EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE COURT OF APPEAL

DOMHCVAP2013/0006

BETWEEN:

[1] THE PRIME MINISTER OF THE COMMONWEALTH OF DOMINICA
[2] THE SPEAKER OF THE HOUSE OF ASSEMBLY OF THE COMMONWEALTH OF DOMINICA
[3] THE ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA

Appellants

and

HECTOR JOHN (LEADER OF THE OPPOSITION)

Respondent

Before:

The Hon. Dame Janice M. Pereira	Chief Justice
The Hon. Mde. Louise E. Blenman	Justice of Appeal
The Hon. Mr. Don Mitchell	Justice of Appeal [Ag.]

Appearances:

Mr. Anthony W. Astaphan, SC, with him Mr. Alick Lawrence, SC and Mr. Lennox Lawrence for the Appellants
Mr. J. Gildon Richards for the Respondent

2013: November 11;
2014: January 13.

Civil Appeal – Constitutional Law – Interpretation to be given to exclusion clauses of the Constitution – Whether Court can interfere in parliamentary procedures – Whether Court can question the certificate of election of the President issued by the Speaker of the House of Assembly – General and specific provisions – Sections 22(5) and 103(1) of the Constitution of the Commonwealth of Dominica – Application of section 121(11) of the Constitution of the Commonwealth of Dominica

On 15th August 2012, the Prime Minister met with the leader of the opposition, Hector John, to inform him that he intended to nominate Mr. Eliud Williams to be Dr. Nicholas J. Liverpool's successor as President and requested that Mr. John join him in the nomination

of Mr. Williams. Mr. John inquired whether Dr. Liverpool had tendered his resignation and the Prime Minister confirmed that he had not. Mr. John subsequently informed the Prime Minister that he was unable to join in the nomination of Mr. Williams as President.

On 24th August 2012, the Members of Parliament were informed by the Speaker of the House of Assembly that Dr. Liverpool intended to vacate the office of President and that the Prime Minister had consulted with the Leader of the Opposition but they were unable to agree on a joint nomination for his successor. The Speaker further indicated that as a result, nominations for President would be accepted from the Members of Parliament as stipulated by the Constitution. Mr. John and other Members of the opposition voiced their disagreement indicating that there had been no consultation because Dr. Liverpool had not yet tendered his resignation.

On 17th September 2012, a meeting of Parliament was convened for the sole purpose of electing a President. The Members of the Opposition were absent and no excuse for their absence was provided to the Speaker. The election of the President was done by ballots cast by the Members of the House of Assembly present representing a majority of all the Members of the House, after which Mr. Eliud Thaddeus Williams was returned and declared by the Speaker to be elected as President. On 11th December 2012 the Speaker issued a certificate of election under the stamp of the House of Assembly.

Prior to the issuance of the Speaker's certificate, Mr. John launched a claim in the High Court by way of Motion against the Prime Minister, the Speaker and the Attorney General, challenging the election of Mr. Williams as President. He sought a number of declarations and constitutional relief in relation to the procedure and process of the election. The Prime Minister, the Speaker and the Attorney General, in response, applied to strike out the claim on the basis that the claim: (1) disclosed no reasonable cause of action; (2) was frivolous, vexatious and an abuse of the court's process; (3) was barred by virtue of (i) Sections 22(5) and 103(1) of the Constitution and/or (ii) the privileges and immunities of Parliament; all three of which precluded the High Court from hearing, inquiring into or making any determination in relation to the election. The learned trial judge dismissed the application and ordered that the matter proceed to trial.

The appellants appealed the matter on similar grounds raised in the court below.

Held: allowing the appeal, granting the application to strike out the claim and making no order as to costs.

1. It is well established that exclusion clauses in statutes as well as in constitutions, are ordinarily to be accorded a literal (as distinct from a liberal) interpretation. In essence, they must be treated as meaning what they say, and no more. Sections 22(5) and 103(1) of the Constitution should be interpreted literally. The framers of the Constitution, holding the office of President in the highest regard, sought to protect the integrity of the office from disrepute, which may arise out of a challenge

to the electoral process. The most effective way to do this was to preclude any inquiry by the court into the process. In relation to section 22(5) it may be said that the framers of the Constitution provided a double shield. Firstly, they provided that the Speaker's certificate is conclusive evidence of the fact. Accordingly, this would not permit rebuttal evidence of the fact as sought to be established by the respondent. Secondly, section 22(5) goes on further to say, that the certificate stating that conclusive fact shall not be questioned in any court of law. The language could not be plainer as to its meaning. This was deliberate. To give any other interpretation to this provision would not represent the intention of the framers.

In the matter of an application brought by Aubrey Norton 1997 No. 5932 applied, Lestrade v The House of Assembly and Others [1985] LRC (Const) 48 applied.

2. Contrary to the argument presented by the respondent, section 121(11) of the Constitution does not allow the court to make an inquiry into the electoral process of the office of President and cannot be called in aid whenever any person or authority fails to follow a procedure provided for, or engages in a process not in compliance with the constitutionally provided methods. The Constitution cannot be seen to contradict itself or have competing provisions. Therefore, save for the very limited jurisdiction granted to the Court of Appeal in relation to challenges to the qualifications of a person to be nominated or elected to the office of President, it is clear that the court was not meant to have jurisdiction over the process of electing a President. Further, in the interpretation of the Constitution, general clauses cannot be seen to override the specific clauses. It becomes clear that section 121(11) of the Constitution is a general provision which must be read down and thus must give way to the specific provision of section 22(5), which ousts the Court's jurisdiction. To accede to the interpretation to this section offered by the respondent calls for ignoring the well-established rules of interpretation with the resulting conflict between the provisions. Such a course would promote uncertainty and lead to undesirable consequences, which would inevitably flow therefrom.

   Re Blake (1994) 47 WIR 174 and Browne v Francis Gibson (1995) 50 WIR 143 followed. International Management Group (UK) Limited v Peter German, Hr Trustees Limited [2010] EWCA Civ 1349 applied; Re Gerriah Sarran (1969) 14 WIR 361, Endell Thomas v The Attorney General of Trinidad and Tobago (1982) AC 113, Jones and others v Solomon 41 WIR 269, Smith v Mutasa et al [1990] LRC (Const.) 87 distinguished.

3. The court may not impute fraud or improper conduct or motive to the Parliament or any officer or inquire into any matters within Parliament's jurisdiction. There is good reason for the separation of powers doctrine and it is in matters of this kind that we see its full merit. It is no part of the court's function or responsibility to meddle in parliamentary affairs particularly when the Constitution clearly precludes it from so doing. The office of President is one, which was meant to be held in the

highest regard and subjected to the highest form of integrity. To allow the court to meddle into the affairs of the election process of the President is an affront to the dignity of the high office of President. It is a course, which a court, in the face of expressed exclusion ought to be loath to permit incursion no matter how inviting the invited excursion may appear to be.

Hoani Te HeuHeu Tukino v Aotea District Maori Land Board [1941] AC 308, British Railways Board v Pickin [1974] AC 765 applied.

JUDGMENT

[1] PEREIRA, C.J.: The Commonwealth of Dominica ("Dominica") upon gaining full statehood, like a few of its Caribbean neighbours, cut its monarchial apron strings with the United Kingdom monarchy and became upon independence, a republic. Its Head of State is designated as the President. The President, unless nominated jointly to Parliament by the Prime Minister and the Leader of the Opposition, is elected to office, not by popular vote of the electorate of the state, but rather by the votes of the elected representatives of the electorate in parliament. The procedure for the election of a President is provided for in Dominica's Constitution. This appeal concerns the question whether Mr. Eliud Williams, who succeeded the then President Dr. Nicholas J. Liverpool as President, was duly elected to the said office. More importantly, it concerns the question whether, in the face of a certificate appearing on its face to have been regularly issued by the Speaker of the House of Assembly certifying that the President was duly elected in accordance with the provisions of the Constitution, the procedure adopted on the election is justiciable.

The Background

[2] In August 2012 the President of the Commonwealth of Dominica was His Excellency Dr. N. Liverpool. By letter dated 7th August 2012, the Prime Minister invited Mr. Hector John, the Leader of the Opposition to a meeting scheduled for 15th August 2012 for the purpose of consulting with him in respect of 'a matter relating to the Office of the President under the provisions of section 19(1) of the Constitution'. At the meeting, the Prime Minister informed Mr. John that he

intended to nominate Mr. Eliud Williams as Dr. Liverpool's successor and requested that Mr. John join him in the nomination of Mr. Williams. Mr. John inquired whether Dr. Liverpool had tendered his resignation and the Prime Minister confirmed that he had not. In a brief letter dated 17th August 2012, Mr. John informed the Prime Minister that he was unable to join in the nomination of Mr. Williams as President.

[3] The Members of Parliament were summoned to a meeting of the House of Assembly on 24th August 2012. At that sitting the Speaker of the House read a letter from the Prime Minister indicating Dr. Liverpool's intention to vacate the office of President. The letter further indicated that the Prime Minister had consulted with Mr. John as Leader of the Opposition but the two of them were unable to agree on a joint nomination for election as President. The Speaker further indicated that as a result, nominations for President would be accepted from the Members as stipulated by the Constitution over the next 14 days until 7th September 2012.

[4] During the course of the parliamentary session of 24th August 2012 Mr. John and other Members of the Opposition voiced their disagreement as, in their view; there was no consultation process with Mr. John. The Opposition members indicated that in their opinion the consultation process could only be triggered by a vacancy in the post of President, which at the time of the Prime Minister's meeting with Mr. John on 15th August 2012 was not the case as Dr. Liverpool had not yet tendered his resignation. Therefore they posited that Mr. John's meeting with the Prime Minister could not be treated as consultation on the matter.

[5] The Prime Minister, in response, noted that he was informed by Dr. Liverpool that due to health reasons it would not be possible for him to complete the term of the Presidency, which would constitutionally end in September 2013. The Prime Minister, also being aware of the fact that the effective date of resignation of the President would be the date of a letter by Dr. Liverpool indicating such, attempted

to avoid a situation where the State would be left without a President and therefore consulted with the Leader of the Opposition at the meeting of 15th August 2012 in an effort to obtain a joint nomination for the new President.

[6] On 17th September 2012, a meeting of Parliament was convened for the sole purpose of electing a President. The Hansard of the meeting for that date reflects that the Members of the Opposition were absent. No excuse for their absence was provided to the Speaker. The election of the President was done by ballots cast by the Members of the House of Assembly present representing a majority of all the Members of the House, after which Mr. Williams was returned and declared by the Speaker to be elected as President. On 11th December 2012 the Speaker issued a certificate of election under the stamp of the House of Assembly in these terms:

> "Pursuant to the Laws of Dominica, I Hon. Alix Boyd Knights, Speaker of the House of Assembly of Dominica, do hereby Certify that at a Meeting of the House of Assembly, Victoria Street, Roseau, Dominica on Monday 17th September 2012 Mr. Eliud Thaddeus Williams, was duly elected to the Office of President of the Commonwealth of Dominica, in accordance with section 19 of the Constitution of Dominica
>
> Speaker of the House of Assembly of Dominica"

[7] Prior to the issuance of the Speaker's certificate the Leader of the Opposition had launched a claim in the High Court by way of Motion against the Prime Minister, the Speaker and the Attorney General challenging the election of Mr. Williams as President. He sought a number of declarations and constitutional relief in relation to the procedure and process of the election. The Prime Minister, the Speaker and the Attorney General, in response, applied to strike out the claim on the basis that the claim:

(1) disclosed no reasonable cause of action;

(2) was frivolous, vexatious and an abuse of the court's process;

(3) was barred by virtue of

  (i) sections 22(5) and 103(1) of the Constitution and/or

  (ii) the privileges and immunities of Parliament;

which precluded the High Court from hearing, inquiring into or making any determination in relation to the election.

[8] The learned trial judge dismissed the application and ordered that the matter proceed to trial, as he formed the following opinion:

> "[31] I have given careful consideration to the arguments and authorities cited in this matter and in all the circumstances, I hold that the Court has jurisdiction and the claim is not frivolous, vexatious nor an abuse of the process of the court.
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> "[32] The framers of the Constitution of the Commonwealth of Dominica never intended that the election of the President, the Head of State should become entangled in controversy. The role of every participant in the process is clearly spelt out. But like in all spheres of life dispute[s] arise from time to time. This case involves a dispute in a matter in which the rules were laid down by the constitution and as such the Court as guardian of the constitution must be the final arbiter"[1]

The learned trial judge was of the view, based on the undisputed evidence presented by the claimant and what was reported in the Hansard, that a number of issues arose which needed clarification. He noted some of those issues as:[2]

(a) Whether there was consultation as contemplated by the Constitution.

(b) Can the procedure under section 19 of the Constitution for the election of a President be commenced in circumstances where a vacancy does not exist?

(c) How does the doctrine of necessity fit into the constitutional arrangements for the election of a President in circumstances where the constitution itself contemplates a short time lapse between the departing of the sitting President and the arrival of his successor?

(d) Is the election of the President an internal parliamentary matter in which the courts cannot interfere?

[1] At paras. 31 and 32 of the judgment.
[2] At para. 33 of the judgment.

The Appeal

[9] The appellants have appealed, and essentially contend that the learned trial judge erred in not striking out the claim and that he ought to have done so on the basis that the matters complained of were non-justiciable by virtue of sections 22(5) and 103(1) of the Constitution, and otherwise by virtue of the immunities and privileges of Parliament. The main focus of the appellants' appeal is section 22(5) of the Constitution. They contend that by virtue of section 22(5) the election of a Head of State by Parliament in the Commonwealth of Dominica is not a justiciable issue and therefore the court ought not to engage in any review of the process. They argue that the purpose of section 22(5) is twofold; firstly it serves as conclusive evidence that the President was elected in accordance with section 19 of the Constitution and secondly it precludes the Speaker's certificate from being challenged in the court.

[10] The appellants also contend that the claim is barred by virtue of section 103(1) of the Constitution which further bolsters section 22(5). It states:

> "Subject to the provisions of sections 22(5), 38(6), 42(8), 57(7), 115(8), 118(3) and 121(10) of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section." (my emphasis)

[11] The respondent, on the other hand, argues that notwithstanding sections 22(5) and 103(1) of the Constitution, section 121(11) of the Constitution empowers the court to make a determination in cases such as this one which point to impropriety and possibly invalidity of the election process. He says that there are instances where an ouster clause may not entirely oust the jurisdiction of the court and the court may in fact be empowered to look behind such a clause to make a determination on issues such as whether the action was legal or whether the proper steps were followed for a particular process. The respondent is of the opinion that this is such a case.

[12] The respondent relied on Re Gerriah Sarran[3]. In that case the court considered the effect of article 125(8) of the Constitution of Guyana, which is similar to section 121(11) of the Constitution of Dominica, as it relates to an ouster clause at article 119(6) of the Guyana Constitution. Cummings JA opined:

> "Let me at the outset say that s.6 of art 119 does not, in my view, present any difficulty. It means no more than that there can be no enquiry by the court into the validity of an act that the Commission is legally authorized to do; this does not mean that if the Commission or person does something which it has no jurisdiction to do, or which is beyond its or his power, as defined in the Constitution, that that act cannot be inquired into by the courts."[4]

[13] The respondent, apart from relying on the authorities of Endell Thomas v The Attorney General of Trinidad and Tobago[5] and Jones and others v Solomon[6], also placed heavy reliance on the case of Smith v Mutasa and Another[7] in contending that, where there was evidence (in this case the Hansard) pointing to disobedience of sections 19 and 119 of the Constitution, the Speaker's certificate was open to scrutiny by the Court. He says that the Speaker's certificate on its face stated a falsehood. In Smith, a decision of the Supreme Court of Zimbabwe, an elected Member of the House of Assembly was entitled to a salary and allowances pursuant to the Parliamentary Salaries and Allowances Act. Because of certain televised remarks he made the House reprimanded him and found him in contempt of Parliament. His punishment was a one year suspension from the House and deprivation of his remuneration. He applied to the Court for an order restoring his salary and allowances. At the hearing a certificate from the Speaker was produced pursuant to s. 6(1) of the Privileges, Immunities and Powers of Parliament Act, ("the Act') in which the Speaker stated that he considered the proceedings to be matters of parliamentary privilege, although he did not mention or specify what those matters were. The judge held that the Speaker's certificate was conclusive and stayed the proceedings. The Member, while conceding that

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[3] (1969) 14 WIR 361.
[4] ibid at p. 371 B-C.
[5] (1982) AC 113.
[6] 41 WIR 269.
[7] [1990] LRC (Const) 87.

his suspension from the House was a matter of privilege, appealed to the Supreme Court on the ground that there was no legal authority for the suspension of his remuneration as there was no provision for such a punishment in the Act. He accordingly argued that the suspension of his remuneration was in breach of his constitutional right under section 16(1) not to be compulsorily deprived of property except under certain conditions as set out therein. The Supreme Court held, among other things and in essence, that:

(a) the House was empowered by s.3 of the Act only to punish a Member in contempt of its privilege by imposing penalties expressly prescribed by the Act and the Act did not provide for deprivation of remuneration as a punishment; that although the power to punish for contempt was a matter of parliamentary privilege, the nature of the punishment was not and the House had no power to impose on a Member an illegal penalty; and

(b) The Speaker's certificate issued under s 6(1) of the Act did not oust the jurisdiction of the courts as the court could examine the Speaker's certificate to establish whether the privilege claimed was legitimate for otherwise Parliament would be able to disregard its own statutes and the Constitution and act illegally without regard to fundamental rights;

(c) If an authority acted in excess of its jurisdiction, the invalid act could not be protected by any exclusionary formula;

(d) Further, the certificate was void for vagueness, inoperative, and contrary to the provisions of s 6(1) as it had not specified the matters considered to be questions of privilege.

[14] The respondent, drawing upon the principles set out in the cases of Re Sarran, Endell Thomas and Smith, asserts that the manner in which the appellants conducted the election process of the President, by invoking the doctrine of necessity, was in direct disobedience to sections 19 and 119[8] of the Constitution. To further exacerbate the situation, the certificate, he says, was issued by the Speaker to invoke parliamentary immunity and privilege and thereby prevent

[8] Section 119 of the Constitution provides, among other things, for the President to resign his office by writing under his hand addressed to the Speaker, where, upon receipt by the Speaker, the office becomes vacant.

inquiry by the court. The respondent argues that these provide good reasons why the court is empowered under section 121(11) to go behind the certificate and examine the election process as it was not done in accordance with the Constitution. He argues that the certificate is not conclusive unless the court finds that the election process was valid.

[15] The respondent accordingly contends that, despite what section 22(5) suggests, regard must be had for section 121(11) of the Constitution which states:

> "No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law."

Therefore, he urges, that by virtue of this provision, any procedure not done in accordance with the Constitution or any other law may be subjected to scrutiny by the court.

[16] The learned trial judge, appears to have found favour with the respondent's position that the jurisdiction of the court is not ousted by the issuance of a certificate by the Speaker and, relying on Re Gerriah Sarran and the other authorities, opined:

> "To be fair to Mr. Lawrence he stated that those authorities are irrelevant in the context of this case. However, I have nevertheless cited them, as to me they stand out as a guide to what is important in the resolution of cases of this nature."[9]

The trial judge accordingly concluded that the matters raised presented a dispute and the court, as the bastion of the Constitution, must be the final arbiter.

[9] At para. 30 of the judgment.

[17] The appellants argue that these cases were distinguishable and inapplicable as the circumstances differ vastly. The cases relied on did not concern the election of a Head of State or applicable 'conclusive evidence' provisions such as contained in section 22(5) of the Constitution. In distinguishing the case of Smith the appellants, in effect, say that:

(a) the matter in issue related to an Act of Parliament, as distinct from a constitutional provision, where the court was empowered to ascertain whether the privilege claimed in fact existed. This was quite different to the case at bar. The Constitution itself provided for the election of the President by the Parliament.

(b) s. 6(1) of the Act did not create a 'conclusive evidence' ouster clause of the nature as created by section 22(5) of the Dominica Constitution. The same Constitution created the 'conclusive evidence' ouster clause and further, expressly barred inquiry by the court in relation to the Speaker's certificate issued in relation to that election process.

Therefore, the appellants contend that the trial judge erred when he sought to rely on Re Sarran, and similar authorities to reach the conclusion that he did.

The Constitutional provisions

[18] A convenient starting point in addressing the issue presented on this appeal is with a recital of the other provisions of the Constitution, which are relevant to this appeal. Section 19 of the Constitution concerns the election of the President. It states:

> "19. (1) Whenever the office of President is vacant or the term of office of the President is due to expire within not more than ninety days, the Prime Minister shall consult with the Leader of the Opposition as to their joint nomination of a suitable candidate for election as President.
>
> (2) If the Prime Minister and the Leader of the Opposition submit to the Speaker by writing under their hands a joint nomination of a candidate for election as President to which that candidate has consented, the Speaker shall inform the House of the nomination, and declare that candidate to have been duly elected without putting the question to the vote.

(3) If the Prime Minister is unable to agree with the Leader of the Opposition as to their joint nomination of a candidate for election as President, he shall notify the Speaker to that effect and the Speaker shall inform the House accordingly.

(4) The Prime Minister or the Leader of the Opposition or any three Members of the House may, during the period expiring fourteen days after the day on which the House has been so informed, submit to the Speaker by writing under their hands nominations of candidates for election as President and the Speaker shall at the first meeting of the House after the expiration of that period and before the House proceeds to any other business inform the House of the nominations he has received and to which the candidates concerned have consented.

(5) An election of the President at which the candidates shall be those of whose nomination the House has been informed by the Speaker, shall thereafter be held at the meeting of the House referred to in subsection (4) of this section (or if proceedings under section 22 of this Constitution are pending before the Court of Appeal, at a meeting of the House held as soon as is practicable after those proceedings) and the Speaker shall declare the candidate who has at that election received the votes of a majority of all the members of the House to have been duly elected:

> Provided that when the question of the election of the President is put to the vote, the votes shall be given by ballot in such manner as not to disclose how any particular member of the House votes.

(5A) Where the only candidate for election under subsection (5) of this section does not receive the votes of a majority of all the members of the House, the Speaker shall inform the House accordingly and a new election shall be held to which the provisions of subsections (4) and (5) of this section shall, *mutatis mutandis,* apply.

(6) Where a person consents to be nominated for election as President he shall do so by writing under his hand addressed to the Speaker.

(7) A person who has been declared to have been duly elected as President under this section shall assume office as such on the day after the day on which his predecessor vacates the office of President or, if that office is already vacant, he shall assume office on the day after the day on which he was declared to have been duly elected." (my emphasis)

[19] Section 22 may be said to be dealing with the jurisdictional limits of the Court and the functions and powers of the Attorney General or members of the House in relation to the Office of President. It states as follows:

> "(1) The Court of Appeal shall have jurisdiction to hear and determine any question whether any person is qualified to be nominated for election, or elected, as President.
> (2) An application to the Court of Appeal for the determination of any question under this section may be made by the Attorney General or by any other member of the House and, if it is made by a member other than the Attorney General, the Attorney General may intervene and may then appear or be represented in the proceedings.
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> (3) The powers, practice and procedure of the Court of Appeal in respect of any application for the determination of any question under this section, including (without prejudice to the generality of the foregoing) the time in which and the conditions upon which an application may be made, shall be regulated by such provision as may be made by Parliament.
>
> (4) No appeal shall lie from any decision of the Court of Appeal under this section.
>
> (5) A certificate under the hand of the Speaker stating that a person was declared to have been duly elected under section 19 of this Constitution shall be conclusive evidence of the fact so stated and shall not be questioned in any court of law.
>
> (6) In the exercise of his functions under this section, the Attorney General shall not be subject to the direction or control of any other person or authority." (my emphasis)

Analysis

[20] As already recited above, section 103(1) of the Constitution begins by expressly stating that it is subject to section 22(5), which deals with the conclusiveness of the Speaker's certificate in respect of the election of a President and which further expressly states that such certificate is non-justiciable. It bears note that no challenge has been made to the certificate's authenticity, neither is it asserted that the certificate on its face is irregular in any way. Rather, the challenge here is to the procedure or the process of the election of the President, notwithstanding the

certificate which states due compliance with the procedure and process. The respondent, in essence, invites the court to look behind the certificate.

[21] I am of the view that the deciding factor lies in the construction of the constitutional provisions and the interpretation to be given to them. It is well established that exclusion clauses in statutes as well as in constitutions, are ordinarily to be accorded a literal (as distinct from a liberal) interpretation. In essence, they must be treated as meaning what they say, and no more. In the matter of an application brought by Aubrey Norton[10] the Chief Justice of Guyana was asked to make a determination on provisions in the constitution of Guyana which are similar to the sections at hand in Dominica. In this regard she opined:

> "This reasoning suggests that courts should lean towards interpreting literally exclusionary or ouster clauses in statutes relating to parliamentary affairs thus leaving no room for liberal or expansive interpretations. Such interpretations may give rise to varying and variable opinions leading to uncertainty in matters relating to our parliamentary system which ought not to be constricted by a plethora of judicial dicta."[11]

She went on to say:

> "I am of the firm view that the draftsmen and crafters of our existing constitution intended in 1900 that the person elected to the high office of President of Guyana should be insulated and shielded from inquiry into his/her election, and that the validity of the election should not be the subject of direct judicial scrutiny."[12]

[22] Although the learned trial judge expressed the sentiment that the framers of the Constitution never intended that the office of President should become entangled in controversy, he still went on to find that the integrity of the Speaker's certificate was in question and that under section 103(1) of the Constitution the court had jurisdiction to entertain the claim.[13] This he found, notwithstanding that section 103 begins by expressly stating that it is subject to section 22(5).

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[10] 1997 No. 5932.
[11] ibid at p. 13.
[12] ibid at p. 14.
[13] See para. 25 of the judgment.

[23] There are cases from our court which establish the principles to be followed when interpreting such ouster clauses. However the learned trial judge failed to consider these. Indeed, the case of Lestrade v The House of Assembly and Others,[14] a case emanating out of the State of Dominica, appears to have been accorded little or no weight. In Lestrade, the President was elected by ballot at a meeting in the House of Assembly after nominations were entered by Members of the House of Assembly. A certificate was signed by the Speaker declaring the newly elected President. The applicant, who was one of the losing candidates, sought to challenge the proceedings claiming a number of constitutional breaches, which adversely affected the conduct of the elections. Justice Singh, who delivered the decision of the Court, opined:

> "The provisions of section 103 of the constitution are subject to the provisions of section 22(5) of the said Constitution.
>
> Section 22(5) states
>
> 'A certificate under the hand of the speaker stating that a person declared to have been elected under section 19 of the Constitution [is] conclusive evidence of the fact so stated and shall not be questioned in any court of law'
>
> "In the affidavit of the learned Attorney General is evidenced a certificate signed by the Speaker of the House of Assembly certifying that on 19th December, 1983, Clarence Henry Augustus Seignoret was declared by her to have been duly elected President of the Commonwealth of Dominica in accordance with the provisions of section 19 of the Constitution. The authenticity of this Certificate has not been challenged in any way by the applicant and I find it to be genuine. Having accepted it in evidence and having found it to be genuine I agree with the submission of the learned Attorney-General that having regard to the provisions of section 22(5) of the Constitution (*supra*) the Speaker of the House having certified under her hand that Clarence Henry Augustus Seignoret was duly elected President of the Commonwealth of Dominica in accordance with the provisions of section 19 of the Constitution, that that is conclusive evidence of the fact so stated and it cannot be questioned in any Court of law."
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> "On this point alone I dismissed this motion in its entirety."[15]

[14] [1985] LRC (Const) 48.
[15] ibid at p. 53.

[24] In my view, sections 22(5) and 103(1) should be interpreted literally. The framers of the Constitution, holding the office of President in the highest regard, sought to protect the integrity of the office from disrepute, which may arise out of a challenge to the electoral process. The most effective way to do this was to preclude any inquiry by the court into the process. In relation to section 22(5) it may be said that the framers of the Constitution provided a double shield. Firstly, they provided that the Speaker's certificate is conclusive evidence of the fact. Accordingly, this would not permit rebuttal evidence of the fact as sought to be established by the respondent. Secondly, section 22(5) goes on further to say, that the certificate stating that conclusive fact shall not be questioned in any court of law. The language could not be plainer as to its meaning. This was deliberate. To give any other interpretation to this provision would not represent the intention of the framers.

[25] This position is further bolstered by the fact that the Constitution makes provision for the aspects relating to the Presidency, which may be challenged. The only involvement of the court in this process is set out in section 22 of the Constitution. Section 22(1) recited above, speaks specifically to a challenge only in regard to the qualification of the holder or a nominee for such office. The jurisdiction given however is to the Court of Appeal and not the High Court, the decision from which no further appeal lies. There is no other provision under Chapter 2 which allows a challenge to the President or the electoral process for the Office. I am therefore of the view that outside such a circumstance, the court has no jurisdiction to interfere. It remains strictly a parliamentary matter, the windows of which have been expressly shielded from the inquiring eyes of the court.

[26] The respondent however, relying on the cases of Sarran, Thomas and Smith seeks to ground his argument under section 121(11) of the Constitution. He says that this provision, having regard to its generality, allows the court to make an inquiry into the electoral process of the office of President. In essence, he

suggests that this provision may be called in aid whenever any person or authority fails to follow a procedure provided for, or engages in a process not in compliance with the constitutionally provided methods. In Re Blake,[16] the appellant sought a declaration from the court alleging that the Governor-General's decision to appoint or retain the Prime Minister and to establish a minority government, made under section 116(2) of the Constitution of St. Kitts & Nevis was unconstitutional and that decision either did or was likely to infringe the appellant's fundamental rights and freedoms. The appellant therefore prayed for an order of mandamus requiring the Governor General to remove the Prime Minister from office, dissolve Parliament and call a general election. The application was refused in the High Court and the appeal was dismissed by the Court of Appeal. The appellant in that case put forth an argument similar to that of the respondent, attempting to invoke section 119(11) of the Constitution of St. Kitts & Nevis, which is similarly worded to section 121(11) of the Constitution of Dominica, that the section empowered the court to consider the exercise of functions under the Constitution. Floissac CJ, who gave the decision of the court, opined:

> "The Governor General's decision is therefore protected by section 116(2) of the Constitution which provides that:
>
> > 'Where by this Constitution the Governor-General is required to perform any function in his own deliberate judgment or in accordance with the advice or recommendation of, or after consultation with, any person or authority, the question whether the Governor-General has so exercised that function shall not be inquired into in any court of law.'
>
> In my judgment, section 116(2) of the Constitution is an unequivocal constitutional ouster of the jurisdiction of the High Court to entertain any application for judicial review of a decision made by the Governor General in the exercise of the constitutional and prerogative powers conferred upon him by section 52 of the Constitution. In this regard, the appellant drew the attention of the court to section 119(11) of the Constitution which provides that:
>
> > 'No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or

[16] (1994) 47 WIR 174.

> authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has exercised those functions in accordance with this Constitution or any other law.'
>
> Section 119(11) of the Constitution acknowledges the inherent jurisdiction of the High Court to entertain applications for judicial review of the judicial, *quasi*-judicial and administrative decisions of public authorities. But section 119(11) must be read subject to section 116(2) of the Constitution which expressly or impliedly excepts or exempts from judicial review any decision made by the Governor-General under section 52 of the Constitution."[17]

[27] The reasoning of Floissac CJ is very instructive and applicable to this present case. The Constitution cannot be seen to contradict itself or have competing provisions. Therefore, save for the very limited jurisdiction granted to the Court of Appeal in relation to challenges to the qualifications of a person to be nominated or elected to the office of President, it is clear that the court was not meant to have jurisdiction over the process of electing a President. Further, in the interpretation of the Constitution, general clauses cannot be seen to override the specific clauses. In Browne v Francis Gibson and Another[18] Floissac CJ, in speaking of certain constitutional provisions giving a right of appeal from the Court of Appeal, had this to say:

> "Section 99 is a general section governing imperial appeals generally. Section 36(8) is a specific section prohibiting imperial appeals from the decisions of this court on appeal from final decisions of the High Court determining questions as to the validity or otherwise of elections and appointments to Parliament. Section 99 should therefore be read subject to section 36(8). Otherwise, there would be a conflict between section 99 and section 36(8) of the Constitution. Assuming that there is such a conflict, it must be resolved by reference to the rule of interpretation which governs such conflict. According to that rule the ascertained leading provision prevails over the ascertained subordinate provision."

[17] ibid at p. 180.
[18] (1995) 50 WIR 143 at 147.

[28] Similarly, in International Management Group (UK) Limited v Peter German, Hr Trustees Limited[19] Mummery LJ had this to say at paragraph 21 of his judgment:

> "The Court ought to apply the general principle of statutory interpretation that, where a generally expressed provision of an Act might be construed as repealing a specific provision, but might also be construed as leaving the specific provision unaffected, the latter construction should be adopted: Bennion on Statutory Interpretation (5th ed.) (2008) pp 306-307."

Applying these principles and rules of interpretation to the present case, it becomes clear that section 121(11) of the Constitution is a general provision which must be read down and thus must give way to the specific provision of section 22(5), which ousts the Court's jurisdiction. To accede to the interpretation of this section offered by the respondent calls for ignoring the well-established rules of interpretation with the resulting conflict between the provisions. Such a course would promote uncertainty and lead to undesirable consequences, which would inevitably flow therefrom.

[29] In my opinion, the Constitution is quite clear and this is further evidenced by the fact that while section 22(1) vests jurisdiction only in the Court of Appeal to determine a specific question, section 103(1) allows for matters not excluded from the section to be brought to the High Court. This shows that there isn't a general or all-encompassing jurisdiction given to the court. The jurisdiction given is limited to the purpose and the court. This, to my mind, further supports the view that section 121(11) cannot, as a general provision, be construed so as to allow a reading down of section 22(5). The ouster clause in section 22(5) is not of general application in the Constitution but rather is confined strictly to the matter of the election of a President of the state – a necessary Office in respect of the legitimacy of any government of the State.

[19] [2010] EWCA Civ 1349.

[30] Whilst I am in complete agreement with the principles set out in the cases of Re Sarran, Smith, and like cases, I agree with the appellants, for the reasons they have advanced, that they are distinguishable and are inapplicable to the case at bar. Here, the matter does not concern an Act of Parliament in respect of which the court is always empowered to examine against the mirror of constitutionality. Rather, the provisions engaged here are those of the Constitution itself. It is the Constitution which provides for Parliament to elect the President and it is the Constitution (section 22(5)) which says that the Speaker's certificate stating that the election was in accordance with section 19 of the said Constitution '**shall be conclusive evidence of the fact so stated and shall not be questioned in any court of law**'. Here, the Speaker's certificate stated this fact precisely and specifically. It was neither vague nor ambiguous. Section 22(5) of the Constitution is clearly intended to oust the jurisdiction of the court. It is clear that this certificate creates an irrefutable factual presumption that Parliament complied with the provisions of section 19 of the Constitution. The Speaker's certificate, once authentic or not tainted by irregularity on its face, operates as a complete shield against any judicial inquiry. It is apparent that the framers of the Constitution did not want to subject the Office or the electoral process of the President to any interference by the court and for good reason. The highest Office of the State must be insulated from controversy. Additionally, section 103(1) which is a supportive provision made subject to section 22(5), makes it clear that although judicial relief can be sought in the High Court for some challenges made under certain sections of the Constitution, a challenge made under section 22(5) is not one of them.

[31] I also agree with the appellants that the doctrine of separation of powers provides support for this view. It is clear that the election of a President is a parliamentary process of which the court is given limited jurisdiction. Outside of the expressed jurisdiction given under section 22, the court has no power to intervene and ought not to arrogate to itself such power by turning its face against a clear and specific ouster clause by praying in aid a general provision.

[32] Counsel for the appellants contend that the respondent had the opportunity to attend the meeting of the House of Assembly at which time he was free to voice his opposition to the nomination of Mr. Williams, yet he failed to do so. I agree. The only challenge open to the electoral process of the President by the respondent was in Parliament. Having failed to do so the respondent is estopped from coming to the court to seek redress as the Constitution specifically precludes the court from delving into such parliamentary matters.

[33] I agree with the appellants that the trial judge was flawed in his reasoning. The only challenge which the constitution allows in relation to the President is at section 22(1) and is on the issue of whether that person is qualified to be nominated for election, or elected as President. There has been no challenge to the certificate, and in the circumstances of this case rightly so.

[34] In Hoani Te HeuHeu Tukino v Aotea District Maori Land Board[20] the House of Lords deemed that the court may not impute fraud or improper conduct or motive to the Parliament or any officer or inquire into any matters within Parliament's jurisdiction. Viscount Simon LC opined:

> "It is not open to the court to go behind what has been enacted by the legislature, and to inquire how the enactment came to be made, whether it arose out of incorrect information or, indeed, on actual deception by someone on whom reliance was placed by it. The court must accept the enactment as the law unless and until the legislature itself alters such enactment, on being persuaded of its error. The principle laid down in *Labrador Company* v. *The Queen* (1) [*[1893] A.C. 104*], referred to by the Court of Appeal, is directly applicable. Lord Hannen, in delivering the judgment of the Board, states (2) [*Ibid. 123*]:—'This is an absolute statement by the legislature that there was a seigneurie of Mingan. Even if it could be proved that the legislature was deceived, it would not be competent for a court of law to disregard its enactments. If a mistake has been made, the legislature alone can correct it. The Act of 1941 Parliament has declared that there was a seigneurie of Mingan, and that thenceforward its tenure shall be changed into that of franc aleu roturier. The courts of law cannot sit in judgment on the legislature, but must obey

[20] [1941] AC 308.

> and give effect to its determination.' Before the court can accede to the appellant's claim for an indemnity against the charge imposed by s. 14 of the Act of 1935, the court will require not only to find that the respondent board owed to the native owners the duty alleged, and that it committed the breaches of that duty which are alleged, but also that the enactment of s. 14 was the reasonable and natural consequence of such breaches, and, even assuming the duty and breaches to have been established, the third and last essential step for the appellant's success would involve an inquiry by the court of the nature prohibited by the principle of *Labrador Co.* v. *The Queen* (1) [*[1893] A.C. 104*]. The appellant, therefore, fails in his first contention."[21]

[35] Similar sentiments were expressed in British Railways Board v Pickin.[22] Lord Reid laid out the position quite succinctly when he said:

> "For a century or more both Parliament and the courts have been careful not to act so as to cause conflict between them. Any such investigations as the respondent seeks could easily lead to such a conflict, and I would only support it if compelled to do so by clear authority. But it appears to me that the whole trend of authority for over a century is clearly against permitting any such investigation."[23]

[36] I accept and am in agreement with the reasoning expressed in Hoani Te HeuHeu Tukino v Aotea District Maori Land Board and British Railways Board v Pickin. There is good reason for the separation of powers doctrine and it is in matters of this kind that we see its full merit. It is no part of the court's function or responsibility to meddle in parliamentary affairs particularly when the Constitution clearly precludes it from so doing. The office of President is one, which was meant to be held in the highest regard and subjected to the highest form of integrity. To allow the court to meddle into the affairs of the election process of the President is in my view an affront to the dignity of the high office of President. It is a course, which a court, in the face of expressed exclusion ought to be loath to permit incursion no matter how inviting the invited excursion may appear to be.

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[21] ibid at p. 322.
[22] [1974] AC 765.
[23] ibid at p. 788.

Conclusion

[37] For the reasons stated above I would allow this appeal. I would accordingly grant the application to strike out the respondent's claim.

Costs

[38] Notwithstanding the general rule providing for costs to follow the event, neither party has sought an order for costs. Given the nature of the matter I consider it appropriate to make no order as to costs.

Dame Janice M. Pereira, DBE
Chief Justice

I concur.

Louise E. Blenman
Justice of Appeal

I concur.

Don Mitchell
Justice of Appeal [Ag.]