JCPC 2024/0016

IN THE JUDICIAL COMMITTEE

ON APPEAL FROM THE COURT OF APPEAL OF THE REPUBLIC OF TRINIDAD AND TOBAGO

BETWEEN: -

THE JUDICIAL AND LEGAL SERVICES COMMISSION

Appellant

AND

MARCIA AYERS-CAESAR

Respondent

THE APPELLANT'S CASE

References to the Record are in the format (Electronic Bundle page number/paragraph or line number, where applicable)

Introduction

1. This Appeal concerns judicial tenure and protection and the administrative responsibility and the constitutionality of the Respondent's resignation.

2. The Appeal "*..arises out of an unfortunate dispute which has arisen between [the parties over her resignation]*"[1] and the manner of dealing with the Respondent's 53 part heard matters.

3. As Lord Hamblen observed in **Charles v Attorney General of Trinidad and Tobago** [2023] 1 WLR 177, para 60:

> "*..It was or should have been obvious that if the Chief Magistrate was to be made a High Court judge consideration would have to be given to her part-heard cases and how they were to be dealt with. These cases would involve criminal proceedings and, given her status as Chief Magistrate,*

[1] **Attorney General of Trinidad and Tobago v Ayers-Caesar** [2019] UKPC 44 para 1 Lord Sales.

were likely to include very serious criminal proceedings, … unless appropriate steps were taken there was a real risk that all such proceedings would have to be started over de novo, with very severe consequences for many defendants. The resulting public outcry ... is entirely understandable…"

4. Regretfully, the Respondent failed to disclose the true extent, number and complexity of her part heard matters as Chief Magistrate either in telephone conversations with the Chief Justice on 10th & 11th April 2017[2] in writing on 19th April 2017,[3] or in her face to face meetings with the Chief Justice on 25th, & 26th April 2017.[4]

5. The central issue on the appeal is whether it was open to Harris J, the Trial Judge, to find that the Appellant voluntarily resigned to complete her part heards so as to restore public confidence in the administration of justice and then return to the High Court bench **[EB 517/328 & 558-9/415-30]**.

6. In summary, the Appellant respectfully submits that the Court of Appeal (Mendonca, York-Soo Hon & Bereaux JJA):

   a. failed to have regard to Harris J's advantage as the trial judge who was fully seized of the entire case and fully entitled on the extensive written and oral evidence, having assessed the parties' credibility, to reject the Respondent's case in a comprehensive and balanced judgment **[EB 415-560]**;

   b. failed to direct themselves accurately in law in finding that the Respondent's part heards and her inaccurate, and therefore misleading, oral and written accounts of them to the Chief Justice, the Appellant and the public could not, in law, entitle the Appellant to consider the section 137 of the Constitution procedure **[EB 822/93 & 8745/160];**

[2] **EB 1304-5 & 1307/9 (c), 13, 18 & 19**
[3] **EB 1308-10 &1315/25, 27-9 & 44(a)-(e)**
[4] **EB 482/230-1 & 520-1/ 336-7]?**

c. seriously erred in finding that the Respondent was not heard and that the Appellant failed to afford her natural justice and/ or fairness to the Respondent **[EB 875-6/161];**

d. having held correctly that Harris J properly rejected the Respondent's account of her conversation failed to test its own findings for inconsistency against that rejection **[EB 858-61/133-5 & 818/80-9]**;

e. having correctly found that the Appellant acted without any malicious intent, seriously erred in finding that that the Appellant's decisions were **designed** and **intended** to coerce the Respondent into resigning by the threat of section 137 proceedings **[EB 811/64, 813-5/69-74 & 858-74/135-59];**

f. further seriously erred in finding that that the Chief Justice conveyed to the Respondent the threat of prospective section 137 proceedings in order to coerce the Respondent into resigning **[EB 875-881/162-7]**; and

g. was not entitled to interfere with and substitute its differing findings and in particular went wrong in *"island hopping*" in its consideration, and ultimately disregarded Harris J's consideration, of the Respondent's WhatsApp evidence, her husband's affidavit evidence and the pre-prepared press releases **[EB 800-6/40-51886-91/176-82]**.

7. The Appellant will develop these submissions orally on the hearing.

The Constitution

8. For the Board's ease of reference, the Appellant set out the following provisions of the Constitution.

9. Section 4(b) of the Constitution of the Republic of Trinidad & Tobago ("the Constitution"), which states:-

> *It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason*

of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely: . . .

(b) the right of the individual to equality before the law and the protection of the law

10. Section 104(1) provides:

"The Judges, other than the Chief Justice, shall be appointed by the President, acting in accordance with the advice of the Judicial and Legal Service Commission"

11. Section 110 provides:

(1) There shall be a Judicial and Legal Service Commission for Trinidad and Tobago.

(2) The members of the Judicial and Legal Service Commission shall be—

(a) the Chief Justice, who shall be Chairman;

(b) the Chairman of the Public Service Commission;

(c) such other members[5] *(hereinafter called "the appointed members") as may be appointed in as may be appointed in accordance with subsection (3).*

…

12. Section 111 of the Constitution provides:

Subject to the provisions of this section, power to appoint persons to hold or act in the offices to which this section applies, including power to make appointments on promotion and transfer and to confirm appointments, and to remove and exercise disciplinary control over persons holding or

[5] **Attorney General of Trinidad and Tobago v Maharaj** [2019] UKPC 6 Lady Black

acting in such offices shall vest in the Judicial and Legal Service Commission.

13. Section 137 of the Constitution provides:

> *(1) A Judge may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.*
>
> *(2) A Judge shall be removed from office by the President where the question of removal of that Judge has been referred by the President to the Judicial Committee and the Judicial Committee has advised the President that the Judge ought to be removed from office for such inability or for misbehaviour.*
>
> *(3) Where the Prime Minister, in the case of the Chief Justice, or the Judicial and Legal Service Commission, in the case of a Judge other than the Chief Justice, represents to the President that the question of removing a Judge under this section ought to be investigated, then—*
>
> *(a) the President shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the President acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Prime Minister after consultation with the Judicial and Legal Service Commission in the case of a Judge, from among persons who hold or have held office as a Judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a Court having jurisdiction in appeals from any such Court;*
>
> *(b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to the President whether he should refer the question of removal of that Judge from office to the Judicial Committee; and*

(c) where the tribunal so recommends, the President shall refer the question accordingly.

(4) Where the question of removing a Judge from office has been referred to a tribunal under subsection (3), the President, acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Chief Justice in the case of a Judge other than the Chief Justice, may suspend the Judge from performing the functions of his office, and any such suspension may at any time be revoked by the President, acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Chief Justice in the case of a Judge other than the Chief Justice, and shall in any case cease to have effect—

(a) where the tribunal recommends to the President that he should not refer the question of removal of the Judge from office to the Judicial Committee; or

(b) where the Judicial Committee advises the President that the Judge ought not to be removed from office.

14. Section 142 of the Constitution provides:

(1) Subject to the provisions of this Constitution, any person who is appointed or elected to or otherwise selected for any office established by this Constitution, including the office of Prime Minister or other Minister, or Parliamentary Secretary, may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed, elected or selected.

(*2) The resignation of any person from any such office shall take effect when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it.*

The Parties

15. The Appellant is the Judicial and Legal Services Commission ("the Appellant", "the Appellant Commission" or "the JLSC") established by section 110 of the Constitution.

16. The Appellant consists of the Chief Justice as its Chairman the Chairman of the Public Service Commission and three others, one of whom has either held or hold high judicial office and two persons with legal qualifications.

17. The Appellant appoints or effectively appoints all judicial officers except the Chief Justice who is appointed the President.

18. The Respondent (or "Ayers- Caesar J") was the Chief Magistrate of Trinidad and Tobago from August 2010 until 12th April 2017, when she was sworn in as a High Court Judge **[EB 14/III].**

19. The Respondent has deposed that this was her third attempt at appointment to the High Court Bench - **[EB 1782/3(3)(b)(ii)]**

20. The Respondent was the first female Chief Magistrate, had been an attorney at law since 1986 and was first appointed a Magistrate in 1992 **[EB 14/III].**

21. As Chief Magistrate the Respondent sat in the most serious criminal matters and had administrative responsibility for some 50 magistrates **[EB 1300-1/6-7].**

The Respondent's Appointment & Part Heards

22. The Appellant respectfully further submits that the matters set out below are crucial context to which Harris J had proper and full regard and which the Court of Appeal respectfully failed to appreciate properly or adequately.

23. On 17th January 2017, the Appellant interviewed the Respondent asked when she could take up her appointment, and she responded March 2017 **[EB 482/222; 517-8/239 & 1674/4-8]**.

24. On 14th March 2017, the Appellant advised His Excellency President, to appoint the Respondent as one of five puisne judges. On 15th March 2017 the Appellant's Secretary, Ms. Coomarie Goolabsingh duly informed the Respondent that she had been successful **[EB 1346 & 1675/8-9 & 1681]**.

25. On 22nd March the Respondent dismissed 16 matters at Couva's Magistrates' Court **[EB 105/22-31 & 1322/91(k)]**

26. On 6th April 2017, the Appellant's Secretary informed the Respondent that the swearing in ceremony was to be on 12th April 2017 at 11.30 am. **[EB 1350]**

27. On 7th April 2017, then Senator, Mr. Gerald Ramdeen, an Attorney at Law, held a press conference and called the Appellant to disclose criteria used for the appointment of High Court Judges and questioned whether the magistrates' previous work, as judicial officers, was properly scrutinized – see Trinidad Guardian newspaper article dated 8th April 2017 "*Ramdeen challenged JLSC; Remove secrecy of judicial appointments"* MAC 5. **[EB 482/223 & 1353]**

28. On 10th April 2017, prompted by the adverse public comment, the Chief Justice telephoned the Respondent and asked whether she had any part-heard matters as of that date. The Respondent responded that she had 3 short trials and a few paper committals that could be restarted. The Chief Justice asked her for a written list of all her part-heard matters with short explanations. **EB 482/224 & 1538/23-4]**

29. On 11th April 2017, the Respondent asked an officer of the Note Taking Unit, Magistrate's Court, to provide a list of all her part-heard matters. Later that day, the Respondent sent a typed written list comprising 28 part-heard matters to the Chief Justice. **[EB 482-3/224-5]**

30. None of the Respondent's written explanations for the matters indicated that cross examination had occurred or that *viva voce* evidence had been given. **[EB 482-3/224-5, 518-20/330-2 &1355-1358]**

31. The Chief Justice offered the Respondent more time to dispose of her part heards but she declined. The Respondent also declined to postpone her

swearing in. Two of the five newly appointed judges postponed their swearing in to complete their professional commitments **[EB 483/226, 1538- 9/25 & 1675 6/11-13]**.

32. On 12th April 2017 the Respondent was sworn in as a Judge of the High Court. **[EB 482/226, 1307/20 EB /1360]**.

33. The Appellant respectfully submits that the matters immediately above went without **comment** in the Court of Appeal's judgments and were properly of immediate concern to the Appellant. In particular:

    a. The Chief Justice offered the Respondent more time to complete her matters based upon the accuracy of only 28 matters most of them being paper committals;

    b. The Respondent's inaccurate response including her omission of matters of *Police* v *Lutchmedial* **[1307/18]**;

    c. The Respondent was duty bound to respond to queries and to take professional responsibility for her judicial work.

Public Comment & Part Heards

34. After the Respondent's appointment, adverse public comment continued. The public outcry called into question the accuracy of the Respondent' list of 28 matters. The Chief Justice asked the new Acting Chief Magistrate to conduct an audit to ascertain the true state of the Respondent's part-heards **[EB 482-4/224-230]**.

35. On 18th April 2017, a journalist contacted the Judiciary Protocol and Information Office enquiring about any of the Respondent's part-heards and specifically asked about the matter against Yasin Abu Bakr. **[EB 1308-9/24; 1368 & 1539/27-28 & 1551].**

36. The Chief Justice's advised the Protocol Officer, Ms. Carter-Fisher, to direct the inquiry to the Respondent for a response. The Respondent accepted that she

had part-heard matters, including the Abu Bakr matter[6] and explained that her part-heard matters were paper committals and could be restarted- I.A. 2. **[EB 1553]**

37. On 19th April 2017, the Protocol Officer sent a draft press release to the Respondent and copied the Chief Justice, to which the Respondent responded with her suggestions to be included – I.A. 3**[EB 1308/25 & 1556]**.

38. The Protocol Officer redrafted the press release and forwarded it to the Chief Justice and the Respondent for review **[EB 520/333, 1540/29-30 & 1555]**.

39. On 20th April 2017 the Judiciary published this settled press release – I.A. 4 **[EB 1559-60]** in the Daily Express newspaper I.A. 6 **[EB 1309/25; 1540-1/32 & 1566]**

40. Also on 19th April 2017 Israel Khan S.C., Prosecuting Counsel in the part heard matter of Yasin Abu Bakr, appeared before the Acting Chief Magistrate Maria Busby Earle Caddle. Mr. Khan severely criticized the Respondent and the Appellant for leaving unfinished decisions such as that case. **[EB 520/333 & 1540/31]**. Mr Khan's comments were published in the newspapers the next day - I. A. 5 **[EB 1540/31-2 & 1563-5]**

41. The Appellant respectfully further submits that the matters immediately above were properly of concern to the Appellant as the Respondent was duty bound:

    a. to ensure that any response to a public query was an accurate one so as to ensure public confidence in the administration of justice;

    b. to be forthcoming and candid and to ensure that proper arrangements are made for unfinished matters such as the Abu Bakr matter;

    c. to report accurately to the Chief Justice the state of unfinished judicial work.

[6] **Lennox Phillip otherwise called Yasin Abu Bakr &113 others v. The Director of Public Prosecutions and the Attorney General of Trinidad and Tobago et al [1991] UKPC 43 & The Attorney General of Trinidad and Tobago and The Director of Public Prosecutions v. Lennox Phillip also called Yasin Abu Bakr & 113 Others Co [1994] UKPC 33**

42. The Appellant respectfully submits that the matters immediately above went without **comment** in the Court of Appeal's judgments.

Audit of & Resolving the 53 Part Heards

43. Acting Chief Magistrate, Mrs. Maria Busby Earle Caddle, reported to the Chief Justice that the Respondent's list of part heard matters was not limited to paper committals. So, the Chief Justice instructed the Acting Magistrate to conduct an audit. **[EB 1541/33- 5]**.

44. On 25th April 2017, the Chief Justice met with the Respondent and the Acting Chief Magistrate and informed the Respondent of the audit – MAC 10. **[EB 520-1/334, 1309-10/27-8; 1370-4& 1568-74]**

45. On the evening of 25th April 2017, the Chief Justice brought the audited list of now 53 matters to the Respondent's attention. The Respondent responded with her comments on each of the outstanding matters **[EB 520-1/334-5, 1310 1/29-30 & 1568-74].**

46. On 26th April 2017 the Respondent met with the Chief Justice along with Ms. Pierre (now Master Pierre), the then Administrative Secretary to the Chief Justice and later the Acting Chief Magistrate **[EB 521 /336-8; 1315- 6/44 (a) - (e); 1541 4/36-44 & 1699/6-76]**.

47. In this meeting:

    a. The Chief Justice went through with the Respondent the list of 53 matters one by one.

    b. Ms. Pierre's advice was that if the Respondent did not tender a letter of resignation, it could be said that she had not yet effectively terminated her appointment to the Magistracy. The Chief Justice found this unconvincing;

    c. Acting Chief Magistrate Maria Busby Earle Caddle's view was that whoever started an enquiry hearing **must** finish it; and

d. The meeting ended with the Chief Justice inviting the Respondent to return the next day with her suggestions as to how else her unfinished matters could be addressed.

48. Also, on 26th April 2017 (as reported in the newspapers on 27th April 2017 -see C.G. 6 **[EB 1691])** several accused in custody engaged in a fracas at the Magistrate's Court after the Acting Chief Magistrate had adjourned their preliminary enquiries. These were among the Respondent's part heard matters **[EB 1678/22-3].**

49. The Appellant respectfully further submits that the Court of Appeal failed to have proper and full regard to the fact that:

a. The Respondent was given a full opportunity to explain in writing on 25th April and orally on 26th April 2017;

b. The Respondent was not left in any doubt that the 28matter list was misleading;

c. The state of the part heard matters with cross examination already begun and Ms. Pierre offering that that the Respondent's appointment had not been terminated meant that the Respondent should, if willing, finish the part heards as the Acting Chief Magistrate, the Chief Justice and the Respondent fully appreciated

JLSC Meeting & Press Releases

50. On 27th April 2017, the Chief Justice

a. convened an emergency meeting of the Appellant in respect of the discrepancy between the Respondent's original list of 28 part-heard matters and the later list of 53 outstanding part-heard matters; and

b. instructed Ms. Carter-Fisher, the Court Protocol and Information Manager, to prepare a draft media statement[7] in the name of the Respondent announcing her resignation as a High Court Judge **[EB 435/57 & 515-4/320-2].**

51. The Appellant Minute of its meeting **[EB 1694]**, records the Chief Justice's' concerns arising from the number of outstanding matters the Respondent had left behind in the Magistrate's Court and her failure to report the same accurately to him, and gave his view that the Respondent's position had become untenable. [**EB 490-8/251-275]**

52. The Minute-**C.G.7** records further as follows: **[EB 1694]:**

> *"The Commission decided that the information before it triggered and met the threshold for disciplinary enquiry but considered also the need for the expediting of Mrs. Ayers-Caesar's outstanding part-heard matters.*
>
> *The Commission then decided that Mrs. Ayers-Caesar be given the option of withdrawing from the High Court Bench and returning to the Magistracy to discharge her professional responsibilities; and*
>
> *In the event she refuses to withdraw, the Commission would consider instituting disciplinary action in accordance with Section 137 of the Constitution of Trinidad and Tobago."* **[EB- 976/8-9;1535-6/12-15; 1544/46; 1582/9 &1695]**

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[7] **EB 487/242** *"Let me tell you about the press statement that I settled and the press statement which the Claimant finalised. There was a draft statement that was passed to me by the Court Protocol and Information Manager to have a look at. I looked at it in a vacuum. When the Claimant came to my office, I said to her, "There is a draft, have a look at it and see whether this is what you wish to say." She looked at it, she made some grammatical changes, she said, "Yes, go ahead with it." I told her that the Chief Justice will issue his own statement and that before she approves….. she could have a look at what the Chief Justice [had] to say. She said, "No, go ahead with it." The Chief Justice subsequently sent his press statement. I printed it for her and I told her, "I had a look at the Chief Justice's draft, now I've looked at what he has finalised. He has made changes to the draft." I then took her through his press statement and showed her the lines that he had made substantial changes. I pointed out to her that he had said that she'd be restored to the Magistracy and I pointed out to her, two other paragraphs that had been inserted in the draft that I had done, and I asked to whether she wished to change her statement, now that she has seen the Chief Justice's statement and she said, "No, leave it as it is…."*

53. Later that afternoon on 27th April 2017 the Chief Justice met with the Respondent and Ms. Pierre and informed the Respondent **[EB 484-6/232-239, 1316-7/45-7, 1543-5/44-50]** that**:**

a. the Appellant met and his view was that having regard to the manner in which the Respondent had managed her elevation to the High Court bench;

b. the evidence that had emerged that the Respondent had provided inaccurate and misleading information about the status of her part heard matters as the Chief Magistrate;

c. he was of the view that her continuation on the bench was becoming untenable;

d. The Chief Justice also told the Respondent that the matter was sufficiently serious to trigger a disciplinary inquiry but the Appellant had made no decision in that regard nor had it formed a concluded view on whether the discrepancy in the list was deliberate or not;

e. The Chief Justice invited the Respondent to think about stepping off the Bench to fix the part heard matters; nd

f. The Respondent accepted that she had a responsibility to resolve the public disquiet caused by her unfinished matters and agreed to tender her resignation.

54. During the meeting, the Chief Justice received a call from His Excellency the President of the Republic of Trinidad and Tobago and spoke with him without providing the details of the Chief Justice's conversation with the Respondent. His Excellency told the Chief Justice that if they wished to meet with him, he could do so at 5.30 p.m. The Chief Justice then offered her the Respondent Ms. Pierre's assistance to draft her resignation and the press release. **[EB 241, 487-8/241-3, 1023/21, 1317/47-9 & 1545-6/52-3]**

55. The Respondent asked Ms. Pierre for some privacy to telephone her husband around 4:30 pm. The Respondent's husband advised her not to resign. The Respondent also sent WhatsApps to three confidantes - her priest, Father

Godfrey Stoute, her friend, Magistrate Cheron Raphael, and another undisclosed friend, a senior attorney at law **[EB 488-9/246-250]**.

56. In her WhatsApp messages the Respondent said that she was *"asked to resign"*:

    i. To Cheron Raphael and Father Godfrey Stoute, that she was going to the President's House and had been asked to resign (at 4.34 pm);

    ii. To Cheron Raphael alone (in response to Ms. Raphael's *"We are praying"*) *"CJ asked me to resign"* (at 5.07 pm).

    iii. To her unnamed attorney friend: *"going to Pres. House was asked to resign .. by the CJ … or else they were going to advise the Pres."* **[EB, 488-9/244-6, 986-7/line 45 to 24, 1318-9/54 & 1700-1/12-4]**

57. Afterwards Ms. Pierre returned to her office and was joined by Ms. Jade Rodriguez, then Master of the High Court **[EB/1700/13].** Ms. Pierre had earlier received from the Judiciary's Court Protocol and Information Manager, Ms. Carter Fischer, a draft copy of a press release Ms. Pierre reviewed it and passed it through Ms. Rodriguez to the Claimant for her review which the Respondent finalized but made no significant alterations and then signed it **[EB 487-8/ 242]**.

58. Ms. Pierre also showed the Respondent the Chief Justice's press release which the Respondent looked at and did not make any alterations to her release. Harris J set out an extract in full **[EB 487-8/242-3; & 513-4/320-2]**.

59. Ms. Pierre then typed the Respondent's resignation letter and handed it to the Respondent for her approval **[EB /998/46]** The Respondent signed the resignation letter after reviewing it **[EB 488-9/243-5 & & 513/319-320, 1150-61, 1317-8/50-3 & 1701/15-17].**

60. The Respondent escorted by her security detail left for President's House to submit her letter of resignation. The Respondent accepted that she could have changed her mind about her resignation on the way to the President's House but did not. **[EB /1002/50].**

61. At the President's House, the Chief Justice arrived and met the Respondent with her husband. The Chief Justice, the Respondent, her husband and the President then met and discussed the matter leading to her resignation for an hour. After the discussion, the Respondent handed her resignation letter to the President **[EB 488-9/246-9, 1319-20/59-61 & 1546/55-6].**

62. On 3rd May 2017, the Chief Justice met again with the Respondent and her husband at the Chief Justice's office **[EB 490/250 & 1321-2/68-71].**. The Respondent secretly recorded this meeting. **[EB 1800]**

63. During the meeting, the Respondent accepted that as the Chief Magistrate she bore the responsibility for knowing her list and the Chief Justice advised the Respondent there was no impediment to the Respondent return to the Magistracy. **[EB 1547/58-63 & 1776/2a]**.

64. On 9th May 2017, the Appellant issued a press statement of the circumstances surrounding the Respondent's resignation **[EB 543/379-80, 1322-4/72-4, 1383-4 & 1548/63].**

65. By letter dated 19th May 2017, the Respondent wrote His Excellency a pre-action letter **[EB 1386 & 1548/64].**

66. By letter dated 25th May 2017, the Respondent wrote the Appellant a preaction letter **[EB 1399 & 1548/64].**

67. The Appellant respectfully further submits that the Court of Appeal failed to have proper and full regard to the fact that:

    a. It was not the case these part heards could be resolved by the expedient of the *Horsford* method as the Respondent suggested;

    b. Chief Justice and the Respondent were engaged in seeking a solution to the aftermath of the part heards;

    c. The Appellant's re-appointment of the Respondent as Magistrate to complete the part heard matters was in the interest of the administration of criminal justice.

High Court Proceedings

68. On 19th July 2017, the Respondent filed an application for leave for judicial review of the Appellant and the President's alleged decisions **[EB 12]**, supported by affidavits of: the Respondent [**EB 1298]**; her husband **[EB 1501]**; Magistrate Cheron Raphael **[EB 1507 & 1516]**; and Godfrey Stoute **[EB 1512]**.

69. On 6th October 2017 Harris J granted leave **[EB 45].** The Attorney General unsuccessfully appealed the grant of leave- **Attorney General of Trinidad and Tobago v Ayers-Caesar** [2019] UKPC 44.

70. On 12th April 2018, the Respondent filed a fixed date claim form seeking judicial review of the said alleged decisions **[EB 49].**

71. In response to the claim the Appellant filed affidavits of: Chief Justice Ivor Archie **[EB 1532]**; Retired Justice of Appeal Stollmeyer **[EB 1580]**; Ms. Karen Julien-Serrette **[EB 1583]**; Ms. Coomarie Goolabsingh **[EB 1673]**; Ms. Sherlanne Pierre **[EB 1698]**; and Ms. Jade Rogriguez **[EB1706]**.

72. The Respondent filed Reply affidavits of: Godfrey Stoute **[EB 1708]**; Raquel Whittier **[EB 1711]**; the Respondent **[EB 1773]**; and Cheron Raphael **[EB 1936]**.

73. By her Amended Fixed Date Claim dated 20th July 2018 **[EB 76]**, the Respondent sought judicial review of the alleged decisions to seek the Respondent's resignation as a High Court Judge by threats of revocation of her appointment or making a representation to that effect to His Excellency the President, Anthony Carmona SC, ORTT, ("His Excellency"); **[EB 76]**:

74. On 13th December 2019, the Appellant filed a supplemental affidavit of Chief Justice Ivor Archie **[EB 1980]**. On 8th January 2020, the Respondent filed an affidavit of Ms. Cheron Raphael in reply **[EB 1995]**.

Harris J Judgment

75. On 21, 22 and 23 September 2020 Harris J heard detailed cross-examination of the Respondent **[EB 948-1040]**, the Chief Justice **[EB 1042- 1120]**, Ms. Pierre, Ms. Goolabsingh and Ms. Rodriguez **[EB 1122-1181]**.

76. On 8th October 2021 Harris J delivered a long and detailed 430 paragraph judgment **[EB 415-560]** dismissing the Respondent's claim and:

    a. accepting the Chief Justice and Retired Justice of Appeal Stollmeyer's evidence and rejecting the Respondent's **[EB 558-415-8]**;

    b. finding that the Appellant did not invoke nor act outside section 137 of the Constitution;

    c. finding that the Appellant did not breach the Respondent's constitutional right under section (b) of the Constitution and acted fairly and justly towards her under sections 4(b) and 137 of the Constitution **[EB 558-9/419-26 & 429];**

    d. finding that His Excellency the President, was not aware nor party to any joint action to procure unlawfully the Respondent's resignation and that His Excellency's acceptance of her letter of resignation did not contravene section 137 of the Constitution **[EB 559/427-8]**; and.

    e. The Appellant voluntarily resigned **[EB 559/430].**

77. First, the Appellant respectfully submits that Haris J correctly, made the following findings:

        a. On 17 January 2017 the Respondent was interviewed by the Appellant for the post of Judge in January 2017 and told that the anticipated effective appointment effective was April/May 2017. It was the Respondent's duty and obligation to complete all of her matters and to

disclose the reasons for not being able to do so at every stage of the application and appointment process [**EB 482/222 & 518/329**];

b. From 7th April 2017 onwards, there were adverse public comments on the Respondent's appointment in light of the number and nature of her unfinished part heard matters **[EB 482/222-3];**

c. From 10th April 2017 onwards, the Chief Justice asked the Respondent about the number and character of her part heard matters. The Respondent provided a list of 28 matters with her comments. The Chief Justice asked the Respondent if she wished to postpone her swearing in but the Respondent declined **[EB 482-3/224-6];**

d. The continuing public outcry called into question the accuracy of the list of 28 part heard matters **[EB 482-3/224-6];**

e. On 25th April 2017 the Chief Justice informed the Respondent that the Acting Chief Magistrate was undertaking an audit of the Respondent part heard matters. The Chief Justice sent the Respondent the audited list of 52 matters for her comments **[EB 483/228-9];**

f. On 26th April 2017, the Respondent then met the Chief Justice, Ms. Pierre and later the Acting Chief Magistrate. They discussed the list of 52 matters and the possible options of the Respondent completing the part heards on the list **[EB 483-4/230-1];**

g. On 27th April 2017, the Chief Justice met with the Respondent and told her that the manner in which the Respondent had managed her elevation to the High Court bench and the inaccurate and misleading information provided about her part heard matters as the Chief Magistrate was a serious matter and her presence on the Bench was becoming untenable and was a matter of confidence in the Judiciary. **[EB 484-5/232-3];**

h. The Chief Justice told the Respondent that the Appellant, had met on the matter The Chief Justice also told the Respondent that the matter was sufficiently serious to trigger a disciplinary inquiry but the Appellant had

made no decision in that regard nor had it formed a concluded view on whether the discrepancy in the list was deliberate or not **[EB 484-5/234-5];**

i. The Chief Justice invited the Respondent to think about stepping off the Bench to complete the part heard matters The Respondent nodded in agreement and accepted that she had a responsibility to resolve the public disquiet caused by her unfinished matters and agreed to tender her resignation **[EB 484-5/235-6];**

j. The Respondent resigned because of her embarrassment at the public disquiet she had caused and her desire to abate it **[EB 485/237];**

k. The Appellant was satisfied that there was sufficient information to bring the matter before it. The Appellant's view was that if the Respondent opted not to resign, that it would not necessarily institute disciplinary proceedings. The Appellant has no authority to threaten the Respondent in the manner she alleged nor to remove her office. **[EB 485/238];**

l. The Chief Justice did not tell the Respondent that when she finished her part heards she would be reinstated to the High Court Bench and that the Chief Justice did not hold out comfort or enticement to the Respondent, were she to decide to resign **[EB 486/239]**;

m. During this meeting the Chief Justice, received a private call from the President. The Chief Justice told the President that the Claimant and he might want to meet with him later. The President said he could do so at 5.30 p.m. The Chief Justice did not tell the Respondent that he was under pressure from the President and that, on the evidence, there is no sufficient basis for concluding that he was under such pressure. **[EB 486-7/240-1];**

n. The Chief Justice offered the Respondent Ms. Pierre's assistance to draft her resignation letter and the press release and the Respondent accepted that assistance on her own volition. Ms. Pierre showed the Respondent a draft press release who made some grammatical

changes. Ms. Pierre also showed the Respondent the Chief Justice's press release which the Respondent looked at it and did not make any alterations to her release. Harris J set out an extract in full[8] **[EB 4879/242-5; & 513-4/320-2];**

o. The Respondent asked Ms. Pierre to type her resignation letter. Ms. Pierre asked the Respondent what she wanted to say in the resignation letter. Ms. Pierre showed the resignation letter to the Respondent for her final approval, who looked at it and responded with the words that included "whatever". The Respondent accepted that the resignation letter was typed in her presence and was not pre-prepared **[EB 488/243];**

p. The Respondent then asked Ms. Pierre for some privacy to telephone her husband around 4:30 pm. The Respondent's husband advised her not to resign. The Respondent also sent WhatsApps to her priest, Father Godfrey Stoute, her friend, Magistrate Cheron Raphael, and another undisclosed friend, a senior attorney at law **[EB 488/244];**

q. The Respondent her husband and the Chief Justice attended upon the President and discussed the circumstances for an hour. There was no undue influence, pressure or threat to the Respondent to procure her resignation **[EB 489/246-7];**

r. The Chief Justice's oral evidence was "*consistent and clear*" and was "*an unassailable explanation and interpretation..*" as to what was before

[8] **EB 487/242** *"Let me tell you about the press statement that I settled and the press statement which the Claimant finalised. There was a draft statement that was passed to me by the Court Protocol and Information Manager to have a look at. I looked at it in a vacuum. When the Claimant came to my office, I said to her, "There is a draft, have a look at it and see whether this is what you wish to say." She looked at it, she made some grammatical changes, she said, "Yes, go ahead with it." I told her that the Chief Justice will issue his own statement and that before she approves….. she could have a look at what the Chief Justice [had] to say. She said, "No, go ahead with it." The Chief Justice subsequently sent his press statement. I printed it for her and I told her, "I had a look at the Chief Justice's draft, now I've looked at what he has finalised. He has made changes to the draft." I then took her through his press statement and showed her the lines that he had made substantial changes. I pointed out to her that he had said that she'd be restored to the Magistracy and I pointed out to her, two other paragraphs that had been inserted in the draft that I had done, and I asked to whether she wished to change her statement, now that she has seen the Chief Justice's statement and she said, "No, leave it as it is…."*

the Appellant in its deliberations **[EB 490-1/252-3]** and "*corroborated"* **[EB 491-3/253-8];**

s. The Appellant emergency meeting was not rushed or hurried or done in haste in order to pressure the Respondent into submission but was simply held at an earlier time than it would usually convene. The Respondent had every chance to avail herself of more time to consider her position **[EB 493/260-1];** and

t. The facts in the Meeting Minute, are "*consistent"* with the evidence of the Chief Justice at trial. The Appellant decided, first, to invite the Respondent to withdraw from the High Court and return to the Magistracy and second, if she refused it would consider instituting proceedings under section 137 of the Constitution. There is nothing in the Minute and evidence that the Appellant's second decision be conveyed as a threat to the Respondent. The first decision could stand on its own **[EB 494-5/262-7].**

78. Secondly, the Appellant respectfully further submits that Haris J correctly, made the following further primary and secondary findings:

a. The Appellant was aware of the "*strictures*" of section 137 of the Constitution and reasonably assumed that the Respondent was similarly aware that neither the Appellant JLSC nor the President could remove the Respondent from office. There was considerable anxiety and the Appellant, the Chief Justice and the Respondent were all seeking a timely solution. The Chief Justice spoke to the Respondent as Chairman of the Appellant **[EB 496-6/268-270];**

b. The circumstances were such that the Appellant, the Chief Justice and the Respondent all sought a workable solution to restore trust and confidence as contemplated in **Rees v Crane [1994] 2 AC 173 [EB 496-8/271-5];**

c. The Appellant did not seek the Respondent's resignation as she alleges and sought to prove. Rather the Appellant sought to canvass the

Respondent's view on resignation. Neither had the Appellant taken any decision to proceed with section 137 or any other formal and/or statutory process toward disciplinary action against the Respondent - **[EB 499/278-9 & 517/328];**

d. There was no decision by the Appellant to procure the Respondent's resignation or to recommend revocation to the President. **[EB 500-1/281 -5];**

e. Based on the Minute alone and alternatively, together with the Appellant's oral testimony, the Appellant did not take the decision to communicate to the Respondent as a threat that if she did not resign, it would represent or consider representing to the President the question of removing her from office be investigated because the threshold for such representation had been met. **[EB 501-3/286-96 & 516-7/326-7];** and

f. The Respondent's primary case failed **[EB 505-7/297-303]**.

79. Thirdly, the Appellant respectfully further submits that Haris J correctly, made the following further evaluative findings:

a. The Respondent, knew of the existence of section 137 of the Constitution and was aware of natural justice, fairness due process. and could not have concluded that the Appellant or the Chief Justice could have threatened, meaningfully threatened or demanded her resignation or effectedher removal from Judicial Office without more. The Respondent was aware from the discussions toward a resolution of her part heard matters that the Appellant could only reinstate as a Magistrate after a formal process [**EB 510/312-5];**

b. On the evidence, Respondent was embarrassed by her non-disclosure of the full extent and character of her part heard matters; the unrelenting imbroglio and public condemnation and the Respondent took the 'high road' of resigning **[EB /511/316-7**];

c. The Respondent's resignation was something that the Chief Justice, as administrative head of the Judiciary, could reasonably have anticipated and prepare for and its advance preparation was not reflective of a plan to procure her resignation **[EB 514-5/321-2]**;

d. The Appellant did not breach of the requirements of natural justice; it had not decided to activate section 137 of the Constitution but had pursued an administrative solution short of invoking that process, in accordance with guidance given by Lord Slynn in **Rees v Crane** supra **[EB 516-7/325-39]**;

e. The Appellant did not reach the stage of recommending the Respondent's removal of the Claimant and had no such power. The merits of the preliminary view as to whether the Respondent's actions met the threshold for the initial invocation of section 137 of the Constitution was not a substantive issue in the trial. The ultimate determination of whether the Respondent's part heard matters and the differences were purposely, negligently or innocently misrepresented to the Chief Justice or the Appellant is for the tribunal set up by the President pursuant to section 137 and for the Privy Council thereafter **[EB 527/339-344];**

f. The Respondent did not resign because of threat, fear, coercion or unlawful pressure The evidence did not support the Respondent's position that circumstances of threat, fear, coercion and unlawful pressure existed. The Respondent had ample support. The Respondent was not taken by surprise. The Respondent was capable and the circumstances do not support the conclusion of her involuntarily executing and resigning does not square with her reality **[EB 525-533/345-360]**;

g. The content of the press release, which the Respondent approved, did not reflect the actual occurrence of events or sequence of events as the Appellants witnesses acknowledged. **[EB 5354-8/363-6]**; and

h. The Appellant authorized the Chief Justice to canvas with the Respondent the option of resigning; it had not authorized him to tell her in addition what was in prospect in the alternative (i.e. the initiation of the section 137 process) if she did not resign the Respondent that the Appellant would consider instituting disciplinary action under section 137. The Appellant did not authorize the Chief Justice to represent to the Respondent that she must resign or face the recommendation or advise to the President for her removal which could not have been authorized in law or under the Constitution. **[EB 541-9/372-91]**.

Court of Appeal

80. By Notice of Appeal dated 17th November 2021, the Respondent appealed against that portion Harris J's decision that concerned the Appellant **[EB 561]**. On 25th November 2021, the Appellant filed a counter notice of appeal in relation to costs **[EB 585]**.

81. The Court of Appeal (Mendonca, York-Soo Hon and Bereaux JJA) heard the appeal on 26th July 2022 **[EB 1183]**.

82. By a judgment dated 12th October 2023 the Court of Appeal unanimously allowed the appeal and set aside the orders of Harris J **[EB 766]** and declared:

a. The Appellant's decision was illegal and ultra vires sections 111(1) and 137(3) of the Constitution as one seeking to force the Respondent to resign by the threat of disciplinary process under section 137 and therefore an illegitimate purpose and design of pressuring the Respondent;

b. The conveying of the Appellant's decision to the Respondent coerced the Respondent into resigning and the Chief Justice had actual and ostensible authority to so convey the decision;

c. The Appellant denied the Respondent protection of the law and she is entitled to compensation for that breach;

d. The Appellant had no sinister motive but rather acted in the public interest of the administration of justice.

83. The Respondent did not on appeal challenge, properly it is submitted, Harris J dismissal of the claim against His Excellency **[EB 768/7**].

84. Mendonca JA **[EB 766-821/1-89]** and Bereaux JA (paras 94 to 187 **[EB 823-896/94-187]** each delivered judgments giving their own reasons for allowing the appeal.

85. York-Soo Hon JA (agreed with both Bereaux JA and Mendonca JA), added a short judgment on the whether the threshold for section 137 of the Constitution had been crossed **[EB 822-3/90-3]**.

Bereaux JA

86. Bereaux JA gave the lead judgment **[EB 891-6/ 183-7].**In Bereaux JA's reasons her first identified three issues **[EB 824-5/94-6}**:

a. the first – whether the Appellant had power to give the Respondent the option of withdrawing from the High Court Bench and return to the Magistracy to discharge her professional responsibilities and if the event she refuses the Appellant could consider instituting disciplinary action pursuant of section 137 of the Constitution;

b. The second was whether the Chief Justice had the authority to so inform the Respondent; and

c. The third was so telling the Respondent caused her to resign.

87. Bereaux JA found, **[EB824-5/94-6, 834-5/116-7 & 856-7/131-2]** that:

a. Harris J found that the Appellant had no power to make the decision to convey to the Respondent that if she failed to resign as a High Court Judge it would consider disciplinary action. This decision was contrary to section

137 of the Constitution and unlawful. Harris J misconstrued the Appellant's Minute;

b. Harris J found that the Appellant had not given the Chief Justice any actual (or ostensible) authority to convey this illegal decision to the Respondent. This was a question of fact (or mixed law and fact) for Harris J subject to an error of analysis which rendered it an error of law. Harris J failed to consider or wrongly considered the Chief Justice's oral admission (and misconstrued and misapplied the law of ostensible authority); and

c. Harris J found that what the Chief Justice told the Respondent did not cause her to resign. This too was a question of fact for Harris J subject to an error of analysis which rendered it an error of law. Harris J failed to consider the evidence as a whole; and the illegal threat had the effect of putting unlawful pressure on the Respondent and forced her to resign her office.

88. Bereaux JA then set out the procedural history and background and summarized the facts **[EB 824-34/98-115].**

89. Next Bereaux JA identified the crucial period as from 25th April to 27th April 2017:

a. he excerpted in extenso paragraphs from their respective affidavits for this and the parties' respective submissions **[EB 835-53/118-129]**; and

b. directed himself on appellate interference on the three bases of no evidence, misunderstood evidence and no reasonable judge could have so found citing excerpts from **Re B (A Child) [2013] 1 WLR 1911** para 53 Lord Neuberger and Viscount Simon in **Thomas v Thomas [1947] AC 484**, 485-7

90. Next Bereaux JA set out Harris J's findings on the Appellant's decisions [**EB 498-9/276-9]** and Appellant's entire Minute **[EB 1695]**, he found that:

a. Harris J correctly rejected the Respondent challenge to the Appellant's purported decisions of seeking the Respondent resignation and recommending to His Excellency that the Respondent's appointment be revoked **[EB 858-61/133-5];**

b. Harris J wrongly rejected the Respondent challenge to the Appellant's purported decisions to threaten, and not communicate a threat to, the Respondent. The Appellant had in effect taken two decisions. The first was that the threshold for disciplinary proceedings had been met. The second was that the Respondent should resign or face probable disciplinary action. The Respondent was given "*an ultimatum"*. The judge had misconstrued the purport of that and had fallen into error **[EB 861-4/135-40];**

c. Such an ultimatum was not a legitimate exercise of power and construed section 111 of the Constitution as providing for removal upon the exercise of disciplinary control. A forced resignation using the threat of initiation of disciplinary proceedings to pressure a judge into resignation is an arbitrary removal and bypasses the three stages in section 137 of the Constitution and cited Lord Slynn in **Rees v Crane** supra 187E to 188A. The Appellant's threat that it may consider initiating the process is intimidating more so if it says the threshold for such initiation has been crossed **[EB 864-70/141-150];**

d. Harris J correctly found that the Appellant Commission had no power to threaten the Respondent **[EB 485/238]** but misapprehended the effect of the Chief Justice evidence that if she remained it would come back for consideration. The fact that the Appellant made no final decision on whether to initiate the section 137 process did not mean that a threat to initiate those proceedings had not been made. The Chief Justice sought after the fact to down play the force of the threat by saying no final decision had been taken. The removal of a judge by threat and coercion was one of the mischiefs that sections 111 & 137 were intended to protect **[EB 870-1/151-3];** and

e. Harris J was palpably wrong in finding that the Appellant had merely sought to canvass the Respondent's view by way of administrative action through the Chief Justice. It is possible that occasion might arise which would require "...*a difficult conversation.."* between the Chief Justice and a judge in which the Chief Justice may quietly advise a judge that resignation may be the best option; but such advice should come from the Chief Justice unprompted by any official Commission decision. In this case, the Chief

Justice was conveying the Appellant's decision of which he was the Chairman. It was not an open discussion between him and the Respondent. Any decision by the Respondent had to be made with the threat of disciplinary proceedings hanging over her. Such a conversation was not in the contemplation of Lord Slynn in **Rees v Crane page 194 C-D**. The Appellant wanted a well-intentioned quick fix but had no power to threaten disciplinary proceedings with the intention of causing a judge to resign. It undermines the section 137(3) process, the independence of the judiciary, the Constitution, and democracy. There was no certainty as to the outcome as the Respondent offered explanations and solutions **[EB 871-4/154-9].**

91. As to whether section 137 of the Constitution had been triggered Bereaux JA found that:

a. the only misbehaviour applicable must be while holding the office of judge. The purported misbehaviour was in respect of the assurances given to the Chief Justice as to the number of part heard or the fact of the part heards which both occurred when the Respondent was Chief Magistrate office; and

b. any decision by the Appellant could only be arrived out after hearing the Respondent preliminarily Lord Slynn in **Rees v Crane** 196F-G and 196 C-D and on the evidence the Respondent was not given the opportunity to be heard - **[EB 874-6/160-1.**

92. As to the Chief Justice's actual authority, Bereaux JA found that Harris J **[EB 547/386**] had fallen into serious error **[EB 875-881/162-7]:**

a. because the Appellant had taken no objection to the Chief Justice's affidavit **[EB 1544/46]** and because he misconstrued the Appellant's decision on canvass the Respondent about resignation as excluding the prospect of initiating section 137 and because the Appellant had acted with urgency on the perceived need to have the Respondent to complete her part-heard matters;

b. it was clear from the Chief Justice's oral[9] evidence that he understood himself to have been authorized to communicate the entire decision to the Respondent **[EB 1079 line 16 to 1080 line 11 & 1083 lines 18 to 34];** and the fact that no member of the Appellant denied that the Chief Justice was so authorized fortified this view.

93. As to the Chief Justice's ostensible authority Bereaux JA found further that Harris J **[EB 543-9/379- 391]** had erred in law with respect to the question of ostensible authority when the Chief Justice presented the Respondent *the ultimatum* **[EB 881-6/**168 to 175 that:

a. The question was whether the Respondent was entitled to assume that the Chief Justice had the authority of the Appellant Commission to convey to her the options; and

b. To determine the Chief Justice's ostensible authority regard must be had to the whole of the Appellant's conduct:

i. By section 110(2) of the Constitution the Chief Justice is the chairman of the Appellant and presides over their meetings (see regulation 5 of the Public Service Commission regulations adopted by the appellant); and

ii. the Appellant' s Secretary. affidavit at paras 10, 13 and 24 **[EB 1675 & 1678]** and the Chief Justice's affidavit at para 23 **[EB 1538/23]** of the chief Justice's affidavit and the Chief Justice's press release – MAC 12 [EB 1377] spoke for the Appellant.

94. As to whether the Appellant's decision caused the Respondent to resign, Bereaux JA found that Harris J had erred in finding that it had not because **[EB 886-91/176-182]**:

a. he had failed properly to consider the Chief Justice's own evidence **[EB 1544/46-7],** and that of the Respondent's husband and her WhatsApp messages fortified this view which demonstrated that the Respondent had

[9] On 22 September 2020.

been persuaded by the threat conveyed to her and that the Respondent had misapprehended how the threat was to be effected was of no moment (paras 177 to 179 **[EB 887-9]**;

b. he failed to consider other evidence of the pressure put on the Respondent:

    i. in the decision to visit the President immediately so that the Respondent could tender her resignation on the same day; and

    ii. both press releases (i.e. of the Respondent and the Chief Justice) were largely untrue representation in that that the 27th April 2017 meeting was arranged *after careful deliberation, prayer and consultation* with no suggestion that the Respondent should resign as a solution and the telephone call between the Respondent and her husband was not a consultation and the Chief Justice's press release **[EB 1377]** gave the impression that the Appellant decided to restore the Respondent without any threat; that the Respondent had decided to return to the Magistracy before the Appellant met on that day the Respondent's press release was issued with her consent and approval and that the Respondent's press release was pre-prepared **[EB 487-8/242**]; when resignation of her office had not entered her thoughts .

Bereaux JA's errors

95. The Appellant respectfully submits that Bereaux JA :

a. failed to have regard to the context of the events prior to 25th April 20017 and in any event failed to assess Harris J's assessment of those events including the Respondent meetings of 25th to 27th April 2017 against that context;

b. correctly upheld Harris J's finding that the Respondent's case failed on the basis that the Appellant had threatened to revoke or recommend that her appointment be revoked but failed to consider the consequences upon other

findings that in so doing Harris J rejected the Respondent's written and oral evidence and accepted the testimony of the Chief Justice as " *consistent* " ;

c. failed to direct himself in law as to whether the Respondent's action could amount to misbehavior within section 137 of the Constitution – see **Rees v Crane**, **Lawerence v Attorney General [2007] 1 WLR 1474** and **Boyce v Judicial Legal Services Commission [2018 CCJ 23 (AJ)** and erred in fact in deciding the Respondent's actions in providing inaccurate information did not occur when she was a judge;

d. erroneously construed the Appellant's Minute as an ultimatum to the Respondent and wrongly decided that the Appellant or the Chief Justice or the Appellant had no power nor authority to inform a judge that her conduct was seriously in default and could amount to misbehavior;

e. erroneously attributing to the Chief Justice without any evidence of ex post fact downplaying the Appellant's determination that no final decision had been taken to invoke section 137;

f. erroneously construed section 137 of the Constitution and finding, without basis, that the Chief Justice could in law only have the difficult conversation with a judge without the involvement of the Appellant Commission;

g. erroneously construed the Chief Justice's affidavit and oral evidence as being actually or ostensibly authorized and did in fact to communicate or convey to the Respondent a threat of section 137 proceedings and erroneously set aside Harris J's contrary;

h. erroneously set aside Harris J's finding that on the evidence the Respondent was heard and that the Appellant afforded her natural justice and/ or fairness; and

i. having correctly found that the Appellant acted without any malicious intent, erroneously disregarded Harris J's consideration, of the Respondent's WhatsApp evidence, her husband's affidavit evidence and the pre-prepared press releases and erroneously set aside Harris J's finding that the

Appellant's decisions did not coerce the Respondent into resigning by the threat of section 137 proceedings

Mendonca JA

96. In summary Mendonca JA reasoned as follows:

a. He correctly, it is submitted, observed that section 137 of the Constitution provides an exclusive three stage procedure for the removal of a judge and the Appellant Commission's limited role[10] in initiating the process in making a representation to His Excellency that the question of the judge's removal ought to be investigated. He further correctly, it is submitted, opined that the appellant had a duty to satisfy itself that the complaint against the judge is sufficiently serious to warrant such a representation to His Excellency and in so deciding it must act fairly **[EB 771-3/11-16];**

b. identified the essential events prior to 27th April 2017 as not in dispute on the appeal and as found by Harris J **[EB 775-7/18-26];**

c. on 27th April 2017 the media reported a fracas by the accused in the Respondent's part heard matters at the magistrates' court; (ii) the Chief Justice convened an emergency meeting of the Appellant – from 10:30am to 12:45pm and (ii) set out the Minute of the Meeting **[EB 1695]** and excerpts of the Respondent's affidavit account (but not, in error, it is submitted, the Appellant's account) **[EB 1316-9/ 45-58]** and Harris J's findings [**EB 484-9 232-249 &];** and

d. cited cases on appellate intervention – **Henderson v Foxworth** [2014] 1 WLR 2600; **McGraddie v McGraddie** [2013] UKSC 58; **Ramsaran v. Hoodan** [1997] UKPC 47; **Beacon Insurance v Maharaj** [2014 UKPC 21; **Volpi -v Volpi** [2022] EWCA 464; **Hastings v Finsbury** [2022] UKSC 19 & **Enal v Singh** [2022] UKPC 13 **[EB 792 -9/31-9];**

[10] **Rees v Crane [1994] 2 AC 173** & **The Chief Justice v The Law association [[2018] UKPC 23**

97. Next Mendonca JA:

a. focused on the judge's purported failure to consider or understand her WhatsApp messages: *"going to Pres. House was asked to resign … by the CJ … or lese they were going to advise the Pres"* and the Respondent and her husband's telephone conversation. This relevant evidence pointed to a threat or coercion to resign, was explicit and proximate in time to her resignation her to resign. Harris J – at paras 183, 244, 259, 350 & 365 - inadequately considered and misunderstood the WhatsApps and the husband's evidence and did not reconcile it with his findings that the Respondent's resignation was voluntary and not coerced **[EB 800-5/40-9]**);

b. Other evidence such as the Respondent's account of the meeting on 26th April 2017 at which the Chief Justice discussed returning to the magistracy with the Respondent ; the fact that the Chief Justice accepted that the first time he discussed it with the Respondent was on 27th April 2017, supported the scenario that the Respondent's resignation was not voluntary. **[EB 805-6/50-1]**);

c. Harris J correctly rejected the Respondent's evidence that Chief Justice said to her that he would advise the President to revoke her appointment could not be overturned. To the extent that the Respondent case depended upon her evidence of the Chief Justice 's threat to advise the President to revoke her appointment it failed **[EB 805-6/52-5]**);

d. Harris J was right to find that the Appellant made the two decisions set out in the minute of its meeting. However, the Appellant made two other material decisions: that the threshold to invoke section 137 was met and that the Chief Justice should communicate its decisions to the Respondent (para 58-59 **[EB 807-8/55-9]**).

e. Harris J's finding as to the limitation put on the Chief Justice's authority to communicate the Appellant's decisions was not warranted on the evidence **.**. The Appellant decided that the Chief Justice communicate its decisions to the Respondent; this was actual authority given to him and included exploring with the Respondent the option of returning to the Magistracy; in

that way the Appellant authorized the Chief Justice to inform the Appellant of the alternatives she faced if she refused to resign **[EB 808-10/59-63].**

f. The Appellant's decisions were **designed** to threaten, coerce or put pressure on the Respondent to resign; they went beyond its constitutional remit as they sought to procure the resignation of a judge otherwise than by section 137. This decision was not motivated by malice but as quick fix to an urgent problem **[EB 811-3/64-7]**.

g. What the Chief Justice told the Respondent was that she was in serious default; the Appellant had not decided to trigger section 137, preferring that she return to the Magistracy to finish her part-heard matters; but if she did not, disciplinary proceedings were likely because the matter was a serious one and the threshold had been met. It was hard to construe what the Chief Justice said in any other way; this was capable of placing unlawful pressure on the Respondent **[EB 813-4/69-70]**.

h. Harris J was wrong to find that the solution alighted upon by the JLSC and the Chief Justice was an administrative solution of the kind discussed by Lord Slynn in **Rees v Crane** supra at page 193 B- D **[EB 814-816/71-4]**.

i. In Harris J's finding that the Respondent was aware of section 137 and therefore could not have believed that the Chief Justice or JLSC could bring about her removal from office, he had not considered the evidence of the Respondent's husband and the WhatsApp messages; had he done so, he would have come to the view at least that the Respondent's understanding of section 137 was less than perfect . And even if the Respondent had known fully of section 137, the Chief Justice's statements were capable of putting significant unlawful pressure on the Respondent **[EB 816-7/-76-9];** and

j. Harris J correctly rejected the Respondent's account of her conversation with the Chief Justice. Given what the Chief Justice told the Respondent, Harris J at para 353 failed to appreciate and understand the probable effect of the Respondent's WhatsApp messages and her spouse's evidence and her evidence. Therefore, the inescapable conclusion was that the

Respondent was coerced or pressured to resign by the threat communicated to her by the Chief Justice. The Appellant obtained the Respondent's removal by a process outside of section 137 of the Constitution and deprived her of the protection of the law under section 4(b) of the Constitution **[EB 818/80--9]**).

Mendonca's JA's errors

98. The Appellant respectfully submits that Mendonca JA :

a. made the same errors as Bereaux JA to the extent that he expressly agreed on implicitly agreed with him;

b. failed to have regard to Harris J's assessment of all of the events leading to the Respondent's resignation on 27th April 2017 against that context;

c. wrongly isolated and erroneously assessed Harris J's consideration of the Respondent's WhatsApp evidence and her husband's affidavit evidence and failed to demonstrate how Harris J to him or otherwise flawed in the context of Harris J having correctly rejected the truth of the Respondent's testimony and accepted the Appellant's;

d. erroneously set aside Harris J's construction of the Appellant's Minute and erroneously construed the Minute as authorizing the Chief Justice to communicate to the Respondent the alternative of resign or face the threat of section 137 proceedings;

e. correctly upheld Harris J's finding that the Respondent's case failed on the basis that the Appellant had threatened to revoke or recommend that her appointment be revoked but seriously erred in finding that that the Appellant's decisions were designed and intended to coerce the Respondent into resigning by the threat of section 137 proceedings;

f. erroneously set aside Harris J's finding that the Respondent as an important judicial figure was probably aware of section 137 and therefore could not

have believed that the Chief Justice or the Appellant could bring about her removal from office and erroneously deciding that Harris J had not considered the evidence of the Respondent's husband and the WhatsApp messages, which he did, and erroneously deciding that had he done so, he would have come to the view at least that the Respondent's understanding of section 137 was less than perfect, which he did; and

g. Harris J having correctly rejected the truth of the Respondent's testimony and accepted the Appellant's, failed to demonstrate how Harris J erred or was otherwise flawed in his assessment of the Respondent's Whats App messages and her spouse's evidence and therefore was in error in rejecting the conclusion that the Respondent was not coerced or pressured to resign by a process outside of sections 4(b) and 137 of the Constitution .

Yorke-Soo Hon JA

99. Yorke-Soo Hon JA agreed with both Mendonca JA and Bereaux JA (para 90 **[EB 822]**) and added as follows:

a. The Commission was aware of the fact that the Respondent had 23 outstanding matters at the time of her swearing in; this was enough to signal to the Appellant that the swearing in of the judge ought to be postponed so that a thorough investigation could be conducted; it was the Appellant's lack of due diligence which had led to these unfortunate circumstances [EB 822/91]; and

b. She was not persuaded that for the purposes of section 137, there was evidence before the Appellant that the Judge in question had committed any act or acts falling within that provision; therefore, the provision could not be enabled **[EB 822-3]**.

100. As for lack of due diligence the Appellant respectfully submits that Yorke Soo Hon erred as:

a. there was no evidence in the record that supports a finding that Appellant was guilty of a lack of due diligence;

b. no other judge of appeal nor Harris J made such a finding;

c. no such allegation was advanced nor any such finding sought on the Respondent's amended application for judicial review.

101. As for section 137 of the Constitution the Appellant respectfully submits that Yorke Soo Hon erred in that the Respondent's repeatedly inaccurate account of her part heards to the Chief justice and the public crossed the threshold of misbehavior within the meaning of section 137 of the Constitution.

The Appellant Answers to Issues on Appeal

102. The Appellant invites the Board to find that these are the responses to the agreed issues that arise on this appeal, that:

a. The Court of Appeal erred in finding that on 27 April 2017 the Appellant's decisions were ultra vires its powers under section 137 of the Constitution and amounted to an unlawful attempt to remove the Respondent as a judge from office outwith the section 137 process;

b. The Court of Appeal erred in finding that what the Chief Justice said to the Respondent were capable of putting (and did in fact put) unlawful pressure upon the Respondent to resign;

c. The Court of Appeal erred in finding that the Appellant had authorised (or ostensibly authorised) the Chief Justice given the Respondent an ultimatum of resign or be subject to a section 137 process and further erred in overturning the judge's findings as to the limits of the Chief Justice's actual or ostensible authority;

d. The Court of Appeal erred in finding that the Respondent did in fact resign as a result of what the Chief Justice said to her;

e. The Court of Appeal was not correct to find, unanimously or by a majority, that the Respondent had done no acts nor omission which would have justified the Appellant invoking or considering the section 137 procedure; and

f. The Court of Appeal was not correct to find, if it did, that it was not necessary for the Respondent to resign as a High Court judge in order to complete her part heard matters in the Magistrates Court.

Ian L. Benjamin SC
H. R. Ian Roach

Counsel for the Appellant

JCPC 2024/0016

IN THE JUDICIAL COMMITTEE

**ON APPEAL FROM THE COURT OF APPEAL
OF THE REPUBLIC OF TRINIDAD AND TOBAGO**

BETWEEN: -

THE JUDICIAL AND LEGAL SERVICES COMMISSION

Appellant

AND

MARCIA AYERS-CAESAR

Respondent

THE APPELLANT'S CASE

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