EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

ANTIGUA AND BARBUDA

ANUHCVAP2010/0047

BETWEEN:

CLIVE OLIVEIRA

Appellant

and

THE ATTORNEY GENERAL

Respondent

Before:

The Hon. Mr. Mario Michel	Justice of Appeal
The Hon. Mr. Paul Webster, QC	Justice of Appeal [Ag.]
The Hon. Mde. Joyce Kentish-Egan	Justice of Appeal [Ag.]

Appearances:

Dr. David Dorsett for the Appellant
Mr. Justin Simon, QC, Attorney General, for the Respondent

2013: November 27;
2014: March 10.

Civil appeal – Judicial review – Irrationality – Appellant's entitlement to be registered as citizen of Antigua and Barbuda pursuant to s. 114(1)(b) of Antigua and Barbuda Constitution Order 1981 – Appellant's citizenship application appointment scheduled some 19 months after application made – Whether delay in being registered constitutes breach of appellant's constitutional rights as provided by ss. 111 and 114(1)(b) of Constitution – Whether learned trial judge erred in holding that delay not inordinate – Whether learned trial judge erred in finding that there was no abuse of discretion by officials or agencies of Government of Antigua and Barbuda – Challenge to findings of fact made by learned trial judge

The appellant, a native of the Co-operative Republic of Guyana, had resided in Antigua and Barbuda since around May 1993. On 23rd October 1997, he married a native of Guyana in Antigua, in accordance with the laws of Antigua and Barbuda. The appellant's wife was registered as a citizen of Antigua and Barbuda on 30th September 2002, on the basis that she was a Commonwealth citizen domiciled in Antigua and Barbuda and lawfully

and ordinarily resident there for no less than 7 years immediately preceding her application for citizenship.

The appellant applied to be registered as a citizen of Antigua and Barbuda in April 2009, on the basis that he was married to a person who was a citizen of Antigua and Barbuda and that his marriage had subsisted for at least 3 years. The following month, the Immigration Department provided the appellant with an appointment date of 11th November 2010 for him to be interviewed in connection with his application for registration as a citizen.

On 15th October 2009, the appellant made a without notice application for leave to apply for judicial review on the ground that, notwithstanding his application to be registered as a citizen of Antigua and Barbuda, and his entitlement to be so registered by virtue of section 114(1)(b) of the Antigua and Barbuda Constitution Order 1981 ("the Constitution"), the Government had failed to register him as a citizen in a timely manner. Leave was granted, and in the court below, the appellant averred (inter alia) that he had expected that upon his application and proof of eligibility, pursuant to section 114(1)(b) of the Constitution he would be promptly registered but that contrary to his expectation, he was provided with an appointment date of 11th November 2010 for an interview, and that this failure of the Passport Office and/or the appropriate arm of the Government to register him as a citizen pursuant to section 114(1)(b) constitutes a breach of his constitutional rights and his right of belonging to Antigua and Barbuda as provided by section 111 of the Constitution. The learned trial judge held that even though the subject period seemed long, he could not hold that the length of time of the process was unreasonable and amounted to a breach of the constitutional right of the appellant to citizenship of Antigua and Barbuda. The claim for judicial review was accordingly dismissed in the court below, and the appellant appealed to this Court, challenging primarily the findings of fact made by the learned trial judge.

Held: dismissing the appeal, and affirming the judgment of the trial judge, that:

1. The trial judge's reasoning that, on a scale of general human experience, the well over one year period from application to interview was not out of the realm of international experience cannot be faulted. There is probably not a country in the world where a person not native to the country – whether by being born in the country or being the offspring of a native of the country – who has acquired certain qualifications for citizenship of the country will immediately and automatically upon application be registered as a citizen of the country. There will invariably be some delay, whether specifically stipulated or naturally arising, before a country confers its citizenship upon persons not native to the country. If the trial judge took this view and concluded that a nineteen month delay is not of such magnitude as to amount to a denial of the appellant's right to registration, then he cannot be faulted for so doing.

2. The judgment of a court on an application for judicial review, especially one grounded on abuse of process or irrationality, is a judgment given in the exercise of a judicial discretion which ought only to be upset by a court of appeal if the appellate court is satisfied that: (i) in exercising his or her judicial discretion, the

trial judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (ii) as a result of the error or the degree of the error, in principle the trial judge's discretion exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong. It cannot be said that the trial judge's exercise of discretion in the instant case was flawed in any of these respects. He was entitled to make the findings of fact that he made based on the evidence that was before him. In particular, he was entitled to accept the respondent's evidence on various aspects of the citizenship application process – the resources available to the Immigration Department for the processing of citizenship applications; the department's workload; and the extent to which these factors would impact on the department's ability to process applications at a faster rate. There is accordingly no basis for overturning the trial judge's decision on the issues raised by the appellant on appeal.

Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 followed.

JUDGMENT

[1] MICHEL JA: The appellant, Clive Oliveira, is a native of the Co-operative Republic of Guyana. According to his affidavit evidence, on 21st October 1991 he married Vidawattie Sampat in the Hindu East Indian tradition in Guyana. On or around 24th May 1993, he travelled to Antigua and, except for brief absences, he has resided in Antigua from since that time. On 15th December 1993, Vidawattie Sampat – also a native of Guyana – arrived in Antigua and on 23rd October 1997 she and the appellant were married in Antigua in accordance with the laws of Antigua and Barbuda. Whilst residing in Antigua, the appellant had been self-employed and had in the past obtained a work permit to work as a self-employed person. On 30th September 2002, the appellant's wife was registered as a citizen of Antigua and Barbuda on the basis that she was a Commonwealth citizen domiciled in Antigua and Barbuda and lawfully and ordinarily resident there for no less than seven years immediately preceding her application for registration as a citizen. In April 2009, the appellant applied to be registered as a citizen of Antigua and Barbuda on the basis that he was married to a person who is a citizen of Antigua and Barbuda and that his marriage had subsisted for at least three years.

Upon presentation of his application and supporting documents to the Passport Office, he was given a document acknowledging receipt of his application and accompanying documents and requiring him to go to the Immigration Department on 1st May 2009, where he was given an appointment date of 11th November 2010 to be interviewed in connection with his application for registration as a citizen. He was also directed to bring with him at the appointed date several specifically identified documents.

[2] The appellant did not wait for the appointed date to be interviewed by the Immigration Department but instead, on 15th October 2009, he made a without notice application for leave to apply for judicial review on the ground that, notwithstanding his application to be registered as a citizen of Antigua and Barbuda and his entitlement to be so registered by virtue of section 114(1)(b) of the Antigua and Barbuda Constitution Order 1981 ("the Constitution"), the Government of Antigua and Barbuda had failed to register him as a citizen in a timely manner.

[3] There is no record in the appeal bundle or in any of the documents filed in the appeal of an order granting leave to the appellant to make the application for judicial review, but it is reasonable to assume that the appellant was granted leave because on 17th November 2009 he filed a fixed date claim seeking the following relief:

> "(1) A declaration that the right of the [appellant to be registered] as a citizen of Antigua and Barbuda as provided for by section 114(1)(b) of the Antigua and Barbuda Constitution Order 1981 has been contravened.
> (2) A mandatory order requiring the Government of Antigua and Barbuda by their proper servants, agents, or officers, to register the [appellant] as a citizen as provided by law and by virtue of section 114(1)(b) of the Antigua and Barbuda Constitution Order 1981.
> (3) Damages, including vindicatory damages and exemplary damages, pursuant to section 119 of the Antigua and Barbuda Constitution Order 1981, for breach of the [appellant's] constitutional rights as provided for under section 114(1)(b) of the Constitution.
> (4) Damages for distress and inconvenience, pursuant to section 119 of the Antigua and Barbuda Constitution Order 1981, for breach of the

[appellant's] constitutional rights as provided for under section 114(1)(b) of the Constitution.

(5) Damages flowing from the inability of the [appellant] to work whilst being denied his citizenship status.
(6) Costs.
(7) Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act.
(8) Interest pursuant to section 7 of the Judgments Act.
(9) Any other relief that the court deems fit."

[4] In his statement of claim accompanying the fixed date claim form, the appellant averred that he expected that upon his application and proof of eligibility, pursuant to section 114(1)(b) of the Constitution, he would be promptly registered; that contrary to his expectation, he was advised by the Passport Office to visit the Immigration Department on 1st May 2009 and return to the Passport Office on 11th November 2010 for an interview; and that the failure of the Passport Office and/or the appropriate arm of the Government to register him as a citizen pursuant to section 114(1)(b) constitutes a breach of his constitutional rights and his right of belonging to Antigua and Barbuda as provided by section 111 of the Constitution. He further averred that the directive given to him to visit the Immigration Department and submit to an interview on 11th November 2010 as a condition for registration of citizenship is contrary to law, namely, section 114(1)(b) of the Constitution, and constitutes a fetter on his constitutional rights which entitle him to citizenship; that as a result of the unlawful denial of citizenship he has been unable to work, either as a self-employed person or otherwise, and as a consequence he has suffered loss and damage to the extent of $1, 200.00 per week, which income he could have earned as a mason or carpenter; and that furthermore, as a result of the denial of his citizenship and his inability to work and generate income for his wife and two minor children, he has suffered and continues to suffer distress and inconvenience.

[5] The respondent's defence to the appellant's claim for judicial review came in the form of two affidavits – one from Juliet Simon, the Supervisor of Temporary

Residency at the Immigration Department, and the other from Brenda Cornelius, the Permanent Secretary of the Passport Office.

[6] The defence to the claim of contravention of the appellant's right to citizenship was essentially a denial that the appellant's right to citizenship had been contravened and averments as to the normal procedures attending applications for registration of citizens of Antigua and Barbuda pursuant to section 114(1)(b) of the Constitution and as to the fact that all of the normal procedures were adhered to with respect to the application by the appellant for registration as a citizen of Antigua and Barbuda. It was also averred by the aforesaid witnesses for the respondent that the date of 11th November 2010 given to the appellant for the conduct of his interview was the earliest available date due to the long waiting list of applicants for citizenship interviews and other immigration appointments; that the interview and investigation process to be conducted prior to the grant of the application for registration as a citizen of Antigua and Barbuda is absolutely vital to enable the relevant authorities to verify if an application has been properly and legitimately made and is not the subject of fraud or forgery; that the process helps to confirm the applicant's personal details and also assists in determining whether or not the applicant has the ability to meet the requirements to be registered as a citizen of the country; and that the grant of citizenship can never be prompt or instantaneous, but must follow its due course which involves the carrying out of an investigation and an interview. The respondent's witnesses asserted that there had been no refusal to grant the appellant citizenship of Antigua and Barbuda, but only the provision to him of a date and time for the conduct of his interview with the Immigration Department, which interview precedes the grant of an application for citizenship. The respondent accordingly submitted that there was (at the time of the filing of the claim) no decision to review and that the claim for judicial review was therefore without foundation or, at the very least, was premature.

[7] The case was heard on 14th June 2010 and judgment was delivered on 12th October 2010. In his judgment, the learned trial judge reviewed the facts of the

case, the submissions made by counsel for the parties and the authorities cited by them and concluded that the central issue to be determined was whether the right of the appellant to be registered as a citizen had been abrogated by the State by virtue of the long time period between application, appointment and registration which, in the present case, would have been at least nineteen months. The learned trial judge accepted that there are circumstances in which delay in taking a decision can amount to a fetter or a breach of one's constitutional rights and that the circumstances of the present case came perilously close to being a fetter on the appellant's rights, but he reasoned that, on a scale of general human experience, the well over one year period from application to interview was not out of the realm of international experience. He concluded that, in the circumstances of this case, even though instinctively the subject period seemed long, he could not hold that the length of time of the process was unreasonable and amounted to a breach of the constitutional right of the appellant to citizenship of Antigua and Barbuda. The judge accordingly dismissed the appellant's claim for judicial review and ordered the parties to bear their own costs.

[8] On 24th November 2010, the appellant filed the present appeal against the judgment and order of the learned trial judge on the grounds that:

> "(1) The learned judge erred in failing to find that the policy and practice of the Immigration Department in considering irrelevant matters [was a] contributory factor in the delay in the application process and grant of citizenship to which the [appellant] was entitled.
> (2) The learned judge erred when he failed to find that the period between the application and the interview was unnecessarily long in light of the evidence as it relates to the number of applications in the system and the rate at which applications were being processed.
> (3) The learned judge erred in holding that there was no reviewable decision to consider when the failure to consider the application in a timely manner constituted a reviewable action.
> (4) The learned judge erred in failing to find that the [appellant] was "entitled, upon [making] application, to be registered" as a citizen and that this right was abridged when the [appellant's] application was in proper order, the only obligation of the State being to verify that the [appellant] had met the preconditions for registration, which they failed to do in a timely manner.

(5) The learned judge erred in failing to find that in the circumstances there was a fetter or breach on the [appellant's] right to registration, which right, by its nature, ought not to be contingent on circumstances of surplus.
(6) The learned judge erred in approaching the matter as one involving an application for citizenship when what was at issue was an application for registration as a citizen.
(7) The learned judge erred in not finding that the [appellant] was entitled to the damages claimed, including flowing from his inability to work, in that the [appellant] was a citizen, though not registered as one."

[9] On 1st July 2013, written submissions were filed on behalf of the appellant, in which the fifth and sixth grounds of appeal were abandoned on the basis that they were essentially covered by the other grounds of appeal. On 5th September 2013, written submissions were filed on behalf of the respondent which contained a general response to the appellant's grounds of appeal. On 14th October 2013, the appellant filed written submissions in reply to the respondent's written submissions.

[10] The appeal was heard on 27th November 2013 when oral submissions were made by Dr. David Dorsett on behalf of the appellant and by the respondent, Hon. Justin Simon, QC, Attorney General of Antigua and Barbuda.

[11] The judgment being appealed was rendered in an application for judicial review filed by the appellant seeking a declaration, a mandatory order, damages, interest and costs against the respondent arising from an alleged contravention by the Government of Antigua and Barbuda of the appellant's constitutional right to be registered as a citizen of Antigua and Barbuda pursuant to section 114(1)(b) of the Constitution.

[12] Judicial review is of course the means by which a court exercises supervisory jurisdiction over public bodies and holders of public offices performing public functions. Claims for judicial review are founded on (1) absence of jurisdiction – the ultra vires acts of public bodies and holders of public offices; (2) abuse of discretion by the aforesaid entities; and (3) violation of the rules of natural justice.

In Council of Civil Service Unions and Others v Minister for the Civil Service,[1] Lord Diplock referred to these three categories of judicial review claims as 'illegality', 'irrationality' and 'procedural impropriety'.

[13] There was no submission made in this case on any ultra vires act by the Government of Antigua and Barbuda or any official or agency of the government so as to give rise to a claim of absence of jurisdiction or illegality, nor was there any submission made on any violation of the rules of natural justice by the government or its officials or agencies so as to give rise to a claim of procedural impropriety, so the judicial review claim in this case would have to be founded on abuse of discretion by officials or agencies of the Government of Antigua and Barbuda justifying a claim of irrationality in the handling by the Government of the appellant's application for registration as a citizen of Antigua and Barbuda.

[14] Based on the appellant's statements of case and the evidence presented by him, his claim for judicial review is founded on the abuse of discretion by the Government of Antigua and Barbuda (or the irrationality of its officials and agencies) arising from the contravention by the government of his constitutional right to be registered as a citizen of Antigua and Barbuda pursuant to section 114(1)(b) of the Constitution.

[15] The constitutional right claimed by the appellant is a right under section 114(1)(b) of the Constitution to be registered as a citizen of Antigua and Barbuda, upon application, by virtue of being married to a citizen of Antigua and Barbuda for more than three years. The contravention alleged by the appellant was the fact that, upon submitting his application for registration and his supporting documents in April 2009, instead of being immediately registered as a citizen of Antigua and Barbuda, he was given a date of 1st May 2009 to go to the Immigration Department and then a date of 11th November 2010 to be interviewed on his application for registration as a citizen. This he contended amounted to a denial of

[1] [1984] 3 WLR 1174.

his right to be registered as a citizen of Antigua and Barbuda, with certain attendant consequences. All the other aspects of the appellant's case in the court below hinged on the determination by the court of the question of whether the appellant's right to be registered as a citizen was contravened by the failure of the Government to immediately register him as a citizen once he had applied and submitted his proof of identity and proof of his marriage to a citizen of Antigua and Barbuda. The appellant contended that he had the constitutional right to be registered immediately upon application, while the respondent contended that the process of acquisition of citizenship of Antigua and Barbuda was not instantaneous and that there had to be a period of assessment and/or verification before an applicant could be registered as a citizen.

[16] I agree with the respondent's contention. It must be the state's responsibility and duty to carry out certain investigations beforehand to ensure that the necessary conditions are met by the applicant for the grant of his application for citizenship, for instance, those set out in the proviso to section 114(1)(b) of the Constitution,[2] under which the application for registration was made.

[17] Furthermore, inasmuch as it is possible for another judge to look at the same facts reviewed by the learned trial judge and come to a different conclusion about the reasonableness or lawfulness of the delay in granting the appellant's application for registration as a citizen of Antigua and Barbuda, because it appears that the appellant had – at the time of the making of his application for registration in April 2009 – met all of the requirements for registration, the trial judge cannot be faulted for accepting the evidence presented by the respondent that the process of the grant of citizenship of a country is not an instantaneous process of submitting an application and being provided in return with a certificate of citizenship. The trial judge's reasoning that, on a scale of general human experience, the well over one year period from application to interview is not out of the realm of international

[2] The proviso to s. 114(1)(b) is to the effect that an application shall not be allowed from a person married to a citizen if the marriage has not subsisted for at least three years or if the parties to the marriage have been living apart under a decree of a competent court or by virtue of a deed of separation.

experience also cannot be faulted. In fact, there is probably not a country in the world where a person not native to the country – whether by being born in the country or being the offspring of a native of the country – who has acquired certain qualifications for citizenship of the country will immediately and automatically upon application be registered as a citizen of the country. There will invariably be some delay, whether specifically stipulated or naturally arising, before a country confers its citizenship upon persons not native to the country. If the trial judge took this view and concluded that a nineteen month delay is not of such magnitude as to amount to a denial of the appellant's right to registration, then he cannot in my view be faulted for so doing.

[18] Learned counsel for the appellant made several references to dicta of Barrow JA in the case of Radhay Noel v The Attorney General et al[3] to the effect that there is no discretion to refuse an application properly made by a person entitled under the Constitution to be registered as a citizen by virtue of the applicant's marriage to another citizen. The ratio of that case though is that, notwithstanding the right of an applicant to be registered as a citizen upon application, the State is entitled to stipulate administrative and/or procedural conditions for the grant of the application and to withhold registration pending full compliance by the applicant with the conditions imposed. This decision of the court in Noel appears to be on all fours with the decision of the learned trial judge in the court below, who determined that the appellant did have a right to be registered as a citizen upon application by him, but that the State had a right to undertake its normal processes of investigation and interview prior to the registration of the appellant as a citizen.

[19] It is of course to be appreciated too that the judgment of a court on an application for judicial review, especially one grounded on abuse of process or irrationality, is a judgment given in the exercise of a judicial discretion which ought only to be upset by a court of appeal if, in the words of Sir Vincent Floissac CJ:

[3] Grenada High Court Civil Appeal GDAHCVAP2006/0011 (delivered 13th November 2006, unreported).

> "… the appellate court is satisfied (1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (2) that, as a result of the error or the degree of the error, in principle the trial judge's discretion exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong."[4]

This does not appear to be the case here so as to justify interference by an appellate court in the judge's exercise of his judicial discretion.

[20] I propose now to address and rule on each of the five grounds of appeal actually pursued by the appellant.

[21] The appellant's first ground of appeal challenged the judge's factual finding that the policy and practice of the Immigration Department in considering 'irrelevant matters' was not a contributory factor in the delay in the application process and grant of citizenship to which the appellant was entitled. In the course of his judgment, the learned trial judge reasoned that even if some of the documents which the appellant was asked to submit to the Immigration Department were irrelevant in the consideration of the appellant's entitlement to be registered as a citizen pursuant to section 114(1)(b), there was no evidence that this impacted on the timing of the appellant's appointment for interview by the Immigration Department and consequentially on the length of time between application and registration. This was a factual finding which the learned judge was entitled to make on the evidence before him, because the evidence of the respondent's witnesses was that the length of time between application and interview was based on the long waiting list of persons to be interviewed by the Immigration Department, whether for citizenship applications or other immigration-related applications. There is no basis therefore for overturning the judge's finding of fact on this issue, and so the appellant's first ground of appeal is dismissed.

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[4] Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 at 190.

[22] The appellant's second ground of appeal challenged the learned judge's failure to find that the period between the application and the interview was unnecessarily long in light of evidence as it relates to the number of applications in the system and the rate at which applications were being processed. This ground of appeal is based on the evidence of one of the respondent's witnesses, Ms. Simon, who estimated that three citizenship interviews are done each day for three days in the week by two employees of the Immigration Department and that there is a backlog of about two hundred applicants. The appellant sought to construct from this an argument that he should have been granted an interview within five months of his citizenship application; but the same witness on whose evidence he sought to rely on this issue swore in an affidavit and certified in a witness statement that the appellant was given the earliest available date for his citizenship interview. This was also sworn to and certified by the respondent's other witness, Ms Cornelius. The learned trial judge was entitled to accept this evidence, which he evidently did, and there is no basis for overturning his finding of fact on this issue. The appellant's second ground of appeal is also dismissed.

[23] The appellant's third ground of appeal reads as follows: 'The learned judge erred in holding that there was no reviewable decision to consider when the failure to consider the application in a timely manner constituted a reviewable action.' However although the learned trial judge commenced the last paragraph of his judgment with the statement that '[t]he immigration department has not taken a reviewable decision', he had in fact found at paragraph 61 of the judgment that a delay in making a decision on the appellant's application 'can amount to a fetter or breach [of his] constitutional rights.' The judge clearly reviewed the decision of the respondent, through the agency of the Immigration Department and/or the Passport Office, to put the appellant's application for registration as a citizen through the normal process of appointment, interview and consequent delay, rather than simply hand the appellant a certificate of registration upon the making of his application. Having reviewed the decision of the Immigration Department / Passport Office, the learned judge found no fault with it, and I can find no fault with

his determination on this issue either. The appellant's third ground of appeal is accordingly dismissed.

[24] If the learned judge is to be taken to have ruled, by his words '[t]he immigration department has not taken a reviewable decision' that the Immigration Department, in deciding to put the appellant's citizenship application through the normal process, had not taken a reviewable decision, then I am prepared to overrule him on this issue, but this would not affect the outcome of the case in the court below in terms of the order dismissing the claim for judicial review, because the decision of the Immigration Department / Passport Office was reviewed by the trial judge and he found that it did not provide a basis to grant the appellant's application for judicial review.

[25] The appellant's fourth ground of appeal is that the learned judge erred in failing to find that the appellant was entitled, upon application, to be registered as a citizen and that this right was abridged when his application was in proper order and the only obligation of the State was to verify that he had met the prerequisites, which they failed to do in a timely manner.

[26] This ground was really the foundation on which the appellant's case rested, both in the court below and before this court. It basically asserts the right of the appellant to be registered as a citizen of Antigua and Barbuda immediately upon his application for registration based on the fact of his marriage to a citizen of Antigua and Barbuda for a period in excess of three years. The trial judge held that the appellant was indeed entitled to registration as a citizen of Antigua and Barbuda once he had applied for registration and the relevant authorities of the State had satisfied themselves that he had met all of the requirements for the acquisition of citizenship of Antigua and Barbuda. The judge was satisfied on the evidence before him and on the applicable law that it was for the relevant authorities of the State to embark on such processes of investigation and verification as was customary for applications for citizenship of the country and that the delay of

nineteen months between application for and possible grant of citizenship, although coming 'perilously close to being a fetter on the [appellant's] rights' was 'not out of the realm of international experience'. I can find no basis to upset the judge's finding on this issue and so the appellant's fourth ground of appeal is dismissed.

[27] I note that counsel for the appellant called into service (in his reply to the respondent's written submissions) a regulation made under the Antigua and Barbuda Citizenship by Investment Act, 2013[5] which provides for an applicant for the conditional and revocable citizenship by investment to be notified within three months of application as to whether his application will be approved, delayed or denied. This provision (if at all relevant) can only usefully buttress an argument that a normal application for citizenship, without the inducement of a significant financial investment by the applicant, without the imposition of conditions and the possibility of revocation, and without a special unit to deal exclusively with such applications, is likely to take far more time to process. A delay of nineteen months between application and possible registration for unconditional, irrevocable and inducement-free citizenship to be processed by two employees with other responsibilities to discharge and a significant backlog may not, in the circumstances, be inordinate, even if it came – in the language of the trial judge – 'perilously close to being a fetter on the [appellant's] rights'.

[28] The judge's ruling on the extent of the delay therefore finds further support from this and the appellant's fourth ground of appeal is further eroded, providing further justification for its dismissal.

[29] The appellant having abandoned his fifth and sixth grounds of appeal, there remains only his seventh ground of appeal which focusses on damages to which he would be entitled if he prevailed in the case. He did not however prevail in the

[5] Act No. 2 of 2013, Laws of Antigua and Barbuda.

court below nor will he prevail on this appeal. The appellant's seventh ground of appeal is therefore dismissed.

[30] Five of the appellant's seven grounds of appeal having been dismissed and the other two having been abandoned, the appeal is dismissed and the judgment of the trial judge is affirmed.

[31] I only wish to add that, in the course of his judgment, the learned trial judge expressed the view that the appellant's interim application for a work permit ought to have been given priority consideration on the basis of his prima facie satisfaction of the requirements for citizenship, but there was no evidence, however, of the appellant ever having applied for and been refused a work permit – interim or otherwise. This therefore could provide no basis for granting relief to the appellant.

[32] As in the court below, no order is made as to costs.

Mario Michel
Justice of Appeal

I concur.

Paul Webster, QC
Justice of Appeal [Ag.]

I concur.

Joyce Kentish-Egan
Justice of Appeal [Ag.]