

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE EDWARDS JA
THE HON MR JUSTICE BROWN JA
THE HON MR JUSTICE LAING JA (AG)**

**IN THE MATTER OF appeals by
way of case stated**

MISCELLANEOUS APPEAL NO COA2022PCRM00001

AW v R

MISCELLANEOUS APPEAL NO COA2022PCRM00002

KW v R

MISCELLANEOUS APPEAL NO COA2022PCRM00003

JR v R

Nickoy Ferguson for AW & JR

George Clue for KW

Miss Natallie Malcolm and Miss Tashelle Powell for the Crown

29 July 2024 and 21 February 2025

Criminal law - Appeal by way of case stated - Jurisdiction of the Children's Court over child offenders - Whether the Children's Court has jurisdiction to try children charged with the offence of rape or buggery - Whether the Children's Court has the jurisdiction to try criminal offences on indictment – The Child Care and Protection Act, ss 71(1), 72, 75, 76, 78 - The Judicature (Parish Courts) Act, s 268 – The Judicature (Family Court) Act, s 4(4)

EDWARDS AND BROWN JJA

Introduction

[1] Three cases involving three separate children, who have come into conflict with the law, were sent to this court on a case stated by Her Honour Mrs Anneil Coote-Guinness, a judge of the Parish Court sitting in the Children's Court ('the learned judge of the Parish Court sitting in the Children's Court'), held in Chapelton in the Parish of Clarendon, so constituted by virtue of the Child Care and Protection Act ('the Act').

[2] The first child, AW, was 13 years old at the time he appeared before the learned judge of the Parish Court sitting in the Children's Court. AW is charged with the offence of buggery, and, in his case, the following questions were posed for consideration by this court:

- "(1) Whether the Children's Court has the jurisdiction to conduct the trial of all matters in which a child under the age of 14 years is charged with a criminal offence? [sic]
- (2) Whether the Children's Court has the jurisdiction to try all charges of buggery in which children are charged with the said offence.
- (3) If the answer to question 1 and 2 above is yes, whether the Children's Court has the jurisdiction to try the offence of buggery on indictment."

[3] The second child, KW, was 17 years of age when he appeared before the learned judge of the Parish Court sitting in the Children's Court. He is charged with the offence of rape, contrary to section 3 of the Sexual Offences Act. In his case, the following questions were raised for this court's consideration:

- "(1) What is the jurisdiction of the Children's Court to hear any matter in which a child who has attained the age of 14 years is charged with a criminal offence not listed in the Fourth Schedule to [the Act]?"

- (2) Whether the Children's Court has the jurisdiction to try the offence of rape given what appears to be the failure of Parliament to amend the Fourth Schedule to [the Act].
- (3) If the answer to question 2 is yes, whether the Children's Court has the jurisdiction to try the offence of rape on indictment."

[4] The third child is JR. At the time of his appearance before the Children's Court, he was 16 years old and was charged with a firearm offence. In his case, the learned judge of the Parish Court sitting in the Children's Court raised the following two questions:

- "(1) What is the jurisdiction of the Children's Court with respect to a matter in which a child who has attained the age of 14 years is charged with a criminal offence listed in the Fourth Schedule to [the Act]?"
- (2) Does the Children's Court have the jurisdiction to conduct the trial of a matter in which a child who has attained the age of 14 years is charged with a criminal offence listed in the Fourth Schedule to [the Act]?"

[5] Having heard submissions from counsel from the Crown, as well as counsel appearing on behalf of each of the three children, we reserved our decision.

The jurisdiction of this court

[6] The jurisdiction of this court to consider and decide questions posed to it on an issue of law before a matter is finally disposed of varies depending on the circumstances. Section 55 of the Criminal Justice (Administration) Act, states as follows:

"When any person shall have been convicted of any treason, felony, or misdemeanour before any Circuit or [Parish Court], the Judge or [Judge of the Parish Court] before whom the case shall have been tried, may, in his discretion, reserve any questions of law which shall have arisen on the trial for the consideration of the Court of Appeal, and thereupon shall have authority to respite execution of the judgment on such conviction, or postpone the judgment until such questions shall have been considered and decided as he may think fit; ..."

[7] Section 56 then enjoins the judge or Judge of the Parish Court to state, in a case signed by him, the questions of law which he reserved for consideration by this court, including the special circumstances in which those questions of law arose in the trial. The section also grants to this court the “full power and authority” having received those questions, to:

“hear and finally determine such questions, and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment on the trial whereof such questions have arisen, or to avoid such judgment and to order an entry to be made on the record that in the judgment of the Court the party convicted ought not to have been convicted, or to arrest the judgment, or order judgment to be given thereon at some other session of the Circuit or [Parish] Court, if no judgment shall have been before that time given, or to make such other order as justice may require.”

[8] Section 55 of the Criminal Justice (Administration) Act contemplates a trial and conviction whereupon the Parish Court judge may reserve a question of law for the consideration of this court. Since none of these children have yet been tried and convicted, a referral under section 55 would be inappropriate (see **Harish Sayani and Anoop Bachwani** [2013] JMCA Misc 1).

[9] Section 49 of the Justice of the Peace (Appeals) Act, however, provides for the transmission of a case to this court for its opinion, and states as follows:

“It shall be lawful for the Judge of the Circuit Court or Supreme Court or for the Justice or Justices or other body or officer before whom any proceedings may be brought from which an appeal may by any law be given, to transmit a case for the opinion of the Court of Appeal in matter of law, or on the construction of any Statute; and thereupon it shall be lawful for the said Court of Appeal, after notice to the parties concerned, and after hearing the said parties if they shall think fit to appear, to certify its opinion thereon under the seal of the said Court to the Appeal Court, or to the Justice or Justices, or other officer or body...”

[10] Section 50 of the Justices of the Peace (Appeals) Act also provides for the parties to a case brought on information or complaint to apply to the Justices to state and sign a case stated. Section 54 grants the power to the Court of Appeal to hear and determine the questions arising from the case stated, and upon hearing the case “shall thereupon reverse, affirm, or amend the judgment, report or decision in respect of which the case has been stated, or remit the matter to the Judge, Justice or Justices, or other body or officer, with the opinion of the Court thereon”. The Court of Appeal is also empowered to make any other such order in relation to the matter, as well as orders as to costs. The orders of the Court of Appeal in relation to the case stated shall be final and conclusive on all the parties.

[11] Although the learned judge of the Parish Court sitting in the Children’s Court did not indicate under which authority the case was stated for the opinion of this court, we are of the view that section 49 would have been the most appropriate avenue.

The jurisdiction of the Children’s Court

[12] Children’s Courts were established in accordance with the provisions of the Act. Section 71 of the Act gives the relevant Minister the power to cause to be established courts known as Children’s Courts. Children’s Courts are constituted in accordance with the provisions of the Third Schedule to the Act. Paragraph 1 of the Third Schedule empowers the Minister to appoint a special panel of Justices of the Peace to sit as members of a Children’s Court. By virtue of para. 2 of the Third Schedule, the Children’s Court is to be presided over by a judge of the Parish Court, as the Chairman, sitting with two Justices of the Peace who are selected from the aforementioned panel, one of whom should be a woman. The Children’s Court is also deemed to be fully constituted where the Judge of the Parish Court sits with only one such Justice of the Peace. As an interim measure, the Judge of the Parish Court may properly sit alone until the panel is appointed by the Minister.

[13] The relevant Minister may designate any place, in any parish, a Children’s Court, and by virtue of para. 4 of the Third Schedule, the Family Court is designated a Children’s

Court when sitting for the purpose of exercising jurisdiction as a Children's Court, and is properly constituted as such with a single Judge of a Family Court sitting in that Court.

[14] By virtue of section 71(1) of the Act, when such courts are constituted to exercise the jurisdiction conferred upon them as Children's Courts, they are deemed to have all the powers of a Parish Court, subject to the provisions of the Act, and the procedure is to be the same as in the Parish Courts, subject to the provisions of the Act.

[15] A "child" is defined in section 2(1) of the Act as a person under the age of 18 years old. Whereas the repealed Juvenile Act had recognised a specie of persons known as "young persons", there is no such specie in the Act.

[16] By virtue of section 2(3) of the Act, the Act is to be interpreted and administered with the best interests of the child being the paramount consideration. One of the objects of the Act, as set out in section 3(d), is to "recognize the special needs of children in conflict with the law".

[17] By virtue of section 63, a child under 12 is *doli incapax*, that is, a child under 12 is conclusively presumed to be incapable of being held guilty of any offence. Sections 65 and 66 make general provisions for the guidance of every court to have regard to the best interest of children, including the separation of children who are in conflict with the law, or are otherwise involved with any offence, from adults who are not their relatives, unless the adult is jointly charged with the child.

[18] The Act provides for two distinct jurisdictions for the treatment of children who come into conflict with the criminal law, according to their ages and the offences with which they are charged. It makes provision for the treatment of children under 14 years of age, and for those 14 years and older but under 18 years of age. It makes no reference to a 'young person' or a 'juvenile', and those categories which had existed under the old repealed Juvenile Act, no longer exist.

[19] Part I of the Act deals with the care and protection of children and the punishment of persons who commit any offence that causes harm to children. Part II makes general provisions for the care and protection of children, including their general maintenance, the restriction on the employment of children, the restriction on the presence of children in any court during a trial of any other person, unless that child is a witness or otherwise or as the court may direct, and, the restriction on publication of cases involving children. Part III deals with children in care. Part V deals with the administration and enforcement of the provisions of the Act. However, the most relevant part of the Act, for the purposes of our discussion, is Part IV. Part IV deals with children who have been detained or brought before a court.

[20] The criminal jurisdiction of the Children's Court is set out in section 72 of the Act. It generally gives exclusive jurisdiction to the Children's Court to hear charges against a child, and applications in relation to children in need of care and protection, subject only to the provisions contained in the section. It, therefore, subjects itself to exceptions and ouster clauses. Section 72(1) is a general provision which states:

"72.- (1) Subject to the provisions of this section, no charge against a child and no application in relation to a child in need of care or protection shall be heard by any court of summary jurisdiction which is not a Children's Court."

[21] Pursuant to section 72(2), the Act ousts the jurisdiction of the Children's Court to try any offence involving a child who is charged jointly with an adult. It states:

"(2) Subject to subsection (3), a charge made jointly against a child and a person who has attained the age of eighteen years shall not be heard by a Children's Court."

[22] Section 72(3) recognises that the court may not realise that a person thought to be a child is actually an adult, until after proceedings against that person have already commenced. If that is the case, the court may continue to hear and determine the case, exercising its summary jurisdiction. Subsection 4 of section 72 also allows another court of summary jurisdiction, other than the Children's Court, to hear a charge against a child,

if an adult is charged at the same time, with aiding, abetting, causing, procuring, allowing or permitting the offence. Subsection 5 of section 72 further allows any other court of summary jurisdiction, other than the Children's Court, to continue to hear and determine a matter where, in the course of the proceedings, it discovers that the offender is a child.

[23] Section 72(6) provides as follows:

"72.- (6) Where a child—

- (a) who has not attained the age of fourteen years is charged with any offence; or
- (b) who has attained the age of fourteen years is charged with any offence other than an offence specified in the Fourth Schedule,

the charge shall, subject to any right of appeal provided by this or any other enactment, finally be disposed of by a Children's Court, or if the charge is heard before a court of summary jurisdiction that is not a Children's Court, by that court of summary jurisdiction, without prejudice, however, to the provisions of section 75."

[24] It is clear from these provisions that the Children's Court is a court of summary jurisdiction and that children who come into conflict with the law, subject to the exceptions in the Act, must be tried summarily in the Children's Court or some other court of summary jurisdiction, if the charge is one for a summary offence heard before such a court. Although the Act does not specifically so state, it is also clear that the Children's Court exercises a special statutory summary jurisdiction. In the case of **Director of Public Prosecutions v Nancy Sanchez-Burke** (1977) 15 JLR 1; (1977) 23 WIR 319), the Privy Council noted that although the term "special statutory summary jurisdiction" was not defined in the Interpretation Act, it was clear that it meant a "jurisdiction bestowed by any statute on the [R]esident [M]agistrate sitting as such in a Resident Magistrate's Court". The term "Resident Magistrate" is used here as that was the nomenclature used to describe judicial officers who are now known as judges of the Parish Court, at the time that case was heard and decided. It is also possible for the

statute creating an offence to directly bestow on the judge of the Parish Court the jurisdiction to try an offence on indictment, as it did in that case.

[25] On a literal and purposive interpretation of the Act, by virtue of section 72(6)(a), the Children's Court has the jurisdiction to try matters involving all children under the age of 14 years for any offence, exercising its special statutory summary jurisdiction.

[26] For children who have attained the age of 14, by virtue of section 72(6) (b), the Children's Court only has jurisdiction to try them, if they are charged with offences which are not listed in the Fourth Schedule. Using the device of exceptions, the Act giveth and the Act taketh away.

[27] The Fourth Schedule matters are as follows:

- “1. Murder or manslaughter.
2. Treason.
3. Infanticide.
4. Any offence under sections 8, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 29, 30, 31, 44, 48, 50, 51, 55, 56, 58, 59, 60, 61, or 69 of the Offences Against the Person Act.
5. Any offence under section 37 or 43 of the Larceny Act.
6. Any firearm offence as defined in the Gun Court Act.”

[28] If the charge is one listed in the Fourth Schedule, neither the Children's Court nor any other court of summary jurisdiction has the jurisdiction to try the child offender who has attained the age of 14 years old. Section 72(7) of the Act provides that where a child 14 years of age or above is charged before the Children's Court with a Fourth Schedule Offence, the Children's Court's jurisdiction is limited to committal proceedings. It reads as follows:

“72.- (7) Where a child who has attained the age of fourteen years is charged with an offence specified in the Fourth Schedule-

- (a) proceedings for the child's committal for trial shall, subject to subsection (1), be heard in a Children's Court; and
- (b) if, on the termination of those proceedings, the court is satisfied that the child should be committed for trial, the court shall so commit the child and shall bind such child and the witnesses, by recognizance to appear at the court to which such child is committed.”

[29] It is clear, therefore, that pursuant to this section, the Children’s Court has no jurisdiction to try matters involving a child 14 years of age or older charged for any of the offences in the Fourth Schedule, including any firearm offence, and its jurisdiction is limited to holding proceedings with a view to a committal for trial in the court in which such jurisdiction lies.

[30] The powers of the Children’s Court in respect of the treatment of a child found guilty of any offence before that court are, by and large, enumerated in sections 73 to 78 of the Act. By virtue of section 74, any court other than a Children’s Court, that tries a child by virtue of the provisions of the Act, can, in relation to that child, exercise all the powers of a Children’s Court.

[31] Section 75 of the Act also permits a court before which a child has been found guilty of any offence, other than murder, to remit the matter to the Children's Court for sentencing. The courts permitted to make such a remission include any other court of summary jurisdiction, as well as the Circuit Court. Section 75 reads, in part, as follows:

“75. -(1) Any Court by or before which a child is found guilty of an offence other than murder may, if it thinks fit, remit the case to a Children’s Court acting for the place where the offender was committed for trial or, if he was not committed for trial, to a Children’s Court acting either for the same place

as the remitting court or for the place in which the offender resides.

(2) Where any such case is so remitted, the offender shall be brought before a Children's Court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court.

(3) No appeal shall lie against an order of remission made under subsection (1), but nothing in this subsection shall affect any right of appeal against a verdict or finding on which such an order is founded; and a person aggrieved by the order of the Children's Court to which the case is remitted may appeal therefrom as if he had been tried by and had pleaded guilty before the Children's Court."

[32] This means that even children 14 years and above who have committed offences listed in the Fourth Schedule, and who have been committed for trial in the Circuit Court, may, if that court thinks it fitting, have their cases remitted to the Children's Court to be sentenced according to the sentencing powers of the Children's Court. Under section 72(6), a court of summary jurisdiction that is not a Children's Court, which hears a charge against a child, may sentence the child if it thinks fit, but this is "without prejudice" to that court's power, by virtue of section 75, to remit the case for sentencing in the Children's Court.

[33] Having set out the relevant provisions in the Act, the questions posed with respect to each of the three children, respectively, will now be considered.

The questions posed with respect to AW v R

[34] Our brother Laing JA (Ag) (as he then was) has come to certain conclusions which, in part, differ from the majority. There is unanimous agreement on the questions posed regarding JR. There is some agreement with his conclusion with regard to KW, but fundamental disagreement exists as regards his reasoning which took him to that conclusion. There is total disagreement with his reasoning and conclusion with respect to AW.

Jurisdiction to try child offenders under 14 years

[35] AW was a child of 13 years when the offence occurred and he was brought before the court. He, being under the age of 14, would, therefore, have fallen under the direct jurisdiction of the Children's Court, for his case to be finally disposed of in that court, by virtue of section 72(6)(a).

[36] Consideration was given to the question whether "finally be disposed of" in section 72(6) means that children under 14 years of age charged with indictable offences, must be sentenced in the Children's Court but tried in the Circuit Court. However, not only is there no provision in the Act for the committal of children in those circumstances, there is no provision in the Act for their remission either. Section 75 makes provision for a child tried for any offence, other than murder, to be remitted for sentence, but makes no distinction between a child under 14 years or 14 years and over, nor between an offence listed in the Fourth Schedule or not.

[37] The words "finally be disposed of" in the section, must be read to mean trial and sentence in the Children's Court, for if it is not so read, then either that section, or section 75 of the Act, is superfluous. If those words mean that the Children's Court only has a sentencing jurisdiction over children under 14 years charged with indictable offences not in the Fourth Schedule, it begs the question of how those children would come up for trial? Section 72(1) has to be interpreted to mean that where a child is charged, at least his first appearance must be before a Children's Court. Section 72(7) only provides for children 14 years and above charged with Fourth Schedule Offences to be committed for trial. There is no provision in the Act dealing with the committal of children under 14 years of age, charged with serious offences not in the Fourth Schedule, nor for that matter, dealing with children 14 years and above charged with serious offences not in the Fourth Schedule. There is only one committal provision in the Act and that is in relation to children 14 years and above charged with a scheduled offence. It begs the questions, therefore, as to how children under 14 years, charged with indictable offences not listed in the Fourth Schedule, would be brought elsewhere other than the Children's

Court for their cases to be heard, and if brought to the Children's Court, under what statutory jurisdiction and power would they be committed to the Circuit Court for trial?

[38] The Children's Court is a creature of statute and has only statutory jurisdiction and powers. It has no inherent jurisdiction. For children under 14 years charged with any indictable offence, and those 14 years and above, charged with indictable offences not in the Fourth Schedule to be committed for trial, the power and jurisdiction to do so must be founded in the Act.

[39] If it were that the Children's Court only had the jurisdiction to sentence children charged with common law indictable offences, regardless of age (common law is used here to differentiate those statutory crimes for which the jurisdiction is indicated in the statute creating the offence) it also begs the question why include a section 72(6) in light of section 75. Section 72(6) would be otiose because the children could be remitted for sentence under section 75, in any event. It may well be that one interpretation could be that those children who are not charged with scheduled offences, whether under 14 years or 14 years and above, must be remitted for sentence, whilst those charged with scheduled offences may be so remitted, if it is thought fitting to do so. However, it still does not answer the question as to why no provision was made for the committal of children under 14 years charged with serious indictable offences, if the Children's Court was not to have jurisdiction to try them.

[40] Furthermore, any interpretation of section 72(6)(a) and (b), which restricts the jurisdiction of the Children's Court over children under 14 years would create an anomaly and a discord in the Act with regard to the treatment of children. By virtue of section 72 (7), children 14 years and above charged with an offence in the Fourth Schedule would be brought to the Children's Court for a determination as to whether there is a *prima facie* case to answer, or not, before they are committed for trial in the High Court. Children under 14 years charged with any indictable offence would have no right to a committal proceeding and would have to be taken directly to the High Court. So too would children

14 years and above who are charged with indictable offences, which are not listed in the Fourth Schedule.

[41] Furthermore, the provisions in the Act regarding the care and protection of children reference the Second Schedule to the Act. The Second Schedule lists certain offences which may be committed against a child, as a result of which, such child may be considered to be in need of care and protection. Buggery is one such offence. An interpretation of section 72(6)(a) that deprives the Children's Court of jurisdiction over a child of 12 to 13 years, charged with buggery, would mean that a child of 17 years who is a victim of buggery would be liable to be treated as one in need of care and protection, but a child of 12 to 13 years who carries out an act of buggery would be liable to be tried, on indictment, in an adult court, in an adult setting, and to be found guilty there, without ever having had his case determined as to whether a *prima facie* case exists for a committal.

[42] A reading of the provisions in the Act does not suggest that that was the intention of Parliament.

[43] If there are any lingering objections to a child under 14 years being tried in the Children's Court for a "serious" offence such as buggery, a reminder should put such disquiet to rest. Although buggery is a felony in the English common law, early in the time of Lord Hale, a child under 14 years was never capable of being guilty of the offence, on the basis that he was below the age of discretion. This was so whether he was the perpetrator or the victim (see 1 Hale 670 and **R v Allen** 1 Den 364, cited in Archbold Pleading, Evidence & Practice in Criminal Cases, 36th edition, at 2971). In this case, under the Act, the age of discretion is 12 years old, but Parliament in its wisdom has determined that a child under 14 years, even though now deemed capable of guilt, should be dealt with in the jurisdiction of a Children's Court rather than in an adult setting.

[44] Our answer to the first question posed as set out below, therefore, would be as follows:

“(1) Whether the Children’s Court has the jurisdiction to conduct the trial of all matters in which a child under the age of 14 years is charged with a criminal offence?”

Answer: Yes

Jurisdiction to try all cases of buggery involving children

[45] Consideration of the second question poses a rather different kind of conundrum. Does the Children’s Court have the jurisdiction to try all cases of buggery involving children? Strictly speaking that question does not arise on the matter before the learned judge of the Parish Court sitting in the Children’s Court as is required by section 55 of the Criminal Justice (Administration) Act, and is academic to the issue before her. It does not fall within the jurisdiction and power granted to this court to answer questions remitted to it for consideration, as it is not a legal issue arising in AW’s case. However, consideration will also be given to that question by this court, in the interest of clarity.

[46] Two things can be seen so far from the perusal of the provisions of the Act relevant to this question. The first thing is that, if the child is 14 years or older, for the Children’s Court’s summary jurisdiction to be ousted in respect of the final disposal of the matter, the offence must appear in the Fourth Schedule. The second thing is that buggery is not an offence listed in the Fourth Schedule. *Prima facie* then, the Children’s Court ought to have jurisdiction for the matter to be finally disposed of in that court.

[47] Buggery is largely a compendium of common law offences of the “unnatural order” of things. The penalty for buggery is provided in section 76 of the Offences Against the Person Act. Section 76 does not create the offence of buggery, and it confers no jurisdiction on any particular court to try the offence. It merely provides for the penalty.

[48] Section 76 under the heading “Unnatural Offences” provides as follows:

“76. Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.”

[49] The description of the offence of buggery is not found in the section and is derived from the common law. More importantly, neither the common law offence of buggery, nor section 76, appear in the Fourth Schedule.

[50] We will repeat the offences listed in the Fourth Schedule here for convenience. These are:

- “1. Murder or manslaughter.
2. Treason.
3. Infanticide.
4. Any offence under sections 8, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 29, 30, 31, 44, 48, 50, 51, 55, 56, 58, 59, 60, 61 or 69 of the Offences Against the Person Act.
5. Any offence under section 37 or 43 of the Larceny Act,
6. Any firearm offence as defined in the Gun Court Act.”

[51] With buggery not appearing in the Fourth Schedule, the Children’s Court would only have two bases for jurisdiction over AW for the charge against him to be finally disposed of in that court. The first basis results from him being under 14 years, and the second is because, even if he had been 14 years or older, the clearly expressed provisions of the Act, provide, in essence, that the Children’s Court’s jurisdiction over a child 14 years and above is only ousted if the offence for which he is charged appears in the Fourth Schedule. With buggery not appearing in the list in the Schedule, the Children’s Court would have jurisdiction to try a child who has been charged with that offence, unless some other enactment provides otherwise, or unless Parliament meant the words “finally be disposed of” to have some other meaning, other than tried and sentenced in that court.

[52] The Children’s Court is a court of summary jurisdiction. However, when judges of the Parish Court sit in the court so constituted as a Children’s Court, they do not sit as two Justices of the Peace, as they would in the Court of Petty Sessions, but rather, in a

special statutory summary jurisdiction conferred by the Third Schedule of the Act to sit by themselves until a panel is in place, or to sit as the Chairman along with one or two Justices of the Peace from a special panel. No Justice of the Peace can sit in a Children's Court alone to hear any case as they do in the Court of Petty Sessions. A single judge of the Family Court also has special summary jurisdiction when sitting in the capacity as a judge of the Children's Court.

[53] It seems to me that there is a fundamental feeling of incongruence with having the felony of buggery at common law, which is usually tried on indictment in the Circuit Court, tried summarily, where the offence is committed by a child. The result of that feeling of incongruence is a seeming reluctance to accept that the Act says and means what it says and means. This reluctance is not shared. The only question is whether Parliament can lawfully pass legislation to allow an offence, previously tried on indictment in a high court, to now be tried summarily in a lower court.

[54] The Privy Council has held, in at least two of its decisions, that Parliament has the legislative power to create new courts or to extend the jurisdiction of existing courts (see **Moses Hinds, Elkanah Hutchinson, Henry Martin, Samuel Thomas v R; The Director of Public Prosecutions v Trevor Jackson and Attorney-General (Intervener)** (1975) 24 WIR 326 ('**Hinds v R**') and **The Director of Public Prosecutions v Nancy Sanchez-Burke**).

[55] There is no concept of summary trial in the common law and the procedure for criminal trials at common law was exclusively on indictment. The jurisdiction to try matters summarily is totally statutory. Statute created this other summary mode of trial. So, for example, the Summary Jurisdiction Act of 1879, in the United Kingdom ('UK'), enlarged the powers of justices to deal with certain classes of offences which had hitherto been ordinarily triable on indictment. The UK's Summary Jurisdiction Act of 1899 added more indictable offences that could be tried summarily. In the case of children, section 10 of the 1879 Act, provided for all indictable offences, except murder, to be tried and punished summarily if they were committed by a child over seven but under 12 years old,

if the court thought it expedient to do so and the parent or guardian did not object. Where an indictable offence, except murder, was committed by a young person, a child 12 to 15 years old by virtue of section 11 of the Summary Jurisdiction Act 1879, and later section 2 of the Summary Jurisdiction Act of 1899, they could, with their informed consent, be tried summarily.

[56] The grant of summary jurisdiction by statute to try offences formerly tried on indictment is, therefore, not a concept unknown to English law jurisdictions.

[57] A Children's Court is a specialised court which deals with issues affecting children. When it repealed the Juveniles Act, Parliament, in its wisdom, decided to have one simple definition of a child, and that is any person under 18. The Children's Court takes care of the legal needs of children in need of care and protection and, in the best interest of the children, it makes provision for those who have been abandoned, abused and neglected, in keeping with the provisions of the Act.

[58] The Act was passed on 26 March 2004 with the preamble to the Act stating that it is "[a]n Act to provide for the care and protection of children and young persons and for connected matters". This legislation is in keeping with the Government's commitments under international treaties and conventions to which it is a signatory, and is in line with the modern approach to the treatment of children who come into conflict with the law.

[59] The Act also sets out comprehensively the manner in which children who come in contact with the law are to be treated. The Act only ousts the jurisdiction of the Children's Court by the device of exceptions. The fact that the Children's Court, by this device, is given a jurisdiction that the Parish Court does not have, we do not find to be incongruous at all. It is supposed to be a specialised court and such courts generally have special jurisdiction over specified subject matters or specified persons.

[60] We also find nothing unconstitutional with regard to this approach. We see no reason to resort to constitutional issues in order to consider these questions. For our part, we think it would be dangerous to determine the constitutionality of legislative provisions

where no constitutional arguments were heard in this case, neither from the parties involved nor from the Attorney General. It is equally dangerous, without submissions from counsel on the point, and without the assistance of the Attorney General, to, effectively, strike down as unconstitutional, section 72(6)(a) in its entirety, and section 72(6)(b) partially, or to place any gloss on those sections. There is no reason to read further words into the clear words of the Act, which speaks to “any offence other than an offence specified in the Fourth Schedule” for the provision to mean “any offence not in the Fourth Schedule which is not a felony previously triable in the Supreme Court on indictment”.

[61] Nothing in the statements made by the Law Lords in **Hinds v R** can cast doubt on the validity of section 72(6)(a) and (b). Though the case is well known, a further and more careful reading became necessary during the consideration of these questions posed to this court. **Hinds v R**, however, does not support the conclusion that interpreting section 72 to give jurisdiction to the Children’s Court to try matters previously dealt with at common law on indictment would be unconstitutional. On the contrary, it supports and confirms the fact that in passing the Act, and in setting up the Children’s Court, Parliament was not in breach of any constitutional provisions. The judges of the Children’s Court are all duly appointed judicial officers of the lower judiciary, as they are drawn from the cadre of judges of the Parish Court. They have simply been given an extended specialised jurisdiction over cases involving children which are to be heard in a court so constituted for that purpose. They have not been given sentencing powers greater than the Parish Court or the High Court. They have only been required to treat children differently from adults, in keeping with international obligations.

[62] This is what the Privy Council in **Hinds v R** said about Parliament’s power to assign new courts, at page 332 of its judgment in that case:

“All constitutions on the Westminster Model deal under separate Chapter headings with the Legislature, the Executive and the Judicature. The Chapter dealing with the Judicature invariably contains provisions dealing with the method of

appointment and security of tenure of the members of the judiciary which are designed to assure to them a degree of independence from the other two branches of government... To the extent to which the Constitution itself is silent as to the distribution of the plenitude of judicial power between various courts it is implicit that it shall continue to be distributed between and exercised by the courts that were already in existence when the new constitution came into force; **but the Legislature, in the exercise of its power to make new laws for the 'peace, order and good government' of the state, may provide for the establishment of new courts and for the transfer to them of the whole or part of the jurisdiction previously exercisable by an existing court. What, however, is implicit in the very structure of a constitution on the Westminster Model is that judicial power, however it be distributed from time to time between various courts, is to continue to be vested in persons appointed to hold judicial office in the manner and on the terms laid down in the Chapter dealing with the Judicature, even though this is not expressly stated in the Constitution...**" (Emphasis added)

[63] The Board determined that on any consideration of the question of the constitutionality of the establishment of a court the issue must be one of substance and not form. It was this consideration that it brought to bear on its determination that the establishment of the Circuit Court Division and the Resident Magistrate Division of the Gun Court was not unconstitutional.

[64] Different considerations were brought to bear on the Full Court Division of the Gun Court, which was a new court in substance and in form. The Board noted that unlike the Circuit Court and the Resident Magistrate Court Divisions, the Full Court Division was of an entirely different composition than previously existed. It also had extremely wide jurisdiction and its sentencing powers were equivalent to that of the Circuit Court even though it was comprised of three Resident Magistrates who had no security of tenure, assigned so to sit by the Chief Justice. In the final analysis, the Board determined that the effect of the procedural changes and the powers given to the Full Court Division of the Gun Court was to take away all the powers of the Supreme Court, including

sentencing powers, and to give it to an inferior court which did not have the same security of tenure as the Supreme Court.

[65] At page 336, the Board said this:

“Their Lordships accept that there is nothing in the Constitution to prohibit Parliament from establishing by an ordinary law a court under a new name, such as the ‘Revenue Court’, to exercise part of the jurisdiction that was being exercised by members of the higher judiciary or by members of the lower judiciary at the time when the Constitution came into force. To do so is merely to change the label to be attached to the capacity in which the persons appointed to be members of the new court exercise a jurisdiction previously exercised by the holders of one or other of the judicial offices named in Chapter VII of the Constitution. In their Lordships’ view, however, it is the manifest intention of the Constitution that any person appointed to be a member of such a court should be appointed in the same manner and entitled to the same security of tenure as the holder of the judicial office named in Chapter VII of the Constitution which entitled him to exercise the corresponding jurisdiction at the time when the Constitution came into force.”

[66] The Board’s concern in this case was the “wide” jurisdiction being granted to the Full Court Division of the Gun Court, and the fact that Parliament was not entitled to “strip” the Supreme Court, by ordinary legislation, of all its jurisdiction. Neither was Parliament entitled to give almost all the jurisdiction of the Supreme Court to an inferior court, comprised of judges without security of tenure, to be exercised concurrently.

[67] At page 338, the Board recognised that it was possible to give some power previously existing in the Supreme Court to the lower judiciary without it being unconstitutional. The Board said this:

“As with so many questions arising under constitutions on the Westminster Model, the question whether the jurisdiction vested in the new court is wide enough to constitute so significant a part of the jurisdiction that is characteristic of a Supreme Court as to fall within the constitutional prohibition

is one of degree. The instant case is concerned only with criminal jurisdiction. **It is not incompatible with the criminal jurisdiction of a 'Supreme Court', as this expression would have been understood by the makers of the constitution in 1962, that jurisdiction to try summarily specific minor offences which attracted only minor penalties should be conferred upon inferior criminal courts to the exclusion of the criminal as distinct from the supervisory jurisdiction of a Supreme Court. Nor is it incompatible that a jurisdiction concurrent with that of a Supreme Court should be conferred upon inferior criminal courts to try a wide variety of offences if in the particular case the circumstances in which the offence was committed makes it one that does not call for a severer punishment than the maximum that the inferior court is empowered to inflict. In this class of offences the answer to the question whether the concurrent jurisdiction conferred upon the inferior court is appropriate only to a 'Supreme Court' depends upon the maximum punishment that the inferior court is empowered to inflict.**" (Emphasis added)

[68] In some jurisdictions, there are serious offences which are triable either way, thus giving concurrent jurisdiction to the High Court and the Magistrates Court, the only difference being the sentence that can be imposed in each court. There are several ways in which an indictable offence can be lawfully tried summarily. For example, the legislature creating the offence may indicate that it may be tried on indictment or summarily. The offence may be "scheduled" by statute to be tried in a particular manner or in a particular court, or triable either way (see Antigua and Barbuda's Magistrate's Code of Procedure Act, the Bahamas' Criminal Procedure Code, Barbados' Magistrate's Courts Act, and Trinidad and Tobago's Summary Courts Act). Two other ways are, firstly, where a non-capital offence is committed by a child and, secondly, in jurisdictions which so allow, where the Magistrate forms the view that the evidence establishes a summary offence of a "like kind" as an indictable offence charged. Therefore, for Parliament to legislate for the Children's Court to try a child summarily for an offence, which had he

been an adult would have been tried on indictment, is not a revolutionary concept nor is it incongruent.

[69] There may well be some concern surrounding the fact that buggery is a serious offence and is usually tried on indictment in the Circuit Court. However, Parliament has determined that in the circumstances where children and especially those of a certain age commit certain offences, by virtue of them being children, they are to be tried and sentenced differently from adults. Nothing in this approach “strips” the Supreme Court of all its jurisdiction, neither does it give the Children’s Court concurrent or greater sentencing powers than the Supreme Court. This is in keeping with the modern approach by jurisdictions all over the world with regard to children who come in contact with the law. Children are either tried separately or sentenced differently than adults. The Act recognises this fact, and in recognition of this fact, even if the child is tried in the Circuit Court for one of the Fourth Schedule offences other than murder, that child can be sentenced in the Children’s Court under that court’s sentencing powers (see section 75 of the Act). There is no basis for holding that it is unconstitutional to try the offence of buggery in the Children’s Court because it is usually tried on indictment in the Circuit Court, whilst at the same time holding that it is perfectly constitutional for the Children’s Court to have the jurisdiction to sentence a child charged and tried in the Circuit Court for a scheduled offence, using the Children’s Court own sentencing powers. It is for the very reason that the Children’s Court has different sentencing powers more appropriate to children, why Parliament has conferred on it the jurisdiction to try certain offences and to sentence the child offender according to the powers provided in the Act.

[70] Furthermore, nothing in the Act can be interpreted as giving the Children’s Court, when so constituted, the power and jurisdiction of the Supreme Court. What it does is to give it a lesser jurisdiction than the Supreme Court, in recognition of international standards that, in appropriate cases, a child who comes into conflict with the law ought not to be treated as an adult or tried in an adult court with its emphasis on punishment,

but in an alternate jurisdiction where the emphasis is more on their care, treatment and rehabilitation.

[71] The answer, therefore, to the second question posed as follows is:

“(2) Whether the Children’s Court has the jurisdiction to try all charges of buggery in which children are charged with the said offence.”

Answer: Yes.

Jurisdiction to try offences on indictment

[72] The Children’s Court is a court of summary jurisdiction. The Act equates its jurisdiction with those of other courts which also exercise summary jurisdiction. The Children’s Court has no indictable jurisdiction. The fact that buggery is an offence at common law, which is usually tried on indictment cannot confer on the Children’s Court the jurisdiction to try buggery on indictment.

[73] The submission made by the Crown, which counsel for the defence Mr Clue partially accepted, was, in essence, that it is possible to “marry” the jurisdiction of the Children’s Court to that of the jurisdiction of the Parish Court under section 268, by reading across legislations. The Parish Court is, by and large, a court of summary jurisdiction which derives its jurisdiction from the Judicature (Parish Courts) Act (‘Parish Courts Act’), and to a lesser extent, the Justices of the Peace Jurisdiction Act. Section 268 of the Parish Courts Act gives the Parish Court a “special” jurisdiction which it otherwise would not have, to try specified offences on indictment.

[74] The Parish Courts Act does not specifically, in so many words, give judges of the Parish Court summary jurisdiction. The definition of “summarily” is to be found in the Interpretation Act. Section 3 of the Interpretation Act defines “summarily”, “in a summary manner” and “on summary conviction” to mean “before a court of summary jurisdiction”, and “court of summary jurisdiction” is defined as:

- “(a) any justice or justices of the peace to whom jurisdiction is given by any Act for the time being in force, or any [Judge of the Parish Court] sitting either alone or with other justices in a Court of Petty Sessions;
- (b) a [Judge of the Parish Court] exercising special statutory summary jurisdiction;”

[75] Section 63 of the Parish Courts Act imposes a duty on judges of the Parish Court to attend all Courts of Petty Session in their parishes. By virtue of the Interpretation Act, when doing so they are exercising a summary jurisdiction.

[76] In creating the Children’s Court, and in setting out its jurisdiction in the Act, no indictable jurisdiction was granted to it. Therefore, in our view, Parliament, in its wisdom, did not give the Children’s Court any jurisdiction to try children on indictment.

[77] Furthermore, no reliance can be placed on section 71 of the Act in order to say that the Children’s Court has any indictable jurisdiction. Section 71(1) and (2) states:

“71.- (1) The Minister responsible for justice shall cause to be established courts, to be known as Children’s Courts, which shall be constituted in accordance with the provisions of the Third Schedule and, when so constituted and sitting for the purpose of exercising any jurisdiction conferred on them by this or any other enactment, shall be deemed to have, subject to the provisions of this Act, all the powers of a [Parish] Court and the procedure in the Children’s Court, subject to the provisions of this Act, shall be the same as in the [Parish] Court.

(2) The Governor-General may appoint, in respect of each Children’s Court, a clerk and deputy clerk who shall, in respect of the Children’s Court to which they are so appointed, have all the powers and perform all duties which the clerk and deputy clerk have and perform in respect of a [Parish] Court:

Provided that it shall be lawful for any clerk and deputy clerk, respectively, assigned under section 7 of the Judicature (Family Court) Act, to exercise the like powers and perform the like duties as aforesaid in respect of the Children’s Court constituted by virtue of paragraph 4 of the Third Schedule.”

[78] The fact that section 71 of the Act states that the Children’s Court, when so constituted as a Children’s Court to sit and hear and determine cases under its jurisdiction, and subject to the provisions of the Act itself, is deemed to have all the powers of the Parish Court, and that the procedure in the court, also subject to the provisions of the Act, shall be the same as that in the Parish Court, does not mean that the Children’s Court has the same jurisdiction as that conferred by section 268 of the Parish Courts Act. This is a fallacy, and the reading across statutes is fundamentally flawed and unnecessary.

[79] Although power and jurisdiction are often used synonymously with each other they do, in truth, very often refer to two different things, in law. Jurisdiction more often refers to the authority to deal with and make decisions over certain cases or causes, and to come to judgment. Power usually refers to the ability or authority to do a particular thing or act. A court may have jurisdiction over a particular case but no power to make certain orders or issue certain processes in relation to such cases when exercising that jurisdiction. Power comes not only with the jurisdiction but also in keeping with rules and regulations that allow a court or body to exercise certain powers, regardless of the jurisdiction. You may have jurisdiction but no power, and no power can be exercised without the authority to do so. Jurisdiction can be in respect of the subject matter, territory, money, or remedies. Section 268 of the Parish Courts Act provides subject matter jurisdiction to the Parish Court.

[80] In this case, a more careful reading of section 71, shows that it was intended to refer separately, and respectively, to the two different things, that is, power and jurisdiction. Firstly, the section makes it clear that when the court is constituted to exercise its Children’s Court jurisdiction “conferred on [it] by this or any other enactment” it will have all the powers of the Parish Court. The court, therefore, only needs the powers of the Parish Court when it is exercising Children’s Court jurisdiction. In that context, power and jurisdiction cannot be synonymous. The jurisdiction the Children’s Court will be exercising is that conferred on it by the Act, but in carrying out that jurisdiction, it will have the same powers as the Parish Courts.

[81] This provision was necessary because, as a new court, being presided over by persons who were judges of the Parish Court, it was necessary to establish the powers of those judges when exercising their Children's Court jurisdiction. Section 71 does the same thing for the clerks who sit in the Children's Court, as it was necessary to state the parameters of their powers also. The Parish Courts Act and the Parish Courts Rules set out extensively the powers of the Parish Court, and by extension, the powers of the judges of the Parish Court. By this short device, and without having to 'reinvent the wheel', their powers were established to be the same as the clerks in the Parish Court, whose powers are also extensively set out in the Parish Courts Act and the Justices of the Peace Jurisdiction Act.

[82] Section 71(3) also establishes that the power to issue process is the same as that which exists under the Justices of the Peace Jurisdiction Act.

[83] It must be clear, therefore, that section 71 was not intended to, and does not grant, neither expressly nor by implication, the same indictable jurisdiction conferred on the Parish Courts by section 268 of the Parish Courts Act. It is simply the device by which the limits of the procedural powers of the Children's Court in carrying out its jurisdiction conferred on it by the Act, is demarcated. The Act has no equivalent section to section 268 of the Parish Courts Act, and, therefore, a section 268 or any equivalent jurisdiction was not conferred on the Children's Courts. It is incongruous to interpret the legislation to mean that in exercising the jurisdiction given to the Children's Courts, they are, thereby, deemed to have an additional jurisdiction. The Children's Court cannot be deemed to have a section 268 jurisdiction when they are exercising the jurisdiction actually conferred on them by the Act. Clear words in the Act would be required before it could properly be said that a section 268 jurisdiction is given to the Children's Courts when so constituted.

[84] Giving the Children's Court the same powers and procedures as the Parish Court simply means that, for example, when trying the cases, it has the jurisdiction to try, the Children's Court is entitled to use the same powers and procedures for calling and

examining witnesses, exercising the oath or affirmation, taking of evidence, granting adjournments, holding bail hearings, granting and refusing bail, ordering summons, subpoenas and so on. In addition, the Children's Court has the same powers in the conduct of proceedings in court as is done in the Parish Court. It does not and cannot mean that a judge sitting in the Children's Court has the same jurisdiction to try matters on indictment as listed in section 268 of the Parish Courts Act as the judge of the Parish Court. If section 71 is to be construed as giving the Children's Court extra jurisdiction then it would mean it has been given all the jurisdiction of the Parish Court, including over civil matters and land matters, as there would be nothing to show why that interpretation should stop at only the section 268 jurisdiction.

[85] A similar provision in the Judicature (Family Court) Act ('the Family Court Act'), section 4(4), cannot give to the judge of the Family Court the jurisdiction to try matters on indictment pursuant to section 268 of the Parish Courts Act. That would be giving the statutory provision a reach that it was never intended to have. This is what that section 4(4) of the Family Court Act states:

"4.- (4) Subject as otherwise provided by or under this Act, the like process, procedure and practice as relate to the exercise of jurisdiction of a Parish Court, and otherwise to the conduct of its business, shall be observed, in so far as they are applicable (with necessary adaptations), in relation to the exercise of jurisdiction, and otherwise to the conduct of business, of the Family Court and, without prejudice to the generality of the foregoing, the judgements [sic] and orders of the Family Court and the attendance of persons before it, whether as accused persons or witnesses or otherwise, may be enforced accordingly."

[86] The section speaks to the process, procedure and practice, with the necessary adaptations, in relation to the exercise of the Family Court jurisdiction. The conduct of court business, attendance of persons, and the enforcement procedures, are to be the same as in the Parish Court. Nothing in the provision of section 4(4) can be properly interpreted to mean that the Family Court now has the special indictable jurisdiction enjoyed by the Parish Court by virtue of section 268 of the Parish Courts Act. The wording

of section 4(4) cements our view that what is intended by section 71 of the Act, which is similarly worded, is for the Children's Court to be able to function in the same manner as a Parish Court, not with the same jurisdiction. If section 4(4) can be interpreted to mean that the Family Courts have a section 268 jurisdiction, it would also mean that they have all the jurisdiction of the Parish Court including, civil, land, small claims and petty session jurisdiction. Surely this could not be so.

[87] To further make our point, we wish to refer to section 282 of the Parish Courts Act, which provides that the procedure at the trial of an indictable offence shall be the same or as near as can be to a summary trial. This section has never been interpreted to mean that when exercising a summary jurisdiction, a judge of the Parish Court has the same jurisdiction to try matters on indictment, or that a judge of the Parish Court, in a trial for an indictable offence under section 268, can hear the matter on an information instead.

[88] Finally, on this point, a Children's Court so constituted with a judge of the Parish Court and two justices cannot exercise an indictable jurisdiction based on section 268 because in the Parish Court, where a judge of the Parish Court sits with two justices, the court has no such indictable jurisdiction, and being so constituted can only sit in petty session.

[89] In the premises, in the case of *AW*, the answer to question 3 would be as follows:

“(3) If the answer to question 1 and 2 above is yes, whether the Children's Court has the jurisdiction to try the offence of buggery on indictment.”

Answer: No

The questions posed with respect to *KW v R*

[90] *KW* was a child of 17 years when he appeared before the learned judge of the Parish Court sitting in the Children's Court, charged for rape. Whereas the offence of rape at common law was in the Fourth Schedule by virtue of the inclusion of section 44 of the

Offences Against the Person Act, which is the penalty section for rape, that section has been repealed along with the common law offence of rape itself. The common law offence of rape is now replaced by section 3 of the Sexual Offences Act of 2009. The Fourth Schedule was not amended to include section 3 of the Sexual Offences Act. However, Parliament, in its wisdom, decided to place the jurisdiction to try rape in the Sexual Offences Act itself. Section 5 of the Sexual Offences Act also introduced a new statutory offence of marital rape.

[91] Section 6(1) of the Sexual Offences Act provides as follows:

“6.- (1) A person who-

- (a) commits the offence of rape (whether against section 3 or 5) is liable on conviction in a Circuit Court to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years;...” (Emphasis added)

[92] The jurisdiction provided for in the legislation that creates the offence provides the answer to the questions posed with regard to KW.

[93] The answers to the questions posed in the case of KW would be as follows:

“(1) What is the jurisdiction of the Children’s Court to hear any matter in which a child who has attained the age of 14 years is charged with a criminal offence not listed in the Fourth Schedule to [the Act]?”

Answer: The Children’s Court has the jurisdiction to try any offence involving a child 14 years of age and above, where that offence is not listed in the Fourth Schedule, or where the offence is statutory and the statute does not otherwise confer the jurisdiction on a different court or courts.

“(2) Whether the Children’s Court has the jurisdiction to try the offence of rape given what appears to be the failure of Parliament to amend the Fourth Schedule to [the Act].”

Answer: No. The Children’s Court has no jurisdiction to try the offence of rape as the statute creating the offence has conferred the jurisdiction on the Circuit Court exclusively.

“(3) If the answer to question 2 is yes, whether the Children’s Court has the jurisdiction to try the offence of rape on indictment.”

Answer: No. The Children’s Court has no jurisdiction to try the offence of rape on indictment or otherwise.

The questions posed with respect to JR v R

[94] In respect of the case relating to JR, he was a 16-year-old child who was charged with the offence of illegal possession of ammunition, committal proceedings were held in the Children’s Court and the matter was committed to the High Court Division of the Gun Court. However, the matter was remitted to the Children’s Court by Bertram Linton J sitting in the High Court Division of the Gun Court, without the matter being heard, and with the file endorsed with the following notation: “[t]his court does not have jurisdiction to deal with the matter. See section 8 of Gun Court Act and **CP v R** [2018] JMCA Crim 43”.

[95] The issue which touches and concerns the questions regarding the case of JR was traversed in the case of **NF v R** [2020] JMCA Crim 4 and ought to be considered as settled. In **NF v R**, this court examined the jurisdiction of the Children’s Court as it relates to offences listed in the Fourth Schedule, in particular firearm offences. At para. [19] Edwards JA, referencing section 72(7) of the Act, stated as follows:

“[19] It is clear, therefore, that pursuant to this section, the Children’s Court has no jurisdiction to try matters involving a child over 14 years of age charged for any of the offences in the Fourth Schedule, including any firearm offence, and its jurisdiction is limited to holding proceedings with a view to a committal for trial in the Court in which such jurisdiction lies.”

[96] Therefore, the answers to the questions posed with respect to JR would be as follows:

“(1) What is the jurisdiction of the Children’s Court with respect to a matter in which a child who has attained the age of 14 years is charged with a criminal offence listed in the Fourth Schedule to [the Act]?”

Answer: The Children’s Court has no jurisdiction to try a child over the age of 14 who has been charged with an offence listed in the Fourth Schedule and such matters must be committed to the Circuit Court for trial. Firearm offences are listed in the Fourth Schedule.

“(2) Does the Children’s Court have the jurisdiction to conduct the trial of a matter in which a child who has attained the age of 14 years is charged with a criminal offence listed in the Fourth Schedule to [the Act]?”

Answer: The Children’s Court has no jurisdiction to conduct a trial in the case of a child 14 years and above charged with a criminal offence listed in the Fourth Schedule and its jurisdiction is limited to the conduct of committal proceedings with a view to committing the case for trial in the court where jurisdiction lies or to sentence, if and when, a case is remitted to the court for sentencing.

[97] In the premise, the matter involving JR is to be sent back to the High Court Division of the Gun Court, where jurisdiction lies, for trial.

Conclusion

[98] The questions posed raise very important issues regarding the jurisdiction of and procedures in the Children’s Court in cases where children are charged with serious offences. The cases will be remitted to the Children’s Court to be dealt according to law.

[99] It is troubling that so long after the passing of this legislation doubts continue to exist regarding the intent of Parliament in respect to certain of its provisions. Perhaps it is time for the legislation to be overhauled to make it clearer and more workable.

LAING JA (AG) (DISSENTING IN PART)

[100] I have found myself in the position in which, with the utmost respect for the majority, I disagree on the issue of whether the Children’s Court has the jurisdiction to try cases of buggery and the response to the questions posed concerning AW. As has been indicated by Edwards and Brown JJA, we are in agreement in respect of our conclusions with regard to KW, but we have taken different routes in our analysis. I am in complete agreement with the majority with respect to the answers to the questions posed in the case of JR.

The applicable law

[101] There are several provisions of the Act that are fundamental to my analysis, and to the extent that they have already been reproduced, I will not necessarily repeat all those provisions.

[102] The Interpretation Act, at section 3, defines “court of summary jurisdiction” to mean:

- “(a) any justice or justices of the peace to whom jurisdiction is given by any Act for the time being in force, or any [Judge of the Parish Court] sitting either alone or with other justices in a Court of Petty Sessions;
- (b) a [Judge of the Parish Court] exercising special statutory summary jurisdiction;”

The Interpretation Act also defines “summarily”, “in a summary manner” or “on summary conviction” to mean respectively, before a court of summary jurisdiction.

[103] For purposes of the court’s jurisdiction, section 72 of the Act distinguishes between children under the age of 14 years and those who are 14 years and over. Section 72(6), in particular, provides that:

“72.- (6) Where a child–

- (a) who has not attained the age of fourteen years is charged with any offence; or
- (b) who has attained the age of fourteen years is charged with any offence other than an offence specified in the Fourth Schedule,

the charge shall, subject to any right of appeal provided by this or any other enactment, finally be disposed of by a Children's Court, or if the charge is heard before a court of summary jurisdiction that is not a Children's Court, by that court of summary jurisdiction, without prejudice, however, to the provisions of section 75."

[104] However, section 72(7) provides that, in the case of a child who has attained the age of 14 years and is charged with a Fourth Schedule offence, the Children's Court's jurisdiction is limited to holding proceedings with a view to a committal for trial in a court of competent jurisdiction. This position was confirmed in the case of **Tafari Morrison v R** [2023] UKPC 14.

[105] The offences in the Fourth Schedule are:

- "1. Murder or manslaughter.
2. Treason.
3. Infanticide.
4. Any offence under sections 8, 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 2009, 30, 31, 44, 48, 50, 51, 55, 56, 58, 59, 60, 61 or 69 of the Offences Against the Person Act.
5. Any offence under section 37 or 43 of the Larceny Act,
6. Any firearm offence as defined in the Gun Court Act."

[106] It is important to note that since the passing of the Act, certain sections of the Offences Against the Person Act ('OAPA'), including section 44, have been repealed by Act 12 of 2009, the Sexual Offences Act, 2009 ('the Sexual Offences Act').

[107] By virtue of section 72(2) of the Act, a child of any age charged jointly with an adult is removed from the jurisdiction of the Children's Court.

[108] The issue is raised as to the meaning of the words "any offence" and "finally be disposed of" in section 72(6). This will assist in determining whether there is a distinction of significance in the jurisdiction of the Children's Court to try the offences of rape and buggery depending on whether the child charged with the offence is below 14 years or 14 years and above.

[109] Section 75 of the Act also permits any court before whom a child has been found guilty of any offence other than murder, to remit the matter to the Children's Court for sentencing, if it thinks fit. The provisions of section 72(6) of the Act are expressed to be without prejudice to this power given to a court under section 75.

The cases of AW v R and KW v R

[110] In determining what is the jurisdiction of the Children's Court in respect of the offences of rape and buggery, an important consideration is that both offences are not among the offences specified in the Fourth Schedule.

[111] The offence of rape was an offence previously at common law only, for which the penalty was prescribed by section 44 of the OAPA, and this section was included in the Fourth Schedule of the Act. However, the Sexual Offences Act has provided a comprehensive statutory framework addressing sexual crimes and their punishment and has repealed section 44 of the OAPA. Rape is now an offence contrary to section 3 of the Sexual Offences Act. The penalty provision in respect of rape at section 44 of the OAPA, which was listed in the Fourth Schedule of the Act, has not been replaced with section 3 of the Sexual Offences Act, which created the statutory offence of rape. This may or may not have been an oversight by Parliament.

[112] Section 6 of the Sexual Offences Act outlines the penalty for the offence of rape and provides that a person who commits the offence of rape is liable on conviction in the Circuit Court to imprisonment for life or such other term as the court considers

appropriate not being less than 15 years. There is no provision in the Sexual Offences Act for a penalty in respect of a conviction other than in the Circuit Court and the implication of this is that trial in the Children's Court was not contemplated.

[113] The offence of buggery is a common law offence for which the penalty is provided under section 76 of the OAPA. Accordingly, the elements of the offence are not defined in that section. Despite it being an offence that is sexual in nature, it remains an offence under the OAPA since a statutory offence of buggery was not created in the Sexual Offences Act. Section 76 of the OAPA was never included in the Fourth Schedule of the Act and remains excluded.

[114] I have also noted that the Third Schedule to the Sexual Offences Act, which addresses consequential amendments to other enactments, made express amendments to the Second Schedule of the Act but made none to its Fourth Schedule. The Second Schedule of the Act addresses certain offences which may be committed against a child. These offences are important, for instance, in determining, for purposes of section 8 of the Act, the circumstances in which a child shall be considered to be in need of care and protection, and the consequences which may flow thereafter as provided by other sections of the Act. Thus, a child who has had a Second Schedule offence such as rape or buggery, committed or attempted to be committed against that child, he/she would be considered to be a child in need of care and protection.

[115] The Third Schedule of the Sexual Offences Act, in identifying the offences which are to be included in the Second Schedule of the Act, specifically, includes rape contrary to section 3 of the Sexual Offences Act, and section 76 of the OAPA the "unnatural crime" of buggery. This tends to suggest that the legislators were attuned to the significance of these offences, and it raises the question as to why a similar amendment was not made in respect of the Fourth Schedule of the Act. The reasonable inference is that the omission from the Fourth Schedule was deliberate. However, the issue is whether the omission of rape and buggery from the Fourth Schedule of the Act operates to confer on the Children's

Court a jurisdiction that it did not have before in respect of the trial of children 14 years and over for the offences of rape and buggery.

[116] The Supreme Court has jurisdiction over felonies, which are serious offences usually triable on indictment. Historically, statutes creating offences would expressly state whether these offences are felonies or misdemeanours, and this would determine the appropriate court in which the offence would be tried. Many of these statutes originated in England and became a part of the law of Jamaica under the principle of reception of law and the effect of the savings law clause, which was adopted in the Constitution. The Criminal Law Act 1967 abolished the distinction between felonies and misdemeanours in England and Wales. Although Jamaica has not abolished this distinction, the modern trend is that offences are no longer classified as such in new legislation but instead an express provision is made declaring the court or courts in which the offence or offences must be tried and the appropriate penalty. The Sexual Offences Act is an example of a statute which exhibits this modern approach.

[117] The Sexual Offences Act does not make any provision for the trial of the offence of rape in the Children's Court. In respect of the offence of buggery, which remains an offence under section 76 of the OAPA. The OAPA similarly does not make any provision for the Children's Court to conduct the trial of a child 14 years and above who has been charged with the offence of buggery.

[118] As it relates to the offence of rape, although that offence was expressly excluded from the jurisdiction of the Children's Court by the inclusion of section 44 of the OAPA, this exclusion by itself is not determinative, since even without that provision, it does not appear to me that the Children's Court would have had the jurisdiction to try a child 14 years and over charged with the offence of rape. Accordingly, it is my opinion that the failure of the legislature to replace section 44 of the OAPA with section 3 of the Sexual Offences Act does not create a lacuna which confers on the Children's Court the jurisdiction to conduct the trial of a child 14 years and over for the offence of rape.

[119] I am attracted to the view that because the Parish Court does not have jurisdiction to try the offences of rape and buggery pursuant to section 268 of the Parish Courts Act, then no such jurisdiction could lie within the Children's Court in the absence of clearly expressed language.

[120] It is a jurisdictionally significant fact that both the Parish Court and the Children's Court are creatures of statute. The Parish Court derives its jurisdiction primarily from the Parish Courts Act and also from other statutes which specifically confer it with jurisdiction in respect of certain specified offences. The Children's Court, on the other hand, derives its jurisdiction from the Act. Section 268 of the Parish Courts Act establishes the jurisdiction of the Parish Court only in respect of indictable offences and identifies the indictable offences that it is lawful for that court to hear and determine. In addition to those offences, the Parish Court also has the power to hear and determine other offences under its special statutory jurisdiction where the jurisdiction is granted under the relevant statutes.

[121] By virtue of section 71(1) of the Act, the Children's Court is vested with all the powers of the Parish Court and its procedure shall also be the same as that of the Parish Court. I am of the view that there is a necessary interplay between the Act and the Parish Courts Act, and such a relationship between separate pieces of legislation is not unusual where common subject matter is involved. Therefore, it is my opinion that "powers" as used in this context includes the power or lawful authority to hear and determine cases which are triable on indictment and in respect of which the Parish Court has been given the power to try by virtue of section 268 of the Parish Courts Act. The procedure to be employed in the Children's Court in determining which cases that are triable on indictment are within the court's jurisdiction is the same procedure that is to be employed by the Parish Court as established in section 272 of the Parish Courts Act, which provides as follows:

"272. On a person being brought or appearing before a Magistrate in Court or in Chambers, charged on information and complaint with any indictable offence, the Magistrate

shall, after such enquiry as may seem to him necessary in order to ascertain whether the offence charged is within his jurisdiction, and can be adequately punished by him under his powers, make an order, which shall be endorsed on the information and signed by the Magistrate, that the accused person shall be tried, on a day to be named in the order, in the Court or that a preliminary investigation shall be held with a view to a committal to the Circuit Court."

[122] By way of comparison, it is also of assistance to examine the situation that obtains in the Family Court because para. 4 of the Third Schedule of the Act provides that the Family Court shall be the Children's Court, and reads as follows:

"4. The Family Court shall be the Children's Court and shall be deemed to be duly constituted as such, at any sitting of a Family Court for the purpose of exercising its jurisdiction in the capacity of such Children's Court notwithstanding that it be constituted of a single Judge of a Family Court."

[123] The Family Court Act establishes the Family Court, and section 5(2) thereof provides that each judge of the court shall be a Judge of the Parish Court.

[124] Section 4(1) of the Family Court Act provides as follows:

"4.- (1) The Court shall have jurisdiction to try or otherwise deal with offences, causes, or matters as provided in that behalf in any of the enactments for the time being specified in the Schedule."

Section 4(2) provides that the court shall have all the functions and authority incident to the jurisdiction conferred upon it by section 4(1).

[125] The Act is one of the enactments specified in the Schedule to section 4(1), and, in addressing the jurisdiction of the Family Court, section 4(4) provides as follows:

"(4) Subject as otherwise provided by or under this Act, the like process, procedure and practice as relate to the exercise of jurisdiction of a Parish Court, and otherwise to the conduct of its business, shall be observed, in so far as they are applicable (with necessary adaptations), in relation to the

exercise of jurisdiction, and otherwise to the conduct of business, of the Family Court and, without prejudice to the generality of the foregoing, the judgements [sic] and orders of the Family Court and the attendance of persons before it, whether as accused persons or witnesses or otherwise, may be enforced accordingly.”

[126] In my opinion, it is apparent from these provisions that the Family Court derives a part of its jurisdiction from the Parish Courts Act in a manner which is similar to how the Children’s Court obtains its jurisdiction or aspects of it, and that in respect of its ability to try indictable cases, this is limited by section 268 of the Parish Courts Act.

[127] In issue are the offences of rape and buggery, which are indictable offences and are not listed in section 268 of the Parish Courts Act among the offences that the Parish Court is empowered to hear. In these circumstances, I am of the view that it would be incongruous to have a judge in the Children’s Court exercising powers in trying indictable offences greater than he has when sitting as a Judge of the Parish Court save and except for any necessary adaptations which permit the judge in the Children’s Court to deal with the special nuances of that court. Furthermore, and more importantly, empowering a judge of the Children’s Court to conduct the trial of children for offences such as rape and buggery would infringe the power granted to the Supreme Court to try these offences.

[128] The importance of the distinction between the jurisdictions of the Supreme Court and the Parish Court was demonstrated in the seminal decision of the Judicial Committee of the Privy Council in **Hinds v R. Hinds v R** arose out of the decision of the Parliament of Jamaica to pass the Gun Court Act in 1974 (‘the GCA’), purporting to establish a new court called the Gun Court which could sit in three divisions. These were a Resident Magistrate’s Division constituted by a Resident Magistrate, a Full Court Division comprised of three Resident Magistrates acting together, and a Circuit Court Division constituted by a Supreme Court Judge exercising the jurisdiction of a Circuit Court.

[129] The Full Court Division was a new court which had a composition different from any pre-existing Jamaican court. The Board considered the following provisions of section 97 of the Constitution:

“97.- (1) There shall be a Supreme Court for Jamaica which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

...

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

[130] The Board examined the distinction between the higher judiciary and the lower judiciary, which included Resident Magistrates (now referred to as judges of the Parish Court). It considered the security of tenure given to the higher judiciary to be significant. By a majority decision, it concluded at page 338 as follows:

“If, as contended by the Attorney-General, the words italicised above in s 97 (1) entitled Parliament by an ordinary law to strip the Supreme Court of all jurisdiction in civil and criminal cases other than that expressly conferred upon it by s 25 and s 44, what would be left would be a court of such limited jurisdiction that the label ‘Supreme Court’ would be a false description. So too if all its jurisdiction (with those two exceptions) were exercisable concurrently by other courts composed of members of the lower judiciary. But more important, for this is the substance of the matter, the individual citizen could be deprived of the safeguard, which the makers of the Constitution regarded as necessary, of having important questions affecting his civil or criminal responsibilities determined by a court, however named, composed of judges whose independence from all local pressure by Parliament or by the Executive was guaranteed by a security of tenure more absolute than that provided by the Constitution for judges of inferior courts.

Their Lordships therefore are unable to accept that the words in s 97 (1), upon which the Attorney-General relies, entitle Parliament by an ordinary law to vest in a new court composed of members of the lower judiciary a jurisdiction that

forms a significant part of the unlimited civil, criminal or supervisory jurisdiction that is characteristic of a 'Supreme Court' and was exercised by the Supreme Court of Jamaica at the time when the Constitution came into force, at any rate where such vesting is accompanied by ancillary provisions, such as those contained in s 6 (1) of the Gun Court Act 1974, which would have the consequence that all cases falling within the jurisdiction of the new court would in practice be heard and determined by it instead of by a court composed of judges of the Supreme Court."

[131] The Board concluded that the provisions of the GCA, in so far as they provide for the establishment of a Full Court Division of the Gun Court conflicted with Chapter VII of the Constitution and were void by virtue of section 2 of the Constitution.

[132] The Act was passed as an ordinary Act of Parliament and did not contain any express amendment of the Constitution, which gives a judge of the Parish Court as a member of the lower judiciary the power to exercise the jurisdiction of a Circuit Court. Without deciding the point, on the authority of **Hinds v R** it appears that, in any event, such a procedure would have been ineffective to achieve such a constitutional amendment.

[133] The provisions of the Act create some ambiguity. The issue which has been largely responsible for fuelling the confusion is the construction placed on section 72(6) of the Act to mean that by the use of the words "finally be disposed of", it is giving the Children's Court the jurisdiction to conduct a trial in respect of children that have been accused of committing the offence of rape and/or buggery.

[134] If the words "finally be disposed of" in section 72(6) of the Act is construed to mean tried and finally disposed of, then this creates a conflict with the Constitution as well as section 75, which is specifically referred to in the section as not to be prejudiced. As it relates to the Constitution, there is a presumption of constitutionality when interpreting statutes, as explained by Lord Diplock in **Attorney-General of the Gambia v Momodou Jobe** [1984] AC 689 at page 702 as follows:

"...This presumption is but a particular application of the canon of construction embodied in the Latin maxim *magis est tut res valeat quam pereat* which is an aid to the resolution of any ambiguities or obscurities in the actual words used in any document that is manifestly intended by its makers to create legal rights or obligations....Where, as in the instant case, omissions by the draftsman of the law to state in express words what, from the subject matter of the law and the legal nature of processes or institutions with which it deals, can be inferred to have been Parliament's intention, a court charged with the judicial duty of giving effect to Parliament's intention, as that intention has been stated in the law that Parliament has passed, ought to construe the law as incorporating, by necessary implication, words which would give effect to such inferred intention, wherever to do so does not contradict the words actually set out in the law itself and to fail to do so would defeat Parliament's intention by depriving the law of all legal effect."

[135] In the instant case, the omission of the offences of rape and buggery in the Fourth Schedule of the Act ought to be interpreted in keeping with the canon of construction that a law should be interpreted in a sense that makes it effective and in conformity with the Constitution rather than ineffective. I adopt this approach on the basis that the intention of Parliament in passing the Act was not to pass legislation which contravened the Constitution by providing a regime for the trial of children charged with rape and/or buggery, as this would contravene the Constitution.

[136] This is not to say that the Children's Court is not capable of finally disposing of these matters although it may not be the court that heard the trial of these offences. Section 75 of the Act provides as follows:

"75.- (1) Any court by or before which a child is found guilty of an offence other than murder may, if it thinks fit, remit the case to the Children's Court acting for the place where the offender was committed for trial, or, if he was not committed for trial, to a Children's Court acting either for the same place as the remitting court or for the place in which the offender resides.

(2) Where any such case is so remitted, the offender shall be brought before the Children's Court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court.

(3) No appeal shall lie against an order of remission made under subsection (1), but nothing in this subsection shall affect any right of appeal against a verdict or finding on which such an order is founded; and a person aggrieved by the order of the Children's Court to which the case is remitted may appeal therefrom as if he had been tried by and had pleaded guilty before the Children's Court.

(4) A court that makes an order remitting a case to a Children's Court under this section-

(a) may give such directions as appear to be necessary with respect to the custody of the offender or for his release on bail until he can be brought before the Children's Court; and

(b) shall cause to be transmitted to the clerk of the Children's Court, a certificate-

- (i) setting out the nature of the offence;
- (ii) stating that the offender has been found guilty thereof and that the case has been remitted for the purpose of being dealt with under this section."

[137] Section 75 shows that a child need not be tried only in the Children's Court and demonstrates that "finally be disposed of" does not carry the meaning that all proceedings relating to a child must be in the Children's Court, including a trial. This is so even when the child is under 14.

[138] At first blush, section 75(2) may appear to have an internal inconsistency in the sense that it is empowering the Children's Court to deal with the offender as if he had been tried by the court although the Children's Court did not have the jurisdiction to try the offence in the first place. However, I interpret the subsection to mean that the

punishment options to be utilised would be limited to those available to the court as if the child had been found guilty of an offence within the jurisdiction of the Children's Court. These methods of dealing with child offenders are specified in section 76 of the Act.

[139] It is my opinion that section 72(6) of the Act, which provides that where a child who has not yet attained the age of 14 years is charged with any offence, the charge shall "finally be disposed of by a Children's Court", is not to be interpreted to mean that if a child is charged with rape or buggery (neither of which are listed in the Fourth Schedule) these charges shall be **tried** and finally disposed of by the Children's Court.

[140] Similarly, I am of the view that to the extent that section 72(6) covers a child 14 years or older when he is charged with any offence other than an offence specified in the Fourth Schedule, the section refers to the situation in which the charge was heard by a court of summary jurisdiction that is not a Children's Court.

[141] It is my respectful opinion the Children's Court is not empowered to conduct the trial of the offences of rape or buggery as this would run afoul of the Act, the Parish Courts Act and the Sexual Offences Act.

Conclusion

[142] Therefore, for the reasons stated above, I am of the opinion that there is no statutory basis for the Children's Court to conduct the trial in respect of children charged with either the offence of rape or buggery, whether the accused child is under the age of 14 years or 14 and over.

[143] For the reasons expressed herein, I would be minded to give the following response to questions (2) in respect of AW and KW as follows:

AW v R:

“(2) Whether the Children’s Court has the jurisdiction to try all charges of buggery in which children are charged with the said offence.”

Answer: No

KW v R:

“(2) Whether the Children’s Court has the jurisdiction to try the offence of rape given what appears to be the failure of Parliament to amend the Fourth Schedule to the [CCPA].”

Answer: No

EDWARDS JA

ORDER

By a majority (Laing JA (Ag) dissenting, in part):

1. The court answers the questions posed by the learned judge of the Parish Court sitting in the Children’s Court as follows:

AW v R

Question (1): “Whether the Children’s Court has the jurisdiction to conduct the trial of all matters in which a child under the age of 14 years is charged with a criminal offence?”

Answer: Yes

Question (2): “Whether the Children’s Court has the jurisdiction to try all charges of buggery in which children are charged with the said offence.”

Answer: Yes.

Question (3): "If the answer to question 1 and 2 above is yes, whether the Children's Court has the jurisdiction to try the offence of buggery on indictment."

Answer: No

KW v R

Question (1): "What is the jurisdiction of the Children's Court to hear any matter in which a child who has attained the age of 14 years is charged with a criminal offence not listed in the Fourth Schedule to [the Act]?"

Answer: The Children's Court has the jurisdiction to try any offence involving a child 14 years of age and above, where that offence is not listed in the Fourth Schedule, or where the offence is statutory and the statute does not otherwise confer the jurisdiction on a different court or courts.

Question (2): "Whether the Children's Court has the jurisdiction to try the offence of rape given what appears to be the failure of Parliament to amend the Fourth Schedule to [the Act]."

Answer: No. The Children's Court has no jurisdiction to try the offence of rape as the statute creating the offence has conferred the jurisdiction on the Circuit Court exclusively.

Question (3): "If the answer to question 2 is yes, whether the Children's Court has the jurisdiction to try the offence of rape on indictment."

Answer: No. The Children's Court has no jurisdiction to try the offence of rape on indictment or otherwise.

JR v R

Question (1): "What is the jurisdiction of the Children's Court with respect to a matter in which a child who has attained the age of 14 years is charged with a criminal offence listed in the Fourth Schedule to [the Act]?"

Answer: The Children's Court has no jurisdiction to try a child over the age of 14 who has been charged with an offence listed in the Fourth Schedule and such matters must be committed to the Circuit Court for trial. Firearm offences are listed in the Fourth Schedule.

Question (2): "Does the Children's Court have the jurisdiction to conduct the trial of a matter in which a child who has attained the age of 14 years is charged with a criminal offence listed in the Fourth Schedule to [the Act]?"

Answer: The Children's Court has no jurisdiction to conduct a trial in the case of a child 14 years and above charged with a criminal offence listed in the Fourth Schedule and its jurisdiction is limited to the conduct of committal proceedings with a view to committing the case for trial in the court where jurisdiction lies or to

sentence, if and when, a case is remitted to the court for sentencing.

2. The matters involving AW and KW are remitted to the Children's Court to be dealt with according to law.
3. The matter involving JR is to be sent back to the High Court Division of the Gun Court, where jurisdiction lies, for trial without further delay.