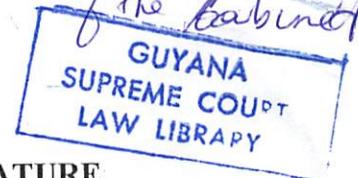


Certification of Resignation of the Cabinet



**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
OF GUYANA**

PROCEEDINGS FOR RELIEF UNDER THE CONSTITUTIONAL

2019-HC-DEM-CIV-FDA-1324

BETWEEN:



MOHABIR ANIL NANDLALL

Applicant

AND

**THE ATTORNEY GENERAL OF GUYANA
Respondent**

September 9, October 4, 16, 2019.

Mr. Kamal Ramkarran for the Applicant.

Mr. Basil Williams SC, Attorney-General, Mr. Nigel Hawke, Solicitor-General, Ms. Deborah Kumar, Deputy Solicitor General and Ms. Beverly Bishop-Cheddie, Assistant Solicitor-General for the Respondent.

CORAM: JUSTICE ROXANE GEORGE, CHIEF JUSTICE (acting)

JUDGMENT OF THE COURT

Introduction and background facts

1. Mr. Anil Nandlall, Attorney-at-law, (the applicant) filed this Fixed Dated Application (FDA) against the Attorney General of Guyana (AG) seeking the following reliefs:

- (1) An Order compelling the Cabinet, including the President to resign consequent upon the Government being defeated by the vote of a majority of all the elected members of the National Assembly on a

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STATE
TARRANT COUNTY
YACHT WAI

vote of no confidence on the 21st day of December, 2018, in accordance with and pursuant to Article 106(6) of the Constitution of the Cooperative Republic of Guyana;

Alternatively:

- (2) A Mandatory Order compelling the Cabinet including the President to give effect to the resignation of the Cabinet, including the President, which occurred by operation of law, consequent upon the Government being defeated by the vote of a majority of all the elected members of the National Assembly on a vote of no confidence on the 21st day of December, 2018, in accordance with and pursuant to Article 106(6) of the Constitution of the Cooperative Republic of Guyana;
- (3) A Conservatory Order or an order restraining the Cabinet, inclusive of the President, from meeting, making decisions as, or performing the functions of Cabinet, consequent upon the Government being defeated by the vote of a majority of all the elected members of the National Assembly on a vote of no confidence on the 21st day of December, 2018, in accordance with and pursuant to Article 106(6) of the Constitution of the Cooperative Republic of Guyana;
- (4) Such further orders that this Honourable Court deems just;
- (5) Costs.

1. This application has its origins in the successful no confidence motion (NCM) against the government that was passed by the National Assembly on December 21, 2018. Three related applications were filed challenging the NCM and seeking orders as to the effect of it in **Compton Herbert Reid v Dr. Barton Scotland, Speaker of the National Assembly, Charrandass Persaud, The Attorney-General, Mr. Bharat Jagdeo, The Leader of the Opposition and Mr. Joseph Harmon, Representative of A Partnership for National Unity, 2019-HC-Dem-Civ-FDA-19, Attorney-General v Dr. Barton Scotland, Speaker of the National Assembly and Mr. Bharat Jagdeo, Leader of the Opposition and Mr. Joseph Harmon, Representative of A Partnership for National Unity, 2019-HC-Dem-Civ-FDA-22 and Christopher Ram v The Attorney-General and The Leader of the Opposition 2019-HC-Dem- Civ- FDA-29.**
2. In **Ram v AG, FDA 29/2019**, one of the decisions rendered in these applications by this Court on January 31, 2019, I ruled that the NCM was properly passed and that the resignation of the Cabinet took immediate effect by operation of law on the passing of the said NCM. This is what I said in that judgment:

“55. I therefore find that Cabinet is not required to resign with all convenient speed, as the resignation under **art 106(6)** takes immediate effect following the defeat of the Government on a vote of confidence by a majority of all the elected members of the National Assembly. In this case, Cabinet must be taken to have resigned with effect from the evening of December 21, 2018, and all functions or duties provided in any law to be performed specifically by Cabinet must have ceased from that time.”

3. The decisions were all appealed with the Court of Appeal overruling the decision that the NCM had been validly passed. The parties to those appeals filed appeals and cross appeals to the Caribbean Court of Justice (CCJ) which heard the consolidated appeals and upheld the validity of the NCM.
4. Consequent on the CCJ’s decision, the parties sought and were granted permission to file submissions regarding the consequential orders that should be granted. For the purposes of this application only one of the orders sought is relevant. This order, which was sought by the Leader of the Opposition (LOP) in **CCJ Appeal No. GYCV2019/010- Bharrat Jagdeo v. AG & Others**, was as follows:

“36. 2. That the Cabinet, including the President, shall resign;”

The applicant was one of the counsel on record in that appeal, who made the submissions therein.

5. The AG filed a notice of application pursuant to Part 9.01(1) of the Civil Procedure Rules seeking the following orders:
 - “(a) A declaration that the Court should not exercise its jurisdiction to grant the orders sought in the Fixed Date Application dated the 26th day of August 2019;
 - (b) An Order striking out the Fixed Date Application dated the 26th day of August, 2019 as being an abuse of the process of the Court;
 - (c) Such further and other Orders that the Honourable Court deems just;
 - (d) An Order for substantial Costs.”
6. In brief, the main grounds of this application are that the FDA is an abuse of process of the court because it is an affront to the doctrine of *stare decisis* or rule of precedent as the CCJ has already ruled on the issue subject of this FDA. It was also stated that the issue

for consideration is therefore now moot or academic. I decided to hear full arguments on this application and the merits of the FDA.

Submissions on behalf of the applicant

7. Mr. Ramkarran on behalf of the applicant explained that the first order sought is premised on a finding that the President and the Cabinet have not yet resigned and therefore seeks their resignation. The alternative mandatory order sought is premised on a finding that the resignation of the Cabinet took immediate effect as of December 21, 2018.
8. It was submitted that contrary to the Constitution, the decision of this Court and the CCJ in its consequential orders judgment of July 12, 2019, the Cabinet has not resigned and continues to function as such, hence the orders sought. It was submitted citing Basu's Commentary on the Constitution of India, (8th edn, 2008) at pp 4706 – 4709 that "there is a clear and unambiguous duty on the part of the Cabinet – whether by operation of law or by positive action – to give effect to its resignation by disbanding."
9. As regards the submissions that the issues raised in this FDA are *res judicata*, the applicant contends that "The Court is enjoined to apply principles which give effect to the rule of law and uphold the Constitution rather than permit its violation, [sic] arguments that an application to end the continued violation of the Constitution is an abuse of the process of the court or subject to the doctrine of *res judicata* should be given very short shrift."
10. It was further stated that "no court has previously been asked in the filed documents (Fixed Dates Applications and Notices of Appeal) for a mandatory order compelling the resignation of the Cabinet."
11. Importantly, in considering the consequential orders judgment of the CCJ, these were the submissions for the applicant:

"30. In making different orders, the Caribbean Court of Justice **omitted rather than refused** to make this order.

31. **In trusting that the constitutional actors** would obey the guidance of that Court and the directions of the Constitution, **the Caribbean Court of Justice fell into error** since there has been no compliance either with that guidance or with those directions requiring the resignation of Cabinet and elections no later than 3 months." (Emphasis mine.)

12. I adverted Mr. Ramkarran to the fact that again this submission does not acknowledge that art 106 (7) of the Constitution provides that if the 3 month deadline for the holding of elections after an NCM is not met, then it is for the National Assembly to extend the period for holding the elections by a vote of two-thirds of all its members. The issue of the date by which elections should be held has been dealt with in the decision in **Ram v Chief Elections Officer, Commissioner of National Registration, GECOM & The AG, FDA 1151/2019** which I gave on August 14, 2019 where it was held that the CCJ did not fix a date on or by which elections consequent on the NCM should be held, and that this Court could not do so.
13. It was also submitted that the CCJ should have been clearer in its reference to the Cabinet in its consequential orders judgment and that it would have been more prudent of the Court to have used the language of the Constitution. As such, the Court should have given orders in consonance with its interpretation of the Constitution.

Submissions on behalf of the respondent

14. Mr. Hawke for the respondent submitted that the issue in contention was ventilated before and pronounced on by the CCJ and cannot be re-litigated. As such, this FDA would be an affront to the doctrine of *stare decisis* and a general abuse of the process of the Court.
15. It was submitted that the CCJ in pronouncing on the issue of the resignation of the President and Cabinet, never ordered the President or the Cabinet to resign, but concluded that as a result of the NCM it was to operate on a different footing.
16. It was urged that the decision of the CCJ on this point of law is conclusive and binding upon all lower courts. It was stated that the applicant is asking this court to review the decision of the CCJ. So this FDA is a clear and wanton abuse of the jurisdiction of the Court which should result in the Court striking out the application or declining jurisdiction.
17. It was further submitted that if this Court were to consider that the FDA is not an abuse of process, the fact remains that the order sought was canvassed before the CCJ and a lower court cannot be asked to make an order mandamus which the higher court did not make.
18. As a consequence, the Court should exercise its inherent jurisdiction to strike out the FDA. The judgment of Chief Justice Desiree Bernard, as she then was, sitting in the Full

Court, in **Abdool Salim Yasseen and Thomas v. The Attorney General of Guyana** (1999) 65 WIR 173 at 178j was cited where Her Honour stated:

“Let me state at the outset that there is no doubt that a judge sitting in the High Court has unlimited jurisdiction and an inherent jurisdiction in relation to matters which come before that court for determination. The statutes and legal authorities support this contention. More specifically the inherent jurisdiction extends to striking out, staying or dismissing an action.”

Findings on this application

19. The parties to this FDA were requested to and did provide the submissions made to the CCJ on the issue at hand. In the submissions in the appeals on behalf of the LOP and **Zulficar Mustapha v The AG** (an appeal regarding the appointment of the Chairman of the Guyana Elections Commission) (CCJ Appeals GYCV2019/010 and GYCV 2019/007), the following was stated:

“6. Respectfully, in fashioning the appropriate orders, this Honourable Court must be guided, first and foremost, by the primary imperative to uphold the letter and the spirit of the Constitution. **As far as possible, therefore, consequential orders ought to be issued to ensure compliance with the constitutional mandate that the Cabinet, including the President, resign upon being defeated on a vote of confidence and that an election be held within three months of the vote of no confidence, that is to say, on or before 21st March, 2019.**” (Emphasis mine.)

20. At the conclusion of the submissions there was a clear application for an order in the same terms as stated in the submission quoted at [19] above. (See [4] above.)

21. While ordering that art 106 (7) “immediately became engaged”, (para 9 (f) of the consequential orders judgment of July 12, 2019) the CCJ also pronounced on the issue of the resignation of the President and Cabinet. In the said judgment the court emphasized:

“8. It is important, however, that the Court makes this point. In mandating that the Government shall remain in office notwithstanding its defeat and the resignation of the President and the Cabinet, Article 106 envisages that the tenure in office of the Cabinet, including the President, after the Government’s defeat, is on a different footing from that which existed prior

to the vote of no confidence. Chancellor Cummings-Edwards, citing Hogg, the Canadian constitutional expert, was right to note that:

‘... The government continues in office as a caretaker government or interim government until the next elections ensue and a President is appointed (or reappointed) depending on the results of that election.’

By convention, the government is expected to behave during this interim period as a caretaker and so restrain the exercise of its legal authority.” (Emphasis and extra emphasis mine.)

22. Both parties relied on this paragraph of the CCJ consequential orders judgment but within the context of the submissions they made as outlined earlier.
23. While there were no specific submissions on the issue before the CCJ, the order sought by the LOP at the conclusion of the consequential orders submissions as outlined above was clear – that the Cabinet including the President shall resign. Indeed, this order was in effect a mandatory order, though not specifically stated to be so.
24. In my view and I so find, in para [8] of the judgment, the CCJ did make a pronouncement on the resignation of the President and the Cabinet. Given the language used by the CCJ, it is evident that the effect of the NCM was the immediate resignation of the Cabinet, but the Court clearly stated that notwithstanding this, the tenure in office of the Cabinet, including the President, as well as the Government as a whole, “is on a different footing” - is that of being in a caretaker mode consequent on the passage of the said NCM.
25. Given this pronouncement, there could not have been, and cannot be any requirement for a mandatory order “compelling the Cabinet including the President to give effect to the resignation of the Cabinet, including the President, which occurred by operation of law”, consequent on the NCM.
26. In any event, given that the issue was a live one before the CCJ, a court of first instance sitting as I am, cannot say that the CCJ omitted to make an order which a party or counsel for a party in the appeals thinks the Court should have made, moreso one that was actually sought; or that it somehow fell into error in its pronouncements or in its considerations of the effect thereof as the applicant has urged. This Court is bound by the pronouncements and decision of the CCJ pursuant to the doctrine of *stare decisis* or doctrine of precedent.

27. As I said in **Ram v Chief Elections Officer, Commissioner of National Registration, GECOM & The AG, FDA 1151/2019**, the pronouncements of the CCJ and the orders made in the consequential orders judgment of July 12, 2019 must be read dispassionately and objectively. While the applicant may be dissatisfied with the conclusion of the CCJ – he cannot seek to overturn or reinterpret it by filing an application such as this. The CCJ did not omit to pronounce on the issue as has been contended. On the contrary, the CCJ emphasised that it was making an important point in stating that the Cabinet including the President, and the Government are to act as a caretaker or interim government.
28. This application is not only wholly misconceived, it is vexatious and an absolute abuse of the process of the court. As such, given that the applicant was integrally involved in the hearing of the consolidated appeals before the CCJ, substantial costs must be awarded to the respondent.
29. The notice of application for the FDA to be struck out is granted as the FDA is an abuse of the process of the court with costs to the respondent in the sum of \$500,000.


Roxane George
Chief Justice (ag)
October 16, 2019

