[2018] JMCA App 10

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 130/2011

MOTION NO 6/2017

BEFORE: THE HON MISS JUSTICE PHILLIPS JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MR JUSTICE F WILLIAMS JA

BETWEEN	**NORTON WORDWORTH HINDS**	**1ST APPLICANT**
AND	**PHILLIP FEANNY PAULWELL**	**2ND APPLICANT**
AND	**COLIN RANDOLPH CAMPBELL**	**3RD APPLICANT**
AND	**ROBERT DIXON PICKERSGILL**	**4TH APPLICANT**
AND	**PORTIA LUCRETIA SIMPSON-MILLER**	**5TH APPLICANT**
AND	**THE DIRECTOR OF PUBLIC PROSECUTIONS**	**RESPONDENT**

Patrick Atkinson QC, Miss Deborah Martin and Miss Nieoker Junor instructed by Knight, Junor & Samuels for the applicants

Mrs Andrea Martin Swaby for the Crown

8 February and 8 June 2018

PHILLIPS JA

[1] The applicants, by way of a notice of motion, sought conditional leave to appeal to Her Majesty in Council, from the decision of the Court of Appeal delivered on 23 June 2017. The court had dismissed the appeal from the order of Campbell J, who had

directed that evidence taken from the applicants, pursuant to a request for assistance made by the Kingdom of the Netherlands (the Netherlands), under the Mutual Assistance (Criminal Matters) Act (MACMA), should be given in open court, as opposed to chambers, which latter position had been the contention of the applicants before him.

Background

[2] On 23 October 2006, Mr Bruce Golding, the then Leader of the Parliamentary Opposition of Jamaica, which was at that time composed of members of the Jamaica Labour Party (JLP), wrote a letter to the relevant authorities in the Netherlands, requesting information relating to the Dutch Company, Trafigura Beheer BV Amsterdam (Trafigura) and its political donations to the People's National Party (PNP). This request was made since Trafigura had made payments of €466,000.00 into the account of CCOC Association, a Jamaican company of which the 3rd applicant was a principal and also a signatory to that account. It was alleged by the JLP, that these payments represented an attempt to influence the Jamaican Government's decision to award commercial contracts to Trafigura to continue lifting oil for the Government of Jamaica. The PNP had at all times maintained that those payments represented a political contribution, "with no strings attached". However, Trafigura had claimed that it had a commercial agreement with CCOC Association and payments were made under that agreement.

[3] Various letters of request were sent by the Dutch Central Authority to the Central Authority in Jamaica, which under MACMA, is the Director of Public Prosecutions (the

respondent), but little information was obtained. Accordingly, the Dutch Central Authority sent a letter to the respondent requesting that the applicants be summoned before a judge of the Supreme Court or a Parish Court Judge to answer various questions.

[4] On 11 November 2010, the respondent filed a fixed date claim form and obtained an order *ex parte* for the applicants to appear before a judge in the Supreme Court to give evidence on oath in answer to the questions posed in a letter of request from the Dutch Central Authority. Before the matter came on for hearing, however, the applicants filed a constitutional motion seeking varied reliefs including a declaration that taking evidence in open court would be in breach of their constitutional rights. The applicants had sought a stay of the matter before Campbell J which he refused. He also made an order refusing an application for evidence to be adduced in chambers.

The decision of the judge below

[5] In essence, Campbell J concluded that "the open justice system having been nurtured in the common law, has now been enshrined and guaranteed by section 16(3) of the [Constitution of Jamaica (the Constitution)]". He stated that section 16(4) of the Constitution recognised that the principle was not absolute, but indicated that none of the exceptions set out in that subsection had been relied on by the applicants before him. He was of the view that the issue as to whether the hearing should be conducted in public, or held in private, was a matter for his discretion. He stated that the nature of the matter was important, as it concerned a criminal investigation of alleged bribery of Jamaican public officials. The witnesses, he noted, were public officials, "four of whom

have had their hands on the principal instrument of policy and constitute persons who along with others are charged with the general direction and control of the government of Jamaica". So he posed the question, "why should they not be required to answer in open court, a court which provides access to the people they are sworn to serve?"

Other proceedings

[6] This court granted a stay of the hearing before Campbell J. The Full Court, in the constitutional proceeding, rejected the applicants' claims, specifically their contention that the judge's decision to conduct the MACMA hearing in open court was in breach of their constitutionally guaranteed right to due process and a fair hearing. Nothing happened in the hearing before Campbell J for some time until the respondent filed an application to strike out the appeal for want of prosecution, or in the alternative to fix a date for the hearing of the appeal. As other issues on appeal before this court had been withdrawn, and the application to strike out the appeal had been dismissed, the applicants then sought this court's determination of the single issue which arose on the appeal, namely, whether the judge's ruling that the applicants should be examined in open court was correct.

The decision of this court

[7] In paragraph [58] of the judgment of this court, Morrison P speaking on behalf of the court, stated that the general rule prescribed by section 16(3) of the Constitution meant that all proceedings of every court **and** proceedings generally, whether of a court or of some other authority, for the determination of the existence or extent of a person's civil rights, or obligations, must generally be held in public. He stated that the

definition of the word 'proceedings' was wide enough to bring MACMA proceedings within the ambit of section 16(3) of the Constitution. In any event, there were, he pointed out, several references to the word 'proceedings' in section 20 of MACMA. He referred to the qualifications set out in section 16(4) of the Constitution, and posed the question as to whether any matter falling outside of that provision must necessarily be held in open court. He quoted the dicta in **William Clarke v The Bank of Nova Scotia Jamaica Limited** [2013] JMCA App 9, where this court found that "the court may depart from the strictures of a public hearing where in a particular case, economy, and efficiency so dictate". Morrison P observed that it is not the nature of the proceedings which may modify the principle of open justice, but it was a factor which may qualify its application in a particular case. It is therefore a matter of discretion, in every case, as to whether the court should exclude the operation of the principle of open justice.

[8] At paragraph [67], Morrison P said this:

> "Against this extended background, it seems to me to be possible to draw at least the following conclusions as regards the open justice principle for the purposes of this appeal. First, the fundamental rule of the common law, which is also enshrined in section 16(3) of the Constitution, is that all proceedings of every court should be held in public. The rule applies equally to proceedings conducted in chambers, in respect of which, save in cases in which there are compelling reasons for doing otherwise, there should generally be public access to, and information available as to what occurred at, such hearings. This requirement may be regarded as a material aspect of the rule of law, in that it secures to the public a guarantee of impartial and even-handed justice, conducted in full view of the public and open to comment from the press. Second, both at common law

> and under section 16(4) of the Constitution, the court has a limited discretion to exclude members of the public from its hearings as an exception to the general rule. Third, while section 16(4) of the Constitution sets out a set of circumstances in which the court may exclude members of the public, the court's discretion is wider than this and, in a proper case, it may be exercised taking into account matters relating to the nature of the proceedings and the type of function conferred upon the court in the particular proceedings. And fourth, while the decision whether or not to exclude the public will in any case ultimately be one for the court, it will usually be helpful, even if only as a counsel of prudence, for the party seeking to justify such exclusion to provide the court with some kind of material to justify a departure from the fundamental principle of open justice."

[9] The court would not accept that the learned judge in the court below had no discretion. Open justice was the norm, although there were exceptions recognised in the Constitution and in the common law. The court acknowledged that there are no regulations set out in MACMA, and found that it is therefore a question of discretion for the judge whether proceedings under MACMA should be held in public. This court commented that it ought not to interfere with the exercise of that discretion unless the court was of the view that the decision of the judge was so aberrant that no other court would have acted in that way, in keeping with the principles enunciated in **Hadmor Productions Ltd and Others v Hamilton and Another** [1983] 1 AC 191.

[10] In fine, this court found that: (i) in general, proceedings under section 20 of MACMA were subject to the principle of open justice, as formulated at common law and as captured in section 16(3) of the Constitution; (ii) the principle is however subject to those exceptions set out in section 16(4) of the Constitution; (iii) the principle is also

subject to such exceptions where the general rule would frustrate or render impracticable the administration of justice, or would damage some other public or private interest; (iv) it is a matter in each case for the judge to exercise his discretion to determine whether the proceedings should be conducted in public or private; and (v) in the instant case, the applicants had failed to demonstrate that in ordering that the evidence should be given in open court, the exercise of the learned judge's discretion had been so flawed that the Court of Appeal ought to interfere.

The application for leave to appeal to Her Majesty in Council

[11] The notice of motion filed 6 July 2017, and amended and filed 12 February 2018, sought the following reliefs:

> "1. That leave may be granted to the [Applicants] pursuant to Sections [sic] 110(1)(c) of the Constitution of Jamaica, to Appeal to Her Majesty in Council from the decision of this Honourable Court of Appeal in this matter delivered on June 23, 2017.
>
> 2. Leave is sought by the [Applicants] to Appeal to Her Majesty in Council as to WHETHER Section 16(3) of the Constitution of Jamaica was incorrectly interpreted to the prejudice of the [Applicants] in describing the provisions of Section 20 of the Mutual Assistance (Criminal Matters) Act as 'Proceedings' under section 16(3) of the Constitution of Jamaica and thereby compelling the [Applicants] to give testimony publicly.
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> 3. In the alternative, the [Applicants] urge that leave may be granted to the [Applicants] pursuant to Section 110(2)(a) because the question involved is one of great public importance in that it concerns the Mutual Assistance (Criminal Matters) Act (MACMA) which is novel legislation and has no regulations as to the taking of the evidence or the procedure to be

> used. In fact, the Act contains unusual provisions allocating functions to the Central Authority who is also the Director of Public Prosecutions of Jamaica, which functions are usually those performed by Supreme Court Judges. The question is whether a citizen can be compelled to give a witness statement in public under this legislation." (Underlined as in original)

[12] The notice was supported by an affidavit of Phillip Paulwell, the 2nd applicant, filed on 6 July 2017, on behalf of the applicants. In his affidavit, Mr Paulwell rehearsed the history of the matter and contended that, as a result of this court's order, the applicants will be mandated to answer the questions posed which include allegations of bribery of public officials, publicly, although the respondent had claimed that the questions were solely for the benefit of a foreign country's investigation.

[13] On 19 September 2017, the respondent filed a "Notice of Opposition For [sic] Leave To Appeal to Her Majesty in Council". Crown Counsel relied on four grounds of opposition, which are set out below.

> "1. There lies no appeal as of right in relation to this matter as the subject of the appeal was the ruling by Justice Lennox Campbell that evidence to be taken from the [applicants], pursuant to a request for the assistance by the Kingdom of the Netherlands (the Netherlands) under the *Mutual Assistance (criminal Matters) Act* 1995, should be given in open court.
>
> 2. The genesis of this appeal surrounds this procedure adopted by Justice Lennox Campbell. The Constitutionality of the procedure adopted by Justice Campbell was challenged before the Constitutional Court. That court ruled that the procedure adopted by Justice Campbell was not unconstitutional.

3. The [applicants] did not challenge the ruling of the Constitutional Court that the Judge's decision to hear the MACMA proceedings in Open Court did not infringe the [applicants'] right to a fair hearing.

4. Leave to appeal to Her Majesty in Council ought not to be granted as the question decided on this appeal is purely procedural and does not satisfy the requirement of section 110(1)(a) of the Constitution of Jamaica." (Italics as in original)

The submissions on the application for leave to appeal to Her Majesty in Council

[14] Counsel for both parties are commended for their detailed and comprehensive oral and written submissions. Accordingly, in my endeavour to summarise the main arguments posited by counsel for parties, this court means no disrespect to the industry of counsel.

[15] Mr Patrick Atkinson QC, for the applicants, argued that they had an appeal to Her Majesty in Council as of right, pursuant to section 110(1)(c) of the Constitution, since the matter involved a final decision in a civil proceeding on questions as to the interpretation of the Constitution. Mr Atkinson submitted that the proceedings, though administrative, were clearly final, as there were no provisions for appeals in MACMA, relating to the proceedings proposed to be undertaken in the instant case, pursuant to MACMA.

[16] Mr Atkinson further asserted that this court in its decision had interpreted 'proceedings' under section 20 of MACMA, as 'proceedings' as stated under section 16(3) of the Constitution. As a result, an issue was joined in the appeal as to whether

the open justice principle, under section 16(3) of the Constitution, should be interpreted to include 'proceedings' under section 20 of MACMA. Mr Atkinson contended that under section 20 of MACMA, the judge was performing a purely administrative role akin to the certification of photographs for passports and the like, and so proceedings under section 16(3) could not refer to matters under section 20 of MACMA. Mr Atkinson further asserted that in this jurisdiction, when statements are taken they are kept confidential and not exposed to the public. Therefore, Queen's Counsel contended that leave to appeal to Her Majesty in Council ought to be granted since the issues before the Court of Appeal clearly related to the question of the interpretation of section 16(3) of the Constitution.

[17] In response to submissions on section 110(c), Mrs Martin-Swaby asserted that the appeal had engaged the common law principle of 'open justice', and whether this principle was applicable to proceedings under section 20 of MACMA. Mrs Martin Swaby argued that the Court of Appeal's decision to dismiss the appeal, was not based on an interpretation of section 16(3) of the Constitution, as section 16(3) was discussed in so far as it codifies the common law principle of 'open justice'. She submitted further that the issue of whether the MACMA regime was merely a statement taking exercise had been given short shrift by Morrison P in the Court of Appeal decision, and the Full Court had also carefully combed through the provisions of MACMA, and found that the provisions were not unconstitutional. In reliance on **Eric Frater v The Queen** [1981] 1 WLR 1468, Mrs Martin-Swaby submitted that there was no genuinely disputable

question as to the interpretation of the Constitution, and so section 110(1)(c) was inapplicable.

[18] Mr Atkinson submitted in the alternative that under section 110(2)(a) of the Constitution, it was a question of general and public importance as to whether Jamaicans could be compelled to give evidence publicly as opposed to in camera in the light of the fact that:

1. there were no regulations promulgated under MACMA indicating how one should proceed;
2. MACMA is a novel piece of legislation relating to a regime which had not existed in this jurisdiction before. Indeed, the closest similar regime is the process under the Extradition Act where statements taken in relation thereto, in any jurisdiction, were never taken in the glare of the public; and
3. MACMA contains unusual provisions which allocated functions which were usually the domain of the judge, but which now resided in the respondent, the designated central authority, and the nation's chief prosecuting officer, who would be responsible for marshalling the evidence to be transmitted to the foreign state.

[19] With regard to section 110(2)(a) of the Constitution, Mrs Martin-Swaby asserted that the question posed by Mr Atkinson for the applicants was not one of any great general or public importance or otherwise, within the context of section 110(2)(a) of the Constitution. It certainly was not an important legal question, as the authorities suggest it should be, in order to warrant the determination of the Board.

[20] In his reply, Mr Atkinson submitted that the learned judge had based his decision on the interpretation to be accorded section 20 of MACMA, within the context of the interpretation to be accorded to sections 16(3) and (4) of the Constitution. Additionally, he argued that the principle emanating from **Eric Frater v The Queen**, was inapplicable to the instant case as the issues raised therein did not relate to the interpretation of any provisions of the Constitution, and so on the facts of that case, no genuinely disputable question of the interpretation of the Constitution arose.

Discussion and Analysis

[21] Section 110(1) of the Constitution reads as follows:

> "An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases-
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> (a) where the matter in dispute on the appeal to Her Majesty in Council is of the value of one thousand dollars or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the value of one thousand dollars or upwards, final decisions in any civil proceedings;
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> (b) final decisions in proceedings for dissolution or nullity of marriage;

(c) final decisions in any civil, criminal or other proceedings on questions as to the interpretation of this Constitution; and

(d) such other cases as may be prescribed by Parliament."

[22] Under that section there are two relevant considerations: whether the matter being appealed to Her Majesty in Council is a 'final decision'; and whether it relates to questions as to the interpretation of the Constitution.

[23] On the issue as to whether the matter being appealed to Her Majesty in Council is a 'final decision', this court has consistently applied the 'application test' as the appropriate means of distinguishing between interlocutory and final orders for the purposes of section 110(1) of the Constitution (see for example **John Ledgister and Others v Bank of Nova Scotia Jamaica Limited** [2014] JMCA App 1 and **HDX 9000 Inc v Price Waterhouse (A Firm)** [2016] JMCA App 25). Applying the 'application test', the question to be answered in determining whether a decision is final or interlocutory is whether, in the light of the nature of the application before the court, the judge's decision, whichever way it goes, will finally dispose of the matter?

[24] In the instant case, the matter in dispute between the parties was whether MACMA proceedings ought to be held in chambers or open court. There were two options open to Campbell J based on that dispute. The first option was to hold the proceedings in chambers, in private, or secondly, to hold them in open court. Utilising the 'application test', whichever option was chosen by the learned judge, it would have finally disposed of the matter in dispute as to where the proceedings were to have been

held. Accordingly, in my view, the decision would be a 'final decision' as described in section 110(1)(c) of the Constitution.

[25] The second consideration under section 110(1)(c) is whether there is a question as to the interpretation of the Constitution. When endeavouring to ascertain the meaning of any word or phrase in a statute it is important to ask what is the natural or ordinary meaning of the word, or phrase in its context in the statute. It is necessary therefore to examine sections 16(3)-(4) of the Constitution, and section 20 of MACMA, to determine whether the interpretation of section 16(3) of the Constitution was a question on appeal.

[26] With regard to the competing contentions as to whether the question of the interpretation of the Constitution was before this court on appeal, succinctly, it was the applicants' position that it was. The court, Mr Atkinson submitted, had to grapple with whether the taking of evidence from the applicants as ordered by the Central Authority pursuant to the request from the Netherlands under section 20 of MACMA for transmission to them, were 'proceedings' within the context/interpretation of section 16(3) of the Constitution, which shall be in open court. The respondent, on the other hand was contending that the taking of that evidence under section 20 of MACMA was really pursuant to the common law principle of open justice, enshrined in the Constitution, and thus for hearing in open court, but not requiring interpretation of any provisions of the Constitution.

[27] In **Eric Frater v The Queen**, Mr Frater had been in open contempt of the court. He had refused to take his seat when directed by Parnell J to do so, and had been given every opportunity to comply with that order of the court. He had therefore been found guilty of contempt and had been fined, which was upheld by the majority on appeal (although the fine of $500.00 was reduced to $200.00). On further appeal to the Privy Council, Mr Frater had crafted a question for the court under section 110(1)(c) of the Constitution for the true construction of section 20(6)(a) of the Constitution as to whether the words "the nature of the charge" included the particularisation of the charge. Lord Diplock on behalf of the Board, stated at page 1470 that:

> "...it cannot plausibly be suggested that any question of *interpretation* of the plain and simple words 'informed... of the nature of the offence charged' in section 20(6)(a) arose in the instant case." (Italics as in original)

[28] The Board considered that perhaps the question that could have arisen was the application of those plain and simple words to the particular facts of Mr Frater's case. And so the Board warned at page 1470 that:

> "vigilance should be observed to see that claims made by appellants to be entitled to appeal as of right under section 110(1)(c) are not granted unless they do involve a genuinely disputable question of *interpretation* of the Constitution and not one which has merely been contrived for the purpose of obtaining leave to appeal to Her Majesty in Council as of right." (Italics as in original)

[29] I find myself in this case with some doubt as to as to whether there was indeed a question of interpretation of section 16(3) of the Constitution or whether the issue is one of application of the said section. However, I will resolve this doubt in favour of the applicants since it is true that this court held that the word 'and' in section 16(3) of the Constitution meant that the section was to be construed to the effect that all 'proceedings' of every court was the applicable interpretation to be accorded the section referable to proceedings under MACMA. This was so despite the fact that there was to be no determination of the existence of any person's civil rights or obligations as nonetheless, the proceedings should have been held in public. As a result, the fact that proceedings were being conducted under MACMA would not affect whether the proceedings would be in open court (save as excepted by section 16(4) of the Constitution, or otherwise, for instance where economy and efficiency so indicated, see **William Clarke v BNS**).

[30] The proceedings therefore being undertaken under MACMA, although only relating to the taking of evidence and the production of documents, (and as indicated not the determination of any person's civil rights), which must be certified, solely for transmission to the Netherlands, would fall to be considered as such, and to be heard in open court, unless circumstances dictated otherwise, which the learned trial judge in the exercise of his discretion did not think was so in this case. This was upheld on appeal. So, I have accepted that on an examination of the reasoning of this court, a question as to the interpretation of the Constitution arose, and thus a genuinely disputable right exists under section 110(1)(c) of the Constitution in this regard.

[31] Section 110(2) of the Constitution reads as follows:

> "An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases-
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> (a) where in the opinion of the Court of Appeal the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council, decisions in any civil proceedings; and
>
> (b) such other cases as may be prescribed by Parliament."

[32] There are several cases which have dealt with the issue as to how the phrase "of great general or public importance or otherwise" should be viewed by this court in relation to the question which the applicant may wish to submit to Her Majesty in Council. A question "of great general or public importance" is one that is regarded as being subject to serious debate. It must be not just a difficult question of law but an important question of law that not only affects the rights of particular litigants but one whose decision will bind others in their commercial and domestic relations. It must not merely be a question that the parties wish to have considered by the Privy Council in an effort to see whether the Law Lords would agree with the decision of the Court of Appeal. It must be a case of gravity involving a matter of public interest, or one affecting property of a considerable amount or where the case is otherwise of some public importance or of a very substantial character (see **Georgette Scott v The General Legal Council (Ex-Parte Errol Cunningham)** (unreported), Court of

Appeal, Jamaica, Supreme Court Civil Appeal No 118/2008, Motion No 15/2009, judgment delivered 18 December 2009; **Vick Chemical Company v Cecil DeCordova and Others** (1948) 5 JLR 106; **Dr Dudley Stokes and Gleaner Company Limited v Eric Anthony Abrahams** (1992) 29 JLR 79); and **Daily Telegraph Newspaper Company Limited v McLaughlin** [1904] AC 776).

[33] In his judgment at first instance, Campbell J in discussing the issue of whether the proceedings should be held in open court or in chambers referred to the dictum of Lord Woolf MR in **Hodgson and Others v Imperial Tobacco Limited and Others** [1998] 2 All ER 673, a decision of the English Court of Appeal. In that case, Lord Woolf MR endorsed the views of Sir Jack Jacob on the issue as to whether proceedings ought to be held in chambers or in open court wherein learned Queen's Counsel indicated that public justice removes the possibility of arbitrariness in the administration of justice, "so that in effect the public would have the opportunity of 'judging the judges'", for he stated that "by sitting in public, the judges are themselves accountable and on trial" (see page 685). It was Campbell J's view that the public officials in the instant case, had not been charged with any offence, and so their answers to the court would determine their value as witnesses. Also, he indicated that "[a] less than open court runs the risk of losing public confidence", and so "the court must open itself to the unimpeded glare of the media and the public at large".

[34] Campbell J considered also, that as the applicants were public officials, and there were questions from the Netherlands as to whether there had been bribery of public officials, the applicants should be required to answer questions in an open court which

provided access to the people they had sworn to serve. He stated further, that there was considerable interest on the part of the public to know the questions and the answers in the matter. There was therefore a balance between the need to protect the administration of justice, recognising and protecting the freedom of the press, and the right of the public to be informed about matters of public importance. It was his considered view at paragraph 45 that:

> "...where the investigation is shown to be concerned with issues in the public sphere that will tilt the scales in favour of a public hearing... [the public hearing] would serve to dispel rumour and arm the public with facts. In a country where many persons are reluctant to assist the police in their investigation of crime, it will be a salutary move on behalf of these public officials to demonstrate to the populace at large the necessity of cooperation with law enforcement to achieve the aims of justice."

[35] He therefore concluded that he had not been shown any authority or precedent that would lead him to find that a secluded private interview would better serve the due administration of justice. He deemed the normal open justice "the hallmark of democracy" and exercised his discretion accordingly. It is this judgment which has been upheld on appeal. It is clear that the issues raised relating to the principle of 'open justice' and its applicability to the instant case are important matters of interest to the public.

[36] In the question posed before this court under section 110(2)(a) of the Constitution the applicants posit whether proceedings under MACMA, being novel legislation, can correctly be interpreted as 'proceedings' under section 16(3) of the

Constitution compelling the applicants to give testimony publicly considering that no regulations have been promulgated under MACMA for the taking of evidence or the procedure to be used under section 20 of MACMA. There is a further concern that the respondent, who also marshals the taking of the evidence under MACMA, has been designated the central authority under MACMA.

[37] In my view, the question for determination by the Privy Council, has been identified, it raises serious issues of law, involving matters of public interest and importance, due to the novelty of the regime under MACMA, although still a matter of discretion to be exercised by the first instance judge. The issues of law are not merely affecting rights of the particular litigants in this case, as there may be other requests from foreign states asking for assistance here in investigations undergoing in that state. The matters, in my view, therefore are worthy of debate before the Privy Council and are relative to issues which were determinative of the appeal. I cannot therefore say that the question posited is not one of great general or public importance.

[38] I would therefore grant the applicants leave to appeal to Her Majesty in Council as of right pursuant to section 110(1)(c) as the matter related to a final decision in civil proceedings on questions as to the interpretation of the Constitution. Additionally, I would also grant the applicants leave to appeal pursuant to section 110(2)(a) with regard to the question that, against the backcloth of the unusual provisions of MACMA, whether proceedings under the legislation are proceedings under section 16(3) of the Constitution, compelling persons to give testimony publicly, bearing in mind the fact that there are no regulations promulgated under it, and with particular regard to the

taking of evidence under section 20 of MACMA, whether a citizen can be compelled to give a witness statement in public under that legislation.

[39] I would therefore make the following orders:

1. Leave to appeal to Her Majesty in Council is granted:

   (i) as of right pursuant to section 110(1)(c) of the Constitution as the matter related to a final decision in civil proceedings on questions as to the interpretation of the Constitution; and

   (ii) also pursuant section 110(2)(a) of the Constitution with regard to the question that, against the backcloth of the unusual provisions of MACMA, whether proceedings under the legislation are proceedings under section 16(3) of the Constitution, and thereby compelling persons to give testimony publicly, bearing in mind the fact that there are no regulations promulgated under it, and with particular regard to the taking of evidence under section 20 of MACMA, whether a citizen can be compelled to give a witness statement in public under that legislation,

on condition that the applicants shall within 90 days from the date hereof, enter into a good and sufficient security in the sum of $1,000.00 for the due prosecution of the appeal and payment of all such costs as may become payable by the applicants in the event of their final leave to appeal not being granted, or if the appeal being dismissed for want of prosecution, or of the Judicial Committee ordering the applicant to pay costs of the appeal; and within the said 90 days take the necessary steps to procure the preparation of the record and the dispatch thereof to England.

2. Costs of this application to await the determination of the appeal.

SINCLAIR-HAYNES JA

[40] I have read in draft the judgment of my learned sister Phillips JA and agree with her reasoning and conclusion. There is nothing that I wish to add.

F WILLIAMS JA

[41] I too have read the draft judgment of Phillips JA. I agree with her reasoning and conclusion and have nothing to add.

PHILLIPS JA

ORDER

1. Leave to appeal to Her Majesty in Council is granted:

   (i) as of right pursuant to section 110(1)(c) of the Constitution as the matter related to a final decision in civil proceedings on questions as to the interpretation of the Constitution; and

   (ii) also pursuant section 110(2)(a) of the Constitution with regard to the question that, against the backcloth of the unusual provisions of MACMA, whether proceedings under the legislation are proceedings under section 16(3) of the Constitution, and thereby compelling persons to give testimony publicly, bearing in mind the fact that there are no regulations promulgated under it, and with particular regard to the taking of evidence under section 20 of MACMA, whether a citizen can be compelled to give a witness statement in public under that legislation,

   on condition that the applicants shall within 90 days from the date hereof, enter into a good and sufficient security in the sum of $1,000.00 for the due

prosecution of the appeal and payment of all such costs as may become payable by the applicants in the event of their final leave to appeal not being granted, or if the appeal being dismissed for want of prosecution, or of the Judicial Committee ordering the applicant to pay costs of the appeal; and within the said 90 days take the necessary steps to procure the preparation of the record and the dispatch thereof to England.

2. Costs of this application to await the determination of the appeal.