

36/85

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER of the Interpretation of the Constitution of Trinidad and Tobago and in particular Section 136

B E T W E E N :

10 PETER SOOKOO  
(an infant by Harry Sookoo  
his father and next friend) and Appellants  
HARRY SOOKOO (Plaintiffs)

- and -

THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO Respondent  
(Defendant)

CASE FOR THE APPELLANTS

RECORD

1.	This is an Appeal by final leave for appeal granted to the above-named Appellants by the Court of Appeal of Trinidad and Tobago on 7th August 1985 against the allowing with costs by the said Court of Appeal (des Iles, Warner and Narine JJ.A.) of the Respondent's appeal to such Court against an order of the High Court of Trinidad and Tobago (Deyalsingh J.) dated 22nd July 1985 in which the said judge on the hearing of an Originating Summons dated 16th July 1985 by the Appellants against the Respondent made certain declarations the effect of which were (1) that the President of Trinidad and Tobago had no power or authority to allow Kelsick J. to continue in office after attaining the age of 65 years on 15th July 1985 to perform the functions of Chief Justice; (2) that the discretion (if any) of the President to allow a judge (including a Chief Justice) to continue in office after attaining the age of 65 years was limited to	p.113, 114  p.112  p.36, 16 - p.37, 7 pp. 4-6
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RECORD

such functions only as enabled such judge to deliver judgment or to do any other thing in relation to proceedings which were commenced before him before he attained such age and (3) that Kelsick J. could not validly perform the functions of Chief Justice after attaining the said age; and that the present Respondent do pay to the present Appellants their taxed costs.

2. The present proceedings arose as a result of three matters, namely : 10

(1) on 15th July 1985 the incumbent Chief Justice attained the age of 65 years;

p. 1

(2) on 28th June 1985 the said Chief Justice wrote to the President advising him to grant to himself (the Chief Justice) permission to continue in office until December 21, 1985, which is the end of the short term, so as to enable him to deliver judgment and to do any other thing in relation to proceedings that were commenced before him prior to his attaining the retiring age. To this the President replied by letter of the same date stating that pursuant to Section 136(2) of the Constitution he thereby permitted the Chief Justice to remain in office as such until the said date, that being the period necessary to enable him to deliver judgment or do anything in relation to proceedings that were commenced before him before July 15. 1985; and 20

p. 2

(3) the Constitution of Trinidad and Tobago provides by Section 136(1) that holders of the office of judge (amongst others) shall vacate office on attaining the age of sixty-five years and sub-section (2) thereof provides: 30

"Notwithstanding that he has attained the age which he is required by or under sub-section (1) to vacate his office, a Judge may, with the permission of the President, acting in accordance with the advice of the Chief Justice, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings which were commenced before him before he attained that age. "

The terms of the above and other relevant provisions of the Constitution and related provisions of preceding Constitutions to which the Court of Appeal referred are appended at the end of this Case.

10 3. The contention of the Appellants in the proceedings below was and now is in short that Section 136(1) and (2) requires all judges to retire at the age of 65 years but that the President "may" (which it is submitted constitutionally means "must") if so advised by the Chief Justice permit a judge to continue in office as a judge but not as Chief Justice to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained retirement age and for no other purpose such continuation to be only for  
20 such limited period as is reasonably necessary to achieve that end.

30 4. In his judgment Deyalsingh J. referred to the fact that the Plaintiffs proposed to commence an action in the High Court by Writ of Summons against the Attorney General and the Minister of Health and that as set out in an affidavit of the Plaintiffs' solicitor an issue arose which in the absence of the appointment of a new Chief Justice of Trinidad and Tobago ought to be resolved before the Plaintiffs commence their action. The facts leading up to the application were not in dispute and he referred to the attainment by Kelsick C.J. of the age of 65 years on 15th July 1985 and the letters referred to above between the Chief Justice and the President. He defined the issue as being whether  
40 Kelsick J. could continue in office as Chief Justice after attaining the age of 65 years performing all the functions and duties of that office or whether he could continue in office (whatever the designation) but limited therein only to completing Court matters already commenced before him. The answer to such question lay, he said, in the construction of Section 136(1) and (2) of the Constitution. The Constitution was not to be construed  
50 in any narrow pedantic sense and a broad liberal spirit should inspire those whose duty it was to interpret it. On behalf of the Defendant it had been submitted that the Chief Justice continued in office as

p.24, 2-26

p.24, 27  
p.24, 29-30

p.25

p.26, 7-12

p.26, 16-33

p.27, 33

p.28, 16-28

RECORD

	Chief Justice performing all the functions and duties attached to the office of Chief Justice during the period of time that he remained in office with the permission of the President after attaining the age of 65 years. That period was predicated upon how long it would take to deliver judgment or do any other thing in relation to proceedings that were commenced before the Chief Justice before he attained the age of 65 years. The seeming limitation of functions and duties referred to the duration of time he could continue in office as Chief Justice and not to the functions and duties he was able to perform during such extension. On behalf of the Plaintiffs it had been submitted that the sub-section enabled a Chief Justice to stay on after he attained 65 years of age but only to complete court work commenced before he had attained that age and not as Chief Justice performing all the functions and duties of that office. He considered that the officers who were required by Section 136(1) to vacate office on attaining 65 years of age were a judge (see Section 106(1); the Auditor-General (see Section 136(12)); and the Director of Public Prosecutions, Chief Parliamentary Counsel and the Solicitor-General (see Section 136(13)). Sub-section (2) made exception in the case of "a Judge". It could not be that a Chief Justice could commence new court work during the continuation period. He examined the wording of sub-sections (1) and (2). He came to the conclusion that the submission on behalf of the Plaintiff presented less or no difficulty. It seemed clear that the intention of the Legislature was directed to the judge continuing in office as a judge sitting in court and doing court work. The judge therefore continued as a judge of the High Court or a Judge of Appeal and not as anything else. He commented that both counsel had proceeded on the basis that Section 136(2) was applicable to the office of Chief Justice. It seemed to him at first sight that an arguable case could be made out for the proposition that the section did not apply to such office but this issue was not before the Court for determination.	10
p.28, 28 - p.29, 3		20
p.29, 10		30
p.29, 22		40
p.31, 12 - p.32, 26 p.32, 27		50
p.32, 30		
p.32, 33		
p.33, 5-17		
p.33, 18	5. The learned judge considered it necessary to add a final word about the construction of sub-section (2). A judge was expected when approaching retirement to so order his court calendar as to leave nothing outstanding by	

	the time he attained 65 years of age. The constitution did not contemplate any substantial period of continuation in office for the effect of any such continuation was self-defeating in that while the judge stayed on to complete outstanding court work the sittings of the court were affected because no new appointments to the court could be made. In all but the very most exceptional of cases the extension should not in his view exceed a period of two months.	<u>RECORD</u> p.34, 11
10		pp.34, 25-31
	6. In the Court of Appeal the President (des Iles J.A.) set out the history of the matter the relief being sought and the grounds of appeal. He said that the main thrust of the Defendant's case was to the effect that if the words of Section 136(1) and (2) were given their natural meaning it would be found that the sections applied to the office of Chief Justice and that the President had the power and authority to allow and permit the Chief Justice to continue in such office after attaining the age of 65 years. Furthermore if the words of Section 136(1) and (2) were given their ordinary natural meaning, absurdity would be avoided. The Defendant had submitted that there were three offices in the Judiciary to which appointments were made namely (1) Puisne Judge; (2) Justice of Appeal and (3) Chief Justice and that there were two statuses therein being (1) Judge of the High Court and (2) Judge of the Court of Appeal. He set out other arguments put forward on behalf of the Defendant and continued that it had been submitted that if the provisions were read carefully and the words given their ordinary meaning the limitation contained therein was one purely of time and not of function and as such the Chief Justice or any Justice of Appeal or Puisne Judge could continue to perform all his functions including the hearing of new matters during the period of the extension of his term of office giving priority to the conclusion of the part-heard matters which was the reason for the extension in the first place. It had been submitted that the concept of extended period and the use of the expression "continue in office" and similar expressions were not new and that as far back as 1959 the idea found expression in the Trinidad and Tobago (Constitution)	pp.58, 25 - 62, 26
20		p.62, 27
		p.63, 20
30		p.64, 9
		p.64, 17 - p.66, 14
40		p.66, 15
50		p.66, 22

RECORD

p.67, 13

(Amendment) Order-in-Council 1959 and again in the Trinidad and Tobago (Constitution) Order-in-Council 1961. Most significantly however in 1962 the Trinidad and Tobago (Constitution) Order-in-Council (1962) by Section 76(2) in relation to a Puisne Judge and Section 80(2) in relation to a Judge of the Court of Appeal had provided that such a judge might with permission of the Governor General acting in accordance with the advice of the Chief Justice continue in office for such period after attaining the age at which he was required to vacate his office as may be necessary to enable him to deliver judgment or do any other thing in relation to proceedings that were commenced before him before he attained that age. He considered that a change in language between the 1959 and 1961 Constitutions ("continue in office for the purpose of giving judgment....") and the 1962 and 1976 Constitutions ("continue in office for such period as may be necessary to enable him to give judgement....") was a clear indication by the Legislature of its intention to remove a limitation on the function of the judge during the extended period. That change of wording remained to the present day. He referred to "extended period" provisions in Constitutions of some Commonwealth Caribbean countries and Guyana which had been submitted to the Court. He referred to the submission on behalf of the Plaintiffs and to Counsel's arguments that there was a distinction between the office of Judge of the Court of Appeal and Justice of Appeal and between a Judge of the High Court and a Puisne Judge; that the Chief Justice was a Judge of the High Court but not a Puisne Judge; that on attaining the age of 65 a judge ceased to be a judge but was permitted by Section 136(2) to continue as a judge to complete matters that he had started before the age of 65; that it would be invidious and contrary to the rules of natural justice for a Chief Justice to be permitted to advise the President as to the extension of his office as Chief Justice as distinct from advising the President as to whether he should be given an extended period as a judge to enable him to complete work already started; and that the wider construction could give rise to the risk of abuse which was to be avoided. The learned President then held that in the exercise of his powers under the section, the President had no discretion and must act on the advice

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p.67, 22

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pp.67, 31 -  
68, 18

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p.68, 24 et seq

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p.70, 14

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p.70, 22

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pp.70, 32 -  
71, 5

p.71, 28

of the Chief Justice by virtue of Section 80(1)(c) of the Constitution. He further held that whilst the Chief Justice may engage in hearing new matters in cases of extreme urgency, having regard to the underlying purpose of the extended period his prime concern and duty must be the conclusion of part-heard matters. He considered that the construction which he placed on the relevant sections was totally in keeping with the public interest which Parliament in enacting them had to subserve. He noted that two months of the extended period granted constituted the Long Court Vacation. The learned President went on to comment on certain passages in the judgment of the trial Judge which he regarded as infelicitous.

RECORD

p.71, 30

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p.71, 33

p.72, 1

pp.73-74

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7. In their concurring judgments Warner J.A. and Narine J.A. dealt with the matter similarly and came to similar conclusions.

pp.76-99;  
pp.100-111

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8. It is submitted on behalf of the Appellant that upon its true construction Section 136(2) of the Constitution does not permit of the extension of the office of Chief Justice but only of the office of Judge and that in any event both the purpose of the extension and the limits of the judge's jurisdiction are the same, that is to say to enable the judge to complete matters already partly dealt with by him before attaining the retirement age.

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9. It is submitted that if the words:

"to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained [retirement] age "

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merely are the determinant of the length of continuation which "may be necessary" and if a Chief Justice is enabled under a subsection to "continue in office for such period" as Chief Justice, the incumbent remains in such office for such period for all purposes. It would follow that a Chief Justice during such extension after retiring age would continue to retain his constitutional position under Section 110(2) of the Constitution as Chairman of the Judicial and

RECORD

Legal Service Commission as well as under Section 11(1) of the Constitution (appointing the President of the Tribunal to review cases of persons detained in an emergency); under Section 36(1)(d) of the Constitution relating to investigation of complaints against the President pursuant to a request of the House of Representatives; administering the oath or appointing another judge to administer the oath to the President before the latter enters upon the duties of his office pursuant to Section 37(1) of the Constitution and being consulted as to the appointment of the Judge who shall chair a Public Service Appeal Board under Section 130 of the Constitution. In addition a Chief Justice has numerous important administrative functions under the Supreme Court of Judicature Act 1962, the Summary Courts Act and other legislation.

10. It is to be noted that the Chief Justice is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition (Section 102 of the Constitution) whereas other judges are appointed by the President acting in accordance with the advice of the Judicial and Legal Service Commission (Section 104(1) of the Constitution).

11. If the extension in office of a Chief Justice is an extension in office as Chief Justice this could have the effect of increasing the length of tenure of his office for pension purposes and of reducing the tenure of his successor's office for such purpose. It is not suggested that Kelsick C.J. was motivated by any self interest whatsoever in advising the President as he did but it is submitted that it is undesirably invidious for a Chief Justice to be placed in such position that members of the public might think self interest could enter into advice given by him to the President and any such reading of the Constitutional provision ought to be avoided if reasonably possible.

12. It is further submitted that learned judges in the Court of Appeal misunderstood the significance in the changes in the relevant provisions of the Constitutions of Trinidad and Tobago and the significance of relevant provisions in other Constitutions. Under Section 64A(1) inserted into the 1950 Constitution by the Trinidad and Tobago (Constitution) (Amendment) Order-in-Council 1959 the Governor had a personal discretion

to permit the Chief Justice or a Puisne Judge who attained retiring age "to continue in office for the purpose of giving judgment or otherwise in relation to any proceeding heard by him before he attained that age". Section 66(1) of the Trinidad and Tobago (Constitution) Order-in-Council 1961 provided that "a Judge of the Supreme Court shall vacate his office when he attains the age of sixty-two years: provided that the Governor may permit a judge who has attained that age to continue in office for the purpose of giving judgment or otherwise in relation to any proceeding heard by him before he attained that age". The 1962 Constitution made separate provision for the office of Puisne Judges (Section 76) and of Judges of the Court of Appeal of whom the Chief Justice was one (Section 78). The age of retirement for Puisne Judges was 62 years and for Judges of the Court of Appeal 65 years. A separate provision was made by Sections 76(2) and 80(2) for the extension of the office of Puisne Judges and Judges of the Court of Appeal. In each case the extension was with the permission of the Governor-General acting in accordance with the advice of the Chief Justice to "continue in office for such period after attaining [the age of retirement] as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age". It is submitted that the words "for such period...as may be necessary to enable him to deliver judgment..." were inserted for the purpose of indicating :

- (i) that the period of extension was to be for such limited period as was reasonably necessary to carry out the only purpose of the extension; and
- (ii) that the sole purpose of the extension was to enable delivery of judgment or the doing of other things in relation to proceedings that were commenced before retirement age and for no other purpose.

On behalf of the Appellant, emphasis is placed on the fact that no provision was made in the 1962 Constitution for the extension of the

office of Chief Justice other than as a person holding the office of Judge of the Court of Appeal. In view of the Constitutional significance of the office of Chief Justice express provision for the extension of that office would have appeared if the intention was that the extension provision was to apply to such office.

13. Before the enactment of the 1976 Constitution there was a Constitution Commission which presented a Report. The only reference therein to age of retirement of judges was that the Commission saw no reason why the retiring age of both High Court judges and Justices of Appeal should not be the same and they therefore recommended a retiring age for all judges of 65 years. In the drafting of the 1976 Constitution, the provisions as to tenure of office of judges were unified and dealt with collectively in Section 136(1) and (2). Accordingly, it is submitted that the history of the present provision in the Constitution shows an intention and a continued intention that the Chief Justice for the purposes of extension of judicial office is to be treated as a Judge of Appeal. Section 136(13) provides that sub-sections (1) to (6) shall apply "to the office of judge". By Section 3(1) "Judge" includes the Chief Justice, a Judge of Appeal and a Puisne Judge.

14. The Appellant accordingly submits that the Court of Appeal were wrong in holding that the President was entitled to extend the office of a Chief Justice other than as a "Judge" for as long as was reasonably necessary to enable him to complete the hearing of matters upon which he had already embarked before attaining the age of 65 years but had not completed and that the Court of Appeal were further wrong in making declarations inconsistent therewith.

15. The Appellants accordingly submit that the judgment of the Court of Appeal of Trinidad and Tobago is wrong in law and should be set aside and that the declarations made by the Honourable Mr. Justice Deyalsingh should be restored and that the Appellants should be awarded the costs of this appeal and their costs in the courts below for the following among other

R E A S O N S

RECORD

- (1) BECAUSE the power of extension of office in Section 136(2) of the Constitution of Trinidad and Tobago does not permit of the extension of the office of a Chief Justice as Chief Justice after reaching the statutory retiring age.
- 10 (2) BECAUSE Section 136(2) of the Constitution of Trinidad and Tobago does not permit the extension of office of a Judge otherwise than to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained the age at which he is required to retire by Section 136(1) of the said Constitution.
- 20 (3) BECAUSE the judgment of the Court of Appeal was wrong and ought to be set aside.

D.J. TURNER-SAMUELS

RAMESH L. MAHARAJ

A P P E N D I X

containing extracts from:

- A. The Trinidad and Tobago (Constitution) (Amendment) Order in Council 1959;
- B. The Trinidad and Tobago (Constitution) Order in Council 1961;
- C. The Trinidad and Tobago (Constitution) Order in Council 1962;
- D. Act No.4 of 1976 (the 1976 Constitution)

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A. THE TRINIDAD AND TOBAGO (CONSTITUTION)  
(AMENDMENT) ORDER IN COUNCIL 1959

Citation,  
construct-  
tion and  
commence-  
ment

1. (1) This Order may be cited as the Trinidad and Tobago (Constitution) (Amendment) Order in Council, 1959, and shall be construed as one with the Trinidad and Tobago (Constitution) Order in Council, 1950 (b), as amended by the Trinidad and Tobago (Constitution) (Amendment) Order in Council, 1956 (c), which Order, as so amended, is hereinafter referred to as "the principal Order".

(2) .....

Revocation  
and  
replacement  
of sections  
64 to 66G  
of the  
principal  
Order

14. Sections 64 to 66G of the principal Order are revoked and replaced as follows -

"PART VI  
The Judicature

Judges of  
the Supreme  
Court

64. (1) The Chief Justice of the Supreme Court of the Territory shall be a person qualified for appointment under subsection (3) of this section and shall be appointed by the Governor, by Instrument under the Public Seal, after consultation with the Premier.

(2) Judges of the Supreme Court other than the Chief Justice (hereafter in this Part referred

to as Puisne Judges) shall be persons qualified as aforesaid and shall be appointed by the Governor, by Instrument under the Public Seal, after consultation with the Judicial and Legal Service Commission.

(3) The qualifications for appointment as a Judge of the Supreme Court shall be such as may be prescribed by any law for the time being in force in the Territory:

Provided that a person who has been appointed as a Judge of the Supreme Court may continue in office notwithstanding any subsequent variation in the qualifications so prescribed.

Tenure of office of Judges 64A. (1) Subject to the following provisions of this section, the Chief Justice and each Puisne Judge shall hold office until he attains the age of sixty-two years:

Provided that the Governor may permit the Chief Justice or a Puisne Judge who has attained that age to continue in office for the purpose of giving judgment or otherwise in relation to any proceeding heard by him before he attained that age.

(2) .....

B. THE TRINIDAD AND TOBAGO (CONSTITUTION)  
ORDER IN COUNCIL 1961

PART V - THE SUPREME COURT

Constitution of Supreme Court 65. (1) There shall be in and for the Territory a Supreme Court having such powers and jurisdiction as may be provided by any law for the time being in force in the Territory.

(2) The judges of the Supreme Court shall be a Chief Justice and such number of Puisne Judges as may be prescribed by any law of the Legislature:

Provided that the office of judge of the Supreme Court shall not, without his consent, be abolished during his continuance in office.

(3) The Chief Justice of the Supreme Court shall be a person qualified for appointment under paragraph (5) of this article and shall be appointed by the Governor, by instrument under the Public Seal, after consultation with the Premier.

(4) The Puisne Judges of the Supreme Court shall be persons qualified as aforesaid and shall be appointed by the Governor, by instrument under the Public Seal, on the recommendation of the Judicial and Legal Service Commission.

(5) The qualifications for appointment as a judge of the Supreme Court shall be such as may be prescribed by any law for the time being in force in the Territory:

Provided that a person who has been appointed as a judge of the Supreme Court may continue in office notwithstanding any subsequent variation in the qualifications so prescribed.

Tenure  
of  
office  
of  
Judges

66. (1) Subject to the following provisions of this article, a judge of the Supreme Court shall vacate his office when he attains the age of sixty-two years:

Provided that the Governor may permit a judge who has attained that age to continue in office for the purpose of giving judgment or otherwise in relation to any proceeding heard by him before he attained that age.

(2) .....

C. THE TRINIDAD AND TOBAGO (CONSTITUTION)  
ORDER IN COUNCIL 1962

CHAPTER VI  
THE JUDICATURE

PART I  
The Supreme Court

Estab- 73. There shall be a Supreme Court of Judicature  
lishment of Supreme Court for Trinidad and Tobago consisting of a High  
Court of Justice (hereinafter referred to as  
"the High Court") and a Court of Appeal with  
such jurisdiction and powers as are conferred  
on those Courts respectively by this Constitution  
or any other law.

The High Court

Consti- 74. (1) (a) The Chief Justice of Trinidad and  
tution of Tobago shall be, ex-officio, a Judge of the  
High High Court.  
Court

(b) The other Judges of the High Court  
shall be such number of Puisne Judges as may be  
prescribed by Parliament.

(2) No office of Judge of the High Court  
shall be abolished while there is a substantive  
holder thereof.

(3) The High Court shall be a superior  
court of record and, save as otherwise provided  
by a Parliament, shall have all the powers of such  
a court, including all such powers as are vested  
in the Supreme Court of Trinidad and Tobago  
immediately before the commencement of this  
Constitution.

Appoint- 75. (1) The Puisne Judges shall be appointed by  
ment of the Governor-General, acting in accordance with  
Puisne the advice of the Judicial and Legal Service  
Judges Commission.

(2) A person shall not be appointed a Puisne  
Judge unless he has such qualifications for  
appointment as may be prescribed by Parliament.

(3) If the office of any Puisne Judge is  
vacant or if any such Judge is for any reason  
unable to perform the functions of his office or  
if the state of business in the High Court so  
requires, the Governor-General, acting in  
accordance with the advice of the Judicial and  
Legal Service Commission, may appoint a person  
qualified for appointment as a Puisne Judge to

be temporarily a Puisne Judge of the High Court:

Provided that a person may be so appointed notwithstanding that he has attained the age of sixty-two years.

(4) Any person appointed under this section to be temporarily a Puisne Judge of the High Court shall hold office until his appointment is revoked by the Governor-General acting in accordance with the advice of the Judicial and Legal Service Commission.

Tenure of Office of Puisne Judges 76. (1) Subject to the provisions of this section a person holding the office of a Puisne Judge shall vacate that office on attaining the age of sixty-two years.

(2) Notwithstanding that he has attained the age at which he is required by the provisions of this section to vacate his office, a person holding the office of a Puisne Judge may, with the permission of the Governor-General, acting in accordance with the advice of the Chief Justice, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) .....

Oaths to be taken by Puisne Judges 77. A Puisne Judge shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and the oath for the due execution of his office set out in the First Schedule of this Constitution.

#### The Court of Appeal

Consti- 78. (1) The Judges of the Court of Appeal shall tution be the Chief Justice, who shall be President of Court of the Court, and such number of Justices of of Appeal Appeal as may be prescribed by Parliament.

(2) No office of Judge of the Court of Appeal shall be abolished while there is a substantive holder thereof.

(3) The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

Appoint-  
ment of  
Judges of  
Court of  
Appeal

79. (1) The Chief Justice shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.

(2) The Justices of Appeal shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(3) A person shall not be appointed a Judge of the Court of Appeal unless he has such qualifications for appointment as may be prescribed by Parliament.

(4) (a) If the office of Chief Justice is vacant or if the person holding that office is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, those functions shall be performed by such one of the Justices of Appeal as may be designated in that behalf by the Governor-General, acting in accordance with the advice of the Prime Minister.

(b) If the office of any Justice of Appeal is vacant or if any such Judge is appointed to act as Chief Justice or is for any reason unable to perform the functions of his office or the state of business in the Court of Appeal so requires, the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission, may appoint a person qualified for appointment as a Judge of the Court of Appeal to be temporarily a Justice of Appeal:

Provided that a person may be so appointed notwithstanding that he has attained the age of sixty-five years.

(5) Any person appointed under this section to be temporarily a Justice of Appeal shall hold office until his appointment is revoked by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.

Tenure  
of office  
of Judges  
of Court  
of Appeal

80. (1) Subject to the provisions of this section, a person holding the office of a Judge of the Court of Appeal shall vacate that office on attaining the age of sixty-five years.

(2) Notwithstanding that he has attained the age at which he is required by the provisions

of this section to vacate his office, a person holding the office of a Judge of the Court of Appeal may, with the permission of the Governor-General, acting in accordance with the advice of the Chief Justice, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) .....

D. ACT NO.4 OF 1976 (THE 1976 CONSTITUTION)

Interpre-  
tation

3. (1) In this Constitution -

.....

"Judge" includes the Chief Justice, a Judge of Appeal and a Puisne Judge;

.....

(4) For the purposes of this Constitution a person shall not be considered to hold an office in the public service by reason only that -

(a) he is in receipt of a pension or other like allowance in respect of public service;

(b) he holds the office of -

(i) President;

(ii) Speaker, President of the Senate, Deputy Speaker or Vice-President of the Senate, Minister, Parliamentary Secretary, member or temporary member of the Senate or member of the House of Representatives;

(iii) Ombudsman or member of the Integrity Commission or member of any other Commission established by this Constitution;

(iv) Judge or member of a Superior Court of Record or any special judicial tribunal established by Act of Parliament or member of the Public Service Appeal Board;

.....  
CHAPTER 3  
THE PRESIDENT  
.....

Procedure  
for removal  
from office

36. (1) The President shall be removed from office where -
- (a) a motion that his removal from office should be investigated by a tribunal is proposed in the House of Representatives;
  - (b) the motion states with full particulars the grounds on which his removal from office is proposed, and is signed by not less than one-third of the total membership of the House of Representatives;
  - (c) the motion is adopted by the vote of not less than two-thirds of the total membership of the Senate and the House of Representatives assembled together;
  - (d) a tribunal consisting of the Chief Justice and four other Judges appointed by him, being as far as practicable the most senior Judges, investigate the complaint and report on the facts to the House of Representatives;
  - (e) the Senate and the House of Representatives assembled together on the summons of the Speaker consider the report and by resolution supported by the votes of not less than two-thirds of the total membership of the Senate and the House of Representatives assembled together declare that he shall be removed from office.
- (2) .....

CHAPTER 5  
EXECUTIVE POWERS

.....

Exercise of President's functions

80. (1) In the exercise of his functions under this Constitution or any other law, the President shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet, except in cases where other provision is made by this Constitution or such other law, and, without prejudice to the generality of this exception, in cases where by this Constitution or such other law he is required to act -

- (a) in his discretion;
- (b) after consultation with any person or authority other than the Cabinet; or
- (c) in accordance with the advice of any person or authority other than the Cabinet.

(2) Where by this Constitution the President is required to act in accordance with the advice of, or after consultation with, any person or authority, the question whether he has in any case so acted shall not be enquired into in any court.

(3) .....

CHAPTER 7  
THE JUDICATURE

PART 1  
The Supreme Court

Establishment of Supreme Court

99. There shall be a Supreme Court of Judicature for Trinidad and Tobago consisting of a High Court of Justice (hereinafter referred to as "the High Court") and a Court of Appeal with such jurisdiction and powers as are conferred on those Courts respectively by this Constitution or any other law.

Constitution of High Court

100. (1) The Judges of the High Court shall be the Chief Justice who shall be ex officio a Judge of that Court, and such number of Puisne Judges as may be prescribed.

(2) The High Court shall be a superior court of record and save as otherwise provided

by Parliament, shall have all the powers of such a court, including all such powers as are vested in the Supreme Court of Trinidad and Tobago immediately before the commencement of this Constitution.

#### The Court of Appeal

Constitution of Court of Appeal

101. (1) The Judges of the Court of Appeal shall be the Chief Justice who shall be the President of the Court of Appeal and such number of Justices of Appeal as may be prescribed.

(2) The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

Appointment of Chief Justice

102. The Chief Justice shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

Acting appointments as Chief Justice

103. Where the office of Chief Justice is vacant or where the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of such office or until the Chief Justice has resumed those functions, as the case may be, those functions shall be performed by such other of the Judges as may be appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition.

#### Appointment of Judges

Appointment of Justices of Appeal and Puisne Judges

104. (1) 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.

(2) Where -

(a) the office of any such Judge is vacant;

(b) any such Judge is for any reason unable to perform the functions of his office;

(c) any such Judge is acting as Chief Justice or a Puisne Judge is acting as a Justice of Appeal; or

(d) the Chief Justice advises the President that the state of business of the

Court of Appeal or the High Court  
so requires,

the President, acting in accordance with the advice of the Judicial and Legal Service Commission, may appoint a person to act in the office of Justice of Appeal or Puisne Judge, as the case may require.

(3) The appointment of any person under subsection (2) to act in the office of Justice of Appeal or Puisne Judge shall continue to have effect until it is revoked by the President, acting in accordance with the advice of the Judicial and Legal Service Commission.

Qualifica-  
tion of  
Judges

105. A person shall not be appointed as a Judge or to act as a Judge unless he has such qualifications for appointment as may be prescribed.

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Part 3  
Judicial and Legal Service Commission

Judicial  
and Legal  
Service  
Commission

110. (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 (hereinafter called "the appointed members") as may be appointed in accordance with sub-section (3).

(3) The appointed members shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition as follows :-

- (a) one, 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 appeal from any such court;

(b) two from among persons with legal qualifications at least one of whom is not in active practice as such, after the President has consulted with such organisations, if any, as he thinks fit.

(4) Subject to section 126(3)(a) an appointed member shall hold office in accordance with section 136.

Appointment  
of Judicial  
officers,  
etc.

111. (1) 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 acting in such offices shall vest in the Judicial and Legal Service Commission.

(2) Before the Judicial and Legal Service Commission makes any appointment to the offices of Solicitor General, Chief Parliamentary Counsel, Director of Public Prosecutions, Registrar General or Chief State Solicitor it shall consult with the Prime Minister.

(3) A person shall not be appointed to any such office if the Prime Minister signifies to the Judicial and Legal Service Commission his objection to the appointment of that person to that office.

(4) This section applies to such public offices as may be prescribed, for appointment to which persons are required to possess legal qualifications.

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## CHAPTER 9 APPOINTMENTS TO AND TENURE OF OFFICE

### PART 2 Public Service Appeal Board

Constitu-  
tion of  
Appeal  
Board

130. (1) There shall be a Public Service Appeal Board (hereinafter referred to as "the Appeal Board") to which appeals shall lie from such decisions against public officers as are specified in section 132.

(2) The Appeal Board shall consist of a Chairman who shall be a Judge, appointed by

the President after consultation with the Chief Justice and two other members appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

(3) .....

### Special Offices

Appoint-  
ments of  
principal  
represent-  
atives of  
Trinidad  
and Tobago

135. (1) The President acting in accordance with the advice of the Prime Minister shall have power to appoint persons to the offices to which this section applies and to remove persons from any such office.

(2) Before tendering any advice for the purposes of this section in relation to any person who holds or is acting in any public office other than an office to which this section applies, the Prime Minister shall consult the appropriate Service Commission.

(3) This section applies to the office of -

(a) Ambassador or High Commissioner ; and

(b) any principal representative of Trinidad and Tobago in any other country.

Tenure of  
special  
offices

136. (1) The holder of an office to which this subsection and subsection (3) to (11) apply (in this section referred to as "the officer") shall vacate his office on attaining the age of sixty-five years or such other age as may be prescribed.

(2) Notwithstanding that he has attained the age at which he is required by or under subsection (1) to vacate his office, a Judge may, with the permission of the President, acting in accordance with the advice of the Chief Justice, continue in office for such period after attaining that age as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(3) Nothing done by the officer shall be invalid by reason only that he has attained the age at which he is required under this section to vacate his office.

(4) The officer shall vacate his office if with his consent, he is appointed a Senator or nominated for election to the House of Representatives.

(5) The salaries and allowances payable to the holders of the offices to which subsection (1) and subsections (3) to (11) apply or an office referred to in subsections (13) to (16) shall be a charge on the Consolidated Fund.

(6) The salary and allowances payable to the holder of any office to which subsection (1) and subsections (3) to (11) apply or an office referred to in subsections (13) to (16) and his other terms of service shall not be altered to his disadvantage after his appointment and for the purposes of this subsection, in so far as the terms of service of any person depend upon the option of that person, the terms for which he opts shall be taken to be more advantageous to him than any other terms for which he might have opted.

(7) The officer may be removed from office only for inability to discharge 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 subsection (10).

(8) A decision that the question of removing the officer from office ought to be investigated may be made at any time -

(a) in the case of the Ombudsman by resolution of the House of Representatives; and

(b) in any other case by the President either on his own initiative or upon the representation of the Prime Minister.

(9) Where a decision is made under subsection (8) that the question of removing the officer from office 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 all of whom shall be selected by the President acting in accordance with the advice of the

Judicial and Legal Service Commission 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; and

(b) the Tribunal shall inquire into the matter and report on the facts to the President and advise the President whether the officer ought to be removed from office on any of the grounds specified in subsection (7).

(10) Where the question of removing the officer from office is referred to a Tribunal appointed under subsection (9) and the Tribunal advises the President that the officer ought to be removed from office, the President shall, by writing signed by him, remove the officer from office.

(11) Where the question of removing the officer from office has been referred to a Tribunal under subsection (9), the President, after consultation with the Judicial and Legal Service Commission, may suspend the officer from performing the functions of his office and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the Tribunal advises the President that the officer ought not to be removed from office.

(12) Subsection (1) and subsections (3) to (11) apply to the office of Auditor General and to such other offices as may be prescribed.

(13) Subsections (1) to (6) apply to the office of Judge.

(14) Subsection (1) and subsections (3) to (6) apply to the office of Director of Public Prosecutions, Chief Parliamentary Counsel and Solicitor General.

(15) Subsections (5) to (11) apply to the office of Ombudsman, a member of the Elections and Boundaries Commission, a member of the Integrity Commission, a member of a Service Commission, a member of the Salaries Review Commission and to such other offices as may be prescribed.

(16) Subsections (5) and (6) apply to the office of President.

No. 37 of 1985

IN THE PRIVY COUNCIL

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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD  
AND TOBAGO

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IN THE MATTER of the Interpretation  
of the Constitution of Trinidad and  
Tobago and in particular Section 136

B E T W E E N :

PETER SOOKOO  
(an infant by Harry  
Sookoo his father  
and next friend) and  
HARRY SOOKOO

Appellants  
(Plaintiffs)

- and -

THE ATTORNEY GENERAL  
OF TRINIDAD AND TOBAGO Respondent  
(Defendant)

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CASE FOR THE APPELLANTS

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London, EC3A 5AL