

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE**

**ANTIGUA AND BARBUDA**

**CLAIM NO: ANUHCV2023/0209**

**IN THE MATTER of Sections 40, 57 and 119 of the Constitution of Antigua  
and Barbuda**

**AND**

**IN THE MATTER of the purported suspension of the Claimant for three  
consecutive sittings from service of the House of Representatives**

**AND**

**IN THE MATTER of a claim for declaratory and other reliefs pursuant to  
section 119 of the Constitution for contravention of provisions of Sections  
40 and 57 of the Constitution**

**AND**

**IN THE MATTER of a claim for declaratory and other reliefs pursuant to  
section 119 of the Constitution for contravention of provisions of sections  
41 and 57 of the Constitution**

**BETWEEN:**

**ASOT MICHAEL**

**(In his personal capacity and in his capacity as Parliamentary  
Representative for the Constituency of Saint Peter)**

**Claimant**

**AND**

**THE SPEAKER OF THE HOUSE OF REPRESENTATIVES**

**Defendant**

**Appearances:**

Mr. Elliot Motley KC with Mr. Hugh C. Marshall Jr and Ms. Kema Benjamin for  
the Claimant

Dr. David Dorset with Mr. Jarid Hewlett for the Defendant

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2023: July 13;  
August 23  
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**JUDGMENT**

[1] **WILLIAMS, J.:** The matter for determination relates to the suspension of the  
Claimant from the House of Representatives on 18<sup>th</sup> May 2023 pursuant to a

vote of Members of the House. The Claimant was suspended for three sittings of the House. This decision was communicated to the Claimant by letter dated 25<sup>th</sup> May 2023.

- [2] The Claimant is the Honourable Asot Michael who is also the Member of Parliament representing the constituency of Saint Peter. The Defendant is Sir Gerald Watt KC an attorney-at-law and Speaker of the House of Representatives. The Claimant was suspended from the House of Representatives during a sitting held on 18<sup>th</sup> May 2023. The circumstances which led to this suspension will be examined in greater detail later in this decision.
- [3] On 8<sup>th</sup> June 2023 the Claimant filed an Originating Motion with an Affidavit in Support challenging his suspension. The Claimant seeks various declarations that his suspension was unconstitutional. The Claimant also seeks an injunction restraining the Defendant, his servants or agents from preventing him from attending sittings of the House. The Claimant also seeks damages and costs.

#### **Interim Relief Sought by the Claimant**

- [4] On 8<sup>th</sup> June 2023 the Claimant filed an application seeking injunctive relief. The interim relief sought was as follows:
- “By interim injunction, the Defendant, whether by himself, his servants, or agents or otherwise howsoever, is restrained from excluding or otherwise preventing the Claimant from attending and participating as a member of the House of Representatives at any sitting of the House and/or from entering the precincts of the House by reason of the purported suspension until the conclusion of the Trial of this action;”<sup>1</sup>
- [5] The application was supported by an affidavit in support sworn to by the Claimant and filed on the same day.
- [6] The Court directed that the application be served on the Defendant and set 16<sup>th</sup> June 2023 for the giving of directions in relation to this application. However, on 15<sup>th</sup> June 2023 the Defendant took a pre-emptive step by filing an application disputing the Court’s jurisdiction to try the claim. In the alternative the Defendant

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<sup>1</sup> Hearing Bundle at page 16

sought an order that the Originating Motion should be struck out as disclosing no reasonable grounds for bringing the Claim or as an abuse of process.

### **Application to Dispute Jurisdiction/Strike out the Claim**

[7] The Defendant seeks the following orders:

1. A declaration that the court has, pursuant to section 58 of the Constitution of Antigua and Barbuda, no jurisdiction to entertain proceedings against any member of either House of Parliament for words spoken before, or written in a report to, the House of Parliament of which he is a member or a committee thereof or any joint committee of the Senate and the House or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise.
2. The Originating Motion filed on 8th June 2023 is struck out and dismissed.
3. Alternatively, it is declared that the court in the exercise of its discretion under CPR 9.7A will not exercise its jurisdiction in respect of these proceedings and pursuant to CPR 9.7A it is ordered that these proceedings are stayed.
4. Costs payable to the Applicant to be assessed.

[8] At the hearing of 16<sup>th</sup> June 2023, it was agreed by the parties that the Defendant's Applications would be heard first as it raised issues of jurisdiction. This approach is consistent with the guidance of the Court of Appeal given in the case of **St. Kitts Nevis Anguilla National Bank v Caribbean 6/49 Limited**.<sup>2</sup> Accordingly, directions were given to facilitate the hearing of the applications which were scheduled for 13<sup>th</sup> July 2023.

[9] It was further directed that the Claimant's application for interim relief would also be heard on the same day. However, for reasons which will be further outlined the Claimant elected not to proceed with the interim relief application.

[10] There are no significant disputes of fact in this matter. In fact, in his affidavit in support of the Originating Motion the Claimant exhibits the relevant excerpts of Hansard which outlines the events that led to his suspension. It should be noted that the Defendant did not object to this evidence.

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<sup>2</sup> Civil Appeal No. 2 of 2002 (St. Kitts and Nevis) at paragraph 18 per Saunders JA

[11] The undisputed facts are therefore as follows:

1. On 18<sup>th</sup> May 2023 the Claimant attended a sitting of the House of Representatives over which the Defendant was presiding. A bill was being presented to the House for consideration by the Honourable Attorney General who is also the representative for St. John's City South.
2. At that point the Honourable Prime Minister who is also Member for St. John's City West made a comment which the Claimant interpreted to have been directed at him.
3. The Claimant in his own affidavit evidence indicates that he responded whilst sitting but he does not indicate what he said. The transcript also does not record what the Claimant said.
4. It is clear however that he was called upon by the Defendant twice. This was most likely an indication by the Defendant that he should stop speaking or otherwise cease interrupting the proceedings.
5. The Defendant then required the Claimant to leave the Chamber. The Claimant continued to speak, and the assistance of the Sergeant-at-Arms was requested to remove the Claimant from the Chamber.
6. What followed was a spirited exchange between the Defendant and Claimant whereby the Claimant accused the Defendant of being biased. The Claimant also continued to object to the Prime Minister's statement. He also continued to accuse the Defendant of bias in strong language.
7. At this point the Defendant named the Claimant. The Speaker then stated as follows:

"The Member (standing) for St. Peter for what he has just mentioned, the abuse of the chair and I'll ask that he be named and that the parliament decide what should be the suspension whether (a) he should be suspended. And if so, how much? On the first occasion...I think it's is for three meetings."

8. The Claimant left the Chamber shortly thereafter whilst still arguing with the Defendant.
9. The matter of the Claimant's suspension was put before the House as is evidenced by the following exchange:

**THE SPEAKER**

Members of the House, I have given—I have put a matter before you. I expect the action to be taken. What is the action? This—cannot be tolerated.

<b>HON. MEMBER FOR ST. JOHN'S CITY WEST</b>	What are the options? Go again?
<b>THE SPEAKER</b>	Suspension for three meetings. That is-- that is the rule. For the first offence three meetings.
<b>MEMBERS<sup>3</sup></b>	(Aye.)
<b>THE SPEAKER</b>	Is that the way the Lower House--- shall the member be suspended for three consecutive meetings? All in favour say aye.
<b>MEMBERS</b>	(Aye.)
<b>THE SPEAKER</b>	All against say no.  (no audible response)
<b>THE SPEAKER</b>	The ayes have it. And the Member for St. Peter is suspended from this house and from Parliament.

10. The Defendant by letter dated 25<sup>th</sup> May 2023 wrote the Claimant informing him of his suspension. The relevant paragraphs of the letter state as follows:

*“Standing Order 50 (8):*

*I. Your suspension pursuant to Standing Order 50 (7) will be for three (3) Sittings;*

*Standing Order 50 (9):*

*II. The remuneration to which you are entitled as a Member of the House of Representatives shall cease for the period of your suspension;*

*Standing Order 50 (13):*

*III. You are not entitled to attend any Sittings in committee or enter the precincts of the House until the termination of your suspension.”*

## **Amended Originating Motion**

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<sup>3</sup> The transcript does not identify which members voted

- [12] Having outlined the relevant facts, it is now necessary to examine a procedural issue. At the beginning of the hearing on 13<sup>th</sup> July 2023 Learned Kings' Counsel for the Claimant drew the court's attention to the fact that an Amended Originating Motion had been filed on 10<sup>th</sup> July 2023. The Originating Motion had been amended to make reference to sections 9 and 18 of the Constitution of Antigua and Barbuda.
- [13] Section 9 of the Constitution refers to the right to property whilst section 18 gives the High Court jurisdiction to enforce the fundamental rights provisions of the Constitution. The Amended Originating Motion added the following paragraph:
- “A declaration that the letter dated 25th May, 2023 from the Speaker of Parliament to the Claimant which stated that his salary as a Member of Parliament was suspended, was unconstitutional, as it amounted to a compulsory taking of property in breach of the provisions of Section 9 of the Constitution.”
- [14] Not surprisingly counsel for the Defendant objected to the Amended Originating Motion. Counsel for the Defendant referred the Court to the Court of Appeal decision in **Attorney General v Darrel Montrope**.<sup>4</sup> According to that authority, the filing of an application challenging the court's jurisdiction or applying to strike out the claim acted as a stay of the proceedings. Therefore, the Statement of Case which was under challenge could not be amended whilst this application was pending.
- [15] Learned King's Counsel for the Claimant then made an oral application to amend the Originating Motion. Counsel for the Defendant also objected to this oral application. After hearing both counsel I came to the conclusion that I could not accede to the oral application for an amendment and that the matter would proceed on the basis of the Originating Motion as originally filed on 8<sup>th</sup> June 2023.
- [16] My brief reasons for doing so are as follows. In **Attorney General v. Darrel Montrope** the Claimant a former Cabinet Secretary commenced proceedings seeking declarations that his transfer from that post was unconstitutional. Instead of filing an affidavit in defence to the Claim the Defendant filed an

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<sup>4</sup> SLUHC VAP2019/0021

application disputing the court's jurisdiction pursuant to CPR 9.7. The Defendant therefore sought an order striking out the Claim.

[17] Prior to the hearing of the Defendant's application, the Claimant amended his claim (without leave of the court) to address the deficiencies pointed out in the Defendant's application. The learned judge at first instance ruled that no leave was required to amend the Claimant's Originating Motion and deemed the amendments properly filed. The Defendant appealed.

[18] At paragraph 49 of the decision Chief Justice Pereira giving the judgment of the Court of Appeal stated as follows:

“Additionally, the determination of the CPR 9.7 application to strike in the appellant's favour could result in Mr. Montrope's claim being brought to an end. Thus, any application for leave to amend the pleadings could only be properly heard after the determination of the application to strike. To my mind, the learned judge failed to adequately appreciate that the effect of an application under CPR 9.7 is to stay the proceedings pending its determination. Accordingly, the learned judge was precluded from hearing Mr. Montrope's oral request to amend his originating motion before determining the CPR 9.7 application to strike, the proceedings having been stayed. Although the learned judge ought not to have entertained Mr. Montrope's application, I propose for completeness to address his decision to allow Mr. Montrope's amendments.”

[19] The procedural history of this matter is almost identical to what occurred in **Attorney General v Darrel Montrope**. This is as the Amended Originating Motion was filed after the Defendant's application made pursuant to CPR Rule 9.7. As clearly outlined by the Court of Appeal in **Darrel Montrope** the effect of an application made pursuant to CPR Rule 9.7 is to stay the proceedings pending determination of the application. Accordingly, on the binding authority of that case I am precluded from considering the purported Amended Originating Motion filed on 10<sup>th</sup> July 2023 as well as the Claimant's oral application to amend. The issue of whether the Court has jurisdiction can only be determined in the context of the Originating Motion as originally filed on 8<sup>th</sup> June 2023.

**Objection to Defendant's Affidavit**

[20] At the hearing of the application Learned Kings Counsel for the Claimant also raised an objection to the Defendant's affidavit filed on 16<sup>th</sup> June 2023. It has been contended on behalf of the Claimant that the Defendant's affidavit contains statements of opinion. Therefore, it is argued that the affidavit is not in compliance with CPR Rule 30.3(1) which states as follows:

“The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.”

[21] In particular counsel objected to paragraphs 3 to 6 of the affidavit which read as follows:

“3. I have been a lawyer for more than 50 years and it is elementary that matters arising in Parliament (to include votes taken in either house of Parliament cannot be the subject of court proceedings. This arises on the well-known rule of Parliamentary privilege and the doctrine of exclusive cognisance. Quite frankly, I am taken aback by the filing of the instant proceedings as I would have thought that Mr. Michael would have been utterly familiar with the rule of parliamentary Privilege and the doctrine of exclusive cognisance. He has been a member of Parliament since 1999, nearly a quarter of a century.”

4. Fixed with knowledge of the rule of parliamentary privilege and the doctrine of Exclusive cognisance, these proceedings brought by Mr. Michael constitute an abuse of the process of the court. Moreover, the court has no jurisdiction to entertain the proceedings brought by Mr. Michael.

5. I have read the grounds enumerated in the application to strike out and dismiss these proceedings. I agree full heartedly with them.

6. Mr. Michael is seeking to challenge by way of court proceedings the vote of the house. This he cannot do.”

[22] It is clear that the paragraphs quoted above are not strictly in compliance with CPR Rule 30.3(1) in that they do not stick to the “facts” upon which the Defendant is relying. Instead, these paragraphs contain the Defendant's opinion as to whether the court has jurisdiction in the matter. Paragraphs 3 and 4 of the affidavit in particular criticize the Claimant for bringing the claim.

[23] Despite the non-compliance with CPR Rule 30.3(1), I declined to strike out these paragraphs of the Defendant's affidavit. Firstly, this was as the Claimant's objection was only made at the hearing of 13<sup>th</sup> July 2023, despite the affidavit in question having been filed since 16<sup>th</sup> June 2023. Thus, the Claimant had ample



opportunity to apply to strike out the relevant paragraphs of the affidavit before the hearing and failed to do so.

- [24] Secondly, there are no significant disputes of fact between the parties meaning that the matter will be decided on the oral and written submissions of the parties. However, for the avoidance of doubt, in coming to a decision I will pay no regard to the opinions expressed by the Defendant at paragraphs 3 to 6 of his affidavit filed on 16<sup>th</sup> July 2023.

## **Submissions**

### **The Defendant's Submissions**

- [25] Counsel for the Defendant Dr. Dorsett submits that the court's jurisdiction is excluded by virtue of section 58 of the Constitution which codifies the doctrines of parliamentary privilege and exclusive cognizance. Counsel states that section 58 of the Constitution deprives the court of jurisdiction to inquire into the matters complained of in the Claimant's Originating Motion.
- [26] However, in oral submissions and in Submissions in Reply filed on 30<sup>th</sup> June 2023 counsel accepted that in the appropriate case the Court could scrutinize parliamentary proceedings for alleged breaches of the Constitution. On the other hand, counsel indicates that the instant claim discloses no breach of the Constitution. The Defendant then addressed the Claimant's assertion that his suspension was in breach of sections 40(1), 41(1), 50(1) and 57(1) of the Constitution. Counsel examined each provision in turn and submitted that there is no arguable case of a breach of any of these provisions.
- [27] In relation to the Claimant's assertion that the vote to suspend him was not done in the manner prescribed by the Standing Orders, counsel submits that Parliament cannot fairly be taken to have intended the invalidity of a vote taken under Standing Order 50(7) on account of a slight procedural error. Counsel argues that the validity of the vote suspending Mr. Michael from the House cannot be impugned by reference to an alleged failure to comply with the Standing Orders during Parliamentary proceedings which resulted in the passage of the vote.

[28] Counsel goes on in his submissions to argue that the Claimant's complaint that there was no motion as stipulated by Standing Order 50(7) must give way to section 51(1) of the Constitution which provides that any question proposed for decision in a House of Parliament is to be determined by a majority of the votes of members present and voting. Counsel submits that once a majority of the members of the House voted to suspend the Claimant that that was the end of the matter.

[29] Counsel for the Defendant also argued that the Claimant's Originating Motion should be struck out pursuant to CPR Rules 26.3(1) (b) and (c) as it does not disclose any reasonable ground for bringing the claim and also because the claim is an abuse of process.

### **The Claimant's Submissions**

[30] The Claimant acknowledges that the courts in common law jurisdictions exercise a self-denying posture in relation to interfering with the proceedings of Parliament. Counsel for the Claimant also accepts that section 58 of the Antigua and Barbuda Constitution is a codification of the English practice as it relates to parliamentary privilege. Counsel argues however that the situation in Antigua and Barbuda is different from England where there is no written constitution and the rights and obligations of the Constitution have been defined over time through convention and case law.

[31] Counsel says that this claim is brought by virtue of section 119 of the Constitution of Antigua and Barbuda and the supreme law clause found at section 2, the courts are obligated to scrutinize parliamentary proceedings for alleged breaches of constitutional rights. Counsel for the Claimant has taken issue with the failure of the Defendant to adhere to sections 40, 41 and 57 of the Constitution.

[32] Regarding section 40 of the Constitution, it was submitted that the Claimant as a Member of Parliament and thus had a right to function as a member of the House of Representatives during every sitting of Parliament unless lawfully removed. As it pertains to section 41 of the Constitution, Counsel submits that the Claimant's right to sit as a Member of Parliament can only be determined

(temporarily or otherwise) in accordance with that section. Counsel further submits that by reason of section 57 of the Constitution the Claimant as a member has the right to be regulated in Parliament by Standing Orders made for the purpose of regulating Parliament's procedure and for the orderly conduct of Parliamentary proceedings. Thus, the Claimant has a right to have those Standing Orders applied correctly and lawfully.

[33] Counsel argues that sections 40, 41 and 57 have not been excluded by section 119 of the constitution and therefore the court has jurisdiction to hear this matter and ought to exercise it in the instant proceedings.

[34] Counsel asserts that the Speaker failed to follow the mandatory requirements of Standing Order 50(7) of the Standing Orders when put the question of the Claimant's suspension before the House. Counsel says the Speaker did not allow the motion for the Claimant to be suspended from the service of the House to be moved by any Member as required by the Standing Orders and that failure to follow the proper procedure made the suspension of the Claimant unconstitutional.

[35] Counsel argues that by virtue of section 43 of the Interpretation Act (CAP 244) the use of the word "shall" in the Standing Orders is mandatory, the result being that Standing Order 50(7) which states "the procedure shall be that a Member of the House of Parliament shall move the motion to suspend the Member" must be adhered to.

[36] Counsel also submits that the Standing Orders are made under the provisions of sections 57 of the Constitution and are therefore a "Constitutional Document" and that breach of the Standing Orders amounts to a violation of section 57.

## **Discussion**

[37] As previously outlined, this claim involves proceedings which took place in this nation's Parliament. The issue of jurisdiction will therefore be addressed as outlined by the Privy Council in the leading case of **Methodist Church of the**

**Bahamas v Symonette.**<sup>5</sup> Incidentally this case was relied on by both parties. In that case Lord Nicholls outlined the relevant principles to be taken into account which may be summarized as follows:

1. Parliamentary Sovereignty;
2. Exclusive Cognizance; and
3. Supremacy of the Constitution.

[38] In **Methodist Church of the Bahamas v Symonette** the issue related to a challenge to a bill which was about to be enacted. It had been alleged that the bill if enacted would contravene the constitution of the Bahamas. In giving the judgment of the Privy Council Lord Nicholls outlined the principle of parliamentary sovereignty as follows:

“This prematurity argument raises questions concerning the relationship of the courts and Parliament. Two separate, but related, principles of the common law are relevant. They are basic, general principles of high constitutional importance. The first general principle, long established in relation to the unwritten constitution of the United Kingdom, is that the Parliament of the United Kingdom is sovereign. This means that, in respect of statute law of the United Kingdom, the role of the courts is confined to interpreting and applying what Parliament has enacted. It is the function of the courts to administer the laws enacted by Parliament. When an enactment is passed there is finality unless and until it is amended or repealed by Parliament: see the well-known case of *Pickin v British Railways Board* [1974] 1 All ER 609.”

[39] The second principle which Lord Nicholls outlined is of more relevance to the present proceedings. In relation to parliamentary proceedings Lord Nicholls stated:

“The second general principle is that the courts recognize that Parliament has exclusive control over the conduct of its own affairs. The courts will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions: see *Prebble v Television New Zealand Ltd* [1994] 1 LRC 122, where some of the earlier authorities are mentioned by Lord Browne-Wilkinson. The law-makers must be free to deliberate upon such matters as they wish. Alleged irregularities in the conduct of parliamentary business are a matter for Parliament alone. This constitutional principle, going back to the 17th century, is encapsulated in the United Kingdom in art 9 of the Bill of Rights 1689: ‘that ... proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament’. The principle is essential to the smooth working of a democratic society which espouses the separation

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<sup>5</sup> [2000] 5 LRC 196

of power between a legislative Parliament, an executive government and an independent judiciary. The courts must be ever sensitive to the need to refrain from trespassing, or even appearing to trespass, upon the province of the legislators: see *R v Her Majesty's Treasury, Ex p Smedley* [1985] 1 All ER 589, per Sir John Donaldson MR.

### **Constitutional Supremacy**

[40] Finally, Lord Nicholls considered the principles of Parliamentary Sovereignty and Exclusive Cognisance in the context of a state with a written Constitution like Antigua and Barbuda. He stated:

“That is the basic position in the United Kingdom. In other common law countries their written constitutions, not Parliament, are supreme. The Bahamas is an example of this. Article 2 of its Constitution provided that 'This Constitution is the supreme law of the Commonwealth of The Bahamas'. Article 2 further provided that, subject to the provisions of the Constitution, if any other law is inconsistent with the Constitution, the Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void. Chapter V of the Constitution made provision for a Parliament of The Bahamas, comprising Her Majesty, a Senate and a House of Assembly. Article 52 provided that 'subject to the provisions of this Constitution' Parliament may make laws for the peace, order and good government of The Bahamas. Thus, in The Bahamas, the first general principle mentioned above is displaced to the extent necessary to give effect to the supremacy of the Constitution. The courts have the right and duty to interpret and apply the Constitution as the supreme law of The Bahamas. In discharging that function the courts will, if necessary, declare that an Act of Parliament inconsistent with a constitutional provision is, to the extent of the inconsistency, void. That function apart, the duty of the courts is to administer Acts of Parliament, not to question them. Likewise, the second general principle must be modified to the extent, but only to the extent, necessary to give effect to the supremacy of the Constitution. Subject to that important modification, the rationale underlying the second constitutional principle remains as applicable in a country having a supreme, written constitution as it is in the United Kingdom where the principle originated.”

[41] Just as in the Bahamas the Constitution of Antigua and Barbuda is supreme. This is expressly provided for at section 2 of the Constitution which states:

“This Constitution is the supreme law of Antigua and Barbuda and, subject to the provisions of this Constitution, if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.”

[42] The Claimant alleges that sections 40(1), 41(1), 50(1) and 57(1) of the constitution have been infringed in relation to him. These provisions are not

contained in the Fundamental Rights provisions and thus the Court's jurisdiction derives from section 119 of the Constitution. This provides as follows:

“119. (1) Subject to the provisions of sections 25(2), 47(8) (b), 56(4), 65(5), 123(7) (b) and 124 of this Constitution, any person who alleges that any provisions of this Constitution (other than a provision of Chapter II) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.”

[43] In light of sections 2 and 119 of the Constitution, the Privy Council's observations in **Methodist Church of the Bahamas v Symonette** are applicable to Antigua and Barbuda. Thus, the broad issue for determination is whether the Claimant has a viable claim that his suspension contravened any provisions of the Constitution?

[44] In order to address this jurisdictional issue, it is necessary to examine the relevant constitutional provisions. Firstly, the Parliament of Antigua and Barbuda is established by section 27 of the Constitution. According to section 27 Parliament consists of Her Majesty (now His Majesty), the Senate and the House of Representatives. Section 46 of the Constitution provides:

“Subject to the provisions of this Constitution Parliament may make laws for the peace, order and good government of Antigua and Barbuda.”

[45] Since at its core the Claimant's case involves a breach of parliamentary procedure section 57(1) of the Constitution is also relevant. This provision states:

“(1) Subject to the provisions of this Constitution each House of Parliament may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.”

[46] Standing Orders for the House of Representatives have been made pursuant to section 57(1) quoted above. The letter of 25<sup>th</sup> May 2023 informing the Claimant of his suspension made it clear that the House in suspending the Claimant was acting pursuant to these Standing Orders. In particular the letter expressly states that the Claimant has been suspended for breach of Standing Orders 50(4) (a), (c) and (d). These create the offences of creating actual disorder, acting in a manner that displays flagrant disobedience to rulings of the

Chair and acting in any other way to the serious detriment of the dignity or orderly procedure of the House respectively.

[47] It is clear that in suspending the Claimant the House purported to act pursuant to Standing Order 50(7) which provides:

“(7) If on any occasion the Speaker considers that his powers under the previous provision of this Standing Order are inadequate, the Speaker may name such Member under this Standing Order, by mentioning the name of the Member concerned. In such circumstances, the procedure prescribed in the next succeeding paragraphs shall be followed:

The Speaker shall mention the Member by name; immediately following the naming, a Member shall move a motion that (“Mr/Mrs./Ms.) \_\_\_\_\_” be suspended from the service of the House; the Speaker shall put the question “that \_\_\_\_\_ be suspended from the service of the House”; this question must be resolved without amendment, adjournment or debate; if the offence has been committed in Committee of the Whole House, the Chairman shall immediately suspend the proceedings of the Committee, resume the House and report the circumstances and the procedure provided for in the preceding subparagraphs of this Standing Order shall be followed; and the Member so named must immediately leave the Chamber and its precincts and shall stand suspended from the service of the House.”

[48] At the hearing of 13<sup>th</sup> July 2023 counsel for the Defendant conceded that there had been non-compliance with Standing Order 50(7). This is as there had been no motion moved by any member to suspend the Claimant. Counsel was correct to make this concession as the unchallenged evidence contained in the excerpt of Hansard clearly indicates that the vote to suspend was taken without any such motion being moved. This was of course the Claimant’s assertion where this aspect of the case is concerned. I am therefore entitled to make a finding of fact based on the unchallenged evidence that no motion to suspend the Claimant had been moved by any member of the House.

[49] At this point the parties diverge. Counsel for the Defendant states that despite this procedural defect the matter is not justiciable. This is as the Court has no supervisory jurisdiction over Parliament’s internal procedures. The Claimant on the other hand alleges that by failing to comply with Standing Order 50(7) the Defendant has breached section 57(1) of the Constitution.

[50] It is therefore necessary to examine some of the authorities relied upon by the parties. The Claimant has placed reliance on a recent decision of the Supreme Court of Samoa in **Malielegaoi and another v Speaker of the Legislative Assembly**.<sup>6</sup> In that case two members of the Samoan Parliament made public comments which scandalized the courts and made serious allegations against opposing members of the Assembly. The Deputy Prime Minister made a complaint to the Privileges and Ethics Committee of the Assembly. The Committee heard the members as to whether there had been a breach of Parliamentary Privilege. The Assembly then debated the report. The two members addressed the Assembly and made apologies but were not given the opportunity to address the penalty. The Assembly voted for the two members to be suspended 'until such time'. The two members filed actions for judicial review in the courts arguing that suspension for an indeterminate period was unlawful and that they had been denied natural justice. The Speaker of the Assembly opposed the applications on the ground that they related to the intramural business of Parliament which the Courts could not enquire into.

[51] The court rejected the Speaker's jurisdictional argument as follows:

“[75] We consider that suspension may be scrutinised as against the principles and provisions of the Constitution, to assess whether the process leading to suspension, indeed the suspension itself is void for inconsistency.”

[52] The Supreme Court went on to hold that the suspensions breached the members' rights to natural justice and was thus contrary to Article 9(1) of the Samoa Constitution. This is as they were not given a right to be heard as to the penalty to be imposed. Article 9(1) of the Samoa Constitution is similar (but not identical) to Section 15(8) of Antigua and Barbuda's Constitution which governs the right to a fair hearing.

[53] The Claimant also relies on **Mapesela and another v Speaker of the National Assembly and others**<sup>7</sup> a recent decision of the Lesotho High Court. In that case two members of Parliament challenged the Speaker's decision not to hold a secret ballot on a particular matter. The court addressed the issue of jurisdiction as follows:

“[41] Parliament, the Executive and the Judiciary are co-equal branches of Government subject to the Constitution and other laws.

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<sup>6</sup> [2023] 2 LRC 128

<sup>7</sup> [2022] 2 LRC 664



Each branch has its constitutional space to execute its mandate under the Constitution without interference by others. Parliament has oversight responsibilities over the Executive. The Judiciary exercises judicial review over Parliament and the Executive. But for the Court to exercise its review jurisdiction, litigants must prove that Parliament and the Executive have performed their functions in a manner that runs afoul of the Constitution or have failed to perform their constitutional duties.”

[54] However, the court refused to grant the substantive relief. At paragraph 38 of the decision the court described the application as a “*Bare-faced request for the Court to direct Parliament how to run its internal business.*”

[55] I understand the foregoing authorities to be stating that there is no absolute bar to the Court having the jurisdiction to review decisions of Parliament if a breach of the Constitution is alleged. Although these decisions are not binding on this court, the approach taken by these courts is consistent with the fact that in Antigua and Barbuda the Constitution is supreme. Each constitutional provision alleged by the Claimant to have been breached in relation to him will now be examined.

### **Section 57(1)**

[56] The Claimant is seeking to equate non-compliance with Standing Order 50(7) with a breach of Section 57(1) of the Constitution. The Claimant’s argument as I understand it, is that the Standing Orders are made pursuant to section 57(1) of the Constitution. Therefore, by not complying with the relevant Standing Order the Defendant has breached section 57(1) of the Constitution.

[57] In reply submissions filed on behalf of the Defendant counsel argues that “the breach of a Standing Order passed under section 57 of the Constitution is not a breach of a constitutional document and not a breach of the Constitution.” I agree with this statement.

[58] In **Nicholls Esprit v. Speaker of the House of Assembly**<sup>8</sup> a decision emanating from the Commonwealth of Dominica Gordon JA stated as follows:

“Indeed, the Speaker was applying Standing Order 50 of the Standing Orders of the House of Assembly, subsidiary legislation made pursuant to the powers contained at section 52 of the Constitution. In

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<sup>8</sup> DOMHCVAP 2008/005

that capacity, this court has no supervisory jurisdiction over the Speaker.”<sup>9</sup>

[59] Section 52 of Dominica’s Constitution referred to above is identical to section 57 in the Antigua and Barbuda Constitution. Having identified the Standing Orders as subsidiary legislation this court has no jurisdiction to rule that Parliament has acted ultra vires the Standing Orders. Section 57(1) of the Constitution itself states that any rules made by Parliament for the regulation of its own procedure are subject to the Constitution itself. Thus, there is nothing to indicate that the Standing Orders are elevated to the status of the Constitution.

[60] In the exercise of its powers Parliament is only subject to the Constitution. By analogy in **The Attorney General v Martinus Francois**<sup>10</sup> it had been argued that Saint Lucia’s House of Assembly had acted ultra vires the Finance (Administration) Act in passing a resolution which approved a loan guarantee. Justice of Appeal Redhead giving one of the judgments of the Court of Appeal stated:

“Unfortunately, the above quoted passages reveal a lot of confusion in the learned trial Judge’s mind. My understanding of constitutional law is that the only authority which places a fetter on Parliamentary Legislative Authority is the Constitution. In that any legislation which conflicts with any constitutional provision, the legislation is void to the extent of the conflict and the Constitution prevails. That is why the Constitution is regarded as being supreme. Delegated legislation, in my judgment could never be superior to Parliamentary, Legislative power. So it is not correct to say in matters of delegated legislation Parliament is not supreme. To say that is to elevate delegated legislation to status of the Constitution.”<sup>11</sup>

[61] In summary, the breach of Standing Order 50(7) is not a breach of section 57 of the Constitution as alleged by the Claimant. The relevant authorities indicate that the Standing Orders cannot be given co-equal status with the Constitution which is Antigua and Barbuda’s supreme law. This court has no jurisdiction to intervene in Parliament’s internal affairs where there is no breach of the Constitution. Accordingly, the Claimant’s claim alleging a breach of section 57 of the Constitution cannot proceed.

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<sup>9</sup> At paragraph 17

<sup>10</sup> CIVIL APPEAL NO. 37 OF 2003

<sup>11</sup> Attorney General v. Martinus Francois at paragraph 43

## Section 40

[62] At the hearing of 13<sup>th</sup> July 2023 learned Kings' Counsel for the Claimant concentrated on the alleged breach of section 57 of the Constitution. However, having not abandoned the other alleged breaches of the Constitution these must be briefly addressed. Firstly, the Claimant alleges that section 40 of the Constitution was breached in relation to him. Section 40(1) provides as follows:

“40. (1) Each of the constituencies established in accordance with the provisions of section 62 of this Constitution shall return one member to the House who shall be directly elected in such manner as may, subject to the provisions of this Constitution, be prescribed by or under any law.”

[63] The Defendant's response is there is no breach of section 40(1) as the Claimant has been duly returned as the Member for St. Peter. I agree. I also fail to see the relevance of the Claimant's suspension where section 40(1) is concerned. However, it is worth noting the court in **Malielegaoi and another v Speaker of the Legislative Assembly**<sup>12</sup> observed that an indeterminate suspension could infringe the right of the members to serve their constituents in accordance with Article 44 of the Samoa Constitution. Article 44 is the equivalent of section 40(1) in Antigua and Barbuda's constitution. However, this is not what has occurred here since the Claimant has only been suspended for three sittings. Accordingly, the Claimant's claim cannot proceed on this basis.

## Section 41(1)

[64] The Claimant alleges that section 41(1) of the Constitution has been breached.

Section 41 provides as follows:

“41. (1) Every member of the House shall vacate his seat in the House-

- (a) At the next dissolution of Parliament after he has been elected;
- (b) If he ceases to be a citizen;
- (c) If he is absent from the sittings of the House for such period or periods and in such circumstances as may be prescribed in the rules of procedure of the House;
- (d) subject to the provisions of subsection (2) of this section, if any circumstances arise that, if he were not a member of the House, would cause him to be disqualified from election as such by virtue of section 39(1) of this Constitution; or

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<sup>12</sup> [2023] 2 LRC 128 at paragraph 94

(e) if, having been elected to the House by virtue of being a member of a political party, he resigns his party whip and withdraws his allegiance from that party: Provided that he shall not be required to vacate his seat, so long as he remains an independent member of the House.”

[65] Section 41(1) appears to provide for the circumstances where a Member is mandatorily required to vacate his seat in Parliament other than by voluntary resignation. The Claimant has only been suspended and not required to vacate his seat therefore this section is not applicable.

### **Section 50(1)**

[66] Section 50(1) deals with the quorum for sittings of the House. There is no suggestion that the Claimant’s suspension led the House to not be quorate. Thus, section 50(1) has no applicability.

### **Conclusion**

[67] In **Nicholls Esprit v Speaker of the House of Assembly**<sup>13</sup> Gordon JA stated, “The courts are the guardians of the Constitution, but Parliament is the policeman of its own procedure.” This means that in the absence of a breach of the Constitution the Court has no jurisdiction to intervene in Parliament’s internal affairs. The Claimant has failed to demonstrate that his suspension was in contravention any provisions of the Constitution of Antigua and Barbuda. Thus, I have no alternative but to declare that the High Court has no jurisdiction to hear the Originating Motion filed herein on 8<sup>th</sup> June 2023.

### **Application to Strike Out**

[68] I have come to the conclusion that the Court has no jurisdiction to hear this claim. Accordingly, it is not necessary to consider the second plank of the Defendant’s application that the claim should be dismissed pursuant to CPR Rules 26.3(1)(b) and (c) as disclosing no reasonable grounds for bringing the claim or as an abuse of process. No useful purpose can be served in examining these issues since the Court has already acted pursuant to CPR Rule 9.7.

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<sup>13</sup> Supra n7 at paragraph 1

### **Application for Injunctive Relief**

[69] Although directions were given for the Claimant's application for injunctive relief and the Defendant's applications to be heard together, at the hearing learned King's Counsel for the Claimant declined to proceed with the injunction application. It was therefore decided that the application for interim relief would be considered once the court decided whether or not there was jurisdiction to try the claim. However, in light of my finding that the Court lacks jurisdiction the application for interim relief has become otiose and is consequently dismissed.

### **Costs**

[70] The Defendant/Applicant has been successful in his application. Thus, according to the general rule costs should follow the event. However, it must be borne in mind that the substantive claim sought relief pursuant to section 119 of the Constitution. CPR Rule 56.13 (6) provides as follows:

"The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application."

[71] The discussion above demonstrates that it is not always clear in what circumstances the court in the exercise of its constitutional jurisdiction may intervene in the internal proceedings of Parliament. I therefore find that the Claimant did not act unreasonably in bringing this claim. Accordingly, no order as to costs will be made.

### **Order**

[72] For the foregoing reasons it is hereby ordered as follows:

1. It is hereby declared that the Court has no jurisdiction to try this claim.
2. Claim No. ANUHCV2023/0209 which was commenced by Originating Motion filed herein on 8<sup>th</sup> June 2023 is struck out in its entirety.
3. No order as to costs.

[73] I wish to take this opportunity to thank counsel for their helpful submissions and numerous authorities provided. Although I did not find it necessary to refer to all of the authorities, they were all taken into consideration.

**Justice Rene Williams  
High Court Judge**

**By the Court**

**Registrar**