster in section 140 (1) of the RPA did not preclude the High Court from exercising its ordinary supervisory jurisdiction. Further, he found that judicial review was available if GECOM had done or intended to do something which it had no jurisdiction to do, or had acted or sought to act beyond the powers conferred upon it by the Constitution.
- [9] At the end of the Judge's ruling on jurisdiction Mr Jagdeo appealed to the Full Court. He applied for several orders, the main one being a declaration that the trial Judge did not have jurisdiction to proceed to hear the FDA.
- [10] The Full Court allowed the appeal and concluded that the High Court had no jurisdiction to entertain Ms Moore's application.

[11] Among the orders made by the Full Court in its judgment dated 31<sup>st</sup> March, 2020 were:

- i) The decision by Holder J to grant the reliefs sought by the first respondent/applicant, is set aside in its entirety, on the basis that the said Trial Judge erred in law in finding the High Court's ordinary supervisory jurisdiction is not ousted by section 140(1) of the Representation of the People Act, Cap 1:03 of the Laws of Guyana;
- ii) As a consequence, the interim injunctions are discharged;
- iii) It is further ordered that the Fixed Date Application stands dismissed on the basis that the High Court has no jurisdiction to hear the aforesaid Fixed Date Application;
- iv) The first respondent's oral application for leave to appeal is refused on the ground that the application is without merit and therefore does not demonstrate to the Court the merits or prospects of success of an appeal;
- v) The first respondent's oral application for a stay of the effect of this FullCourt's ruling is refused on the ground that the said application is similarly without merit as no real prospect of success of an appeal has been provided to this Court.

[12] Dissatisfied with the ruling of the Full Court, Ulita Moore now seeks leave of the Court of Appeal to challenge the decision of the Full Court.

[13] More specifically, in her Notice of Motion to the Court of Appeal the intended appellant seeks the following orders:

- i. That there be leave to appeal to the Court of Appeal against the decision of the Full Court delivered on the 31<sup>st</sup> March, 2020;
- ii. That the Application for leave to appeal be treated as the hearing of the Appeal;
- iii. That there be an early and/or expedited hearing of the Appeal.

[14] These orders are all granted by this Court for the reasons set out below.

#### *Leave to Appeal*

[15] Mr Scotland for the applicant noted that in this case, the seventh respondent's appeal arose during the course of the hearing of the FDA on a preliminary point of jurisdiction. He submitted that although the appeal to the Full Court was by its very nature an interlocutory one, the orders of the Full Court upon the disposition of the interlocutory appeal were final orders. The appeal being one against those final orders, could be entertained as of right under the provisions of section 6(2) of the Court of Appeal Act Cap 3:01.

[16] It was conceded that if the order of the Full Court [allowing the appeal] was final but was made in a summary proceeding the appellant would have no appeal as of right to the Court of Appeal. In that case leave would be

required under section 6(4). Reference was made to Alfred Chung and Another v AIC Battery and Another [2013] CCJ 2 (AJ).

- [17] The material parts of section 6(2) and 6(4) of the Court of Appeal Act are set out:

**Section 6 (2)(a)(i)**

Subject as otherwise provided in this section, an appeal shall lie to the Court of Appeal in any cause or matter from any order of the Full Court or of a Judge of the High Court ...where such order is –

(a) final and is not –

(i) an order of a Judge of the High Court made in chambers or in a summary proceeding; ...

**Section 6(4)**

With the leave of the Full Court or of the Court of Appeal, an appeal shall lie under this section from a decision of the Full Court upon appeal from a Judge of the High Court in respect of an order referred to in subsection (2)(a)(i)... or in respect of an order of a Judge of the High Court not referred to in the said subsection.

- [18] Mr Scotland submitted in the alternative that if the applicant's appeal does not fall within section 6(2)(a)(i) because it arises out of interlocutory as opposed to final proceedings in the Full Court, section 6(4) further gives the applicant the right to seek leave to appeal. Reliance was placed on the cases of Gayadin and Others v Republic Bank (Guyana) Limited [2014] CCJ 13 (AJ)], Sankar v Sankar Civil Appeal No. 76 of 2001 (No.3). As such, even if it is found that the decision of the Full Court is interlocutory, the applicant can seek leave of the Court of Appeal by virtue of section 6(4).

- [19] Mr Mendes SC, in response, accepted that the Full Court's order was a final one, although the appeal before the Full Court was from an interlocutory ruling made by a Judge of the High Court. Mr Mendes however argued that this was a final order given in summary proceedings and therefore cannot fall under section 6(2)(a)(i). Thus there was no automatic right of appeal to the Court of Appeal.

- [20] Counsel cited Persaud v Nizamudin [2020] CCJ 4 (AJ) in support of the contention that matters commenced by FDA and determined expeditiously without employing the regular process are in effect summary matters. In

such circumstances he argued there is no right of appeal under section 6(2)(a)(i).

- [21] We conclude that the appeal to this Court is from a decision of the Full Court made on appeal from an interlocutory decision of the High Court. The FDA was part heard - only on the preliminary point of jurisdiction - and was not concluded in the High Court when the appeal to the Full Court was taken. For that reason, the proceedings before the Full Court remained interlocutory. In our analysis this case is distinguishable from Alfred Chung and Another v AIC Battery and Another and Persaud v Nizamudin in which the cases had been concluded in the High Court. It was there determined that the orders were final and made in summary proceedings. As such the appeal did not lie to the Court of Appeal under section 6(2)(a)(i) of the Court of Appeal Act but to the Full Court by virtue of section 79 of the High Court Act. That section states that an appeal shall lie to the Full Court from any judgment made by a single judge of the High Court in the exercise of its civil jurisdiction in which there is no appeal to the Court of Appeal.
- [22] The Caribbean Court of Justice noted in Robin Singh v Attorney General of Guyana [2012] CCJ 2 (AJ) at [16]: "Whether or not an appeal lies to the Court of Appeal from the High Court or the Full Court as the case may be is dependent purely on legislation. The relevant legislation is...in section 6 of the Court of Appeal Act..."
- [23] We hold that section 6(4) of the Court of Appeal Act applies as this is an appeal from a decision of the Full Court upon appeal from a judge of the High Court in respect of a judgment not referred to in section 6(2)(a)(i). The judgment of the High Court is outside of section 6(2)(a)(i) because as a preliminary judgment on jurisdiction only, the appeal to the Full Court against it was an interlocutory appeal. Leave is therefore necessary to appeal to this Court against the judgment of the Full Court.
- [24] We have considered the important issues which touch upon the High Court's jurisdiction as well as the public interest in the matters which arise in the appeal. In our view it is appropriate to grant leave to appeal the decision of the Full Court.

#### *Urgent Hearing of the Appeal*

- [25] All parties agreed that the appeal requires urgent disposition in light of the critical circumstances in which the nation is currently engulfed. Specifically,

more than one month after General and Regional Elections the final declaration of the results of the elections is still being awaited. It is also clear that the issues in dispute in this case have some bearing on the processes leading to the declaration of the final results.

- [26] It is also worth mentioning that by Practice Directions 1 of 2020 all matters related to elections have been deemed urgent and accorded precedence in the administration of cases at the present time.
- [27] In all the circumstances, the Court with the concurrence of the parties, has decided to treat this Motion for leave to appeal as the appeal itself. The intended Notice of Appeal and Grounds are adopted as the Notice and Grounds of Appeal.

### Issues in the Appeal

- [28] The Grounds of Appeal and submissions raise four issues:
  - i) Whether the Full Court correctly exercised its discretion to hear the seventh respondent's appeal during the course of the hearing of the appellant's Fixed Date Application before Mr Justice Holder;
  - ii) Whether the Full Court was correct when it determined that the Court had no jurisdiction to enquire into the matters set out in the Fixed Date Application and when it found that the reliefs sought had to be addressed by an election petition filed in accordance with Article 163 of the Constitution and the National Assembly (Validity of Elections) Act and Rules;
  - iii) Whether section 140 (1) of the Representation of the People Act ousted the jurisdiction of the High Court and/or whether there was a constitutional jurisdiction to enquire into the matters raised in the Fixed Date Application;
  - iv) Whether the application in this case of section 22 of the Election Laws (Amendment) Act No. 15 of 2000 is unconstitutional.

- [29] The second and third issues are part of the main issue, that is, whether the High Court had jurisdiction to hear the FDA, and will be dealt with together.

*First issue – did the Full Court correctly exercise its discretion to hear the seventh respondent's appeal during the course of the hearing of the FDA*

- [30] The Full Court considered the question whether it should properly entertain an appeal from a ruling made during a hearing for the progress of the matter, more particularly, whether the seventh respondent/appellant was entitled to appeal the ruling of Holder J without waiting for the completion of the FDA. The Full Court examined a number of authorities which

discussed the principles which should guide the hearing of interlocutory appeals in the course of a civil action. The Court considered such authorities as Laird v Briggs[1879] 16 Ch D 663, American Life and General Insurance and Ors v Super Chem Products Ltd[1995] 51 WIR 298, Birkett v James[1977] 2 All ER 801, Lennox Phillip v Attorney-General[2009] UKPC 18.

- [31] Applying the principle that interlocutory appeals are to be discouraged unless there are exceptional circumstances, the Full Court found that there were exceptional circumstances in this case. The Court found that the question of jurisdiction would determine the case and that if the High Court were to proceed without a review of the question of jurisdiction the High Court may be inquiring into matters over which it had no jurisdiction. The High Court should be prevented from potentially interfering with the carrying out of GECOM's decision to hold a recount.
- [32] Further, the Court noted that there was no legislative restriction precluding the Full Court from exercising jurisdiction to hear the appeal.
- [33] It is true that jurisdiction of the High Court is the largest issue in the case. The determination of this issue turns on the Court's view of the applicability of section 140 (1) of the RPA and Article 163(1) of the Constitution to the claims made in the FDA.
- [34] It may be added that urgency was another exceptional factor which could justify an early, separate examination of the issue of jurisdiction of the High Court to proceed with the hearing of the case.
- [35] The observation is made, however, that the FDA before the High Court was a claim for judicial review, questioning the constitutionality of actions and /or omissions by GECOM and seeking remedies in public law. It is therefore arguable whether the Full Court had the jurisdiction to hear such an appeal from the High Court or whether the Court of Appeal was the correct forum to hear the appeal. Section 22 of the Judicial Review Act Cap 3:06 provides:

“Notwithstanding anything in any other written law, there shall be a right of appeal from a judge of the [High] Court in any application, including one arising from a criminal cause or matter, to the Court of Appeal.”

- [36] In The Medical Council of Guyana v Jose Ocampo Trueba[2018]CCJ 8 (AJ) the Court discussed the operation of Part 56 of the Civil Procedure Rules 2017 (which regulates applications for judicial review). At para [21] the Court said that by analogy the Judicial Review Act should apply to claims under Part 56 brought before the Act has commenced. Thus section 22 of the Act would seem to apply to appeals. At common law, as reviewed in Robin Singh (above cited) appeals against decisions of the High Court in proceedings for prerogative writs were also brought directly to the Court of Appeal.
- [37] The issue of jurisdiction in judicial review appeals was not raised in the Full Court. In this Court, the observation was made at the hearing whether the Full Court was in fact the correct forum to hear the appeal, but the matter was not argued. The guidance in Dhajoov Thom[1939] LRBG 262 is that it is the first duty of every court to enquire as to its own jurisdiction. This Court's view is that the Full Court may have incorrectly assumed jurisdiction to adjudicate in the appeal. Our approach, however, is that the Court of Appeal is now in a position to exercise jurisdiction in its own right and to make the orders it considers appropriate to dispose of the appeal.
- Main Issue (combining the second and third issues) – did the Single Judge of the High Court have jurisdiction to hear the FDA?*
- [38] A reading of the reliefs sought by Ms Moore in her application to the High Court reveals that her main complaint was that the respondents, GECOM and its Officials had no authority to undertake a recount of the votes cast by electors in the 10 electoral districts or to do so on the basis of an agreement between President David Granger and Leader of the Opposition Bharrat Jagdeo. She claimed that requests for recounts had been refused by Returning Officers, steps had been taken by the Returning Officers under the provisions of the RPA and a report had been presented by the Chief Elections Officer. She alleged that these events triggered duties under Article 177 of the Constitution (Article 177) and section 99 of the RPA (section 99). Article 177 provides for the declaration of the winner of the Presidency, while section 99 provides for the allocation of seats in the National Assembly on the basis of Proportional Representation.
- [39] The appellant alleged the proposed recount to be an unlawful and unconstitutional act and the corresponding failure to comply with the

provisions leading to the declaration of a Presidential winner and allocation of seats to be unlawful and unconstitutional omissions by the respondent Commission and Officials in the conduct of the elections.

- [40] The crux of her complaint seems to be that the time had come for GECOM to proceed to Article 177 and section 99 and GECOM had no authority to act outside of these provisions. Thus, its Officials acted unlawfully and unconstitutionally when they failed to comply with these provisions.
- [41] The claims also complained that the agreement between President David Granger and Leader of the Opposition, Mr Jagdeo for the recount contravened Article 161B of the Constitution which prescribes a limited role of political parties and their nominees in the conduct of elections.
- [42] The claims alleged further that the agreement gave supervision of the proposed recount to a high-level team in terms which were embodied in an Aide Memoire between the political leaders and the Caribbean Community.
- [42] Counsel for the appellant urged that the Chairman and GECOM having failed to perform their functions under Article 177 and section 99, mandatory orders such as those granted by the Court in the case of Ventose v Chief Electoral Officer [2018] CCJ 13 (AJ) would be appropriate. In that case the Court granted coercive orders directing a Chief Electoral Officer who had refused to register the appellant as an elector to do so. The Court's order stated: "You shall register or cause to be registered the appellant as an elector before 12:00 noon on Monday the 14th day of May 2018 ..." [followed by the penal clause].
- [43] The orders sought by Ms Moore in her FDA are now set out:
  - i) A declaration that as soon as practicable, but no later than fifteen days after elections day and upon receipt of the Report of the Chief Elections Officer of the Guyana Elections Commission regarding the results of the 2020 General and Regional Elections, which Report is made pursuant to section 96 (2) of the Representation of the People Act, Chapter 1:03, Laws of Guyana, the Guyana Elections Commission is mandated to publicly declare the results of the Elections as stipulated by section 99 of the Representation of the People Act. Chapter 1:03. Laws of Guyana.
  - ii) A declaration that the Respondents have no authority to accede to any request for a Recount of the votes cast by Electors in favour of the Lists of Candidates at the ten Electoral Districts in Guyana at the recently concluded General and Regional Elections, 2020, on the basis of an Agreement between the President of Guyana and the Leader of the Opposition.
  - iii) A declaration that the Respondents are not empowered under the Constitution or any Law to permit or authorise any person or persons

- pursuant to any Agreement between the President of Guyana and the Leader of the Opposition and or any Agreement between the Guyana Elections Commission and the Caribbean Community to give effect to or to count or recount any ballots cast by electors at the March 2, 2020 General and Regional Elections after a refusal of an application for a recount by the Returning Officer of the Polling District; the Declaration or Electoral Returns made by the Returning Officer being deemed final pursuant to section 84 (2) of the Representation of the People Act and or the communication of the election results to the said Commission by the Chief Election Officer of the said Commission;
- iv) A declaration that the Respondents have no authority to accede to any request by a List of Candidates for a Recount of the votes cast at the 2020 Regional and General Elections after the refusal of a request for a Recount by a [sic] Returning Officers of the Electoral Districts and or the Declarations or Electoral Returns made by the Returning Officers being deemed final pursuant to section 84 (2) of the Representation of the People Act;
  - v) A declaration that the Respondents are not empowered under the Constitution or any Law to enter into or give effect to any Agreement between the President of Guyana and the Leader of the Opposition and or any Agreement between the Guyana Elections Commission and the Caribbean Community to witness or give effect to any Agreement for the counting or recounting of any votes cast by Electors at the March 2, 2020 General and Regional Elections after a refusal of an application for a Recount by the Returning Officer of Polling District and or the Declaration or Electoral Returns made by a Returning Officers being deemed final pursuant to Section 84 (2) of the Representation of the People Act and or the communication of the election results to the Commission by the Chief Election Officer of the said Commission;
  - vi) A declaration that the Respondents have no authority to engage in any count or recount of the votes cast by Electors after the refusal of a request for a recount by the Returning Officer;
  - vii) A declaration that the Declarations made by the Returning Officers of the ten Electoral Districts of the votes cast by the Electors in the Electoral Districts and or Electoral Returns are final and cannot be set aside, varied and or altered by the respondents;
  - viii) A declaration that any Agreement entered into by the Guyana Elections Commission to enter into or give effect to any Agreement between the President of Guyana and the Leader of the Opposition and or any Agreement between the Guyana Elections Commission and the Caribbean Community or to give effect to any Agreement [sic] count or recount any votes cast by Electors at the March 2, 2020 General and Regional Elections after a refusal of an application for a recount by the Returning Officer of Polling District or the Declaration of Electoral Returns made by the Returning Officer being deemed final pursuant to section 84 (2) of the Representation of the People Act and the communication of the election results to the Guyana Elections Commission by the Chief Election Officer of the said Guyana Elections Commission is ultra vires the powers of the Guyana Elections Commission, and therefore unlawful, illegal, improper, void and of no legal effect;
  - ix) A declaration that the Declarations of the respective Returning Officers for each Polling District after compliance with section 84 of the Representation of the People Act of the votes cast by Electors in favour

- of the Lists of Candidates in Electoral Districts 1 to 10 are the Final Declarations of the votes cast by the Electors in favour of a List of Candidates in Electoral Districts 1 to 10;
- x) A declaration that the Declarations of the respective Returning Officers of Electoral Districts 1 to 10 of votes cast by Electors in favour of the List of Candidates in the respective Districts at the General and Regional Elections held on March 2, 2020 made on or before the 14<sup>th</sup> day of March, 2020, are the sole legal basis for the Chief Elections Officer's Report to the Chairman of the Guyana Elections Commission and the Guyana Elections Commission pursuant to section 99 of the Representation of the People Act and the Chief Elections Officer's advice tendered under Article 177 of the Constitution of Guyana;
  - xi) A declaration that the Guyana Election Commission has no authority or power to do agree to or to do acts contrary to the provisions of the Constitution or the Representation of the People Act or to abandon the statutorily mandated procedures and to employ procedures not contemplated by Constitution or the Representation of the People Act;
  - xii) A declaration that the decision by the Guyana Elections Commission purporting to give effect to the agreement between the President and the Leader of the Opposition, is contrary to Article 161 B of the Constitution of Guyana which expressly forbids a political party or its nominee from being involved in the active management of the electoral process, and is therefore improper, void and of no legal effect;
  - xiii) A declaration that the failure of the Guyana Elections Commission to carry out its statutory duty pursuant to Section 99 of the Representation of the People Act and to publicly declare the results of the election held on 2 March, 2020 and to cause the said results to be published in the Gazette, amounts to a dereliction of duty and non-compliance with Section 99 and is unconstitutional, unlawful, illegal, improper, arbitrary, capricious of no legal effect;
  - xiv) A declaration that the Guyana Elections Commission is under a Constitutional duty to act fairly towards the Applicant in as much as the Applicant is a registered voter at the last General and Regional Elections held on the 2<sup>nd</sup> March, 2020 and to execute its mandate in compliance with section 99 of the Representation of the People Act. Chapter 1:03, Laws of Guyana, provided there is no lawful impediment to same, none of which obtain in the present instance;
  - xv) A declaration that as a registered voter at the last General and Regional Election held in Guyana on the 2<sup>nd</sup> March, 2020 the Applicant has a legitimate expectation that, provided section 96 (2) of the Representation of the People Act has been complied with by the Chief Elections Officer in that he has sent his Report regarding the results of the elections to the said Commission, the Guyana Elections Commission will proceed to act in accordance with section 99 of the Representation of the People Act, Chapter 1:03 and to make a public declaration of the results of the election;
  - xvi) A declaration that the Guyana Elections Commission's purported decision to have a general Recount of all the votes cast in the ten electoral districts will impinge and impact upon and defeat the Applicant's legitimate expectation that the Representation of the People Act will be complied with by the said Commission;
  - xvii) An order of mandamus compelling the Chief Election Officer in accordance with Article 177 of the Constitution of Guyana, to advise the Chairman and the Guyana Elections Commission that in accordance with the **information** furnished to him by the Returning

- Officers who is the Presidential Candidate that was elected at the March 2nd, 2020, General and Regional Elections;
- xviii) An order of mandamus compelling the Chairman of the Guyana Elections Commission to convene a duly summoned meeting of the Guyana Elections Commission to receive the advice of the Chief Elections Officer pursuant to Article 177 of the Constitution of Guyana;
  - xix) An order of mandamus compelling the Chairman of the Guyana Elections Commission to declare the President in accordance with Article 177 of the Constitution of Guyana;
  - xx) An order of mandamus compelling the Guyana Elections Commission to carry out its duty in accordance with section 90 of the Representation of the People Act, Chapter 1:03;
  - xxi) Elections Commission, is unlawful, illegal, void and of no legal effect; An order of prohibition prohibiting the Guyana Elections Commission from facilitating any person or persons and or doing any Act pursuant to any agreement between the President of Guyana and the Leader of the Opposition and or any Agreement between the Guyana Elections Commission and the Caribbean Community to count or recount any votes cast by Electors at the March 2, 2020 General and Regional Elections after all applications for a recount have been refused by the Returning Officer for each Polling District; the Declaration or Electoral Returns made by the Returning Officer being deemed final pursuant to section 84 (2) of the Representation of the People Act and or the communication of the election results to the Commission has been made by the Chief Election Officer of the Guyana Election Commission on the basis that such Recount would be and is ultra vires the powers of the Guyana
  - xxii) A declaration that the respondents are not authorised to set aside and or vary the Declarations of the Returning Officers of the Electoral District and or the Electoral Returns of the said Returning Officer or to substitute or replace the said Declarations of the Returning Officers or their Electoral Returns with Electoral Returns or documents;
  - xxiii) An Injunction restraining the Guyana Elections Commission from setting aside and or varying the Declarations of the Returning Officers of the Electoral Districts and or the Electoral Returns of the said Returning Officer of the votes cast by the Electors in the ten Electoral Districts and from substituting or replacing the said Declarations of the Returning Officers or their Electoral Returns made on or prior to the 13<sup>th</sup> day of March, 2020 with any other Declarations, Electoral Returns or documents;
  - xxiv) An Interim Injunction restraining the Chief Election Officer from submitting any Report of the total votes cast for each List of Candidates pursuant to Section 96 (1) and (2) of the Representation of the People Act save and except on the votes counted and the information furnished by the Returning Officers to the Chief Elections Officer on or prior to the 14<sup>th</sup> day of March, 2020, under Section 84 (1) of the Representation of the People Act;
  - xxv) An Injunction restraining the Guyana Elections Commission from facilitating any person or persons and or doing any Act pursuant to any Agreement between the President of Guyana and the Leader of the Opposition and or any Agreement between the Guyana Elections Commission and the Caribbean Community or at all, to count or recount any votes cast by Electors at the March 2, 2020 General and Regional Elections.

*The Affidavit Evidence in the FDA before the High Court*

[44] The appellant in her Affidavit in Support stated that declarations of all 10 electoral districts had been forwarded by Returning Officers (ROs) to the Chief Elections Officer (CEO) in accordance with section 89 (1) of the RPA and the ROs had refused requests for recounts. Thus, the time for the recount process had passed. Further, the CEO had prepared his report in accordance with section 96 (2) of the RPA and furnished it to the Commission.

[45] Section 96 (2) of the RPA is to the effect that the Chief Elections Officer shall prepare a report manually and in electronic form in terms of section 99 for the benefit of the Commission which shall be the basis for the Commission to declare and publish the election results.

[46] Section 99 states:

As soon as practicable after Election Day the Commission shall publicly declare the results of the election and shall cause to be published in the Gazette a notification thereof, specifying—  
(a) the number of votes cast for each list of candidates;  
(b) ...  
(c) the number of seats allocated to each list of candidates; and  
(d) ...

[47] The applicant further deposed that the CEO had failed to advise the Chairman and GECOM in accordance with the information furnished to him by the ROs who was the Presidential candidate who had been elected.

[48] It was in this context that the applicant mentioned a media release by the Chairman of GECOM on the 14th March, 2020. The applicant outlined that the Chairman had indicated that GECOM would be cooperating fully with the process embodied in the agreement between the President and Leader of the Opposition for a recount of all the votes cast. That recount was to be supervised by members of the Caribbean Community.

[49] In relation to the agreement, the applicant complained that the GECOM respondents seemed to have agreed to "surrender their respective duties under the Laws of Guyana to a mission from the Caribbean Community." The applicant stated that she disagreed with that course and asked the Court to grant her the reliefs sought in her FDA.

[50] The seventh respondent, Mr Jagdeo in his Affidavit in Defence specified controversial events which he alleged had taken place in the tallying process.

His allegations were supported by the fourth respondent Mark France in his Affidavit in Defence and several other deponents.

[51] Mr Jagdeo deposed to an independent high-level team "being fielded to supervise the recounting of the ballots" and referred to an Aide Memoire attached to his Affidavit which confirmed this. In the Affidavit in Defence of Mark France it was stated that "...[the Leaders] had agreed ...to request that CARICOM field a team of experts to come to Guyana to monitor and oversee a recount of the ballots in Region 4". Also exhibited to Mark France's Affidavit were media statements regarding supervision of the recount by an independent team of experts.

[52] Moreover, in her Affidavit Ms Moore had stated: "That since the conclusion of the said elections there was much furore surrounding the tabulation and declaration of results for the various districts but more specifically District number 4."

[53] This statement by Ms Moore was admitted by Keith Lowenfield, Chief Elections Officer, third respondent. Mr Lowenfield deposed that he had given his report, as provided for under section 96(2) of the RPA to the Chairman of GECOM but not to the Commission. No meeting had been convened in terms of Article 177 (2). As such, the Commission had not deliberated on his report. In his view without such deliberation no public declaration could have been made under Article 177. The material portion of Article 177 states:

- (1)...
  - (2) Where -
    - (a)...
    - (b) there are two or more Presidential candidates, if more votes are cast in favour of the list in which a person is designated as Presidential candidate than in favour of any other list,
- that Presidential candidate shall be deemed to be elected as President and shall be so declared by the Chairman of the Elections Commission acting only in accordance with the advice of the Chief Election Officer, after such advice has been tendered to the Elections Commission at the duly summoned meeting.

[54] It was brought to the attention of the Court by the Chairman of GECOM, Justice (Ret'd) Claudette Singh in her Affidavit in Defence that she had appeared before the High Court on the 13<sup>th</sup> March 2020 in Contempt proceedings. The Chairman deposed that she had indicated to the Court in that matter that the tabulation process was in progress, that should there be

discrepancies in the Statements of Poll as found by the Returning Officer and those held by political parties the discrepancy should be noted and at the end of the process, if they could not be addressed, then the Chairman would endeavor to facilitate a recount at the level of the Commission.

- [55] This was the essence of the evidence on which Ms Moore sought the High Court's intervention to direct the first to third respondents to proceed to carry out their functions under Article 177 and section 99.

#### *Powers of GECOM*

- [56] Article 62 of the Constitution provides:

Elections shall be independently supervised by the Elections Commission in accordance with the provisions of Article 162.

- Article 162 (1) states:

The Elections Commission shall have such functions connected with or relating to ... the conduct of elections as are conferred upon it by or under this Constitution or subject thereto, any Act of Parliament; and, subject to the provisions of this Constitution, the Commission -

- (a) shall exercise general direction and supervision over  
...the administrative conduct of all elections of members of the National Assembly; and
- (b) shall issue such instructions and take such action as appear to it necessary or expedient to ensure impartiality, fairness and compliance with the provisions of this Constitution or of any Act of Parliament on the part of persons exercising powers or performing duties connected with or relating to the matters aforesaid.

- [57] Section 16 (1) of the Election Laws (Amendment) Act No 15 of 2000 is also relevant. It states:

- 1) All directions and instructions of the Commission in the exercise of the functions conferred on it by Article 162 of the Constitution, this Act, the Representation of the People Act or the National Registration Act shall be issued orally or in writing through the Chairman of that Commission or any person authorised by him in writing...
- 2) All communications or instruments from or made by the Commission shall be issued or made under the signature of the Chairman or any person authorised by him in writing...

- [58] Pointing to GECOM's powers under Articles 62 and 162 of the Constitution of Guyana, the Representation of the People Act and section 22 of the Election Laws (Amendment) Act No. 15 of 2000, Counsel on behalf of the Chairman had submitted to the High Court that once there was evidence that the electoral process was compromised, then to ensure impartiality, fairness and compliance with the provisions of the Constitution or of any Act of

Parliament, the Commission was constitutionally mandated to intervene to ensure public confidence in the electoral process.

- [59] The Chairman submitted that in her view of the difficulties which had arisen, the Commission would be guided in its work by section 22 of the Election Laws (Amendment) Act which states in part:

Section 22 (1)

If any difficulty arises in connection with the application of this Act, the Representation of the People Act or the National Registration Act or any relevant subsidiary legislation, the Commission shall by order, make any provision, including the amendment of the said legislation, that appears to the Commission to be necessary or expedient for removing the difficulty; and any such order may modify any of the said legislation in respect of any particular matter or occasion so far as may appear to the Commission to be necessary or expedient for removing the difficulty.

*Submissions on section 140 of the RPA - was the jurisdiction of the High Court ousted*

- [60] Section 140 of the Representation of the People Act states:

- (1) Except to the extent that jurisdiction...has been conferred, and the exercise thereof is required, by the Constitution or any law made under Article 163 thereof (which provides for the determination by the Supreme Court of Judicature of questions as to membership of the National Assembly and elections thereto)... no question whether any function of the Elections Commission or of any of its members has been performed validly or at all shall be enquired into in any court.
- (2) No evidence of any deliberations of the Elections Commission or communications between members of the Commission regarding its business shall be admissible in any Court.

- [61] Dr. Alexis QC for the appellant submitted that the first to third respondents are public functionaries, performing public duties and the Court has jurisdiction over these offices on the principles set out in R v Panel on Take-Overs and Mergers, ex parte Datafin Plc [1987] 2 QB 815. He submitted that section 140(1) cannot operate as an ouster of judicial supervision of their acts and /or omissions which are in excess of these powers. He referred to the principle articulated by Lord Reid in Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147 at 170 that "a provision ousting the ordinary jurisdiction of the Court must be construed strictly and that meaning shall be taken which preserves the ordinary jurisdiction of the Court".

- [62] Counsel also referred to Guyanese cases which have treated ouster clauses in similar fashion, for example, Application by Gerriah Sarran (1969) 14 WIR 361, Barnwell v AG (1993) 49 WIR 88. Reference was also made to the decision of the Caribbean Court of Justice in AG of Barbados v Joseph and Boyce CCJ Appeal No CV 2 /2005. Counsel said that these authorities provide further support for the position that on a strict construction of section 140 (1) the section only ousts the Court's jurisdiction from determining whether the Commission has performed or discharged its functions and duties validly. He argued that it does not oust the Court's jurisdiction to consider the Commission's decision to not perform or its failure to perform its functions.
- [63] Counsel pointed out that in the case under review, Ms Moore's complaint concerns GECOM's omission to perform relevant functions under Article 177 and section 99. As such the appellant was as entitled as the applicant in Holladar (cited above) to judicial review of the RO's non-performance of his duties under section 84 (1) of the RPA.
- [64] In opposing the ruling of the Full Court that the appellant had an alternative to judicial review in the form of an election petition which the Full Court said was better suited to her dispute, Counsel contended that the appellant was also seeking interpretation of several provisions of the Constitution, a jurisdiction reserved exclusively for the High Court as provided for in Article 133(1)(a) of the Constitution.
- [65] Mr Mendes SC in response submitted that the Full Court correctly found that section 140(1) applies to non-performance as much as to performance of functions. He submitted that the appellant has failed to distinguish the decisions of the House of Lords in Farley v Secretary of State for Works and Pensions [2006] 1 WLR 1817 and R(A) v Director of Establishments of the Security Services [2010] 2 AC 1, in which it was held that the jurisprudence in the Anisminic Case does not apply to clauses such as section 140(1) which do not oust judicial scrutiny of a public authority's determination but allocate that scrutiny to the Court exercising jurisdiction by way of a specialised process or establish a time regime for such scrutiny.
- [66] Mr Mendes further argued that what the appellant is in fact challenging is GECOM's decision to take the step of having a recount and not their failure to declare the results. Counsel urged that section 140(1) does not completely oust judicial scrutiny but simply means that such scrutiny can only be exercised by way of the specialized process of an election petition. There is

no reason to read the provision to create a special instance where the ordinary judicial review jurisdiction can be exercised. Counsel relied on Saunders P's statement in Christopher Ram v AG[2019] CCJ 10 [38] that "the Court cannot take it upon itself ... to enlarge its jurisdiction".

- [67] The additional challenge was raised by Dr Alexis to the constitutionality of section 22 of the Election Laws (Amendment) Act 2000 which empowers GECOM to make such orders as are deemed necessary to remove any difficulty in carrying out its functions. It was contended that the section was capable of enabling GECOM to exercise powers which were not expressed in the Constitution or the RPA.
- [68] Mr. Mendes objected that the challenge to the constitutionality of section 22 was not made in the High Court or Full Court. Despite its late addition to the issues before the Court and the limited time to respond fully, he argued that such a challenge should have been made in the presence of the Attorney General as a party to the proceedings and further that it was not prohibited for legislative power to be exercised by a non-legislative body, in this case GECOM. Even if section 22 unlawfully allowed GECOM to exercise legislative power, that part of section 22 could be severed. What would be left would still enable GECOM to take such action as it considered necessary to remove any difficulty in carrying out its functions.

#### *Analysis and Findings on the Main Issue in the Appeal*

- [69] The claims under consideration were brought to the High Court during the election period. According to Gladys Petrie and Others v the AG and Others (1968) 14 WIR 292 and Seecomar Singh and Another v R C Butler (1973) 21 WIR 34, the election period commences from the proclamation of the date of the election and extends through to the final declaration of the results.
- [70] Section 140(1) of the RPA provides in effect that except in relation to jurisdiction exercised under Article 163 (1), no question whether any function of the Elections Commission or of any of its members has been performed validly or at all shall be enquired into in any Court. Therefore any question into any matter falling within section 140 (1) is allocated to the jurisdiction of the Court exercised under Article 163 of the Constitution.

- [71] The procedures prescribed under the National Assembly (Validity of Elections) Act and Rules made pursuant to Article 163 mandate that an election petition shall be filed within 28 days after the declaration of the results of the elections, that is 28 days after the election period has come to an end.
- [72] Since under section 140 (1), no question can be enquired into by the Court except under Article 163, it follows that during the election period, section 140 (1) operates as a complete ouster of the Court's jurisdiction and secures the functions referred to in that section from challenge during that time.
- [73] When section 140 is read together with Article 163 the position is confirmed that the Court's ordinary review jurisdiction is intended to be wholly ousted during the election period.
- [74] In its language section 140 (1) speaks to whether any "function has been performed validly or at all". Thus, it cannot be accepted that only acts of the Commission or any of its members are protected. The section also precludes any question as to whether any function has been performed at all. Both acts and omissions are shielded by the section.
- [75] Given the effect of section 140 (1) and its connection with Article 163 in allocating such questions to the election petition after the election period, the Anisminic approach would apply and therefore a strict construction is to be placed on section 140 (1) in order to preserve the ordinary supervisory jurisdiction of the Court during the election period.
- [76] That the High Court has exercised its ordinary judicial review jurisdiction during this period is illustrated in local cases such as Joseph Hamilton v Guyana Elections Commission and Others(2001 No 40M Unreported) and recently Holladar v Returning Officer for Region 4 and Others (*supra*). Both cases concerned alleged non-compliance by ROs with section 84(1) of the RPA. No ouster clause applied to protect the RO's function but it was argued in both cases that the issues fell within the class of cases listed in Article 163 (1) which could be challenged only by election petition. The argument was that the question in the election petition would be whether the result of the election was, or may have been affected by any unlawful act or omission.
- [77] The High Court in both cases exercised its supervisory jurisdiction and granted relief during the election period since the RO's functions under section 84 (1) of the RPA were public functions prescribed by statute and reviewable by the Court in its supervisory jurisdiction.

- [78] Section 140 (1) must be construed as not ousting the supervisory jurisdiction where the Court is satisfied that a public body, in this case GECOM, acts or is about to act outside or in excess of its powers. The clause is effective in excluding the Court's jurisdiction and shielding from enquiry into their validity, those acts and omissions which are within a public body's powers.
- [79] As discussed earlier, GECOM's responsibilities as set out in Articles 62 and 162 are to independently supervise and administer the election process. It is clear that section 140 has as its policy the efficient and unimpeded management of the electoral process.
- [80] In Re Gerriah Sarran (1969) 14 WIR 361, this Court considered Article 119 (6) of the 1966 Constitution of Guyana, which was in similar terms to section 140 (1) of the RPA. The Article provided that any question whether a Commission (in that case the Public Service Commission) had validly performed any of its functions or whether any of its delegates or other person had validly performed any function delegated to such person by a Commission, shall not be enquired into in any Court.
- [81] Crane JA had this to say at p 364 about the ouster contained in Article 119(6):  
“This seemingly exclusionary jurisdictional clause in Article 119 (6) is clearly designed to achieve non-interference by the judiciary in matters of appointments to, and discipline in the Public Service – matters which the framers of the Constitution think, and rightly so, properly to be within the Administration’s normal sphere of competence”...
- [82] The 1966 Constitution contained its own proviso in Article 125(8) which stated that no provision that any person or authority shall be subject to the direction or control of any other person or authority in the exercise of any functions, shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with the Constitution or any other law. Crane JA expressed the view that article 125 (8) was in the nature of a proviso to Article 119 (6) and recognized the ancient supervisory jurisdiction which such clauses cannot oust when he said, also at p 364:

“...As I understand the matter, that Article [125(8)] operates as a proviso to Article 119 (6). It is in the nature of a proviso, I feel, because it preserves, by excepting out of Article 119 (6), the ancient supervisory jurisdiction of the High Court in fit cases to

enquire and be informed, which, but for Article 125 (8), would not exist in view of that aspect of finality which appears in Article 119 (6). *Certiorari*, then, as a means of invoking the supervisory jurisdiction of the High Court, is thus not excluded as a remedy once it is manifest on the record that what is really being questioned is the constitutionality or other legality of the exercise of functions delegated to the Permanent Secretary for a jurisdictional defect".

- [83] In the case now under consideration, the claims were made against the Elections Commission and one of its members, the Chairman, who are expressly protected under section 140(1). The appellant contends that her claims fall properly for determination under the supervisory jurisdiction of the High Court and ought not to be allocated for hearing by election petition.
- [84] We agree that the Anisminic jurisprudence and the reasoning of the Court in Re Gerriah Sarranought to be applied to section 140(1) of the RPA. On those authorities, we hold the view that the High Court's jurisdiction is not ousted by section 140(1) and can be exercised if the Court is satisfied that GECOM has exceeded or is about to exceed its powers by its acts or omissions.
- [85] The evidence before the High Court, as outlined, indicated that there were matters which were being addressed by GECOM which related to the execution of its functions under Article 177 and section 99. Whether the time had come to proceed under Article 177 and section 99 and the decision whether to hold a recount or not were matters that were central to the elections and fell squarely within the domain of GECOM to determine as part of its management of the elections. The functions performed in relation to those responsibilities would be shielded by section 140(1).
- [86] Based on the evidence before the High Court on Affidavits, the High Court was not equipped to determine conflicts on the issues being addressed by GECOM or to find, at that stage, that there was unlawful non-compliance with Article 177 and section 99. This therefore was not a fit case for the exercise of the Court's supervisory jurisdiction and formandatory orders to issue against the GECOM respondents.
- [87] In concluding the Ventose case (cited above) the Court stated: "On the basis of the judicial findings pronounced in this matter, which have not been appealed, the appellant has satisfied the necessary legal and regulatory conditions for registration as an elector as he has satisfied the conditions precedent under section 7 of the Representation of the People Act [Barbados]."

That degree of evidence would be required to support the grant of the mandatory and prohibitory orders being sought in the case under consideration, a threshold which has not been met.

[88] On our view of the affidavit evidence the issues raised in the FDA in relation to whether Article 177 and section 99 were triggered and whether the proposed recount is lawful are matters which would fall for determination under Article 163 of the Constitution.

[89] An election petition which has the features of a trial according to the procedures set out in the National Assembly (Validity of Elections) Act and Rules would be the place for controversies central to the elections to be resolved by the High Court by way of evidence and cross examination of witnesses. In that process the Court can also consider constitutional questions as part of its determination of any dispute before it.

[90] **Section 3 (1)** of the National Assembly (Validity of Elections) Act Chap 1:04 which gives effect to Art 163 of the Constitution provides:

3(1) Any question referred to in Article 163 (1) (a) ...of the Constitution may, in respect of an election referred to in article 60(2) of the Constitution and with a view to securing appropriate remedial orders, be referred to the Court and shall thereupon be determined by it, in accordance with this Act.

(2) Every such reference shall be by a petition (hereinafter referred to as an election petition) presented to the Court in accordance with this Act.

[91] **Rule 3(1)** of the National Assembly (Validity of Elections) Rules states:

"(1) Except by way of an election petition for redress in conformity with the Act, there shall be no reference to the Court of any question regarding the qualifications of any person to be elected as a member of the National Assembly..."

(2) An election petition shall be in Form 1 and shall contain the particulars required in the Form."

[92] Some of the salient provisions regulating elections petitions may be mentioned:

**Section 5(1)** of the Act prescribes the time for the presentation of an election petition as within twenty-eight days after the publication of the results of the election, section 8 sets the timeline for service on the respondent while section 13 provides for the trial - so far as is practicable the trial shall be continued from day to day on every Court day until conclusion provided that an election petition may be presented and heard during any period appointed as a Court vacation.

- [93] Given the range of complaints made in the FDA, the question remains whether any other of Ms Moore's claims was appropriate for enquiry by the High Court in its ordinary review jurisdiction.
- [94] In relation to the claim that GECOM had acceded to a request for a recount by political leaders, the appellant alleged a breach of Article 161B of the Constitution. The provision declares "that the role of political parties and their nominees in the conduct of elections by the Elections Commission shall be limited to their participation in determining policy, monitoring the electoral process and the conduct of the election but does not include active management of the electoral process".
- [95] If the political leaders by their agreement were taking an active role in the management of the electoral process, this would be outside of GECOM's powers to allow and would therefore invite the supervisory jurisdiction of the High Court. There was however no evidence in reply or in contradiction to the Chairman's Affidavit evidence that she had given an undertaking to the Court in this regard on 13<sup>th</sup> March 2020 in Contempt proceedings.
- [96] According to exhibits, the agreement between the political leaders for a recount was announced on 14<sup>th</sup> March and the Aide Memoire was disclosed on 16<sup>th</sup> March. In light of this sequence of events, it was not shown that the proposed recount had been set in motion by the agreement between political leaders. Instead, there was evidence that the recount had been mentioned in a prior undertaking given to the Court in Contempt proceedings. An evidential basis was not provided to the Court to support an enquiry into this complaint.
- [97] The claim that GECOM was about to surrender supervision of the recount was in our view one which could have given rise to an enquiry by the Court. There was a body of affidavit evidence from parties on both sides of the case suggesting that the important supervisory function of GECOM might be at risk of being compromised. It bears emphasis that Article 62 provides expressly that elections shall be independently supervised by GECOM. To

relinquish this function would be to act outside of those powers and therefore unconstitutional.

[98] This complaint was one into which the High Court clearly has jurisdiction to enquire and if found to be true, could have been remedied by such orders as the Court saw fit.

[99] Holder J found that the supervisory jurisdiction of the High Court was not ousted and he fixed the FDA for hearing on its merits. In our view of this case, Holder J had the jurisdiction to enquire into the claim regarding supervision of any recount and, if satisfied, to grant appropriate remedial orders.

[100] The seventh respondent's submission was that none of these questions raised by the appellant fell within the supervisory jurisdiction of the High Court and thus ought to be allocated to an election petition. Counsel relied on a line of cases which discussed partial ouster clauses, such as Smith v East Elloe Rural District Council [1956] AC 736, and R (A) v Director of Establishments of the Security Service[2010] 2 AC 1 and Farley v Secretary of State for Work and Pensions (No 2) [2006] 1 WLR 1817. Counsel argued that there were similar clauses in those cases to section 140 (1) and therefore those cases should be applied instead of the Anisminic approach. He contended that section 140 (1) was no more than a partial ouster clause since the High Court's jurisdiction was otherwise available by way of elections petition.

[101] We do not agree. Firstly the wording in section 140 (1) does not resemble the partial ouster clauses which were considered in the cases relied on. Secondly, section 140 (1) does not provide any access to the High Court during the elections period. The specialised procedure that it allows and the time limits contained in the procedures (for the filing of an election petition) would not provide any avenue to the Court during the active election period when the relief in the instant application was sought.

[102] In Smith v East Elloe Rural District Council, the ouster clause in the schedule to the Acquisition of Land (Authorisation Procedure) Act 1946 UK provided that any person aggrieved by a compulsory purchase of property order who desired to question the validity of the order or of any of its provisions on the ground that the authorization thereby granted was not empowered to be granted under the Act or that any requirement under the Act or regulation was not complied with, may within six weeks of the notice of confirmation or making of the order make an application to the High Court. Upon such application the court may by interim order suspend the operation of the compulsory purchase order or any

provisions contained in it until the final determination of the proceedings. The clause further provided that subject to those provisions, an order made under the schedule shall not either before or after it was confirmed made or given be questioned in any legal proceedings whatsoever and shall become operative from the date notice was first published. The House of Lords upheld the clause. The clause in this statute did not seek to oust the jurisdiction of the court altogether but simply to limit the time when claimants could seek its exercise. Aggrieved persons had access to the court within six weeks of the confirmation or publication of the order.

[103] The provision in the Farley v Secretary of State for Work and Pensions is distinguishable from section 140 (1) of the RPA. The subsection in question in that matter, S.33 (4) of the UK Child Support Act, 1991 limited the matters the court may investigate on an application for a liability order. The subsection is in these terms: -

"On an application under subsection 2, the court...shall not question the maintenance assessment under which the payments of child support maintenance fell to be made".

The House of Lords held that the subsection prevented the Magistrate from inquiring after the amount of arrears, but not as to whether child support maintenance was payable at all. So that Magistrates were wrong to think they had a discretion to look at the validity of a liability assessment under child support legislation. The Court reasoned that because the Act gave the payer alternative avenues of appeal, the Act should be read as it stated and the magistrates had no such jurisdiction. Lord Nichols said:

"The need for a strict approach to the interpretation of an ouster provision was famously confirmed in the leading case of *Anisminic*...This strict approach however is not appropriate if an effective means of challenging the validity of a maintenance assessment is provided elsewhere".

The Court concluded that Section 33 was not an ouster provision, but rather part of a statutory scheme which allocated jurisdiction to determine the validity of an assessment and to decide whether the defendant was a liable person to a court other than the Magistrate's court.

104] In similar vein, in R (A) v Establishment of Security Service, the Court viewed the position to be analogous to that in Farley v Secretary of State for

Work and Pensions (No. 2) again referring to the dicta (above) of Lord Nicholls. Channelling the supervisory jurisdiction by means of time limits or requirements to pursue alternative remedies is one (legitimate) thing, but excluding it altogether is quite a different proposition; one which must be interpreted with the strictness appropriate to a provision which purports to exclude the jurisdiction of the court.

***Fourth Issue -Constitutionality of section 22 of the Election Laws (Amendment) Act No. 15 of 2000***

[105] For ease of reference the material part of the section provides:

Section 22 (1)

If any difficulty arises in connection with the application of this Act, the Representation of the People Act or the National Registration Act or any relevant subsidiary legislation, the Commission shall by order, make any provision, including the amendment of the said legislation, that appears to the Commission to be necessary or expedient for removing the difficulty; and any such order may modify any of the said legislation in respect of any particular matter or occasion so far as may appear to the Commission to be necessary or expedient for removing the difficulty.

[106] We agree with the submission that the legality of section 22 is a matter to be frontally examined by the Court at a full hearing. In Petrie and Seecomar Singh, the High Court declined to examine the constitutionality of election related legislation during the election period, allocating such questions to an election petition. The Court said that such a determination would be disruptive of the election process. Moreover, it is well established that constitutional questions can be determined at the hearing of a petition as discussed in Peters and Chaitan v Attorney General and Another (2001) 63 WIR 244.

[107] Alternatively, if GECOM has utilised or utilises its powers under section 22 unlawfully, then this would be a question for determination at such time. No sufficient evidential basis exists for such a determination at this point.

**Conclusion**

[108] On the main issue in this appeal we have found that the jurisdiction of the High Court can be exercised to grant relief during the election process in spite of section 140(1) of the RPA. That jurisdiction can be exercised where the Court is satisfied that GECOM has acted or is about to act in excess of its constitutional and/or statutory powers. Section 140 (1) is however effective in excluding the

Court's intervention in relation to functions which fall within the responsibilities of GECOM in its management of the election process. The validity of its acts and omissions in carrying out its responsibilities would be, by virtue of section 140(1) and Article 163 of the Constitution, matters for determination in an election petition.

[109] The complaints made in the FDA that Article 177 and section 99 have been triggered and that there may be no further count or recount, touched upon matters which are germane to GECOM's functions in its management of the election process and, as indicated by the Affidavits, are matters of controversy. It is within GECOM's functions to resolve those controversies as part of its responsibilities to deliver the results of the elections. In carrying out its responsibilities, GECOM must uphold the Constitution and the rule of law.

[110] The allegation that GECOM was about to surrender supervision of a proposed recount was a matter into which the Court could inquire in its supervisory jurisdiction and if satisfied make appropriate orders.

[111] In light of the evidence brought before the High Court and having regard to the powers of GECOM conferred by the Constitution and the RPA it would be unlawful for GECOM to surrender its supervisory function over the election process, more particularly over the recount of ballots cast at the March 2<sup>nd</sup> elections.

[112] The appeal is allowed in part.

[113] We have considered the submission on behalf of the appellant that in the light of our findings on jurisdiction of the High Court the matter ought to be returned to the High Court for hearing on its merits.

[114] We are of the view that the issue of supervision has been sufficiently addressed as a matter of law in this appeal and in the orders of the Court. We consider further that GECOM and the Chairman are parties to these proceedings. We see no need for any further orders to be made against these respondents.

[115] Given the urgency in concluding this litigation, the Court will not return the matter to the High Court for hearing on the issue of supervision. A further consideration is the saving of time and costs and the avoidance of another cycle of appeals on that issue.

[116] The decision of the Full Court that the High Court did not have jurisdiction to hear the FDA is set aside and the decision of Holder J in that respect is restored.

[117] The order of the Full Court dismissing Fixed Date Application 2020-HC-DEM-CIV-FDA-394 is set aside in part. It is declared that it would be a breach of Article

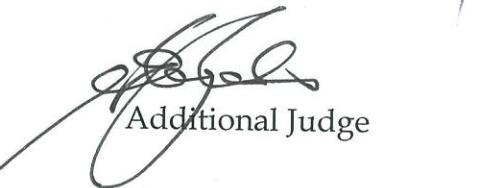
62 and 162 of the Constitution for GECOM to abdicate or delegate its supervisory function over the election process, more particularly any recount of ballots cast at the March 2<sup>nd</sup> 2020 elections.

[118] The orders of the Full Court discharging the interim injunctions granted by Holder J on 17<sup>th</sup> March 2020 are affirmed.

[119] Each party will bear its own costs.



Mugay  
Justice of Appeal

  
Additional Judge

5<sup>th</sup> April 2020

IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE  
-APPELLATE JURISDICTION-

Civil Appeal No. 38 of 2020

BETWEEN:

ULITA GRACE MOORE  
Intended Appellant

-and-



1. THE GUYANA ELECTIONS COMMISSION
2. CHAIRMAN OF THE GUYANA ELECTIONS COMMISSION
3. THE CHIEF ELECTIONS OFFICER
4. MARK FRANCE
5. DANIEL JOSH KANHAI
6. JOHN FLORES
7. BHARRAT JAGDEO

Intended Respondents

**Before:**

The Hon. Mm'e Justice Dawn Gregory	-	Justice of Appeal
The Hon. Mr. Justice Rishi Persaud	-	Justice of Appeal
The Hon. Mr. Justice Brassington Reynolds	-	Additional Judge

**Appearances**

Dr. F. Alexis Q.C with Mr. K. Scotland, Mr. M. Robertson and Mr. R. Forde for the Appellant.

Ms. K. Thomas for GECOM [No. 2 Respondent]

Mr. N. Boston SC for the Chief Elections Officer [No. 3 Respondent]

Mr. T. Jonas with Mr. K. Ramkarran for the 4, 5 and 6 Respondents

Mr. Mendes with Mr. Nandlall and Mr. D. Kissoon for Mr. B. Jagdeo [No. 7 Respondent].

**Decision**

- [1] The First Respondent Ulita Moore, by way of Fixed Date Application essentially challenged the Constitutionality of GECOM's actions in effecting a recount of the ballots cast in the General and Regional Elections of March 2<sup>nd</sup>, 2020. This recount was seemingly prompted by an agreement between His Excellency the President and the Leader of the Opposition.

- [2] Moore sought in that regard 25 interwoven declarations which are fully set out in the record of proceedings and its recital is thought unnecessary. The matter engaged the attention of Franklin Holder J. at first instance. At that hearing Counsel for the 7<sup>th</sup> Respondent Dr. Bharrat Jagdeo raised the issue as to whether the Court had jurisdiction to grant the reliefs sought, other than by way of elections petition pursuant to the combined effect of Article 163 of the Constitution, Section 22 and Section 140 of the Elections Laws (Amendment Act No. 15 of 2000 and Chapter 1:03 respectively.
- [3] On the 27<sup>th</sup> March, 2020 Holder J. orally ruled that the High Court had jurisdiction to hear that Fixed Date Application. Dr. Jagdeo, being dis-satisfiedAppealed to the Full Court. That Appeal engaged the attention of her Honour R. George-Wiltshire CJ and N. Harnanan J. On March 31<sup>st</sup> 2020, the Full Court allowed the Appeal ruling, essentially that the High Court had no jurisdiction, on a Fixed Date Application to entertain the claims sought by Moore.
- [4] By way of Notice of Motion dated the 31<sup>st</sup> March, 2020 the Applicant Moore sought leave to Appeal the said ruling of the Full Court and urged that the Application be treated as the hearing of the Appeal. Attached to that Motion is a "Notice of Appeal" dated 31<sup>st</sup> March 2020 containing some 10 grounds of Appeal. Again the reliefs sought are comprehensively set out in the record of proceedings and its recital is thought unnecessary.
- [5] Voluminous written submissions ensued and time restricted oral submissions entertained. The latter was wholly necessary due to the COVID-19 contagion a declared pandemic which afflicts our planet. The main and salient issues that fall for determination are un-complicated. I propose to consider those issues frontally without the unnecessary recitation of those voluminous submissions which are well recorded.

#### Jurisdiction of the Full Court

- [6] The issue of the Jurisdiction of the Full Court is raised here for the first time. It seems that all parties had agreed and operated on the basis that the Order of Holder J. on a parliamentary point was interlocutory. The Appellant here seemingly attacks the jurisdiction of the Full Court on the basis of Article 133 of the Constitution which mandates an Appeal as of right to the Court of Appeal from final decision of the High Court in any civil or criminal proceedings on questions as to the interpretation of the Constitution. The specific wording of Article 133 must be noted in this context.

- [7] This argument to my mind is without merit. The preliminary point raised at first instance related to that Court's jurisdiction to enquire into challenges to the decision made by GECOM as it was argued that Section 140 of the Representation of the People's Act precluded same. In finding that he had jurisdiction to enquire into the decision of GECOM, Holder J. was careful in separating the jurisdictional issues from that of the reliefs claimed. See page 18 lines 10-16 of the Appellant's Record (1) of Appeal. It is interesting to note as well that at page 33 of that record Holder J. states "I note that this application is being made on an interlocutory Application". Holder J. was of course referring to the Application for a stay of execution upon the ruling on the preliminary issue. It is clear that there was no attempted interpretation of the constitution in respect of the jurisdictional issue. Indeed no argument in that regard was proffered.
- [8] Again caution must be exercised in distinguishing a claim as one for the interpretation of the Constitution as opposed to its mere Application. That caution was urged and applied in **Harri Kissoon -v- Attorney General of Trinidad and Tobago [1980] AC 265**. Holder J. merely ruled on that jurisdictional issue which had no bearing on the interpretation of the Constitution as mandated by Article 133.
- [9] Further Holder J.'s order could not be said to be a final order again, as mandated by Article 133 and of course Section 6 (2) (a) of the Court of Appeal Act. The determination of what is a final Order as opposed to an interlocutory order is essentially governed by the "Application Test". My in depth analysis here on this issue would merely serve academic purposes and I resist such a temptation. However, in **Saliman -v- Warner and others [1891 1 QB 734]** Fry L.J. succinctly stated "I conceive that an order is final only where it is made upon an Application or other proceeding which must whether such Application or proceeding fail or succeed determine the action. Conversely, I think that an order is interlocutory where it cannot be affirmed that in either event the action will be determined". See too **White -v- Burton [1984] 1 QB 570**. This approach was approved by Chancellor Bernard (as she then was) in the matter of American Life Insurance Co. Civil Appeal No. 8 of 1996.
- [10] Again in **Nova Scotia Manufacturing Co. Ltd -v- Narine [2015 85 WIR 423]**, Chancellor Singh in adopting the Application test stated "we agree that this was not a final order for the reason that the order made was as the result of an

Application in relation to an issue that was preliminary to a final hearing and was therefore clearly an interlocutory order. Clearly the order made by Holder J did not fall within the ambit of Article 133 and as a consequence leave is required under Section 6 of the Court of Appeal Act. More importantly the Full Court properly assumed jurisdiction to determine that appeal from Holder J's preliminary ruling.

- [11] In closing on this issue, the recent pronouncement by the CCJ in Persaud -v- Nezamudin 2020 CCJ 4 AJ has not escaped my attention. In the context of Section 6 (1) (a) (i) of the Court of Appeal Act the CCJ held that on the facts and circumstances of the case under review, which was commenced by Fixed Date Application, as presently obtains, and determined expeditiously without resort to the more elaborate and regular process followed generally in matters commenced by SOC such a proceeding would be properly designated as a "Summary Proceeding" I merely mention this in passing. The somewhat peculiar circumstances of this case, urgency, public interest and national importance considerations necessitates the grant of leave to appeal.

#### Constitutionality of Section 22 of the Elections Law Amendment Act

- [12] The constitutionality of Section 22 is called into question here for the very first time. It is noted that the Fixed Date Application that initiated these proceedings makes absolutely no inference to this claim nor was it canvassed below. This is an unacceptable state of affairs.
- [13] The constitutionality of an Act of Parliament is presumed and the burden of proving otherwise is a heavy one. (**See Mootoo -v- Attorney General Trinidad & Tobago 1979 1 WLR**). The authorities are many and clear on the issue of advancing new grounds or points of law for the first time on Appeal. In **Port of Trinidad & Tobago -v- Daban [2019] U.K PC**, this issue was explored. At paragraph 26 the Board had this to say "it is well established that the board will generally not allow a party to raise a new point on an Appeal before it". In **Baker -v- R [1975] 3 All ER 55 at 64**, the Board said that its usual practice was not to allow parties to raise for the first time in an appeal to the board a point of law which has not been argued in the Court from which the Appeal is brought.
- [14] Exceptionally it allows this practice to be departed from if the new point of law sought to be raised is one which in the Board's view is incapable of depending on an appreciation of matters of evidence or of facts of which judicial notice might be taken and is also one of which in the Board's view they would not

derive assistance from learning the opinions of judges of the local Courts on it". See too **Colonial Life Ins. Co. Ltd -v- Goed Et Al.** Again in Samuels -v- GT&T CCJ Appeal No. GYCV 2014/008, the CCJ had this to say:

"From inception, Mr. Samuels' claim was couched in the language of contract law. There is simply no indication on his pleadings that his was a mixed claim. As such the main issues between the parties centred on whether there was an oral or written contract and what the terms of their agreement were. To allow Mr. Samuels to challenge the validity of GT&T's licence in these proceedings would be manifestly unfair to GT&T. This is simply not the pleaded case that GT&T was called upon to answer. Mr. Samuels gave no notice to GT&T that wider public interest issues, such as the legality of monopolies and the infringement of constitutional rights, were at stake. It goes without saying that the principles of fairness and justice must be considered from the standpoint of all the parties to litigation. As Lord Mustil observed in his oft-quoted observation in R v Secretary of State for the Home Department, Ex. p Doody, though the standards of fairness are not immutable, they do require that a party be informed of the "gist of the case which he has to answer". We note also that neither the State nor the Director of Telecommunications, both of whom would have an interest in the resolution of this issue, is a party to this appeal".

- [15] Further in Eaton -v- Brant County Board of Education [1997] 1SCR 241 Sopinka J noted:

"In our constitutional democracy, it is the elected representatives of the people who enact legislation. While the courts have been given the power to declare invalid laws that contravene the Charter and are not saved under Section 1, this is a power not to be exercised except after the fullest opportunity has been accorded to the government to support its validity. To strike down by default a law passed by and pursuant to the act of Parliament or the legislature would work a serious injustice not only to the elected representatives who enacted it but to the people. Moreover, in this court, which has the ultimate responsibility of determining whether an impugned law is constitutionally infirm, it is important that in making that decision, we have the benefit of a record that is the result of thorough examination of the constitutional issues in the courts or tribunal from which the appeals arise".

- [16] The authorities cited in support of the unconstitutionality of Section 22 are involved and complex. The issue as a whole would as of necessity require the fullest assistance of all concerned including the Attorney General whom pursuant to our CPR must be given notice to defend the legislation. There is no evidence that this was done and the Attorney General is certainly not a party to these proceedings. Additionally a determination of the issue may also require evidence to be placed before the court for its consideration.

[17] A consideration of this new ground at the Second Appellate level may completely change the nature of the case canvassed below. Significant prejudice would operate against the Respondents present and absent and the unfairness to the lower courts would be palpable. In the circumstances I am unable to accede to the invitation to consider this completely new ground. I can conceive no exceptional circumstance in operation here to permit this course.

**Discretion to hear the Appeal**

[18] The law is clear on this issue. Only in exceptional circumstances would an appeal against an interlocutory order be heard during pending proceedings (see **Birkett -v- James [1977] 2 All ER 801** per Lord Diplock). There seems to be no authority that sets out in any definitive way, what are “exceptional circumstances” and may be for good reason. One may be incapable of conceiving exhaustively whether in generally or specifically, such circumstances. To my mind the exercise of the court’s discretion ought not be fettered and such discretion should be exercised on a case by case basis.

[19] It is clearly within the courts discretion to determine whether or not to proceed to hear an appeal against an interlocutory order. I am unaware of any legislative bar thereto. On this issue the Full Court held

“In this appeal before this court the singular determination of the question of jurisdiction will decide if the case goes on to a hearing into the substantive issues. In our view this amounts to an exceptional circumstances permitting the exercise of the discretion to hear this Appeal. The ruling made by Holder J is not one that is merely interlocutory and for the progress of the case as regards for example parties to be heard pleadings on evidence to be led. It appears to a more fundamental issue – whether the High Court has jurisdiction to hear the Fixed Date Application. It goes to the root of whether the matter should proceed at all”

[20] Having regard to all of the circumstances of this case, including its national importance, I cannot fault the learned Justices of the full Court in exercising their discretion in the way in which they did. Challenges to the jurisdiction of pending proceedings “warrant immediate intervention” and plainly there is no public interest in proceedings continuing which are unlawful”. (See **Ferguson et al -v- AG and DPP**). It is trite that an appellate court would not interfere with a court’s exercise of its discretion unless it can be demonstrated that it was

plainly wrong. The fact that another court may have exercised its discretion in a different manner is irrelevant. (See **Sankar -v- G.R.D.B (2019) CCJ 11 JA**, **Rodrigues Architects -v- N.B.S (2018) CCJ 9 AJ**.

- [21] Suffice it to say that I agree fully with the Full Court's analysis of the authorities and their subsequent exercise of discretion. I can conceive of no circumstance which is more exceptional than that which operates here. (See pages 10-13 of the Full Courts decision).

**Jurisdiction of the High Court to hear the Fixed Date Application**

- [22] This issue forms the substantive bone of contention between the parties to these proceedings. I must reveal from the outset that I am in full agreement with the comprehensive analysis, impeccable reasoning and irresistible conclusions arrived at by the Full Court. My intent here is merely to reiterate or supplement as the case may be those conclusions.

**The Declarations sought below**

- [23] It is clear and ought not be the subject of any serious contention that the declarations sought and consequential orders that engaged the attention of the courts below concerned the political agreement by his Excellency and the leader of the opposition to have a CARICOM supervised recount of those ballots cast at the March 2<sup>nd</sup> National and Regional elections. To my mind, issues that fall for consideration and the orders and declarations sought are incapable of disaggregation when one peruses the Fixed Date Application as a whole and in its proper context.

**Section 140 of the Representation of the People's Act**

- [24] The various provisions which empower, specifies and guides GECOM's role in carrying out its mandate is comprehensively set out in the decision of the Full Court, (see pages 19-23 of decision). In an effort to avoid unnecessary detailed repetition I will decline to do so here.
- [25] Article 162 (1) (a) and (b) a fundamental democratic pillar vests in GECOM wide ranging powers as it relates to the supervision over the registration of electors and the administrative conduct of all elections. More importantly perhaps GECOM is mandated to ensure an impartial and fair election process. Throughout the legislative provisions, mechanism are put in place to ensure compliance with Article 162. Section 140 of the Representation of the People's Act precludes a Court from intervening and interfering in GECOM's decision

making process, except by way of elections petition. Of course caution must be exercised so as to avoid a trespass on the functions of the Commission as endowed by Article 162.

- [26] Cases such as Petrie et al -v- AG and Seecoomar Singh -v- Butler have concretized the scope and ambit of the High Courts' jurisdiction in this regard. Petrie decided in excess of 50 years ago is well known to all and remains good in law up to the present time. (See Christopher Ram -v- AG et al CCJ). The significance of the "election process" period is of particular importance in relation to the legislative scheme. The purport and scheme of those various pieces of legislation must be fully appreciated and the mischief intended to be guarded against understood. The application of highly technical methods of construing these pieces of legislation without such an appreciation can only lead to interpretative, unlawfulness, the application of which could invite dire consequences. In the context of the arguments presented here and below, the use of the words "performed validly or at all" in Section 140 (1) refers clearly to performance or the failure to perform.
- [27] The exclusive and specialized jurisdiction created by Article 163 clearly refers to unlawful acts or omissions (see 163 (b) (1). See too Rule 3 (1) of the National (Validity of elections rules) which refers to the exclusive use of an election petition to test whether the results of an election has been affected by any unlawful act or omission. Any argument that attempts to exclude one or the other pursuant to an interpretation of the legislation is unmeritorious. They are inextricably interwoven. It may be apt to mention here if only for the sake of emphasis my full agreement with the Full Court in distinguishing Holladar -v- RO 2020 OVI 360 rendering it wholly unapplicable to the present case. (See pp 24 – 25 of the Full Court decision).

#### Ouster Clause

- [28] Section 140 (1) can only be lawfully interpreted as a partial ouster clause as opposed to a complete ouster clause contemplated by the seminal decision in *anisminic* which requires "a provision ousting the ordinary jurisdiction of the Court must be construed strictly". In the latter case any error of law which goes to the jurisdiction renders such a clause wholly ineffective.
- [29] Section 140 (1) as a partial ouster clause does not completely oust the jurisdiction of the Court. It is an integral cog in the <sup>STATUTORY</sup> scheme which prohibits enquiring into whether the Commission has performed its functions lawfully, or

at all other than by way of elections petition (see R (a) -v- Director of Establishment of Security Services paragraphs 18 and 20). This would include whether the Commission did act upon the political agreement between his Excellency and the Leader of the Opposition, the extent to which they did and its legal implications. Credible affirmative evidence would be required to impugn the conduct of the Commission.

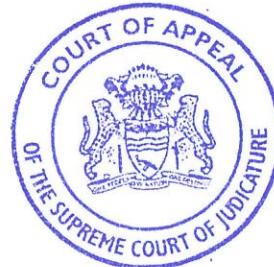
- [30] In passing I feel constrained to touch briefly on this aspect of the proceedings. On a perusal of that political agreement, it is clear that the term "supervise" was used in loose terms and was of no "legal" significance. That agreement along with its "aide memoire" which is widely publicized and judicial notice taken of, must be considered as a whole. Its clear and inescapable intention was to confine its operation within the ambit of the Constitution and in general applicable law. The mere use of the word "supervise" without context could not lend itself to general statements as to its constitutionality, much less pronouncement to the effect that such an agreement would be un-constitutional. Such sweeping statements and or pronouncements are inherently problematic and lacks prudence, that aside.
- [31] Again at this stage of the elections process the constitutionality of the relevant legislative provisions could only be examined by way of election petition as is of course permissible and was done in **Esther Periera -v- Chief Elections Officer et al 36p of 1998** (see too **Peters and Chaitan -v- The AG et anor 2001 63 WIR 244**). In the circumstances of our legislative prohibition any other approach to the Court during this elections process may amount to an abuse of the Courts process. See (**AG -v- Dumas 2017 UK PC 12**).
- [32] The Courts whilst zealous to resist restrictions on their jurisdiction draws a clear distinction between legislative attempts to oust judicial control over the legality of decisions and legislation that has the function of allocating jurisdiction to a particular judicial body provided of course that there is effective judicial control as there is in this jurisdiction. (See DeSmiths Judicial Review 7<sup>th</sup> Edn, paragraphs 4 – 015 – 016).
- [33] In closing I wish to endorse the view expressed by the Full Court at pages 28 – 29. Their decision:

"This court is of the view that the filing of judicial review proceedings undermines the legislative process, which affects finality in the elections process. We are quick to point out

however, that the finality does not mean lawfulness. Lawfulness can always be challenged by way of an election petition. On this point, it is clear that the filing of these judicial review proceedings has had the contrary effect to facilitating the efficient completion of the 2<sup>nd</sup> March, 2020 National and Regional elections. This is a clear demonstration of one type of mischief which the legislature intended to address by providing in plain and simple language, that these challenges should be addressed by election petition. This entire scheme of the legislative matrix points significantly to the fact that the election process must swiftly and efficiently take its course so as to enable the election results to be declared.

- [34] In the circumstances this appeal is hereby dismissed as I find no merit in the Appellant's submission and the decision of the Full Court dated March, 31<sup>st</sup> 2020 is hereby affirmed.

Each party to bear their own costs.



Rishi Persaud

Dated Sunday 5<sup>th</sup> April, 2020