

[2010] CCJ 1 (OJ)

IN THE CARIBBEAN COURT OF JUSTICE
Original Jurisdiction

CCJ Application No. OA 2 of 2009

Between

**Trinidad Cement Limited
TCL Guyana Incorporated**

Applicants

And

**The State of the Co-operative
Republic of Guyana**

Respondent

THE COURT,

composed of M de la Bastide, R Nelson, A Saunders, J Wit and D Hayton, Judges

having regard to the application for a finding of contempt of court filed on behalf of the Applicants on the 6th day of October 2009 with annexures, the reply by the Respondent filed on the 27th day of October 2009 with annexures, the Applicants' reply filed on the 4th day of November 2009, the written submissions of the Applicants and the Respondent both filed on the 18th day of January 2010, the written submissions and authorities of the State of Trinidad and Tobago filed on the 20th day of January 2010, and the hearing held on the 26th day of January 2010

and after considering the oral submissions and written observations of:

- **the Applicants**, by Dr C Denbow, SC appearing together with Mrs D Denbow, Mr D Rohlehr and Ms K De Freitas, Attorneys-at-law
- **the Respondent**, by Mr Kamal Ramkarran, Attorney-at-law
- **The State of Trinidad and Tobago**, by Mr Douglas Mendes, SC appearing together with Mr M Quamina, Mr E Pierre, Ms G Jankey and Ms S Ramhit, Attorneys-at-law

on the **29th day of March 2010** delivers the following

JUDGMENT

- [1] This application is the sequel to the failure of the Respondent, Guyana, to comply with the Court's Order of August 20, 2009 ("the Order") within the period of 28 days fixed by the Order.

By the Order the Court ruled, *inter alia*, that:

"The Defendant do within 28 days of the date of this order, implement and thereafter maintain the CET in respect of cement from non-CARICOM sources."

- [2] The Applicants seek an order compelling the Honourable Attorney-General of Guyana to attend court and show cause why he should not be held to be in contempt of court for failing to implement and give effect to the Order. The Applicants further pray for a declaration that such failure constituted a contempt of court. The Applicants amended their application with leave of the Court so as to include a prayer for a declaration that Guyana was in breach of Article 215 of the Revised Treaty of Chaguaramas ("the Revised Treaty").
- [3] At the hearing of the contempt application the Applicants orally notified the Court that they were inviting the Court to find that Guyana was in contempt by virtue of its disobedience of the Order and to make an award of costs on an indemnity basis but otherwise they were not seeking any punitive sanctions.
- [4] For the reasons set out below the Court declares that Guyana failed to obey the Order promptly pursuant to Article 215 of the Revised Treaty. Even if the Court had jurisdiction to make orders for civil contempt for disobedience of its orders, which is highly doubtful, the evidence would not justify fixing the Honourable Attorney-General, an agent of Guyana but not a party to the proceedings, with any responsibility for disobedience of the Order. Therefore the Court dismisses the applications to "show cause" and for a finding of contempt against the Attorney-

General. The Court holds that the oral claim for a finding of contempt against Guyana was not properly raised in these proceedings.

The facts in outline

- [5] The Respondent on September 16, 2009, the day before the grace period of 28 days fixed by the Order expired, purported to apply for an extension of the time for the purpose of re-imposing the CET in accordance with the Order but only filed an application in proper form on September 23, 2009. This application was dismissed on October 14, 2009. The application however, did not operate as a stay of the Order and no excuse was offered for not making it earlier. Guyana had remained in non-compliance since September 17, 2009.
- [6] On October 15, 2009 the Commissioner-General of the Guyana Revenue Authority instructed the Deputy Head, Customs and Trade Administration to reinstate the CET on cement imported from non-CARICOM countries but only on shipments that were ordered after October 15, 2009.
- [7] At a case management conference on November 13, 2009 counsel for Guyana admitted that Guyana remained in continuing breach of the Order because of the Commissioner-General's failure to reinstate the CET in respect of all non-CARICOM cement imported into Guyana regardless of the date when it was ordered.
- [8] On January 8, 2010, almost four months after the grace period fixed by the Order had expired, Guyana reinstated the CET with immediate effect on all imports of cement from non-CARICOM countries.
- [9] On November 16, 2009 the Court invited all States Parties to the Agreement Establishing the Caribbean Court of Justice ("the CCJ Agreement") and the Caribbean Community to participate by making written and/or oral submissions in the contempt application as the application was likely to raise important issues of

law concerning the enforcement of the Court's orders and the use of contempt proceedings for that purpose. In response to the Court's invitation Trinidad and Tobago by its leading counsel, Mr. Mendes S.C., made written and oral submissions, which have greatly assisted the Court.

The oral claim for civil contempt against Guyana

[10] In the notice inviting the States Parties to the CCJ Agreement to participate in the contempt application and in formulating the issues for determination at a case management conference on December 7, 2009, the Court recognized that an issue as to whether it had jurisdiction to deal with civil contempt might well be raised by the application. The Applicants, however, never sought to amend their application to claim any contempt order or declaration of contempt against Guyana. The only relief claimed by the amended application against Guyana, was a declaration of breach of Article 215.

[11] In the course of the hearing in response to a query from the Bench, leading counsel for the Applicants as a coda to his oral submissions invited the Court to make a declaration that Guyana was in contempt of court. Yet no amendment to the application before the Court was sought and none was granted.

[12] Dr. Denbow S.C. for the Applicants contended that such a claim against Guyana was implicit in the original application, and all the facts were before the Court. Mr. Mendes S.C. for Trinidad and Tobago submitted that no claim for a finding of contempt against Guyana had been made in the original or amended application. Accordingly, neither the Respondent, Guyana, nor Trinidad and Tobago as an intervener had notice of the new claim against Guyana. Counsel for Guyana endorsed this submission.

[13] The Court holds that if it has jurisdiction in civil contempt (which is doubtful) proceedings for civil contempt should be specifically directed to and served on the alleged contemnor, who should be given an adequate opportunity to prepare a

defence in advance of the hearing. Because of the lateness of the Applicants' oral application no such opportunity was afforded Guyana or indeed the States Parties invited to make submissions on the contempt application before the Court. In the circumstances the Court rules that the oral claim for a finding of contempt against Guyana was not properly raised.

Issues

[14] At a case management conference on December 7, 2009 attended by the parties and the intervener, the Court directed that the following broad issues arose for determination at the hearing of the contempt application as filed:

- “(a) Whether this Court has the power to deal with non-compliance with its order as a contempt of court;
- (b) If the Court has that power, what order can it now make and against whom?
- (c) Assuming affirmative answers to the above questions, does this Court have in the circumstances of this case power to make the declaration and order sought against the Attorney-General of Guyana?

[15] However, after studying the written submissions and hearing the oral arguments the Court considers that the only issues that it needs to determine for the disposal of this application are as follows:

1. Was the Court's Order so unclear as to be unenforceable by a coercive order?
2. If the Order was clear, was there a breach of Article 215 of the Revised Treaty?
3. If the Court has jurisdiction to make orders for civil contempt, could it on the evidence in this case make an order summoning the Honourable Attorney-General to show cause why he should not be held in contempt and/or make a finding of civil contempt against him?

[16] Three broader issues of general importance arose out of the submissions canvassed before the Court.

1. What is the meaning of “contempt of court” in the context of Article XXVI of the CCJ Agreement? In particular did the CCJ Agreement give the Court jurisdiction to entertain proceedings for civil contempt?
2. What impact, if any, does municipal legislation incorporating the CCJ Agreement have on the jurisdiction of the Court, and, in particular, what is the effect, if any, of sub-sections (3) and (4) of section 11 of the Caribbean Court of Justice Act 2004 (No. 16) (“the CCJ Act”) on the Court’s jurisdiction?
3. In the absence of any counterpart to section 18 of the CCJ Act, how are the Court’s orders in its original jurisdiction to be enforced within the domestic jurisdiction?

These questions could be rendered otiose by a protocol amending the Revised Treaty to make clear what forms of contempt the Court can deal with and what sanctions it can impose on those whom it holds in contempt. In the meantime the Court will express provisional views on these matters in the hope that the difficulties of interpretation which emerge, will be eliminated by an appropriate protocol to the Revised Treaty.

Clarity of the Order

[17] Guyana contended that the Order was “not without some indicative element of equivocation”. Counsel for Guyana submitted that it was not the Order that re-imposed the CET. The Order left Guyana free to “implement” or “complete” the

CET and to “maintain” the CET “only from that date” i.e the date of reinstatement. This submission is disingenuous since at a case management conference on November 13, 2009 counsel for Guyana conceded that Guyana was in breach and continued to be in breach of the Order by restricting the application of the CET to imports of non-CARICOM cement ordered after October 15, 2009. Further, counsel for Guyana assured the Court on December 7, 2009 that his client would provide the Court with information on how much cement from non-CARICOM sources had been imported into Guyana (a) since September 17, 2009 and (b) since October 15, 2009; and on what quantity of such cement the CET had been collected. The Court’s emphasis was on cement imported and CET collected since September 17, 2009. Accordingly counsel for Guyana clearly understood that in ordering the reinstatement of the CET on cement imported from non-CARICOM sources the Court had made no distinction as to the date on which imported cement was ordered. The Court holds that there is no ambiguity in the Order and that the breach of it was unlawful.

The claim for a declaration as to breach of Article 215

[18] Article 215 of the Revised Treaty of Chaguaramas provides:

“Compliance with Judgments of the Court

The Member States, Organs, Bodies of the Community, entities or persons to whom a judgment of the Court applies, shall comply with that judgment promptly”.

Article XV of the CCJ Agreement which was not relied on by the Applicants states:

“Compliance with Judgments of the Court

Member States, Organs, Bodies of the Community or persons to whom a judgment of the Court applies, shall comply with that judgment.”

- [19] At the commencement of the hearing of this application counsel for the Applicants applied for leave to amend his application to include a claim for a declaration that Guyana was in breach of Article 215. The Court granted leave after counsel for Guyana stated that he had no objection to the amendment.
- [20] Counsel for Guyana resisted the claim under Article 215 on the ground that since the amendment had only been granted after the Order of August 20, 2009 had been complied with, the question whether Guyana was in breach of Article 215 was academic. Courts were reluctant to grant declarations that served no useful purpose. He relied on Zamir and Woolf: *The Declaratory Judgment (3rd ed.) at paras 4.032, 4.038, 4.092 and 4.093.*
- [21] Trinidad and Tobago accepted that the Court could find a State Party to be in breach of the obligation in Article 215 to comply with the Court's judgment promptly.
- [22] There is ample evidence that Guyana did not comply promptly. Guyana's application for an extension of time for compliance with the Court's Order was an admission that it had not complied. On October 14, 2009 the Court refused to extend the grace period of 28 days fixed by the Order. The application for extension of time did not operate as a stay and so Guyana was in non-compliance from September 17, 2009.
- [23] At a case management conference on November 13, 2009 counsel for Guyana admitted that Guyana remained in breach of the Order by restricting the application of the CET to imports of non-CARICOM cement ordered after October 15, 2009.
- [24] The Court rejects the notion advanced by Guyana that compliance with the Order on January 8, 2010 nearly four months after the time fixed by the Order for re-imposition of the CET had passed, renders academic an inquiry into whether

Guyana had complied with the Court's Order promptly. Past acts of disobedience constitute a breach of the Court's Order and consequently a breach of Guyana's obligation to obey the Court's Order promptly.

[25] The Court takes note of the information supplied by the Respondent after the hearing first at its request made on December 7, 2009 and later on January 26, 2010 by formal order. This information reveals that between September 17, 2009 and January 8, 2010 42,304 metric tonnes of cement from non-CARICOM countries were imported into Guyana without the imposition of the CET. This information serves to quantify the practical consequences of Guyana's breach. The Court therefore makes the declaration prayed for, namely, that Guyana failed to comply promptly with the Order and so was in breach of Article 215 of the Revised Treaty.

The claim for a contempt order against the Attorney-General of Guyana

[26] Apart from the claim for a declaration that Guyana was in breach of Article 215 of the Revised Treaty, the Applicants sought the following orders against the Honourable Attorney-General:

- “(1) That the Honourable Attorney-General of Guyana, Mr. Charles Ramson, S.C. do attend before the Caribbean Court of Justice and give viva voce evidence in order to show cause as to why he should not be held in contempt of Court for failing to implement and give effect to the aforementioned order of this Court on 20th August, 2009.
- (2) A declaration that the failure of the Honourable Attorney-General of Guyana to implement and give effect to the Order of this Honourable Court made on August 20, 2009 amounts to a contempt of Court. It presents a real risk that public confidence and respect for this Honourable Court will be undermined.”

- [27] Even if the Court has jurisdiction to make civil contempt orders, on the facts and on principles of common sense reflected in the municipal authorities¹ cited to the Court, the Court refuses to make the orders prayed for.
- [28] The Court agrees with Mr. Mendes S.C. that a “show cause” order cannot properly be made against the Attorney-General of Guyana. He could only be summoned to show cause if there was a likelihood that an order for contempt could be made against him.
- [29] Further, a coercive order should not be made against someone who is not a party to the proceedings, as both Mr. Mendes S.C. and counsel for Guyana submitted. There was no evidence that the Attorney-General was personally responsible for breach of the Order, or that the Attorney-General, as a non-party, was responsible in his official capacity for the reinstatement and maintenance of the CET on cement from non-CARICOM sources. In the circumstances the Court dismisses the claims for orders relating to civil contempt against the Honourable Attorney-General.

Jurisdiction to make orders for contempt of court

- [30] The Court passes now to consider the broader issues raised in this application. By way of preface to this discussion the Court notes that the concept of contempt of court is a common law concept that has no equivalent in the civil law system: see *Pekelis: Legal Techniques and Political Ideologies*² and *Chesterman: Contempt: In the Common Law, but not the Civil Law*³. In civil law systems offences against the administration of justice are confined to conduct defined by statute. Penalties are fixed; normal procedural rules apply, and as a rule formal charges are laid and tried.

¹ *Beggs v Scottish Ministers* [2007] 1 WLR 455; *M v Home Office* [1994] 1 AC 377, 425E, 426E

² [1942-43] 41 Michigan Law Review 665

³ [1997] 46 ICLQ 521

[31] At common law superior courts of record assert an inherent power to make orders dealing summarily with contempt affecting their own proceedings, and even proceedings of inferior courts⁴. There are two broad categories of contempt at common law: criminal contempt, consisting of words or acts which interfere with the administration of justice or are likely to do so, and civil contempt, consisting of disobedience to judgments, orders or other process of the court and involving private injury.⁵

Jurisdiction in contempt: is there an express power?

[32] In this judgment the Court is concerned only with civil contempt of court in the sense of disobedience of an order of court. Since the concept of civil contempt (disobedience of court orders) as an affront to the court is not known in the civil law, the question arises whether civil contempt exists in international law. Even though civil contempt were unknown to international law, states may confer that power on a tribunal by agreement⁶. Indeed leading counsel for the Applicants contended that by the conjoint operation of Article XXVI (b) of the CCJ Agreement and Part 29.3 of the CCJ (Original Jurisdiction) Rules, 2006 (“the Rules”), the Court had jurisdiction to deal with contempt by disobedience of its orders regardless of whether these instruments were incorporated into municipal law. The source of jurisdiction would then be the agreement of the Member States. For ease of reference Article XXVI is set out hereunder:

Enforcement of Orders of the Court

“The Contracting Parties agree to take all the necessary steps, including the enactment of legislation to ensure that:

- (a) all authorities of a Contracting Party act in aid of the Court and that any judgment, decree, order or sentence of the Court given in exercise of its jurisdiction shall be enforced by all courts and authorities in any territory of the

⁴ 9(1) Halsbury’s Laws of England (4th ed.) Reissue, para. 454

⁵ 9(1) Halsbury’s Laws of England (4th ed.) Reissue, para. 402

⁶ See Evans on International Law (2nd ed.) at page 119

Contracting Parties as if it were a judgment, decree, order or sentence of a superior court of that Contracting Party;

- (b) the Court has power to make any order for the purpose of securing the attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of court that any superior court of a Contracting Party has power to make as respects the area within its jurisdiction”.

[33] It is axiomatic that the Rules cannot confer jurisdiction on the Court to treat disobedience of its orders in the same way as civil contempt at common law. Article XXVI, however, presents considerable difficulties of interpretation. Upon a close reading, Article XXVI (b) (hereinafter referred to as “the second part of Article XXVI”) does not confer an express power on the Court to enforce its orders by contempt proceedings.

Jurisdiction in contempt: is there an implied power?

[34] The exhortation in the chapeau of Article XXVI to the States Parties to enact legislation to ensure that the Court has power to make orders for “*the investigation and punishment of any contempt of court that any superior court of a Contracting Party has power to make as respects the area within its jurisdiction*” assumes the existence on the international plane of a power to make civil contempt orders and by necessary implication evidences an intention that the Court shall have such a power.

[35] The power to deal with contempt which the local law is supposed to accord to the Court is limited by the second part of Article XXVI to “*the power to make any order ... that any superior court of a Contracting Party has power to make as respects the area within its jurisdiction*”. However, the superior courts of a Contracting Party with a civil law system have no competence to punish civil contempt. Thus, the ambit of the phrase “contempt of court” in the second part of Article XXVI is not clear. One assumes that on the international plane there

must be a uniform meaning throughout Member States' jurisdictions, though one may query whether this need be the case.

- [36] If a power to entertain contempt proceedings could be implied from the second part of Article XXVI, it cannot be said with any certainty that the phrase “contempt of court” in the CCJ Agreement includes civil contempt, or what forms of contempt are covered by that expression. For example, if it includes criminal contempt what is its scope and what sanctions apply?

Jurisdiction in contempt: is there an inherent power?

- [37] Counsel for the Applicants, Dr. Denbow S.C., submitted that as an international court applying the rules and principles of international law and the decisions of international tribunals, this Court had an inherent jurisdiction to deal with complaints of contempt of court. He cited two cases in support of the existence of the concept of contempt of court in international law: *Prosecutor v. Tadić*, Case No. IT-94-1-A-R77, *Judgment on Allegations of Contempt against Prior Counsel, Milan Vujin*, in the Appeals Chamber of the International Tribunal for the former Yugoslavia (“ICTY”) and *Beqa Beqaj* Case No. IT-03-66-T-R77 before the Trial Chamber. *The Tadić contempt case* concerned allegations of witness tampering or manipulation by counsel; *Beqaj* dealt with allegations that Beqaj had, *inter alia*, interfered with a witness, conduct which constituted a contempt of the Tribunal. In both cases there was no provision in the ICTY statute dealing with contempt. The Appeals Chamber accepted that the ICTY Rules of Procedure and Evidence did not permit the Tribunal to adopt rules “which constitute new offences” [*The Tadić case, para. 24*]. The Appeals Chamber asserted an inherent power to make rules affecting the conduct of matters within its inherent jurisdiction. The content of those inherent powers could only be ascertained by reference to the usual sources of international law. In asserting a jurisdiction to try the accused’s former counsel for contempt the Tribunal stated as follows:

“There is no mention in the Tribunal’s Statute of its power to deal with contempt. The Tribunal does, however, possess an inherent jurisdiction, deriving from its judicial function, to ensure that its exercise of the jurisdiction which is expressly given to it by that Statute is not frustrated and that its basic judicial functions are safeguarded. As an international criminal court, the Tribunal must therefore possess the inherent power to deal with conduct which interferes with its administration of justice. The content of that inherent power may be discerned by reference to the usual sources of international law”. [*The Tadić contempt case, para. 13*].

- [38] Neither the *Tadić contempt* case nor *Beqaj* (which applied that case) dealt with disobedience of a final court order. The *Nuclear Tests case (Australia v France)*⁷, a non-criminal case, was relied on in the *Tadić contempt* judgment, but no issue of contempt arose in that case. In the *Nuclear Tests* case the ICJ was asserting its right to regulate its own procedure so as to entertain an objection to a full hearing of injunctive proceedings after France had announced internationally that it would no longer carry out nuclear tests in the Pacific. These cases are therefore not authority for the existence of an inherent power in an international court to punish disobedience of a final order in non-criminal cases. The Court expresses no opinion as to whether the principle asserted by the UN *ad hoc* international criminal Tribunals of inherent powers to punish contempt of court extends to disobedience of a final order of court in a non-criminal case. The Court also reserves its position on whether an inherent jurisdiction “to ensure that the exercise of its jurisdiction over the merits, if and when established, shall not be frustrated” or “to provide for the orderly settlement of all matters in dispute” (see [23] of the *Nuclear Tests* case (supra)) is sufficient to found a jurisdiction to treat disobedience of a final order in a non-criminal case as a contempt of court.

- [39] Indeed the *Tadić contempt* case has been criticized in an article for openly adopting the common law approach to contempt of court. In the same article it

⁷ (1974) ICJ Reports 253

was the author's view that "*the Tribunal's law on contempt is not one of the most opportune and meritorious of its achievements over the past 10 years.*"⁸

Jurisdiction in contempt: practical considerations

[40] Even if civil contempt of court were recognized on the international plane, it is evident that the common law concept of contempt of court must undergo some metamorphosis if it is to operate in a different setting "within the basic structure of the international community": see *Tadić (supra)*⁹. In non-criminal cases the common law sanctions for contempt of court, i.e. (1) imprisonment; (2) sequestration; and (3) fines, may have to be adapted to take account of the fact that states are the defendants and cannot be imprisoned, and that regional international courts, such as this Court, have no tipstaff or gaols except where treaties so provide.

[41] Thus committal is not available as a means of enforcement. Nor is sequestration since the writ of sequestration does not run in the international arena. Fines were originally considered inappropriate in cases of civil contempt since remedies for civil contempt were "primarily coercive or remedial rather than punitive": see *Australian Consolidated Press v. Morgan*¹⁰. Despite the trend in municipal cases to punitive sanctions, in the absence of enforcement machinery of its own this Court would refrain from imposing fines at the supranational level.

[42] In the context of a multilateral regional agreement it would be sufficient to make a declaration finding a Contracting Party in contempt of court and to leave to the other Contracting Parties the consequences of that finding, whether the sanctions be economic or political or of some other kind.

⁸ Göran Sluiter: *The ICTY and Offences against the Administration of Justice – (2004) 2 Journal of International Criminal Justice* 631, 637

⁹ At [18]

¹⁰ (1965) 112 CLR 483, 499

[43] When one transplants civil contempt of court into the international arena among nation states, the primary sanction is a declaratory finding of contempt or non-compliance with the Court's order. In the result such a declaration is similar to the one available under Article XV of the CCJ Agreement or under Article 215 of the Revised Treaty (where the obligation is to comply promptly). The lack of meaningful difference between these declarations and a declaratory finding of contempt suggests that "*contempt of court*" in Article XXVI may not cover disobedience of a final order of the Court, though the Court expresses no concluded view on this point.

[44] In summary, no express power to entertain contempt proceedings is granted in Article XXVI. Further, it is by no means clear that one can extrapolate from the *ad hoc* international criminal tribunal cases that international courts have an inherent jurisdiction in civil contempt in non-criminal cases. No clear authority has been cited to the Court in this regard. An argument for an implied power to deal with civil contempt might be based on the second part of Article XXVI of the CCJ Agreement. However, there are countervailing arguments against this view. On the other hand the problems outlined above and the lack of any practical value in a finding of civil contempt on the international plane in the context of the Revised Treaty and the CCJ Agreement might suggest that no such power was intended.

The impact of the local CCJ Act on the Court's jurisdiction

[45] Section 11(3) of the CCJ Act provides so far as relevant:

"The Court shall have the same power as the Supreme Court to make any order for:

...

(c) the investigation or punishment of any contempt of court".

Section 11(4) states:

“A judge of the Court may exercise all of the powers and functions of a superior court judge of the Supreme Court”.

- [46] Mr. Mendes S.C. submitted that on one possible view sub-sections (3) and (4) of section 11 of the CCJ Act could be interpreted as meaning that the Court’s powers were subject to the same limits that are applicable in the case of the domestic courts, more especially the limitation with regard to the making and enforcement of orders against the Government of Guyana imposed by the *State Liability and Proceedings Act, Cap 6:05* (Guyana).
- [47] Counsel’s alternative and preferred interpretation of sub-sections (3) and (4) of section 11 of the CCJ Act was that these provisions were enabling and were not to be construed as transferring to the Court the limitations contained in the *State Liability and Proceedings Act*.
- [48] While counsel’s alternative submission is more attractive, the Court is unable to endorse it fully. Municipal law can neither confer powers on the Court in its original jurisdiction nor diminish the powers that the Court has. Municipal law may, however, recognize an international court within its national borders and give efficacy to its orders.
- [49] For present purposes the interpretation of sub-sections (3) and (4) of section 11 is quite irrelevant and academic for the reason that domestic legislation cannot have any impact whatever on the powers which the Court does or does not have. The only purpose which can be achieved by incorporating into domestic law the powers of the Court is the enforcement of the orders which the Court makes in exercise of those powers. Incorporation into domestic law may make it possible to invoke the coercive powers of the State in support of orders made by the Court, but to facilitate this the local legislation must go further than sub-sections (3) and (4) of section 11 go, and state quite explicitly how and in what circumstances those coercive powers may be engaged. If the possibility of local enforcement is limited to orders made in exercise by the Court of some only of its powers i.e.

those which correspond with powers exercised by the local courts, this complicates the matter greatly as it may raise issues which a court (presumably a local court) may be called upon to decide.

[50] Sub-sections (3) and (4) of section 11 and the second part of Article XXVI are founded on the same error i.e. that local legislation can impact on the powers of the Court.

Absence of any machinery to enforce the Court's orders domestically

[51] Orders made in the original jurisdiction may require the assistance of the enforcement machinery of the national courts. By contrast, the Court as a final appellate court is already part and parcel of the national legal system and its orders are enforceable in the manner provided in the local laws.

[52] By Article XXVI (a) States Parties undertake to assist the Court and to cause its judgments, decrees, orders and sentences to be enforced by the court process applicable to superior courts of the respective jurisdictions. That undertaking is fulfilled by section 18 of the CCJ Act in relation to the appellate jurisdiction, where it is, strictly speaking, not needed. The CCJ Act however contains no express provision for making the orders made by the Court in its original jurisdiction enforceable by the domestic process applicable within the jurisdiction of Guyana.

[53] It is hoped that when the broader issues here discussed come up squarely for determination the States Parties will have agreed a protocol which will clarify what was intended by the phrase "contempt of court" in Article XXVI of the CCJ Agreement and that closer co-ordination will have been achieved between the drafters at the Caribbean Community and those within the national jurisdictions.

Conclusion

[54] For the reasons outlined above the Court grants a declaration that the Respondent is in breach of Article 215 of the Revised Treaty. The Court dismisses the claim for an order against the Honourable Attorney-General requiring him to show cause why a finding of contempt should not be made against him and the claim for a declaration finding that the Honourable Attorney-General is in contempt of Court. The Court finds the oral claim against Guyana was not properly raised and so it was not entertained. The Court orders Guyana to pay to the Applicants one-half of their taxed costs of this application.

The Rt Hon Mr Justice Michael de la Bastide (President)

The Hon Mr Justice Rolston Nelson

The Hon Mr Justice Adrian Saunders

The Hon Mr Justice Jacob Wit

The Hon Mr Justice David Hayton