

The Republic of Trinidad and Tobago

In the High Court of Justice

Claim No. CV 2014-01240

In the Matter of an Application by John Reginald Phelps Dumas in the public interest for the construction of Section 122(3) of the Constitution of the Republic of Trinidad and Tobago in relation to the nominations made thereunder by His Excellency Anthony Thomas Aquinas Carmona, O.R.T.T., S.C., President of the Republic of Trinidad and Tobago, for the appointment of Dr. James Armstrong and Mrs. Roamar Achat-Saney to the Police Service Commission, such nominations having been approved by affirmative resolution of the House of Representatives on the 13th November, 2013 and the appointment by His Excellency of the said Dr. James Armstrong and Mrs. Roamar Achat-Saney as members of the said Commission for a term of three years with effect from the 19th November, 2013.

BETWEEN

JOHN REGINALD PHELPS DUMAS

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

BEFORE THE HONOURABLE MR. JUSTICE ROBIN N MOHAMMED

Appearances

Mr. Ramesh Lawrence Maharaj S.C., and Ms. Elaine V. Green instructed by Ms. Margaret Clerk for the Claimant

Mr. Avory Sinanan S.C., Ms. Donna Prowell and Mr. Richard Arjoon Jagai instructed by Mr. Sean Julien for the Defendant

RULING

INTRODUCTION, APPLICATION AND PROCEDURAL HISTORY

1. On the 10th April, 2014 the Claimant commenced the proceedings before this Court by the filing of a Fixed Date Claim Form, along with his affidavit in support, at the Civil Court Office, Hall of Justice, Port of Spain. Both the Fixed Date Claim Form and supporting affidavit were served on the Defendant, the Attorney General, on the 10th April, 2014. No appearance to the Fixed Date Claim Form or any evidence in opposition to the claim has yet been filed by the Defendant.
2. The Claimant's claim is for the interpretation of **section 122(3)** of the Constitution of the Republic of Trinidad and Tobago ("the Constitution") in relation to the appointment by the President, His Excellency Anthony Thomas Aquinas Carmona O.R.T.T., S.C., ("the President") of Dr. James Armstrong and Mrs. Roamar Achat-Saney to the Police Service Commission ("the Commission"). The claim essentially seeks a determination of whether, on a proper construction of section 122(3) of the Constitution, the appointments of Dr. Armstrong and Mrs. Achat-Saney by the President were lawful. Certain consequential declaratory reliefs are also sought in the Fixed Date Claim Form relating to the qualifications and experience of Dr. Armstrong and Mrs. Achat-Saney and the power of the President to appoint persons to the Commission who do not meet the criteria of **section 122(3)** of the Constitution.
3. At the first hearing of the Fixed Date Claim held on the 22nd May, 2014, Counsel for the Defendant raised, as a preliminary issue, the question of pursuant to which Part or provision of the **Civil Proceedings Rules 1998 ("CPR")** the claim had been brought. He indicated to the Court that it was important to know the procedural provenance of the claim in light of the relief sought by the Claimant in the Fixed Date Claim Form.
4. In the circumstances, this Court directed that the parties prepare and file written submissions to resolve the issue of what are the provisions of the CPR pursuant to which this claim has been brought.

PRELIMINARY ISSUE

5. The preliminary issue which falls to be determined is whether the claim has been properly brought before the Court. If not, the sub-issue which then arises is whether the Court still has the power to entertain the Claimant's claim.

SUBMISSIONS

6. The Claimant submits that the High Court of Justice exercises an original jurisdiction on questions as to the interpretation of the Constitution and that appeals on such questions are as of right to the Court of Appeal. He submits that in the procedural administration of civil justice, how the High Court exercises that original jurisdiction is now governed by the **Civil Proceedings Rules 1998 (“CPR”)** which in 2005 replaced the **Orders and Rules of the Supreme Court of Judicature of Trinidad and Tobago 1975 (“the RSC”)**.
7. Under **Order 5 rule 3** of the **RSC**, applications to the High Court under any enactment were required to be made by way of originating summons unless the **RSC** or any enactment expressly required the application to be made by other means. Equally, questions involving the interpretation of statutes (including the Constitution) were proceeded with by originating summons pursuant to **Order 5 rule 4(2)** of the **RSC**.
8. The Claimant submits that under the new regime established by the **CPR**, the originating summons procedure in the High Court no longer exists and has been supplanted by the Fixed Date Claim Form procedure. The Claimant submits that for present purposes, the counterpart to **Order 5 rule 3** of the **RSC** is now to be found in **Part 8.1(4)(c)** and **(d)** of the **CPR**.
9. According to the Claimant, **Order 5 rule 4** of the **RSC** has been replaced by **Part 62.2(1)** of the **CPR**. The Claimant submits that **section 7** of the **Conveyancing and Law of Property Act Chap. 56:01 of the Laws of Trinidad and Tobago** and **section 24** of the **Legal Profession Act Chap. 90:03** are examples of statutory applications which would now be made under **Part 62.2(1)(b)(ii)** of the **CPR** by way of a Fixed Date Claim Form. The Claimant further submits that equally, the old interpretation summons procedure under **Order 5 rule 4** of the **RSC** is now appropriately pursued under **Part 62.2(1)(b)(ii)** of the **CPR**. It is the Claimant’s position that the present claim falls within **Part 62.2(1)(b)(ii)** of the **CPR**. In support of his submissions, the Claimant draws reference to, amongst others, the cases of (1) **In the Matter of the Legal Profession Act Chap. 90:03 and In the Matter of the Construction of Sections 9 and 27 of the Legal Profession Act Chap. 90:03 and In the matter of the Construction of Section 26 of the Legal Profession Act Chap. 90:03 Between Nadine Nabie and Michelle Mayers v. The Law Association of Trinidad and Tobago and the Attorney General of Trinidad and Tobago Civ. App. No. 72 of 2012/Claim No. CV2012-00892** and (2) **The Attorney General of Trinidad and Tobago v. The Tobago House of Assembly CV2013-00135**.

10. The Claimant accordingly asks this Court to determine that these proceedings are brought properly pursuant to **Part 62.2** of the **CPR** for the interpretation of **section 122(3)** of the Constitution and for certain consequential declaratory relief.
11. The Defendant's position is that the introductory rubric, contained in **Part 62.1** of the **CPR**, makes it clear what **Part 62** deals with. It defines and limits the scope of the provisions contained in that Part. The Defendant submits that the scope accordingly governs and applies to all the sub-provisions of **Part 62**, including **Part 62(b)(ii)** [since there is no provision as **Part 62(b)(ii)** in **Part 62 I take it that what was being referred to was Part 62.2(1)(b)(ii)**].
12. According to the Defendant, **rule 62.1** enunciates the procedure to be followed in the case of all applications dealt with under **Part 62**. The scope of the Part is stated to deal with applications under enactments (in contradistinction to the Constitution- no doubt because the Constitution at **Section 14** thereof provides its own right of application to a person aggrieved which is now procedurally catered for expressly by **CPR Part 56(1)(b)**). The Defendant submits that the clear purport, tenor and intention of **Part 62** is to deal with enactments and the fact that **rule 62.1(a)** excludes the Constitution must be given effect. It is further submitted that **rule 62.2(1)(b)(ii)** relied upon by the Claimant is a default provision which is specified to be limited to cases or situations not falling within **rule 62.2(1)(a)** and accordingly must be read in conjunction with that rule. That rule again refers to the very specific situation "*where the terms of the particular enactment exclude the need for notice of the application to be given*".
13. The Defendant submits that the entire procedural regime contained in **CPR Part 62** is to deal with applications directly or indirectly under statutory enactments as distinct from the Constitution which has been expressly excluded. It is further submitted that to allow this application to stand in the face of the clear and obvious prohibition of **CPR Part 62** is to allow by the back door an application which has been denied through the front.
14. Further, the Defendant submits that there is to be no gratuitous interpretation of the Constitution without a claim for breach of a protected right. According to the Defendant, by his claim, the Claimant, without alleging a breach of his own constitutional rights, indirectly seeks to have a public duty performed in the manner he thinks it ought to be performed and the Constitution does not allow this. Further, it would be an abuse of procedure so far as the Constitution is concerned in contradistinction to an ordinary Act of Parliament, for **CPR 62** to be used to answer hypothetical or academic questions.

15. According to the Defendant, the Claimant juxtaposed the **Order 5 rule 4** of the **RSC** to **Part 62** of the **CPR** in support of the view that they are one and the same. However, the Defendant submits that the Claimant is asking the Court to adopt an interpretation of **Part 62** of the **CPR** that goes beyond its plain and unambiguous meaning. The Defendant submits that in so doing, the Claimant is asking the Court to transport the baggage of the **RSC** (“the Old Rules”) into the present regime and have it infused into the **CPR** (“the New Rules”). According to the Defendant, such an approach ignores the precept that the **CPR** is a new and complete code ushered into our procedural justice system and furnishes a new dispensation with its own philosophical underpinnings.
16. The Defendant contends that the Court must recognize the importance of procedural law in the overall administration of justice and that procedural or adjectival law very often cuts down or circumscribes substantive rights.
17. In the circumstances, the Defendant submits that the court should hold that these proceedings have been inappropriately instituted and consequent on such a finding dismiss the matter accordingly.

ANALYSIS

18. The thrust of the Claimant’s submission is that questions involving the interpretation of statutes, including the Constitution, were proceeded with by originating summons pursuant to **Order 5 rule 4(2)** of the **RSC**. Under the **CPR**’s new regime, the originating procedure was done away with and in its place stands the Fixed Date Claim Form procedure. According to the Claimant, **Order 5 rule 4** has been replaced by **Part 62.2(1)** of the **CPR** and the old interpretation summons procedure under **Order 5 rule 4** of the **RSC** is now appropriately pursued under **Part 62.2(1)(b)(ii)** of the **CPR**. The Claimant submits that the instant claim, which seeks an interpretation of the Constitution, properly falls within **Part 62.2(1)(b)(ii)** of the **CPR**.
19. Indeed, an appropriate starting point is the actual provisions contained in **Order 5 rule 4** and their scope. **Order 5 rule 4** provides as follows-

“ 4.(1)...

(2) *Proceedings-*

(a) *in which the sole or principal question at issue is, or is likely to be, one of the construction of an Act or Ordinance or any instrument made under an Act or Ordinance or any deed, will, contract or other document or some other question of law; or*

(b) *in which there is unlikely to be any substantial dispute of fact,*

are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 83 or for any other reason considers the proceedings more appropriate to be begun by writ.”

20. **Order 5 rule 4** is clearly broad in scope. The rule allows for proceedings for the construction of an Act, Ordinance or *any instrument* made under an Act or Ordinance to be brought by way of originating summons or writ, as the circumstances dictate. [Emphasis mine]. Accordingly, it may be argued that proceedings for interpretation of the Constitution could have been brought under the **RSC** when those Rules were in force.

21. However, a new regime is now in place- the **CPR**. The Claimant contends that **Order 5 rule 4** of the **RSC** has been replaced by **Part 62.2(1)** of the **CPR** and that the old interpretation summons procedure under **Order 5 rule 4** of the **RSC** is now appropriately pursued under **Part 62.2(1)(b)(ii)** of the **CPR** and that the instant case- the claim for interpretation of a particular section of the Constitution- falls within same.

22. **Part 62.2(1)** of the **CPR** provides as follows-

“62.2(1) The general rule is that applications to the High Court may be made by-
(a) An application under Part 11 where the terms of the particular enactment exclude the need for notice of the application to be given; or
(b) A fixed date claim in Form 2 where-
(i) An enactment requires an application to be by originating summons, originating application or originating motion; and
(ii) In any other case not falling within paragraph (a).”

23. In submitting that **Order 5 rule 4** of the **RSC** has been replaced by **Rule 62.2(1)** of the **CPR** and suggesting that the old interpretation summons procedure under the former is now appropriately pursued under **Part 62.2(1)(b)(ii)** of the **CPR**, the Claimant has overlooked or failed to appreciate the relevance and consequential effect of **Part 62.1** of the **CPR** on the rest of **Part 62**, including that on which he relies (**Rule 62.2(1)(b)(ii)**). As stated in the **CPR**, **rule 62.1** deals with the *“Scope of this Part”*, meaning the *whole* of **Part 62** that thereafter follows.

24. **Rule 62.1** states as follows-

“ This Part deals with the procedure to be followed-
(a) When any enactment (other than the Constitution) gives a right to apply to the court; and
(b) Where money is paid into court under an enactment,

unless any enactment or any other rule makes contrary provision”

25. **Rule 62.1** thus constitutes the governing words in light of which the rest of **Part 62** is to be read and **rule 62.1(a)** expressly excludes the Constitution. This is in stark contrast to **Order 5 rule 4** of the **RSC** which does not include any such delimiting provision. Accordingly, it cannot accurately be said that the old interpretation summons procedure insofar as it allowed for the Constitution to be interpreted is properly pursued under **Rule 62.2(1)(b)(ii)**. This Rule is not a stand-alone provision existing in a vacuum, but rather, falls to be applied within the boundaries set by **rule 62.1**-boundaries which leave the Constitution, and consequently, questions of interpretation thereof, outside its confines.

26. In my view, **Rule 62.1(a) CPR** is clear and simply stated. There is no ambiguity. Indeed, the **CPR** themselves were designed in such a way as to combat the ills of the **RSC**, one such ill being the use of language that is convoluted and difficult for the average litigant to comprehend. In reforming civil procedure rules in the United Kingdom, Lord Woolf, in his **Access to Justice Final Report (July 1996)** indicated that under the new landscape of civil procedure rules, *“the rules will be simpler”*. He indicated that he set himself objectives in the rule making exercise, one of which was *“to remove verbiage and adopt a simpler and plainer style of drafting”* as *“genuine access to justice requires people to be able to understand how the legal procedure works.”* His Lordship went on to state that the-

“ system of civil justice and the rules which govern it must be broadly comprehensible not only to an inner circle of initiates but to non-professional advisers and, so far as possible, ordinary people of average ability who are unlikely to have more than one encounter with the system.”

27. Indeed, in the foreword to the Trinidad and Tobago **CPR**, Sharma CJ, then Chairman of the Rules Committee, expresses similar sentiments. He states that-

“This concept of access requires the Judiciary to eliminate the unnecessary barriers to the accessibility to the courts and their services. Barriers to access may be economic, procedural or psychological in terms of the costs of litigation and the complexity of the legal system and rules of court. Language that is obscure and unintelligible to the ordinary person may also create an effective barrier...”

28. It cannot be, as the Claimant appears to suggest, that this Court ought to go against the clear and plain wording of **rule 62.1** to construe same as allowing for the inclusion of

questions of Constitutional interpretation by way of **Part 62**. I agree with the Defendant insofar as he submits that **Part 62.1(a)** of the **CPR** admits of only one interpretation which is plain and unambiguous and I am guided by the words of the Privy Council in **The Attorney General v. Keron Matthews [2011] UKPC** where their Lordships stated that -

“ nevertheless, if the language of the rules admits of only one interpretation, it must be given effect”.

29. According to the Claimant, it is the substantive law which gives the Claimant the entitlement to bring these proceedings, not procedural law. He submits that substantive law derives from the common law and that the **RSC** acknowledged and recognised in **Order 5 rules 3 and 4** the jurisdiction of the Court to interpret Acts of Parliament including the Constitution and other documents in “interpretation proceedings” filed by an individual. He contends that his right to bring these proceedings is therefore authorized by the common law. I find however that the Claimant’s submission in this regard fails to take cognizance of the fact that while a proposed claimant may have certain substantive rights, procedural law is the vehicle which mandates the manner in which such rights may be ventilated before the Courts. Accordingly, substantive rights may well be circumscribed by procedural law. In **The Attorney General of Trinidad and Tobago v. Miguel Regis Civ. App. No. 79 of 2011** Archie C.J. noted that-

“In fact, most if not all procedural schemes provide for the possibility of claims and counterclaims being struck out for procedural non-compliance before any substantive hearing on the merits. Clearly there never has been in Trinidad and Tobago an absolute entitlement to substantive justice on the merits.”

He thus emphasized that there never was nor is there now any absolute right to substantive justice in Trinidad and Tobago. Rather, same is proscribed, as it always has been, by procedural considerations. As the Defendant rightly suggests, the prescription of **CPR Part 62** and the exclusion of the Constitution from its ambit is another manifestation of this axiom.

30. The Claimant highlights that the Constitution is a schedule to an Act of Parliament. He contends that the definition of the Constitution in **Section 2** shows that the Constitution is the schedule to **Chapter 1:01** of the Laws of the Republic of Trinidad and Tobago, **The Constitution of the Republic of Trinidad and Tobago**. The Claimant submits that it is bizarre for the Defendant to take the stance that it is the correct procedure for the Court to interpret provisions of an Act of Parliament in “interpretation proceedings” under the **CPR** by a Fixed Date Claim Form but it is the wrong procedure for the Court to interpret provisions of the Constitution (the Schedule to an Act of Parliament) in

proceedings by a Fixed Date Claim Form. From **Part 62.1** of the **CPR** however, it is clear that the Constitution is treated as an exception- it is to be treated exceptionally from other enactments per se. This is a marked distinction from **Order 5 rule 4** of the **RSC** where the Constitution was not expressly exempted and accordingly was afforded no different treatment and would thus have been encompassed within the interpretation summons procedure provided for thereunder. In light of this exclusion of the Constitution on questions of interpretation and the procedure for going about same under **Part 62**, it is not, as the Claimant contends, bizarre for the Defendant to accept that interpreting Acts other than the Constitution under the **CPR** is permitted by way of Fixed Date Claim Form under the **CPR** while simultaneously contending that it is wrong procedurally to seek Constitutional interpretation by a Fixed Date Claim Form.

31. In his submissions, the Claimant stated that **section 7** of the **Conveyancing and Law of Property Act Chap. 56:01** and **section 24** of the **Legal Profession Act Chap. 90:03** are examples of statutory applications which would now be made under **Part 62.2(1)(b)(ii)** of the **CPR** by way of Fixed Date Claim Form. I note, however, that these Acts are enactments *other* than the Constitution.

32. The Claimant submits that the **Part 62.2(1)(b)(ii)** procedure was used without objection against the Defendant in **In the Matter of the Legal Profession Act Chap. 90:03 and In the Matter of the Construction of Sections 9 and 27 of the Legal Profession Act Chap. 90:03 and In the matter of the Construction of Section 26 of the Legal Profession Act Chap. 90:03 Between Nadine Nabie and Michelle Mayers v. The Law Association of Trinidad and Tobago and the Attorney General of Trinidad and Tobago Civ. App. No. 72 of 2012/Claim No. CV2012-00892** for the interpretation of certain provisions of the **Legal Profession Act Chap. 90:03**. He also referred to **The Attorney General of Trinidad and Tobago v. The Tobago House of Assembly CV2013-00135** in which the Defendant was the claimant and a fixed date claim in judicial review proceedings was converted by consent into an interpretation summons to consider the powers of the Tobago House of Assembly under the **Tobago House of Assembly Act Chap. 25:03** to enter into certain financial arrangements for the construction of an administrative complex in Tobago. I note, however, that both of the above cases involved the interpretation of sections of Acts *other* than the Constitution. **Part 62** of the **CPR** excludes the Constitution. The aforementioned cases to which reference is drawn by the Claimant are not analogous to his claim and do not assist in advancing his position that the proceedings in question were correctly brought. In fact, they serve to highlight the distinction between proceedings brought for interpretation of Acts other than the Constitution, which are arguably permitted by **Part 62** to be brought by Fixed Date Claim Form, and proceedings for the interpretation of

the Constitution which, by the governing words set out in **rule 62.1(a)**, are not permitted under that Part.

33. The Claimant also submits that the cases of **Sookoo v. The Attorney General of Trinidad and Tobago (1985) 33 WIR 338**, **Integrity Commission v. The Attorney General of Trinidad and Tobago H.C.A. No. 1735 of 2005/Civ. App. No 30 of 2008** and **Stone Street Capital v. The Attorney General of Trinidad and Tobago CV2012-04383** are interpretation cases under the **RSC** and the **CPR** which have been determined by the Courts and to which the Attorney General was a party.

34. **Sookoo** concerned an interpretation summons brought for the interpretation of **sections 136(1) and 136(2) of the Constitution of Trinidad and Tobago** and it involved, **inter alia, the question of whether the President had the power to allow the Chief Justice to continue in office after retirement performing the functions of that office**. I note that **Sookoo** was brought prior to the coming into force of the **CPR** and arguably, under the **RSC**, more particularly, the broad scope of **Order 5 rule 4**, such an interpretation of the Constitution would have been permissible.

35. According to the Claimant, **Stone Street** was a claim under the **CPR** in which the Court had to determine whether the Central Bank (Amendment) Act No. 18 of 2011 was unconstitutional. However, I note that in that case, the Claimant alleged the infringement of a number of his constitutional rights and freedoms- he alleged the infringement of his constitutional right to property, right to equality before the law and protection of the law and the right to protection of the law. As is discussed below, the **CPR** allows for the interpretation of the Constitution where infringement of fundamental rights and freedoms are alleged. In any event, such is not permitted under **Part 62**, the section upon which the Claimant purports to place reliance in bringing his own proceedings for Constitutional interpretation.

36. With respect to **Integrity Commission v. the Attorney General of Trinidad and Tobago**, the Claimant submits that this was a case under the **RSC** where the High Court and the Court of Appeal interpreted certain provisions of the Integrity in Public Life Act and Constitution. As the Claimant himself says, this was a case under the **RSC**. Accordingly, such interpretation was arguably permissible based on the broad construct of **Order 5 rule 4**. However, under the **CPR**, **Part 62** is expressly delimiting, barring claims for constitutional interpretation thereunder and it appears that under the **CPR**, the constitutional interpretation is only permitted where infringement of a right or freedom is alleged, as is discussed below.

37. The Claimant also submits that **section 83(1)** of the **Supreme Court of Judicature Act** makes it clear that the Supreme Court is entitled where the **RSC** are not inconsistent with the **Supreme Court of Judicature Act** or the **CPR**, for it to continue to use the **RSC** in the like cases and for the like purposes as those in and for which they have been applicable in former High Courts and Courts of Appeal. In other words, **section 83(1)** gives to the Court the power to construe the **CPR** in such a way to save the procedure and thereby hold that the Fixed Date Claim Form is the correct procedure by which “interpretation proceedings” are to be commenced. **Order 5 rule 4** of the **RSC** permitted proceedings for the interpretation of an Act, Ordinance or any instrument (accordingly not exempting the Constitution from its purview) to be brought by originating summons. Accepting that the Fixed Date Claim Form has replaced the Originating Summons, the fact remains that **rule 62.1** expressly excludes the Constitution. Accordingly, to this extent, **Order 5 rule 4** of the **RSC** is inconsistent with **rule 62.1** and consequently, **rule 62.2** of the **CPR** and so the Court cannot continue to use the aforementioned provision of the **RSC**, as the Claimant submits.
38. The Defendant questions the Claimant’s locus standi in the interpretation proceedings which the latter seeks to bring. According to the Defendant, by excluding the Constitution from the ambit of **CPR Part 62**, the framers of the Rules intended to insulate it from being inundated with and accordingly beleaguered by and consequently debased by pedantic and unmeritorious applications which did not seek to redress a breach of a constitutional right. The Defendant highlights that not only in the very intitlement of these proceedings does the Claimant aver it is being brought in the “public interest” but in his affidavit, he makes it clear that he disavows any breach of his constitutional rights or that he entertains any personal grievance. According to the Defendant, at paragraph 7 of the Claimant’s affidavit in support he deposed as follows-

“Having seen the reports in the press concerning Mrs. Achat-Saney and Mr. Armstrong and their curricula vitae, I became concerned that these two persons did not fulfill the requirement of section 122(3) of the Constitution of being “qualified and experienced” in the disciplines for which his Excellency had nominated them to become members of the Police Service Commission. My concern was not personal. I do not know Mrs. Achat-Saney and am only slightly acquainted with Dr. Armstrong. Nor did I judge that I would be directly affected in my individual capacity by any possible consequence of the Notifications, if approved by the House of Representatives. Rather, I was and am concerned as a citizen who has for many years written and spoken publicly about the need to good governance in this society, particularly including respect for our institution such as our Constitution, which is the highest law of the land. I am therefore acting in what I consider to be the public interest of Trinidad and Tobago.”

32. The Defendant submits that in light of the clear disavowal of a breach of any of the Claimant's constitutional rights, it would be an abuse of procedure –so far as the Constitution is concerned in contradistinction to an ordinary Act of Parliament, for **CPR Part 62** to be used to answer hypothetical or academic questions. The Defendant further submits that the Constitution in the first instance, and the **CPR** in the second, do not allow the Claimant to come to Court to get what is essentially legal advice or a legal opinion on the meaning of a provision of the Constitution.
33. For his part, the Claimant submits that the cases relied upon by the Defendant in support of this issue are judicial review cases and further submits that the judicial review law in those jurisdictions is not like that of Trinidad and Tobago. The Claimant submits that the principles of law for locus standi in judicial review cases are different to the principles contained in the Judicial Review Act. The Claimant refers to **section 7(1)** of the **Judicial Review Act** and says that it permits an individual to apply for judicial review in the public interest:
- “Notwithstanding Section 6, where the Court is satisfied that an application for judicial review is justifiable in the public interest, it may, in accordance with this section, grant leave to apply for judicial review of a decision to an application whether or not he has a sufficient interest in the matter to which the decision relates.”*
34. The Claimant further submits that **section 5(6) of the Judicial Review Act Chap 7:08** gives power to a person to make an application for judicial review on behalf of persons who are unable to file an application for judicial review if they could not do so on account of poverty, disability or socially or economically disadvantaged position.
35. However, from the intitlement of these proceedings and the affidavit in support of his claim, along with the submissions made by the Claimant, the Claimant has not brought proceedings for judicial review. He has brought interpretation proceedings for a particular section of the Constitution, proceedings which he contends are properly pursued under **Part 62.2(1)(b)(ii)** of the **CPR**. An application for judicial review is properly brought under **Part 56.7** of the **CPR**.
36. The Claimant further contends that the locus standi in “interpretation proceedings” is for the claimant to show that he has a genuine interest in having the interpretation done by the Court and that the proceedings are not frivolous or vexatious. He however provides no authority in support of this claim, or more particularly, to establish that this is the position as it relates to the interpretation of the Constitution under the **CPR**.
37. It is arguable that **Order 5 rule 4** of the **RSC**, as was said earlier, was so broad that it allowed for the interpretation of the Constitution. By contrast, **Part 62** of the **CPR** is not so sweeping in its nature, expressly excluding the Constitution. The conclusion to be drawn from this marked change between the interpretation procedure under **Order 5 rule**

4 of the **RSC** and that under **Part 62** of the **CPR** is that, as the Defendant suggests, in excluding the Constitution from the ambit of the **CPR Part 62**, the framers of the Rules intended to insulate it from being inundated with and beleaguered by pedantic and unmeritorious applications which did not seek redress of constitutional right.

38. **Section 14 (1)** of the Constitution allows for any person who alleges that any of the provisions of that Chapter (Chapter 1 of the Constitution which deals with the recognition and protection of fundamental human rights and freedoms) has been, is being or is likely to be contravened in relation to him, to apply to the High Court by way of originating motion. **Rule 56(1)(b)** of the **CPR** expressly provides procedurally for the making of this application. **Rule 56.7(1)(b)** of the **CPR** provides that an application for an administrative order must be made by a fixed date claim identifying whether the application is ... *“b) under section 14(1) of the Constitution.”*
39. Accordingly, when **rules 62.1** and **62.2** of the **CPR** are read conjunctively with **section 14** of the Constitution and **rules 56(1)(b)** and **56.7(1)(b)** of the **CPR**, it seems clear that under the **CPR**, provision is only made for the interpretation of the Constitution where a person alleges a breach of his fundamental rights and freedoms. Interpretation beyond this is not provided for, in contrast to what may have been read into the **RSC** given the broader ambit of **Order 5 rule 4**.
40. I find merit in the Defendant’s submission that one can surmise that by expressly excluding the Constitution from **Part 62** and provided for interpretation of same in limited circumstances, the framers of the **CPR** were indeed attempting to shield the Constitution and the Courts from a flood of unmeritorious applications which did not seek to redress a breach of constitutional right. Indeed it is not unreasonable to conclude that the thought process behind the framers of the **CPR** in that regard may have been similar in nature to the views expressed by Gibbs J. in **Australian Conservation Foundation v. Commonwealth [1980] HCA 53**. Therein Gibbs J. stated that-

“...an interest, for present purposes, does not mean a mere intellectual or emotional concern. A person is not interested within the meaning of the rule, unless he is likely to gain some advantage, other than the satisfaction of righting a wrong, upholding a principle or winning a contest if his action succeeds or to suffer some disadvantage, other than a sense of grievance or a debt for costs, if his action fails. A belief, however strongly felt, that the law generally, or a particular law, should be observed, or that conduct of a particular kind should be prevented, does not suffice to give its possessor locus standi. If that were not so, the rule requiring special interest would be meaningless. Any plaintiff who felt strongly enough to bring an action could maintain it.”

41. The Claimant has not alleged an infringement of any of his fundamental rights and freedoms. He claims that as a citizen of Trinidad and Tobago, he is concerned that having regard to the exercise of the powers of an institution such as the Police Service Commission, it should be properly constituted. It is in the public interest that this should be done. While his desire to seek what he thinks is best for the public may be described as admirable, this in no way amounts to an allegation that his fundamental rights and freedoms have been infringed. It is not a motion brought pursuant to **section 14 (1)** of the Constitution, which in any event, is the only manner in which the **CPR**, on its wording, appear to allow for constitutional interpretation of any form.

DECISION

42. The Claimant has brought proceedings for the interpretation of **section 122(3)** of the Constitution. He claims to have brought same pursuant to **Part 62.2** of the **CPR**. However, it is clear that **Part 62.1(a)**, which governs the rest of **Part 62**, including **Part 62.2(1)(b)(ii)** under which the Claimant purports to act, does not permit the bringing of such proceedings thereunder. Unlike under the **RSC**, it appears that under the **CPR**, any interpretation of the Constitution can only be carried out by the Court where the claimant alleges a breach of his or her fundamental rights and freedoms. This has not been alleged by the Claimant.
43. Accordingly, it is this Court's view that the present proceedings have not been properly instituted.
44. The Claimant has suggested that this Court has the power to correct an error of procedure. However, the present circumstances are such that on the clear wording of the **CPR**, the type of action sought to be brought by the Claimant- proceedings for interpretation of the Constitution where no infringement of fundamental rights and freedoms has been alleged- is simply not permitted. Accordingly, this Court cannot convert and allow that which is not permitted under the **CPR**.
45. Accordingly, the Claimant's Application by Fixed Date Claim is dismissed.
46. The Claimant shall pay to the Defendant costs to be assessed in accordance with **Part 67.11** of the **CPR**.
47. The Defendant to file and serve a Statement of Costs for assessment on or before the 29th September, 2014.
48. The Claimant to file and serve objections, if necessary, on or before the 13th October, 2014.

49. There shall be a stay of the execution of this order for 14 days from today's date.

Dated this 22nd day of July, 2014

Robin N Mohammed
Judge