

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 37 of 1985

O N A P P E A L
FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

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

- and -

10 THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Respondent

CASE FOR THE RESPONDENT

Record

1. This is an appeal from the judgement of the Court of Appeal of Trinidad and Tobago (des Iles, Warner and Narine J.J.A.) dated 7th August 1985 allowing the Respondent's appeal from the judgement and order of the High Court of Justice (Deyalsingh J.) dated 22nd July 1985. The learned Judge had declared that:

"(1) His Excellency, the President of Trinidad and Tobago has no power and/or authority to allow Kelsick J. to continue in office after attaining the age of 65 years on the 15th July, 1985 to

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perform the function of Chief Justice of the Supreme Court of Trinidad and Tobago.

- (2) The discretion (if any) of His Excellency the President to allow a judge (including a Chief Justice) to continue in office after attaining the age of 65 years is limited to such functions only as enables such judge to deliver judgement or to do any other thing in relation to the proceedings that were commenced before him before he attained the age of retirement.

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ll. 1-7

- (3) Kelsick J. cannot validly perform the functions of Chief Justice after attaining the retirement age of 65 years. He may continue in office 'to deliver judgement or to any other thing in relation to proceedings that were commenced before him before he attained the age of 65 years.'"
- (4) The learned Judge also ordered that costs be taxed and paid by the [Respondent] to the [Appellant].

2. The Court of Appeal effectively reversed the effect of each declaration made by the learned Judge in holding unanimously that:

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Upon a true construction of Section 136(1) and Section 136(2) of the Constitution of Trinidad and Tobago

1. His Excellency the President of Trinidad and Tobago Mr Ellis Clarke has the power and/or authority to permit the Honourable Mr Justice Cecil Kelsick to continue in office as Chief Justice after attaining the age of sixty-five on the 15th day of July, 1985 to perform the

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functions of Chief Justice of the Supreme Court of Trinidad and Tobago.

10 2. The power of His Excellency the President to permit a Judge which expression includes the Chief Justice to continue in office after attaining the age of 65 is not limited to enabling a Judge to deliver judgment or to do any other thing in relation to proceedings commenced before him before he attained that age. His Excellency the President does not act in his discretion in this regard.

3. The Honourable Mr Justice Kelsick continues in the office of Chief Justice of Trinidad and Tobago despite having attained the retiring age and he can validly perform the functions of Chief Justice of Trinidad and Tobago.

The Court of Appeal accordingly allowed the appeal with costs in the Court of Appeal and in the Court below.

20 3. The principal issue in this Appeal concerns the construction of Sections 136(1) and 136(2) of the Constitution of Trinidad and Tobago ("the Constitution") by which:

136 (1) The holder of an office to which this subsection and subsections (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.

30 (2) Notwithstanding that he has attained the age at which he is required by or under subsection (1) to vacate his office, a Judge

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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 judgement or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

4. The Constitution also contains the following relevant provisions:

- 3(1) In this Constitution ——— 10
.....
"Judge" includes the Chief Justice, a Judge of Appeal and a Puisne Judge;
- 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.
- 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. 20
- 106(1) Subject to Section 104(3) a judge shall hold office in accordance with Sections 136 and 137.
- 136(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.
- 136(13) Subsections (1) to (6) apply to the office of Judge.

5. By originating summons dated 16th July 1985 the Appellants made an application for the Court to determine the following questions:-

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"(1) Whether upon the true construction of Section 136(1) and (2) of the Constitution of Trinidad and Tobago contained in the Schedule to the Constitution of the Republic of Trinidad and Tobago Act Ch:1:01 of the Laws of Trinidad and Tobago (hereinafter referred to as "the Constitution"). His Excellency the President of Trinidad and Tobago Mr Ellis Clarke has the power and/or authority to allow the Hon. Mr Cecil Kelsick to continue in office after attaining the age of sixty-five on the 15th day of July, 1985 to perform the functions of Chief Justice of Supreme Court of Trinidad and Tobago.

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(2) Whether upon the true construction of Sections 136(1) and (2) of the Constitution the discretion of His Excellency the President of Trinidad and Tobago Mr Ellis Clarke to allow a judge of the Supreme Court which includes the Chief Justice by virtue of Section 3 of the Constitution to continue in office after attaining his retiring age is limited to enabling the Judge to deliver judgement or to do any other thing in relation to proceedings that were commenced before him before he attained the retiring age.

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(3) Whether upon the true construction of Sections 136(1) and 136(2) the Hon. Mr Cecil Kilsick if he remains in the office of Chief Justice of Trinidad and Tobago after he attains the retiring age, can validly perform the functions of Chief Justice of Trinidad and Tobago."

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p. 23-37 6. The originating summons was heard by Deyalsingh J. on 18th July 1985 and he delivered judgement on 22nd July 1985. The learned Judge summarised the undisputed facts as follows:

p. 24 " (1) C.A. Kelsick, Chief Justice of Trinidad and
11. 29-34 Tobago attained the age of 65 years on 15th July, 1985. I will, with no disrespect intended, refer to him hereafter as Kelsick J. since whatever the findings of the Court, he remains at the present time a Judge of the Supreme Court. He wrote the President of the Republic of Trinidad and Tobago on the 28th June, 1985 as follows:-

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' June 28, 1985.

p. 25 His Excellency Mr. Ellis Clarke, T.C.,
11. 1-35 President,
President's House,
ST. ANN'S.

Your Excellency,

I will attain the retiring age of 65 on 1985. There are several matters on which I have adjudicated that are part heard or in which judgment has been reserved.

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Under section 136(2) of the Constitution, I advise Your Excellency to grant me permission to continue in office until December 21, 1985 which is the end of the short term, so as to enable me to deliver judgment and to do any other thing in relation to proceedings that were commenced before me prior to my attaining the retiring age.

Yours sincerely,

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Sgd. C.A. Kelsick,
Chief Justice.'

(2) The President replied on the said 28th June, 1985 thus:

'28th June, 1985.

The Honourable the Chief Justice
Mr. Cecil Kelsick,
Chief Justice's Chambers,
Supreme Court,
Port of Spain.

Dear Chief Justice,

I acknowledge receipt of your letter of June 28, 1985.

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Pursuant to section 136(2) of the Constitution I hereby permit you to continue in office as Chief Justice until December 21, 1985 this being the period necessary to enable you to deliver judgment or to do any other thing in relation to proceedings that were commenced before you before July 15, 1985.

Yours sincerely,

Sgd. Ellis Clarke
President '

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(3) Kelsick J. has since the 16th July, 1985 continued and is still continuing in office as Chief Justice.

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ll. 1-6

(4) The Plaintiff's Solicitor is desirous of filing an action against the Attorney General and the Minister of Health in tort and is uncertain 'as to whether the said Writ of Summons would be valid if it is witnessed by the Honourable Cecil Kelsick as Chief Justice.'

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7. The learned Judge then summarised the construction placed upon section 136(2) for the Respondent and Appellants respectively in these terms:-

"Mr De Labastide submits that Section 136(2) empowers the Chief Justice to continue in office as Chief Justice performing all the functions and duties

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11. 1-3

attached to the office of Chief Justice during the period of time that he remains in office with permission of the President after attaining the age of 65 years and that period of time he says, is predicated upon how long it will take him "to deliver judgement or to do any other thing in relation to proceedings that were commenced before him before he attained the age of 65 years". The seeming limitation of functions and duties spelt out in the words just quoted refers to the duration of time he continues in office as Chief Justice and not to the functions and duties he is to perform after attaining 65 years.

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Mr Maharaj submits that the said quoted words limit the functions and duties of the Chief Justice after he attains 65 years of age. He can stay on he says, but only to complete Court work commenced before he attained 65 years of age and not as Chief Justice performing all the functions and duties attached to that office."

The learned judge decided the question of the construction of s.136(2) thus:

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11. 27-36

"The submissions of Mr Maharaj presents less or no difficulty. Since the material sections of the Constitution are primarily directed to the office of Judge, and the subsection limits the functions and duties during the continuation in office to Court work, it seems the clear intention of the Legislature is directed to the Judge continuing in office as a Judge sitting in Court and doing Court work. The Judge therefore continues as a Judge of the High Court or a Judge of Appeal and not as anything else. Kelsick J. would therefore, in this case continue in office as a Judge of Appeal and not as Chief Justice. This construction brings both parts of the subsection in

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harmony with each other; it disposes of the conflict raised by Mr De Labastide's submission and I hold it to be the construction intended by the Legislature and therefore, the true construction."

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ll. 1-4

Having so determined the point of construction before him, the learned Judge made the declarations as set out in paragraph 1 hereof.

8. The Respondent appealed to the Court of Appeal on the grounds that the learned Judge erred in law in the construction of sections 136(1) and (2) of the Constitution. The judgements of the Court of Appeal, delivered on 7th August 1985, unanimously rejected the construction of Sections 136(1) and (2) of the Constitution which had been advanced by the Appellants and accepted by the learned Judge.

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pp. 58-111

9. Des Iles J.A. summarised the facts, the relevant Constitutional provisions and the arguments (which were substantially the same as had been advanced before the learned Judge) and continued:

"I hold that under Section 136(1) of the Constitution the age at which the Chief Justice vacates his office is that of 65 years. I hold that on the authority of The Composition of Legislation by Dreidger of the Saskatchewan Bar, the effect of the word "notwithstanding" with which Section 136(2) of the Constitution begins is to override the provision in subsection (1) thereof and accordingly that the Chief Justice with the permission of the President acting on the advice of the Chief Justice, not "for the purpose of" as these words do not appear in the Section, but "for the period necessary" to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he

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attained the age of 65 years."

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"I hold that in the exercise of his powers under this Section the President has no discretion and that he must act on the advice of the Chief Justice by virtue of Section 80(1)(c) of the Constitution. I further hold 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. I consider that the construction which I have placed on the relevant sections is totally in keeping with the public interest which Parliament in enacting them intended to subserve."

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Des Iles J.A. then answered the questions raised in the Originating Summons in the form set out in paragraph 2 hereof.

10. In agreeing that the appeal should be allowed and with the order proposed by des Iles J.A., Warner J.A. held that

- (a) the effect of section 136(2) is to postpone the vacating of office normally required at age 65 for such period as is permitted under the said section 136(2).
- (b) on the plain meaning of the words of section 136(2) a Chief Justice who has been permitted to continue in office under that subsection:-
 - (i) continues in the office of Chief Justice and cannot be said to have vacated that office, and
 - (ii) is not limited by the subsection as to the functions which he may perform.

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11. Narine J.A. also agreed that the appeal should be allowed and with the Order proposed by des Iles J.A. He

construed section 136(2) thus:

"There is a restriction as to time. In my opinion the language is plain. The length of time necessary to complete unfinished court work will provide the criterion for determining the period of extension of time for vacating the office."

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11. 5-8

12. In the Respondent's respectful submission the words of sections 136(1) and (2) of the Constitution are clear and unambiguous.

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(1) A Judge is "the holder of an office" within subsection 136(1); see sections 106(1) and 136(13).

(2) The words "a Judge" in subsection 136(2) include the Chief Justice; see section 3(1).

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(3) The office in which the Chief Justice is permitted to continue is the same office which he would but for that permission be required to vacate. A construction which involves some unspecified change of office is erroneous and absurd in the absence of clear words. The doctrines of continuance and regularity apply.

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(4) The appropriate length of time for which the Chief Justice remains in office after attaining the age of 65 is determined by reference to such time "as may be necessary to enable him to deliver judgement or to do any other thing in relation to proceedings that were commenced before him before he attained that age." The determination imposes a limitation of time, not of function.

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(5) While he remains in office the Chief Justice is obliged to continue to perform all the functions and duties of his office which it is necessary or appropriate for him to perform, including such extra-judicial functions and duties as are conferred on him by statute.

(6) In any event the purpose and effect of section 136(3) is to preclude any challenge of anything done by or in the name of the Chief Justice, such as the witnessing of a writ, on the ground that he has attained the age at which he is required under section 136(1) to vacate his office.

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13. The Appellants appeal to the Judicial Committee of the Privy Council as of right pursuant to section 109(1)(c) of the Constitution. The Respondent respectfully submits that the appeal should be dismissed with costs for the following among other

REASONS

1. BECAUSE the learned Judge erred in law in construing section 136(1) and (2) of the Constitution as he did.
2. BECAUSE the Court of Appeal were correct in their construction of sections 136(1) and (2) of their Constitution.
3. BECAUSE on the facts and upon a true and proper construction of the Constitution and particularly section 136 thereof the Chief Justice remains in office as Chief Justice until 21st December 1985.

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M.A. de la Bastide Q.C.

Jonathan Harvie

No. 37 of 1985

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B E T W E E N :

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

HARRY SOOKOO

Appellants

- and -

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

Respondent

CASE FOR THE RESPONDENT

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London. WC2A 3UL

Our ref: R/JA/JA.1-14