[2025] JMCA Civ 20

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MRS JUSTICE DUNBAR-GREEN JA
THE HON MRS JUSTICE G FRASER JA (AG)

SUPREME COURT CIVIL APPEAL NO COA2024CV00039

BETWEEN	**SUNBEAM CHILDREN'S HOME (also referred to as Sunbeam Boys Home, Sunbeam Childcare Facility, and Sunbeam Home for Boys)**	**APPELLANT**
AND	**CHILD PROTECTION AND FAMILY SERVICES AGENCY**	**RESPONDENT**

Miss Sarah-Elizabeth Dixon instructed by Cardinal Law for the appellant

Steven Powell for the respondent

2, 4 April and 27 June 2025

Civil Procedure – Application for removal of children from children's home – Whether the learned judge committed jurisdictional error – Proper procedure for removal application – Judicature (Supreme Court) Act, section 27 – The Child Care and Protection Act, sections 47, 49 and 57

P WILLIAMS JA

[1] I have read, in draft, the reasons for judgment of G Fraser JA (Ag). I agree with her reasoning as it accords with my own reasons for concurring with the orders outlined in para. [4].

DUNBAR-GREEN JA

[2] I, too, have read the draft reasons for judgment of G Fraser JA (Ag) and agree with her reasoning.

G FRASER JA (AG)

Introduction

[3] This was an appeal by the Sunbeam Children's Home (also referred to as Sunbeam Boys Home, Sunbeam Childcare Facility, and Sunbeam Home for Boys) ('the appellant') arising from an application made by the respondent, Child Protection and Family Services Agency ('CPFSA') (formerly the Child Development Agency), for a court order to remove children from the Sunbeam Children's Home operated by the appellant.

[4] We heard this matter on 2 April 2025, and, after consideration of all the supporting documents filed on behalf of the parties and after hearing oral submissions on behalf of the parties, we made the following orders:

> "1. The appeal is allowed.
>
> 2. The orders of Reid J made on 29 February 2024 are set aside.
>
> 3. The counter-notice of appeal filed by the respondent on 18 April 2024 is dismissed.
>
> 4. Costs to the appellant in the appeal and in the court below to be agreed or taxed."

We then indicated that written reasons for the decision would be furnished to the parties, and this judgment fulfils that promise.

[5] The application giving rise to the appeal was heard by Reid J ('the learned judge') on 29 February 2024, who granted the order as prayed by the CPFSA and extracted an undertaking from the said CPFSA to discontinue similar proceedings which were initiated in the Saint Catherine Parish Court on 18 January 2024. The orders made by the learned judge were as follows:

> "1. The Claimant's Attorney at Law gives an undertaking to file a Notice of Withdrawal of the Plaint dealing with the same issues which were filed at the Spanish Town parish Court by 11:00 am on March 1, 2024.

> 2. The Claimant is granted permission to remove all the children who are currently in the custody care and possession of the Defendant.
>
> 3. The Claimant's Attorney at Law is to prepare, file and serve this Order."

[6] Aggrieved by the learned judge's orders, the appellant, on 21 March 2024, filed a notice and grounds of appeal challenging the decision made in favour of the CPFSA. In particular, order 2 in para. [5] above. The grounds of appeal are as follows:

> "1. The learned Judge erred in law in finding that the Supreme Court of Jamaica had jurisdiction to hear the Fixed Date Claim Form filed on the 13th of February 2024 and/ or the Notice of Application for Court Orders filed on the 15th of February 2024 pursuant to section 27 of Judicature (Supreme Court) Act.
>
> 2. The learned Judge erred in finding that the Defendant did not possess the requisite license to operate a children's home pursuant to section 47 of the Child Care and Protection Act at the time of hearing the substantive matter.
>
> 3. The learned Judge erred in law in ordering the removal of the wards in the care of the Defendant pursuant to sections 49(3) and 57 of the Child Care and Protection Act.
>
> 4. The learned Judge erred in law in empowering the Claimant to remove the wards in care of the Defendant pursuant to section 57(2) of the Child Care and Protection Act."

[7] The CPFSA filed its counter-notice of appeal and five grounds of appeal, on 18 April 2024, asking that the learned judge's decision be affirmed. On 2 April 2025, during the course of oral submissions before this court, Mr Powell indicated that the CPFSA was withdrawing its counter-notice of appeal.

Background

[8] The CPFSA, on 12 January 2024, corresponded with the appellant, referencing an approval by the Minister of Education and Youth ('the Minister') to cancel its licence. On

18 January 2024, CPFSA initiated proceedings in the Saint Catherine Parish Court for an order to remove the children from the appellant's care. Without discontinuing the application made in the Parish Court, on 13 February 2024, CPFSA filed in the Supreme Court a fixed date claim form ('FDCF') No SU2024FD00521, with a supporting affidavit seeking the same order previously sought in the Parish Court, namely, the removal of the children in the care of the appellant. The claim was made pursuant to the Judicature (Supreme Court) Act ('JSCA'), the Child Care and Protection Act ('CCPA'), the Child Protection and Family Services Agency Standards of Care for Residential Child Care Facilities ('the Standards') and the Child Care and Protection (Children's Homes) Regulations, 2007 ('the Regulations'). Significantly, it does not appear that the CPFSA served the claim on the appellant. Furthermore, the claim was not issued for service as there was no court seal or date endorsed on the FDCF. Without more, on 15 February 2024, CPFSA filed a notice of application for court orders ('the application'), accompanied by an affidavit of urgency, seeking the exact order as contained in the FDCF. The notable difference was that there was no mention of the JSCA grounding the application.

[9] On hearing the notice of application, the learned judge granted the orders in para. [5] above.

Submissions

[10] Counsel, Miss Sarah-Elizabeth Dixon ('Miss Dixon'), on behalf of the appellant, contended that the learned judge erred in determining that the Supreme Court possessed the jurisdiction to hear either the FDCF or the notice of application in accordance with section 27 of the JSCA. In very detailed and extensive arguments, Miss Dixon maintained that it is, in fact, the Parish Court that Parliament had endowed with the authority to address issues pertaining to the removal of children from the appellant's custody. It was further submitted by Miss Dixon that, notwithstanding the erroneous acquiescence of counsel, then appearing on behalf of the appellant, the appellant was in possession of a valid licence to operate a children's home on the date of the hearing.

[11] Conversely, the respondent, through counsel, Mr Steven Powell, argued that section 27 of the JSCA conferred upon the learned judge the jurisdiction to hear and adjudicate upon the matter, exercising the powers of the Supreme Court within its Chancery Division, and acting in the capacity of *parens patriae* of the child. In support of this submission, counsel relied on the authority of **B and C v The Children's Advocate** [2016] JMCA Civ 48. Additionally, reference was made to paras. [53] and [54] of the decision **Jamaica Public Service Company Limited v Dennis Meadows and others** [2015] JMCA Civ 1, which, counsel submitted, affirmed the principle that statutory words were to be interpreted according to their ordinary and natural meaning, unless such an interpretation would result in an outcome that was manifestly absurd or contrary to the intention of Parliament. Accordingly, the word '**may**' was said to denote an act that was permissive or discretionary, in contrast to '**shall**' or '**must**', which ordinarily was construed as imposing a mandatory obligation. In that regard, the CPFSA contended that the use of the word '**may**' provided the CPFSA a choice of forums, wherein the removal application could be made.

The issues

[12] Although four grounds of appeal were filed, grounds 1, 3 and 4 challenged the jurisdiction of the learned judge to hear and determine the application as framed and, therefore, were conveniently dealt with together. For convenience and the avoidance of repetition, I utilised several subheadings in my analysis of grounds 1, 3 and 4. The secondary issue arising on ground 2 concerned the disagreement as to whether or not the appellant's licence was extant at the time of the application. This ground was, therefore, considered separately.

[13] This court was not provided with any reasons for the learned judge's decision to grant the orders. Therefore, the material considered was the submissions of both counsel and the documentation filed in the record of appeal.

Discussion

Jurisdiction

The parens patriae jurisdiction of the Supreme Court

[14] On review of the FDCF and the notice of application, it was observed that what was before the learned judge for her determination was an application for an order to remove the children under the appellant's care and from its facility. The narrow issue for determination, therefore, was whether the Chancery jurisdiction of the Supreme Court was triggered in the circumstances of this case. This issue necessarily involved statutory interpretation and a resort to relevant case law.

[15] The two relevant statutes for consideration were the CCPA and the JSCA. Since this appeal touched and concerned statutory interpretation, it was apropos to consider the two competing provisions in the statutes. I started with section 27 of the JSCA, which is reproduced below:

> "27. Subject to subsection (2) of section 3 the Supreme Court shall be a superior Court of Record, and shall have and exercise in this Island all the jurisdiction, power and authority which at the time of the commencement of this Act was vested in any of the following Courts and in this Island, that is to say –
>
> The Supreme Court of Judicature,
> The High Court of Chancery,
> The Incumbered Estates Court,
> The Court of Ordinary,
> The Court for Divorce and Matrimonial Causes,
> The Chief Court of Bankruptcy, and
> The Circuit Courts, or
> Any of the Judges of the above Courts, or
> The Governor as Chancellor or Ordinary acting in any judicial capacity, and
> All ministerial powers, duties, and authorities, incident to any part of such jurisdiction, power and authority."

[16] Section 27 of the JSCA establishes the jurisdiction and authority of the Supreme Court, outlining its inherent and statutory powers, including its equitable jurisdiction as

derived from the Court of Chancery. The Chancery Division of the Supreme Court of Jamaica primarily handles matters relating to trusts, estates, and related areas of equity. It also addresses issues involving children guardianship, custody and associated welfare matters, thus empowering the Supreme Court to make decisions for vulnerable individuals, including children.

[17] With regard to decided cases, the Chancery Division typically deals with the custody and guardianship of children, especially when parental wishes conflict with the child's best interests (see **LHP v DP** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 21/2006, judgment delivered 29 November 2006).

[18] The application made by CPFSA was to remove children from the Sunbeam Children's Home. I reiterate that there was no indication on the face of the application that the CPFSA was relying on section 27 of the JSCA. On the contrary, the application was entirely couched in terms of the statutory regime prescribed by the CCPA. It appears that it was the appellant who challenged the Supreme Court's jurisdiction to deal with the application. It was then that the CPFSA advanced the argument that the Supreme Court could rely on its broad jurisdiction as *parens patriae* of the children, despite the existence of a detailed statutory mechanism under section 57 of the CCPA. The learned judge accepted jurisdiction and proceeded to hear and determine the matter.

[19] This, therefore, begged the question whether the Chancery jurisdiction of the court overrides other specified legislation. The answer could only be discerned by an analytical discussion of the principles upon which the Supreme Court exercises jurisdiction over the custody of children. This also included consideration of the successive statutes which have altered the fundamental principles upon which the jurisdiction is exercised. Finally, it involved the consideration of current statute in relation to children guardianship, custody and welfare, and which affects the legal jurisdiction of the Chancery Division of the court.

[20] The original position, at common law, was that the father was by nature the guardian of his children. He was, therefore, at liberty to make all decisions as to the custody and control of his children. That situation was entirely different from the jurisdiction that existed in equity. The latter jurisdiction was not concerned with determining rights between a parent and a stranger or between a parent and a child. It was a judicial administrative jurisdiction, by virtue of which the Court of Chancery was put to act on behalf of the Crown, as being the guardian of all infants, thus overriding the natural guardianship of the parent. In the decision of **The Queen v Gyngall** [1893] 2 QB 232, Lord Esher MR at page 239 stated:

> "…I take it that at common law the parent had, as against other persons generally, an absolute right to the custody of the child, unless he or she had forfeited it by certain sorts of misconduct….Where the common law jurisdiction was being exercised, unless the right of the parent was affected by some misconduct or some Act of Parliament, the right of the parent as against other persons was absolute.
>
> **But there was another and an absolutely different and distinguishable jurisdiction, which has been exercised by the Court of Chancery from time immemorial. That was not a jurisdiction to determine rights as between a parent and a stranger, or as between a parent and a child. It was a paternal jurisdiction, a judicially administrative jurisdiction, in virtue of** which **the Chancery Court was put to act on behalf of the Crown, as being the guardian of all infants, in the place of a parent, and as if it were the parent of the child, thus superseding the natural guardianship of the parent.**" (Emphasis added)

[21] Whilst there can be no doubt as to the existence and extent of the jurisdiction wielded by Chancery, how that jurisdiction was exercised remains vague and uncertain. One might be tempted to think that once the Court of Chancery assumed jurisdiction, it overrode all other jurisdictions. The uncertainty in the application of the equitable jurisdiction is a matter of fundamental importance, since the JSCA, by section 49(i), provides that "…[i]n questions relating to the custody and education of infants the rules

of equity shall prevail". Does this mean that the equitable jurisdiction of the Chancery Division of the Supreme Court cannot be subject to the express provisions of any other Act?

[22] While the court possesses *parens patriae* jurisdiction to intervene in matters concerning the welfare of minors, such jurisdiction must be clearly justified and exercised judiciously and within the bounds of procedural fairness. **In Re F (Mental Patient: Sterilisation)** [1990] 2 AC 1, the House of Lords emphasised the limited and exceptional nature of such jurisdiction. The Jamaican courts have similarly exercised caution. In **Children's Advocate v RH** [2023] JMSC Civ 16, the court reiterated that its powers under the *parens patriae* doctrine are to be exercised cautiously and in accordance with established legal procedures and only upon full and fair consideration of all relevant circumstances.

[23] In my view, the Chancery Division's jurisdiction has been somewhat modified by other legislation, including the Children (Guardianship and Custody) Act ('CGCA'), where applications can be made through the Family Court and the Parish Court regarding the custody and guardianship of children. So too, the Matrimonial Causes Act had dramatically affected the significant scope of its application as that statute gave power to the divorce court in proceedings for judicial separation, nullity and divorce to make interim and final orders respecting the custody, maintenance and education of the children of a marriage.

[24] Thus, the doctrine of *parens patriae* gave the Supreme Court inherent jurisdiction to act in the best interest of minors, in the appointment of guardians, custody or upbringing of a child or the administration of any property belonging to or held on trust for a child. I noted, however, that in the case at bar, no such issues were involved, whether between the State and natural parents of any child or between the appellant and CPFSA. In fact, the minors involved were already wards of the State. The sole issue in contention was their accommodation in a suitable facility and environment. Since wardship was not in issue, why was the court being asked to exercise its *parens patriae* jurisdiction? Upon an application being made for the Supreme Court to exercise its *parens*

patriae jurisdiction, such child or children may automatically become wards of the court. I am sure this was not the intended outcome when CPFSA made its application (see **E (Mrs) v Eve** [1986] 2 SCR 388, **Johnstone v Beattie** (1843) 10 Cl & F 42, 8 ER 657 and **In re N (Infants)** [1967] 1 Ch 512).

[25] It seemed to me that while section 27 of the JSCA gives the Supreme Court the inherent jurisdiction to deal with matters which were previously under the jurisdiction of the Court of Chancery, this broad jurisdiction operates by dealing with child welfare matters, allowing it to intervene only where the Supreme Court's *parens patriae* jurisdiction is invoked correctly and or justified on exceptional grounds. Such grounds would, it seemed to me, include, but are not limited to where: (i) specific statutory provisions are inadequate to meet the circumstances of the case; (ii) there is statutory ambiguity within the CCPA; (iii) the CCPA allows for concurrent jurisdiction; and (iv) the CPFSA properly made a case for removal from the jurisdiction of the Parish Court (for example, where the urgency or complexity of the matter required it to be done).

[26] The *parens patriae* jurisdiction, in my view, certainly does not explicitly address the placement of children in regulated homes or the specification of the particular facilities to which they should be sent. Furthermore, the Supreme Court's jurisdiction, under section 27 of the JSCA, does not necessarily override the statutory framework provided under section 57 of the CCPA. The question, therefore, was whether the Supreme Court's (Chancery Jurisdiction) was triggered by the proceedings initiated by the CPFSA and whether it trumped the jurisdiction of the Parish Court.

[27] Judicial precedent supports the view that inherent jurisdiction should not be exercised contrary to statutory child protection schemes and that, while superior courts possess inherent jurisdiction, they should exercise restraint where Parliament has legislated a clear process. **In re McGrath (Infants)** [1893] 1 Ch 143, the court stressed that inherent jurisdiction should not override statutory child protection mechanisms. In **R v Secretary of State for the Home Department, ex parte Simms** [2000] 2 AC 115, the House of Lords emphasised that general provisions should not override specific

legislative intent. Similarly, in **R (on the application of A) v Croydon London Borough Council** [2009] UKSC 8, the Supreme Court reaffirmed that specialist child protection legislation should guide judicial decisions regarding children. In the decision of **A v Liverpool City Council and another** [1982] AC 363, the House of Lords ruled that courts should not use their inherent jurisdiction to override statutory child protection laws, reinforcing that the *parens patriae* power is secondary to clear legislative intent.

[28] I appreciated that the foregoing decisions are merely persuasive, but within Jamaica, several cases have examined the Supreme Court's *parens patriae* jurisdiction. These cases provide insight into how the Supreme Court exercises its inherent powers. In the decision of **The Children's Advocate v RH**, the Supreme Court reiterated its *parens patriae* jurisdiction, emphasising its role in intervening on behalf of children to protect their welfare. The judgment underscored that while the court has inherent powers to act for the benefit of minors, these should be exercised considering the statutory frameworks established for child protection. So although Mr Powell relied upon this case, to my mind it did not support the respondent's position. In **R v M and The Children's Advocate** [2019] JMSC Civ 156, the court refused to return a minor child to her biological mother, prioritising the child's welfare over parental rights. The court applied the *parens patriae* principle, demonstrating its commitment to acting in the best interests of the child, even when it means overriding parental claims.

[29] In the case of **B and C v The Children's Advocate**, the Court of Appeal addressed the Supreme Court's authority to appoint guardians for children. Brooks JA (as he then was) rendered an extensive and erudite decision regarding the *parens patriae* jurisdiction of the Supreme Court and, more importantly, how and when the jurisdiction should be assumed or invoked. After a clinical examination of sections 4, 27 and 49 of the JSCA and relevant sections of the CGCA, the learned judge of appeal at para. [31] stated as follows:

> "In addressing the jurisdiction of the Supreme Court in respect of children, the CGCA, it could be said, codified an aspect of that jurisdiction, by providing for the removal, by the court,

> of testamentary or court-appointed guardians, and the appointment of other guardians in their stead. Those provisions are contained in section 8 of the Act."

[30] The learned judge of appeal observed, at para. [33] that:

> "It is apparent, from the above analysis, that the inherent jurisdiction of the court is relevant in a case where a child has living biological parents, but there is a need, for whatever reason, to appoint a guardian for the child. The Supreme Court, in exercising either its inherent or statutory jurisdiction, is entitled to make a decision concerning the person who is best able to take care of the child. It is to be noted that section 18 of the CGCA stipulates that, in contemplating that decision, it is the welfare of the child that should be paramount."

[31] The foregoing authority highlighted that the Court of Chancery traditionally exercised jurisdiction over children based on the Crown's *parens patriae* prerogative. The court noted that this inherent jurisdiction allowed for the appointment of guardians other than biological parents when it served the child's best interests. However, the court also urged that such inherent powers should be exercised in alignment with existing statutory provisions.

[32] These cases affirm that, while the Supreme Court of Jamaica possesses inherent *parens patriae* jurisdiction to act in the best interests of children, the court's power is exercised with deference to statutory frameworks such as the CCPA. The court balances its inherent authority with legislative provisions, ensuring that any intervention aligns with both the child's welfare and Parliament's intent.

Comparative analysis between the JSCA and the CCPA

[33] Having addressed the scope and implications of section 27 of the JSCA, it was necessary to return to the statutory framework specifically governing child care and protection matters. Section 57 of the CCPA sets out the procedure by which the court may be engaged in applications concerning the removal of a child or children from a place of safety or a children's home. It provides as follows:

"57. –(1) Subsection (2) shall apply in any case where the Minister –

(a) in exercise of the powers conferred on him by section 49, has cancelled or suspended a licence or has refused to renew a licence; or

(b) has reasonable grounds for believing that—

(i) any home is maintained in contravention of any of the provisions of this Part, any of the terms and conditions of a licence or of any direction given by the Minister thereunder; or

(ii) that any child is being maltreated, neglected or illegally detained in any home.

(2) Any person authorized by the Minister in that behalf may apply to a Resident Magistrate for an order–

(a) directing the Minister to remove any child from such home to a place of safety to be specified in the order; and

(b) making any necessary arrangements for the future of the child.

…"

[34] Having regard to the perceived tension seemingly existing between the two provisions, I next embarked on a comparative analysis of section 27 of the JSCA and section 57 of the CCPA. This examination is necessary to determine whether the general jurisdiction conferred under the former continues to operate alongside the specific procedure established under the latter, or whether section 57, being a later and more targeted legislation, implicitly limits or displaces the general grant of jurisdiction in this particular context. The analysis will be guided by well-established principles of statutory interpretation, including the presumption against implied repeal, the doctrine that specific provisions override general ones (*generalia specialibus non derogant*), and the overarching requirement to give effect to the legislative intent manifested in the statutory scheme.

[35] Section 57 of the CCPA allows the Minister (or by delegation, the CPFSA) to apply to the court for an order to remove a child or children from a children's home in specific circumstances, usually where there is evidence of abuse, neglect, or the child being at risk. This application is statutorily directed to "a Resident Magistrate", formerly the judge of the Resident Magistrates Court, now the Judge of the Parish Court. The court is now the Parish Court, and the relevant legislation is renamed the Judicature (Parish Court) Act ('JPCA'). Separate and apart from a change in nomenclature, no other changes have been made, divesting the Judge of the Parish Court of the jurisdiction to hear such applications. Section 57 of the CCPA specifically governs children's removal from homes, suggesting that Parliament intended for this provision to be the primary legal framework for such applications to a judge of the Parish Court.

[36] Additionally, there are certain principles of statutory interpretation relevant to this case, such as when two legislations are seemingly in contention. In analysing these provisions, the following key principles of statutory interpretation were applied by this court:

a) Literal rule – If the wording of section 57 of the CCPA is clear and unambiguous, it must be applied as written. The provision specifically outlines how and under what conditions a child may be removed from a children's home, implying that this is the governing framework for such applications.

b) General versus specific provisions (*generalibus specialia derogant*) – Where a general statute (the JSCA) seemingly conflicts with a more specific statute (the CCPA), the specific statute prevails. The CCPA, being a child-specific legislation, should take precedence over the general jurisdiction granted in section 27 of the JSCA.

c) Purposive approach – Courts should interpret statutes in line with their underlying purpose. The CCPA aims to protect children, while the JSCA ensures judicial authority.

[37] Even if the application was brought under section 27 of the JSCA in reliance on the *parens patriae*, a judge of the Supreme Court, before invoking its inherent jurisdiction, would have been duty-bound to consider the statutory provisions of the CCPA first. This exercise would have determined whether the statutory framework of the CCPA was inadequate or if the statutory provisions failed to address an exceptional circumstance affecting the children's welfare. It was only if the judge found any such lacuna or shortcoming that jurisdiction should have been assumed.

[38] A secondary issue arose from the CPFSA's contention that "[t]he rule of statutory interpretation is of remarkable importance as it relates to the use of the word '**may**' in section 57(2) of the [CCPA]" (emphasis as in original). The CPFSA argued that the ordinary meaning of "may" in that context indicated a discretion regarding the forum or court in which a removal application could be made. While I agreed that the term "may" implies a discretion, I did not accept that this discretion extended to the choice of forum. Rather, the discretion lies with the Minister or her designate to decide whether or not to initiate a removal application. In this regard, I agreed with the appellant's submission that section 57 does not confer "a right to seek redress in another Court of law of the Respondent's choosing".

[39] It has long been a rule of legislative interpretation that special legislative provisions override general laws (*generalia specialibus non derogant*). In the case of **Seward v The Vera Cruz** (1884) 10 AC 59, the House of Lords applied the maxim to resolve a conflict between general maritime law and specific provisions of the Merchant Shipping Act. The Court held that the specific statutory provisions governed the case, overriding the general maritime principles. In **Anthony Henry and Another v Attorney General of St Christopher and Nevis** [2023] UKPC 5, the Privy Council held that the specific provisions of the Mental Health Act governed the procedures for detaining individuals with mental health issues, taking precedence over the general provisions of the Criminal Code. This case illustrates the application of the maxim in the context of conflicting statutory provisions. These cases demonstrate the consistent application of the principle

that specific legal provisions override general ones when both apply to a particular issue. Thus, any application to remove a child from a children's home should be made under section 57 of the CCPA, not section 27 of the JSCA.

[40] It was my opinion that section 27 of the JSCA confers upon the Supreme Court a broad and enduring jurisdiction, including powers historically associated with the Chancery Division, such as the court's inherent jurisdiction to act *parens patriae* in matters concerning children. That jurisdiction is general in nature and applies across a wide range of civil contexts, allowing the court to grant equitable remedies where no specific statutory procedure exists. This includes the power to make orders concerning the welfare of minors.

[41] In contrast, section 57 of the CCPA is a later, more targeted provision. It establishes a precise mechanism by which an application for the removal of a child from a place of safety or a children's home is to be brought before a judge of the Parish Court. The section makes no reference to the Supreme Court, nor does it suggest an alternate or concurrent forum. Instead, it is drafted in specific and exclusive terms, outlining both the circumstances in which such an application may be made and the court before which it must be brought.

[42] Where two statutes appear to confer overlapping jurisdiction, the courts are guided by the presumption that Parliament does not legislate in vain. The principle of *generalia specialibus non derogant* dictates that a general provision must yield to a specific one in cases of direct conflict. Section 27 of the JSCA, being a general jurisdictional grant, must therefore be read subject to the more specific procedural requirements laid out in section 57 of the CCPA.

[43] Moreover, while implied repeal is not easily inferred, it may arise where a later enactment is so inconsistent with an earlier one that both cannot reasonably stand together. In the present case, the inconsistency lies not in the subject matter of jurisdiction over children per se, but in the procedural pathway by which relief is to be

sought. Section 57 constitutes a deliberate legislative choice to route such applications through the Parish Court, thereby providing a more accessible, community-based forum suited to the nature of child protection proceedings.

[44] Viewed in this light, section 57 is not merely permissive, it is directive. It prescribes the jurisdiction, the court, and the process to be followed in cases involving the removal of a child from institutional care. To permit parties to bypass that framework and proceed instead under the general jurisdiction of the Supreme Court would risk rendering the statutory procedure otiose, and would subvert the legislative intent underpinning the CCPA.

[45] Accordingly, I found that section 57 of the CCPA operates to limit the application of section 27 of the JSCA in this specific context. While the Supreme Court retains its inherent powers in genuinely exceptional circumstances, it ought not to be the default forum in cases where Parliament has provided a clear and detailed alternative.

Removal of section 57 application from the jurisdiction of the Parish Court, without leave

[46] It is not uncommon for proceedings commenced in one court to be lawfully transferred or removed to another court of competent jurisdiction. The statutory framework anticipates such procedural movement in appropriate circumstances. In the context of the Parish Court, the authority for such a transfer is expressly provided for under section 130 of the JPCA, which states that:

> "No action commenced in any Court under this Act shall be removed from the said Court into the Supreme Court by any writ or process, unless the debt or damage claimed shall exceed twelve thousand five hundred dollars; and then only by leave of the Magistrate of the Court in which such action shall have been commenced, in any case which shall appear to the said Magistrate fit to be tried in the Supreme Court, and subject to any order of the Supreme Court upon such terms as he shall think fit."

[47] While a party is free to discontinue or withdraw a matter commenced in the Parish Court and commence fresh proceedings in the Supreme Court without engaging section

130 of the JPCA, that was not the avenue pursued by the CPFSA in this case. The section 57 application before the Parish Court was still extant when the FDCF and subsequent section 57 application were filed in the Supreme Court. This court was, therefore, constrained to observe that the decision of the CPFSA to initiate an application pursuant to section 57 of the CCPA in the Supreme Court, without first securing the leave of the Parish Court in accordance with section 130 of the JPCA, raised a serious procedural irregularity. Section 130 prescribes the mechanism by which proceedings properly before the Parish Court may be removed to the Supreme Court. It provides that such a transfer may only occur upon the direction of a judge or through the appropriate procedural channels, including the grant of leave by a Judge of the Parish Court.

[48] The object of this provision is clear; it is intended to preserve the integrity of the Parish Court's jurisdiction and to guard against the impermissible shifting of proceedings to another forum in search of a more favourable outcome, thereby engaging in what is colloquially termed "forum shopping".

[49] The statutory scheme is designed to ensure that cases are adjudicated in the forum designated by law, and not displaced at the instance of one party acting unilaterally. Such procedural safeguards are fundamental to the orderly administration of justice and the protection of litigants from unfairness or prejudice, particularly in sensitive matters involving children and the institutions charged with their care.

[50] On a proper reading of the CCPA, it is evident that applications under section 57 are to be brought before a judge of the Parish Court. In the absence of a clear statutory foundation authorising the CPFSA to initiate the application in the Supreme Court, the decision to proceed in that court was, in this court's view, misconceived. Jurisdictional boundaries are not to be treated as optional; they are the framework within which justice is to be pursued. Failure to adhere to those limits invites not only procedural impropriety but also a potential abuse of the court's process.

Relevance of the CPR in applications

[51] The application filed by the CPFSA sought relief through a procedural mechanism that effectively determined the sole issue raised in the FDCF without serving or pursuing a substantive claim at the time of the application. The question for this court was whether the CPFSA's approach of filing an application seeking final relief without pursuing a substantive claim was consistent with the remit of the Civil Procedure Rules, 2002 ('CPR'), and whether such conduct amounted to an abuse of process.

[52] Applications made in the Supreme Court can arise in various contexts, including but not limited to interlocutory applications, injunctions, summary judgment and amendments to pleadings. Applications for court orders in the Supreme Court are integral to civil proceedings and comprehensively governed by the CPR. Part 11 of the CPR addresses the general framework for applications before, during, or after proceedings and contemplates the existence of a predicate claim. Part 26 empowers the court with broad case management powers, including the discretion to issue orders on its own initiative or upon application by a party. However, these procedural rules are not to be applied in isolation.

[53] The CPR is actuated by the overriding objective of ensuring that cases are dealt with justly, which includes ensuring procedural fairness, saving expense, and safeguarding the parties' right to be heard. The Supreme Court of Jamaica, while vested with inherent jurisdiction to control its processes, must exercise that discretion within the bounds of fairness and statutory compliance. The mere existence of inherent jurisdiction does not sanction the wholesale disregard of established procedural rules.

[54] It is well established that applications seeking to dispose of substantive issues finally must be anchored to an existing claim or followed by one if made pre-action. Moreover, courts have ruled that applications determining the main issue should be filed as substantive claims (see **A v Liverpool City Council and Another** [1982] AC 363). Exceptions, however, exist, such as applications under statutory authority or the court's inherent jurisdiction, including those concerning the welfare of minors under *the parens*

patriae doctrine. However, in child welfare matters, courts require adherence to statutory procedures before exercising inherent jurisdiction (*parens patriae*).

[55] In the present case, the CPFSA filed an application that mirrored the relief sought in a prior, unserved FDCF. This approach effectively bypassed the procedural safeguards embedded in the CPR, particularly those ensuring that parties have a fair opportunity to present their case. The Supreme Court of Jamaica has consistently emphasised the importance of adhering to procedural rules to maintain the integrity of the judicial process. In **Adjudah Silvera v Attorney General of Jamaica and South East Regional Health Authority and Another** [2023] JMSC Civ 50, the court affirmed that the initiation of proceedings without proper legal foundation constituted an abuse of process. That principle, in my view, is equally, if not more, applicable where proceedings are commenced in clear contravention of a statutory scheme prescribing the forum or jurisdiction in which such matters are to be heard. To proceed in defiance of legislatively conferred jurisdictional boundaries is to subvert the structure of the judicial system itself and constitutes a misuse of the court's process.

[56] Abuse of process occurs when the court's procedures are misused unfairly or bring the administration of justice into disrepute. If the CPFSA circumvents the statutory court process without legal justification, this could be seen as an abuse, particularly where the choice of court affects the respondent's rights or the CPFSA's actions appear calculated to obtain a procedural or tactical advantage. In **Hunter v Chief Constable of the West Midlands Police and Others** [1982] AC 529, Lord Diplock emphasised that abuse of process includes using the process of the court in a manner that is inconsistent with the underlying principles of justice. In the Jamaican context, procedural propriety is closely tied to jurisdiction. Local courts have treated a failure to follow the statutory court process as going to the root of the proceedings. But in the ordinary course, filing in the Supreme Court without leave where the law directs proceedings to the Parish Court is procedurally improper.

[57] The court's inherent jurisdiction to prevent abuses of its process empowers it to terminate or stay frivolous, vexatious, or oppressive proceedings. This principle was affirmed in **Millicent Forbes v The Attorney General of Jamaica** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 29/2005, judgment delivered 20 December 2006. In that case, the issue on appeal was whether the Full Court had jurisdiction to set aside the directed verdict of acquittal as returned by a jury. The appellant maintained that *certiorari* should go to quash the said verdict. Harrison P underscored the court's duty to prevent misuse of its procedures, and at page 12 of the judgment enunciated that:

> "Undoubtedly, a superior court has always had the inherent jurisdiction, to protect its own procedure. That inherent jurisdiction has never been interpreted to mean that a superior court has an unlimited power to make any order it chooses. Such a power to protect itself from abuse of its process and control its own procedure and practice must be exercised within accepted and permissible judicial ambits…"

[58] The CPFSA's decision to proceed by way of application, in the absence of a properly instituted claim, and to seek relief tantamount to a final determination was not merely procedurally irregular; it was legally indefensible. This was not a case that fell within the limited exceptions where a stand-alone application might be permissible, such as those expressly authorised by statute, or where the court's *parens patriae* jurisdiction is properly invoked to safeguard the welfare of a child in urgent or exceptional circumstances.

[59] The impropriety of the approach adopted by the CPFSA, in the manner in which the application was framed and pursued, revealed a clear intention to circumvent the procedural architecture laid down by the CPR and the CCPA. Both the rules and the statute exist to ensure that parties are afforded due process and that matters of such gravity are adjudicated with procedural integrity.

[60] In matters involving the welfare of children, where the stakes are particularly high, the court must be vigilant in safeguarding the rights of all parties, while ensuring that statutory procedures are not sidelined in pursuit of expediency. In this regard, I was

guided by the dicta of Phillips JA in para. [48] of **Joan Allen and Louise Johnson v Rowan Mullings** [2013] JMCA App 22. The learned judge of appeal cited with approval the enunciation of Smith J in **Nottinghamshire and City of Nottingham Fire Authority v Gladman Commercial Properties Ltd and another** [2011] 1 WLR 3235, at para. 32, "that all parties should be given the fullest opportunity to fairly and fully present their case". It was my considered view that the CPFSA's application, in both form and substance, constituted a serious departure from accepted legal process and warrants censure.

Statutory framework under the CCPA

[61] The CCPA establishes a comprehensive legal framework for the welfare and protection of children in Jamaica. Among its provisions, sections 47, 49, and 57 outline specific functions and powers vested in the Minister responsible for child care and protection. A critical analysis of these sections reveals the extent of the Minister's authority, the level of discretion afforded, and the potential implications of such discretion in the administration of child welfare.

[62] Section 47 of the CCPA, which deals with licences to operate children's homes, is irrelevant to the circumstances of this case because the appellant was not a facility falling within the exceptions of section 47(1) or (2). The undisputed fact was that the appellant had been a licensed entity since 24 June 2021, and, by virtue of section 47(3) "[a] licence shall be valid for a period of three years from the date of its issue and may be renewed successively". The currency of the licence would expire in June 2024, barring any intervention by the Minister.

[63] Section 49 sub-section (1) of the CCPA, empowers the Minister in respect of any children's home to refuse the grant of a licence, refuse the renewal of a licence or refuse the transfer of a licence. Sub-section (2) allows for the attachment of conditions to a licence, as the Minister deems fit. Section 49(3) grants the Minister the authority to remove a child from a children's home and make alternative arrangements for their care. Removal of children pursuant to section 49 is subject to the licensee contravening any

provision of the CCPA itself or violating any terms and conditions of the licence in question. Under the CCPA, the Minister is required to consider whether the home meets prescribed standards, but the section allows room for subjective judgment. Notably, there is no mandatory requirement for consultation with independent bodies before making a decision, which centralises authority in the Minister's office.

[64] Of course, when a person or an entity is imbued with great authority, there is an equal obligation and responsibility to wield that power in the interest of those whom it seeks to protect. Accordingly, this provision places a significant responsibility on the Minister to ensure that children's homes operate within the required standards. However, it would be impractical to expect the Minister to conduct these functions personally; therefore, the delegation of licensing assessments, inspections, and recommendations to the CPFSA is appropriate. The CPFSA, accordingly, is tasked with administering licensing, conducting inspections, and making assessments. In that sense, the operational tasks are delegated to the CPFSA.

[65] What was concerning is the absence of clear statutory guidelines, as the section does not explicitly state whether the Minister may delegate this function. However, in practice, the CPFSA typically exercises administrative functions related to child placement and removal. The Minister may, therefore, delegate operational aspects of removal, but the decision-making power likely remains with the Minister unless statutory or administrative provisions allow delegation. There is no such specific provision for delegation within the bounds of the CCPA, and therefore, the final approval, suspension or revocation of licences is retained by the Minister.

[66] The language used in section 49 suggests a broad discretion in determining whether a child should be removed based on considerations such as welfare, safety, and the best interests of the child. The provision, however, does not set out any explicit criteria for removal, which suggests that the Minister has significant latitude in exercising this power. The legal and practical implications are that while the discretion granted is

broad, it must be exercised reasonably and in accordance with legal principles, including natural justice and procedural fairness.

[67] Section 57 pertains to applications to the court for the removal of a child or children from a children's home. The Minister may initiate applications, but the final decision rests with the court, ensuring a check on executive power. This section, therefore, ensures a balance between executive authority and judicial oversight, reducing the risk of arbitrary removals. Additionally, the provision reinforces the principle that child welfare decisions must be evidence-based and subject to legal review.

[68] Section 57 ought to be read in conjunction with section 49, since removal exercises are activated in part, where the Minister suspends or revokes an existing licence or refuses the renewal of a licence. There are, however, other bases under section 57 upon which the Minister may act to remove children from homes, for example, where children are being maltreated, neglected or illegally detained. The Minister's power to delegate to the CPFSA is contained in section 57(2). That section states that "[a]ny person authorized by the Minister in that behalf may apply to a Resident Magistrate for an order…". The significance of the phrase "[a]ny person" means there is no restriction as to any group or specified person; therefore, the Minister has discretion to delegate at large. But what is the Minister delegating, is it the authority to delicense or the authority to apply for a removal order?

[69] The Minister does not personally file removal applications; the section provides for this process to be executed by "any person" delegated by the Minister. This function is usually carried out by the CPFSA, as in the instant case. The Minister's role is, therefore, policy-driven rather than having direct involvement in every application.

[70] The CCPA establishes the CPFSA as the primary body responsible for child care and protection. And that body acts as an agent of the Minister, executing policy directives and operational functions under the Minister's general supervision. This means the Minister can delegate practical functions to the chief executive officer ('CEO') of the CPFSA

or authorised officers. Since section 57 of the CCPA involves applications to the court, the Minister does not personally file such applications. Instead, the CPFSA's legal representatives are authorised to initiate legal proceedings.

[71] Delegation within government departments usually follows the Carltona Doctrine (from **Carltona Ltd v Commissioners of Works and Others** [1943] 2 All ER 560), which states that Ministers act through their civil servants. This means senior officers in the CPFSA could properly carry out child removal, licensing reviews, and enforcement duties on behalf of the Minister, unless expressly prohibited. There can, however, be no delegation of statutory or core decision-making because a delegate cannot delegate (*delegatus non potest delegare*). If the statute requires the Minister to personally exercise a power, as in this case, revocation of a licence, she cannot delegate it. In **Barnard and Others v National Dock Labour Board and Others** [1953] 2 QB 18, the court ruled that if a law assigns a power specifically to a Minister, he/she cannot transfer it without explicit legal authorisation.

[72] The takeaway is that the Minister's functions under sections 47, 49, and 57 of the CCPA involve significant discretion, particularly in decisions regarding the removal of children and the licensing of children's homes. While this discretion is necessary for flexibility in child welfare administration, it must be exercised lawfully, fairly, and in the best interest of the child. Section 57 provides a judicial safeguard, ensuring that the removal of children is subject to legal scrutiny, whereas sections 47 and 49 grant broader executive discretion.

[73] Under section 49(3) of the CCPA, the Minister may cancel a children's home licence if she "is of the opinion that there has been any contravention of any of the provisions of this Act". Operators of children's homes do not appear to be granted formal rights to be heard or to oppose the decision-making process to delicense a facility before the decision is taken. The process, guided by the CCPA and overseen by the CPFSA, largely focuses on the CPFSA's recommendations and the Minister's discretion, with limited involvement from operators of children's homes.

[74] Moreover, the CPFSA's approach culminated in the minister's final determination, effectively extinguishing the appellant's licence without affording it an opportunity to respond to CPFSA's allegations, leading to its delicensing. The issue raised in this regard by the appellant is whether the absence of an express provision in the CCPA affording a hearing before the revocation of the appellant's licence rendered such a decision procedurally unfair.

[75] It is well established that the principles of natural justice, particularly the right to be heard, are integral to the exercise of administrative powers where legal rights or legitimate expectations may be affected. Procedural fairness requires not merely that justice be done, but that it be seen to be done, and that affected parties be afforded a meaningful opportunity to be heard. The *audi alteram partem* rule is not a technicality; it is a fundamental tenet of the rule of law. As stated in **R v Secretary of State for the Home Department, ex parte Doody** [1994] 1 AC 531, 560 d-f, per Lord Mustill:

> "Where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances…Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken; with a view to procuring its modification; or both..."

[76] However, as this court made clear in **Robert Ivey v Firearm Licensing Authority** ('**Robert Ivey**') [2021] JMCA App 26, this right is not absolute. It must be interpreted within the context of the statute and the public interest considerations relevant to the decision. In **Robert Ivey**, the Court considered whether the Firearm Licensing Authority was under a legal obligation to afford a licence holder a hearing before revoking his firearm licence. In his judgment, at para. [22] Brooks P stated:

> "[22] Where the legislature provides a procedure for the decision maker to follow, that procedure must necessarily be the standard for determining fairness. The court is, however, entitled to examine the legislation to determine whether it

achieves objective fairness. Lord Wilberforce in **Wiseman v Borneman** explained this approach. He said at page 317:

> 'I am not, therefore, satisfied with an approach which merely takes the relevant statutory provision...subjects it to a literal analysis and cuts straight through to the conclusion that Parliament has laid down a fixed procedure which only has to be literally followed to be immune from attack. It is necessary to look at the procedure in its setting and ask the question whether it operates unfairly to the taxpayer to a point where the courts must supply the legislative omission….'

[77] Brooks P held that while procedural fairness is a fundamental aspect of public law, statutory silence on the requirement of a hearing does not automatically result in procedural unfairness, particularly where there are broader policy concerns or statutory objectives that may require immediate action. The court further accepted that post-decision remedies**,** such as the right to apply to the Review Board or to seek judicial review, may suffice to satisfy the requirements of natural justice.

[78] The same reasoning applies with equal, if not greater, force in the context of the CCPA. The CCPA is designed to protect the rights and welfare of children, including those placed in residential care. The state's duty to act in the best interests of the child must be given primacy in any interpretation of the statute. Importantly, the CCPA does not contain any express provision requiring the Minister to hold a hearing before delicensing a children's home. That omission is significant and cannot be construed as accidental. In circumstances where the continued operation of a children's home may pose a risk to children's safety or where regulatory breaches persist despite warning, the authority must be empowered to act expeditiously.

[79] To require, as a matter of rigid legal principle, that a hearing be held in every case prior to delicensing would risk frustrating the protective intent of the CCPA. Delays caused by mandatory hearings could expose children to further harm, thereby undermining the very objectives of the CCPA.

[80] I reiterate that the principles of fairness are not fixed rules but are contextual and flexible, as applied locally in decisions such as **Donald Gittens v General Legal Council** [2025] JMCA Misc 5, where McDonald-Bishop JA (as she then was) articulated that:

> "[46] The right to be heard is, however, flexible and not absolute, and its dictates will depend on (i) the circumstances of the case; (ii) the nature of the enquiry; (iii) the rules under which the tribunal is acting; and (iv) the subject matter that is being dealt with."

[81] As was the situation in the **Robert Ivey**, the CCPA does not expressly require the Minister to hold a hearing or to provide reasons to the licence holder before revoking a licence. Section 49(1) of the CCPA empowers the Minister to revoke the licence once she is satisfied that certain conditions are met. There is no requirement for her to have granted the appellant a hearing before any decision to revoke its licence. In this sense, there was no basis for saying that the appellant had been deprived of the right to be heard and subjected to unfairness.

Was the respondent's licence revoked in January 2024

[82] The CPFSA, in its written submission, reproached the appellant for not taking advantage of the appeal provision under section 50(1) of the CCPA, fastidiously pointing out that any appeal regarding a cancellation of a licence had to be lodged within 14 days from the date of being notified of the cancellation. The CPFSA claimed that notification of the cancellation was furnished on 15 January 2024; therefore, the time for appeal had lapsed on 29 January 2024. Whilst I agreed that there was an avenue to appeal the Minister's decision, the criticism levied by the CPFSA could only have been justified if the notification communicated to the appellant was clear and unambiguous as to the fact of a revocation. Further, in order to be effective, the notice ought to have indicated the effective date of the revocation, so as to enable the appellant to appreciate when time began to run.

[83] In the circumstances, it is useful to replicate the relevant paragraphs of the letter signed by the Minister, the contents of which were brought to the attention of the appellant. Paragraphs two and three stated the following:

> "…
>
> Based on the information submitted and power vested in my role as Minister, outlined under section 49 (3) of the Child Care and Protection Act, **approval is granted to cancel the license for the Sunbeam Boys' Home**.
>
> Further permission is granted to the Child Protection and Family Services Agency to make an application to the court for the removal of all the children in the care of the Sunbeam Boys Home in accordance with section 57 (2) of the Child Care and Protection Act.
>
> …" (Emphasis added).

[84] On a fair interpretation of the foregoing aspects of this correspondence, there was some justification for the appellant's complaint that the tenor of the Minister's letter did not convey a decisive revocation of the appellant's licence. The Minister merely communicated her approval for the licence to be revoked, but did not say it was in fact revoked by her. Who, then, would have been responsible for executing the task that was solely within her authority to perform?

[85] The letter from the CEO of the CPFSA, dated 15 January 2024, couched in similar terms, had only exacerbated the issue, wherein she indicated to the legal policy manager of the Office of the Children's Advocate the following:

> "Please note that based on your findings and our investigations, the Agency is taking the necessary steps to remove all the children en bloc and that **we have received approval from the Honourable Minister of Education and Youth to de-license the SCH with immediate effect in keeping with section 49, Subsection 3 of the CCPA.**
>
> …" (Emphasis added)

[86] It seemed that the CEO was intimating that the CPFSA was responsible for terminating the appellant's licence, or at best, there was an ambiguity as to the effect of that letter. In the circumstances, it was doubtful whether the appellant's licence was revoked at the application hearing in February 2024. Even so, that state of affairs was overtaken by subsequent events and became otiose, since the appellant's licence was determined by the effluxion of time in June 2024.

[87] I referred to the foregoing issue mainly to underscore that the appellant had not been afforded a reasonable opportunity to explore the section 50 appeal process and would not have been afforded the necessary time or opportunity to ventilate its grievances for the so-called loss of its licence. It was noted that the letter of notification sent to the appellant, which was penned by the CEO and dated 15 January 2024, also spoke of approval being granted by the Minister, "for the delicensing" of the appellant's facility, in accordance with section 49(3) of the CCPA. The letter further indicated the intended removal of the children "upon approval of the Court…"; the expectation was that the process would be "finalized for execution on Thursday, January 18, 2024". So, a scant three days was the time frame apparently allotted for the appeal process.

[88] The lack of explicit procedural safeguards in sections 47 and 49 could be an area for legislative reform, ensuring greater accountability and consistency in decision-making. Ultimately, the Minister's authority must align with constitutional principles, statutory intent, and international human rights standards governing child welfare. However, if the Minister fails to act in cases where removal is necessary, legal remedies such as judicial review may be pursued to compel action.

[89] The CCPA does not explicitly provide a general delegation clause for the Minister. However, it empowers specific agencies and officials to carry out child protection duties. Operational and administrative functions (such as inspections, reporting, and filing applications) can generally be delegated to child welfare officers, CPFSA staff, and legal representatives. Final decision-making powers (such as revoking licences or authorising removals) may not be delegable unless explicitly permitted by law. The application

process to the court under section 57 is inherently a legal function and is executed by legal authorities, not the Minister personally.

[90] I am not, in any way, disputing that the Minister ought not to have revoked the appellant's licence, because that was entirely within her discretion and authority. Equally, I am not criticising the Minister's decision to delegate the CPFSA to apply to the court for a removal order, thereby removing the children from the Sunbeam Children's Home. On the contrary, from my reading of the record, the plight and condition of the children warranted such drastic action, whether after revocation of the licence or simply because a child or children were reportedly being maltreated.

[91] There was documented evidence of a child being hit with a machete by a staff member, resulting in open wounds to the chest and arm. There were other instances of documented abuse of other children, allegedly while under the appellant's care. Section 16 of the Regulations specifies that discipline is to be promoted by a system of rewards and privileges. Punishment could be implemented by forfeiture of rewards and privileges, temporary loss of recreation and in exceptional cases isolation. There is no scope for corporal punishment; in fact, such is strictly forbidden under section 19(1) of the Regulations, which states, "[no] licensee or member of staff of any children's home shall strike, cuff, slap, or use any other form of physical violence towards any child who resides, or is, at the home".

[92] I, therefore, appreciated that CPFSA regarded the situation as dire, especially as the contraventions within the appellant's facility were alleged to be repeated instances of neglect and abuse. My only reproval of the CPFSA was that, in its effort to remove and safeguard the children, it ultimately failed to follow the procedure laid down by law. The CPFSA was required to apply for the removal order via the judge of the Parish Court and initially did so. I very much appreciated that the CPFSA was frustrated by the resulting delay caused by the vacillation of both the Judge of the Parish Court and the Judge of the Family Court, who kept bouncing the matter back and forth, and could not agree as to which of the two courts had the jurisdiction to grant the order. The judges of those

courts were proverbially fiddling while Rome burned. Since the care and protection of children was at stake, the Judges of the Parish Court and the Family Court should have prioritised the intent behind the CCPA.

[93] Notwithstanding the perceived egregious delay, the CPFSA ought not to have unceremoniously moved its application to the Supreme Court, without submitting an application under section 130 of the JPCA and without obtaining the necessary leave from a judge of the Parish Court to proceed in that manner.

[94] Regardless of its good intentions, the CPFSA's actions amounted to forum shopping when it unauthorisedly shifted the removal application to the Supreme Court. In so doing, the CPFSA committed procedural impropriety. Furthermore, I was not persuaded that the learned judge had the jurisdiction to grant the orders sought by the CPFSA, and in the circumstances, I considered that a jurisdictional error was committed. Accordingly, it was for those reasons that I concurred in the orders of the court reflected at para. [4] above.