

IN THE COURT OF APPEAL OF BELIZE AD 2006

CIVIL APPEAL NO 7 OF 2006

**THE ATTORNEY GENERAL
THE MINISTER OF PUBLIC UTILITIES
BELIZE TELECOMMUNICATIONS LIMITED**

Applicants

v

**JEFFREY J PROSSER
BOBBY LUBANA
BELIZE TELECOM LIMITED
INNOVATIVE COMMUNICATION CORPORATION
INNOVATIVE COMMUNICATION CORPORATION
LLC**

Respondents

**THIERMON LIMITED
BELIZE BANK LIMITED**

Interested Parties

BEFORE

The Hon Mr Justice Manuel Sosa	Justice of Appeal
The Hon Mr Justice Boyd Carey	Justice of Appeal
The Hon Mr Justice Dennis Morrison	Justice of Appeal

E Kaseke for the first-named and second-named applicants.
R R A Williams SC for the third-named applicant.
L R Welch for the respondents.
E A Marshalleck for the interested parties.

2006: 11, 19 and 26 October
2007: 8 March

SOSA JA

[1] Jeffrey J Prosser, Bobby Lubana, Belize Telecom Limited, Innovative Communication Corporation and Innovative Communication Corporation, LLC,

the five respondents in these applications ('the applications'), sought, as claimants in Claim No 338 of 2005 in the court below ('the claim'), certain itemised reliefs together with the familiar '[f]urther and other relief'. From the judgment of that court dated 19 September 2006, it is to be gathered that those itemised reliefs, omitting only such items as were rejected *in toto*, were as follows:

- '6. An Order that the Inspection [into the affairs of Belize Telecommunications Limited (referred to as 'BTL' in the judgment from which I quote) purportedly ordered by the Minister of Public Utilities by an Order dated 26 August 2005 and comprised in Statutory Instrument No 108 of 2005] cover the period April 2001 to 8th February 2005.

7. A declaration that section 22A of the Public Utilities Commission Act, Chapter 223 of the Laws of Belize is repugnant to, *ultra vires* of, and inconsistent with the Belize Constitution and is therefore unlawful and void.

8. A Declaration that the declaration and confirmation made by the Minister of Public Utilities dated the 26th day of August 2005 comprised in Statutory Instrument No 109 of 2005 purporting to declare:

- (a) that Belize Telecom Limited's Special Rights Redeemable Preference Share ("Special Share") is unlawful and of no effect
- (b) that the rights flowing from the Special Share (including the rights specified in Articles 2, 3, 8, 11, 36, 88, 90, 92, 94, 95, 113, 120 and 127 of BTL's Articles of Association) are of no effect
- (c) that the Directors appointed by the holder of the Special share cease to be Directors of BTL
- (d) that the Board of directors of BTL is and shall be Rocky Reef Ventures Limited, Share Holdings Limited, Ediberto Tesecum, Philip Zuniga, Seascope Holdings Limited and Keith Arnold
- (e) ...

is inconsistent with the basic principle of separation of powers implicit in and underpinning the Belize Constitution and is therefore unlawful and void;

9. A Declaration that the declaration and confirmation made by the Minister of Public Utilities dated the 26th day of August 2005 comprised in Stautory (*sic*) Instrument No 109 of 2005 is a violation of the Claimants' constitutional rights enshrined in sections 3(a) and 6(1) of the Belize Constitution and is therefore unlawful and void.
10. A Declaration that the declaration and confirmation made by the Minister of Public Utilities dated the 26th day of August, 2005 comprised in Stautory (*sic*) Instrument No 109 of 2005 is a violation of the Claimants' constitutional rights enshrined in sections 3(d) and 17(2) of the Belize Constitution and is therefore unlawful and void.
11. A Declaration that any steps taken in pursuance of or in consequence of the said purported declaration and confirmation by the Minister of Public Utilities are unlawful including in particular the convening of the Annual General Meeting of BTL for the 30th of September 2005.
12. ...
13. ...

14. A Declaration that section 22A of the Public Utilities Commission Act, Chapter 223 of the Laws of Belize ... is repugnant to, *ultra vires* and inconsistent with the Belize Constitution in that it contravenes sections 3(d) and 17(1) of the Constitution and is therefore unlawful and void.'

[2] It will be noted that the relief specified above, with the possible exception of that set out at 6, is all declaratory in nature. Item No 6 is further referred to, in this regard, at para **[6]** of this judgment.

[3] The defendants in the claim were the Attorney-General ('the Attorney-General') and the Minister of Public Utilities ('the Minister'), the first-named and second-named applicants, respectively, in the applications. Belize Telecommunications Limited (referred to in this judgment, as in that of the court below, as 'BTL'), the third-named applicant in the applications, was an interested party in the claim. Thiermon Limited and Belize Bank Limited were, in the claim, and are, in the applications, interested parties.

[4] In the concluding paragraphs of its judgment, the court below:

1. found and held (at para 77) '... section 22A of the Public Utilities Commission (Amendment) Act 2005 (*sic*) in so far as it confers power on [the Minister] to declare entrenched rights in public utility providers to be unlawful and of no effect and Statutory Instrument

No 109 of 2005 made pursuant to the said section to be incompatible with the Constitution of Belize.’;

2. found and held (at para 79) ‘... Statutory Instrument No 108 of 2005, made pursuant to section 23A of the Public Utilities Commission (Amendment) Act 2005 (*sic*), in so far as it provides for an inspection of the affairs of BTL **only** as from 31 March 2004 to be at variance with a valid and subsisting Order of the Court which had ordered the inspection of BTL’s affairs to cover the period from April 2001 through to 8th February 2005’. [Emphasis not mine.]
3. held and declared (also at para 79) ‘... that the declaration and determination of [the Minister] pursuant to section 22A as set out in Statutory Instrument No 109:
 - i) in respect of the Special Share in BTL are hereby set aside;
 - ii) the Directors of BTL appointed by the holder of the Special Share continue as directors of BTL for so long as the Claimants hold the Special Share, therefore their purported removal from BTL’s board is improper and invalid;

- iii) the Memorandum and Articles of Association of BTL filed by [the Minister] and purportedly in force and effect from 26th August 2005 are hereby set aside and the Memorandum and Articles of Association of BTL before that date remain in force and effect;
- iv) the convening of the Annual General Meeting for BTL for 30th September 2005 without notice or invitation to Messrs Jeffrey Prosser and Bobby Lubana representing the Special Shareholder was unlawful'; and

4. held and declared, in respect of Statutory Instrument No 108 of 2005 (also at para 79) 'that the period of inspection of the affairs of BTL ordered by the Court in March 2005 and covering the period April 2001 through to 8th February 2005 remains in force and effect'.

[5] The judgment of the court below ends with a statement of an intention to proceed to hear counsel as to costs; but no evidence of any order for the payment of costs was placed before us and there is, indeed, no suggestion by any of the applicants that such an order (which would be coercive in character) was ever made.

[6] It is worthy of note that while the item of relief claimed and numbered 6 may, on one view, not be one of declaratory relief, what the court below granted in response to it was unquestionably a declaration, shown as 4 at para **[4]** above.

[7] It would appear that the Attorney-General and the Minister had filed a notice or notices of appeal by 25 September 2006, for there is in the court bundle a document headed 'Application for a Stay of Judgment' which purports to have been filed by them, as 'Defendants/Appellants', on that date. By this 'application' they sought to be heard by 'the Court of Appeal' (rather than by a single judge of this Court) on an application for 'an order staying the operation of the judgment ... until after the determination of the appeal made by the Defendants/Applicants ...' A two-page affidavit, which purports to have been sworn on 25 September 2006 and which was filed in support of this 'application', makes no reference to any attempt by the Attorney-General or the Minister to make prior application to the court below for a stay of the operation and/or effect of the judgment or to the taking by the respondents of any further proceedings, or any steps towards the same, following delivery by the court below of the judgment. The conclusion is irresistible that this affidavit is the one referred to in the 'application' as accompanying it. Therefore it stands to be taken as purportedly filed, like the 'application', on 25 September 2006, a circumstance whose importance will appear below.

[8] By a notice of appeal dated 10 October 2006, BTL appealed from the judgment.

[9] The applications of the Attorney-General and the Minister came on for hearing before this Court (the court specified, as already noted at para **[7]** above, by these applicants in their 'application' as that by which they desired to be heard) on 11 October 2006. On that day, having heard counsel for the Attorney-General and the Minister and, in reply, counsel for the respondents, we acceded, not without some reluctance, to an application for an adjournment of several days by counsel for BTL and counsel then representing Belize Bank Limited only, but later representing Thiermon Limited as well.

[10] Sometime before the resumption of the hearing on 19 October 2006, BTL filed a document of its own dated 17 October 2006, headed, like that filed earlier by the Attorney-General and the Minister, 'Application for a Stay of Judgment' and seeking the hearing (again by 'the Court of Appeal') of an application for an order 'staying the effect of the judgment' of the court below until after the determination of the appeals of the Attorney-General, the Minister and itself.

[11] The hearing before this Court resumed, as already indicated, on 19 October 2006. It continued, and came to its conclusion, on 26 October, when we announced that we were dismissing the applications for reasons to be given in

writing at a later date. My own reasons for arriving at the conclusion that the applications should so fail now follow.

Lack of Jurisdiction

[12] In my view, this Court lacked the jurisdiction to hear the applications at the points in time when it was called upon to do so. Such jurisdiction was wanting at those points in time for the reason that a core condition for its existence was then demonstrably unfulfilled.

[13] Order II, rule 19(1) of the Court of Appeal Rules ('the Rules') provides as follows:

'19. – (1) An appeal shall not operate as a stay of execution or of proceedings under the judgment appealed from, except so far as the court below or the Court may order, and no intermediate act or proceeding shall be invalidated except so far as the Court may direct.'

These provisions plainly assume that this Court has, like the court below, jurisdiction to order a stay of execution or of proceedings.

[14] That assumption does not stand in isolation. Order II, rule 16(1)(c) of the Rules, shorn of such parts of it as are immaterial for present purposes, states:

'16.-(1) In any cause or matter pending before the Court a single judge of the Court may upon application make orders for –

(a) ...

(b) ...

(c) a stay of execution on any judgment appealed from pending the determination of such appeal ...'

From this rule it is apparent that a single judge of this Court may likewise order a stay of execution pending the hearing of an appeal

[15] It was against the background constituted by these provisions that, at the very outset of the hearing before this Court, I raised the question whether the proper procedure is not for the party seeking a stay of execution or of proceedings to apply for the same to the court below; the corollary question being whether this Court is only to be approached, (a) in the case of a stay of execution, in the event of a refusal, first, by the court below and, next, by the single judge of this Court, and, (b) in the case of a stay of proceedings, in the event of a refusal by the court below. The response of counsel fell into two parts.

[16] It is convenient at this juncture to make note of the important fact that while, as this judgment reflects, the submissions on the points here dealt with were actually articulated only by counsel for the Attorney-General and the Minister, they were in fact adopted by both Mr Williams, for BTL, and Mr Marshalleck, for Thiermon Limited and Belize Bank Limited. And neither Mr Williams nor Mr Marshalleck availed himself of the opportunity to add to, or vary, those submissions.

The first response

[17] The initial reaction of counsel for the Attorney-General and the Minister on the raising of this question was to submit, in effect, that, on the premise that the relevant jurisdictions are concurrent, it matters not which court is first approached. This is not a submission that I find myself able to accept, though there is no denying its premise. The mere failure of the draftsman expressly to state that a stay of execution or of proceedings should be sought from this Court only after having first been sought, without success, from the court below cannot, in my view, suffice to justify a reign of disorder in the practice of this Court and of its single judge.

[18] It is, to my mind, simply inconceivable that the intention of the framer/s of the Rules would have been so contrary to good sense as to leave it entirely up to the whim of each and every litigant desirous of a stay of execution or of proceedings to choose for himself/herself whether his/her first application should

be to the court below or to this Court. The importance of orderliness and convenience in these matters cannot have been lost to the framer/s. In the course of the argument before us, a member of this Court, quite obviously speaking of the generality of cases, usefully characterised as ‘more meaningful’ the exercise resulting from an application made directly to the judge of the court below whose judgment is to be appealed from (rather than to this Court) for a stay of execution or of proceedings. As he pointed out, the trial judge will generally be fully seised of all the matters canvassed on the application for a stay. This Court is particularly at a comparative disadvantage in a case, such as the present one, where it is asked to hear an application even although it has not had the benefit of a record of the proceedings in the claim below since none has been prepared up to the time when the hearing ends. The element of inconvenience is real. *Argumentum ab inconvenienti plurimum valet in lege.*

[19] The importance of the need for the application for a stay of execution or of proceedings to be made in the first instance to a court well seised of the facts has been judicially emphasised before. In *Tuck v Southern Counties Deposit Bank* (1889) 42 Ch D 471 the defendants, nine days following the delivery of judgment against them, sought a stay of execution from the judge of first instance, Kay J. [I hasten to point out, so as not unintentionally to mislead, that there was, at the time, already an express requirement in the relevant English rules of court that, where the court below and the Court of Appeal had a concurrent jurisdiction, application should, in general, be made in the first

instance to the court below.] Refusing the application, the judge, at p 478, contrasted the advantage to the defendant of making such an application 'at the moment of giving judgment, and when the court has all the facts before it' to the disadvantage of making it 'some time afterwards, when the Judge cannot be expected to remember the facts'. In so doing, Kay J was, in my view, drawing attention (albeit not from the relatively far-removed position of an appellate judge) to just the sort of practical concern expressed by my fellow-member of this Court, entirely validly, if I may say so with respect, in the course of argument in these applications.

[20] Sharing this concern voiced by Kay J and echoed by a member of this Court in the instant matter, I have no doubt that it is, and rightly so, a condition for (a) the existence of the jurisdiction of this Court (not to mention its single judge) to hear, determine and make orders on an application for a stay of execution and (b) the existence of the like jurisdiction of this Court on an application for a stay of proceedings that a judge of the court below should have previously heard and refused such an application. Not insignificantly, that is the order prescribed by the Court of Appeal Act in all instances in which it provides for the court below and this Court to enjoy concurrent jurisdictions, whether civil or criminal: see section 14(2)(a), concerning leave to appeal; section 14(3)(b), also concerning leave to appeal; and section 28(2), concerning extension of time for the giving of notice of appeal and of application for leave to appeal. That the same eminently convenient order is not expressly prescribed by the Rules in the

case of applications for stays of execution and of proceedings has to be the result of an oversight. It is a matter of clear necessity, in my opinion, that in order to forestall the development of a chaotic situation with respect to applications of the kind under discussion, Order 19, rule 2 should be read as if it expressly provides, as do sections 14(2)(a), 14(3)(b) and 28(2) of the Act, for application to be made in the first instance to the court below. The element of necessity is reinforced, it seems to me, by the statutory requirement that, save where a contrary intention appears, subsidiary legislation shall not be inconsistent with the provisions of the Act under which it is made: section 21(b) of the Interpretation Act.

[21] The relevance of all of the foregoing arises, of course, from (a) the central argument of BTL, Thiermon Limited and Belize Bank Limited, that this Court can, in the exercise of its undoubted jurisdiction to grant stays of execution, grant stays of the operation and effect of judgments and (b) the fall-back argument, developed somewhat late in the day for the Attorney-General and the Minister, that, by the like token, this Court can, in the exercise of its equally undoubted jurisdiction to grant stays of proceedings, grant stays of the operation and/or effect of judgments. But the principal argument advanced for the Attorney-General and the Minister (and, of course, adopted by Mr Williams and Mr Marshalleck) was that this Court has, quite apart from its jurisdiction to grant stays of execution or of proceedings, jurisdiction to grant a stay of the operation and effect of a judgment. Even, however, if it be assumed, purely for the sake of

argument, that the Court does, in fact, have such a separate jurisdiction, I can see no reason (and, indeed, counsel have not attempted to show this Court any) why the procedure applicable to applications for stays of execution and of proceedings would not be applicable to applications for such stays.

The second response

[22] Counsel for the Attorney-General and the Minister ventured a second response to the question referred to at para **[15]** above. Although I have been at pains so far in this judgment fully to address his initial response to the question posed, I must confess to being unable, even now, to discount the possibility that his second response was meant to signal a concession on his part that the first could not pass muster. This latter response featured an element of surprise, in that, after the vigorous and sustained earlier submission that it did not matter whether the court below had been approached for the desired stay, counsel now made so bold as to contend that he had in fact, previously attempted to make the relevant application to the court below but had been turned empty away. This was, in retrospect, an attempt doomed from the outset for counsel did not, and indeed could not, go so far as to assert that he had actually made the relevant application to the court below. In truth, he was no longer addressing the question posed. Examination of this response is, nevertheless, important.

[23] It must first be observed, however, that, if an attempt to apply for a stay in the court below was made, as claimed, then counsel must be taken to have

regarded such a step as necessary. Experienced counsel will not engage in the idleness of making unnecessary applications to these busy courts. If, however, the application was deemed a necessary step, it becomes difficult to understand why the affidavit filed in support of the applications of the Attorney-General and the Minister to this Court, or, if that affidavit preceded the attempted application, a follow-up affidavit (and there was none), did not make the appropriate disclosure to this Court.

[24] With this observation in mind, I turn to the specific claims of counsel for the Attorney-General and the Minister before this Court. Having previously said, in the course of argument that ‘if I go to the Chief Justice he will refuse to grant me the stay’, counsel went on to seek to pray in aid the transcript of a hearing said to have taken place in the court below on 25 September 2006, when the respondents in these applications obtained an injunction from that court. However, as already betokened, he limited himself to saying, purporting to do so on the strength of the transcript, that ‘we tried to make the application’ to the judge below. The judge, he said, ‘echoed the sentiments that “Go to the Court of Appeal. Don’t trouble me.” ‘

[25] The transcript, however, speaks loudly and clearly for itself, helpfully recording at pp 9-11:

'THE COURT: Court grants injunction to be served on the respondents including the Attorney General and [the Minister]. ... Yes anything else?

MR WELCH: No, My Lord.

MR KASEKE: We have an application. I don't know if it has been brought up yet.

THE COURT: They phoned me at lunch as I said. Has it been filed?

MR KASEKE: It has been filed, yes.

THE COURT: Check with the Registrar quick.

MR KASEKE: We are applying for a stay of the operation of the judgment of the court dated 19th September 2006.

THE COURT: To stay it?

MR KASEKE: To stay, yes. We have filed a Notice of Appeal to the Court of Appeal and the application is basically being made to the Court of Appeal, My Lord.

THE COURT: For reasons that they better deal with it?

MR KASEKE: That is precisely why I am saying the application is being made to the Court of Appeal.

THE COURT: I would stay my hand in the light of that.

MR KASEKE: Much obliged, My Lord. ...

THE COURT: ... In the light of that fact the Court will stay its hand as the application is launched before the Court of Appeal.

MR KASEKE: Obligated, My Lord.'

[26] In my opinion, this portion of the transcript completely refutes the claim of counsel for the Attorney-General and the Minister that he attempted to make to the court below the application he has now sought to make to this Court. And it is equally clear from the above extract that the court below was merely informed by counsel of the making of an application to this Court for the desired stay of operation. The court below was not asked to hear that application, and nothing appearing in the above excerpt or elsewhere in the transcript provided to us, suggests, or otherwise indicates, that the judge told counsel to come to the Court of Appeal, as alleged by counsel. As the record stands, I have no reason to

doubt that if, in fact, application had been made to the judge below, he would have readily heard and determined it. He did no more than acknowledge the stark fact that the application in question was being made to the Court of Appeal and not to him. Returning to the observation made at para **[23]** above, what the transcript thus reveals is, in fact, wholly consistent with the absence of disclosure, by way of an affidavit, of any attempt to make the necessary application to the court below.

[27] Mr Welch, for the respondents, if I understood aright what he said in his final address to this Court, chose not to oppose anything submitted or otherwise stated by counsel for the Attorney-General and the Minister with respect to the question referred to at para **[15]** above. He explained that his reason for so choosing was that the matter was, in fact, now before this Court. The choice involved a variation of stance from the supportive to the neutral, for Mr Welch had earlier, in replying to the submissions of counsel for the Attorney-General and the Minister, asserted that that counsel (ie counsel for the Attorney-General and the Minister) had, in fact, made application to the court below for the desired stay on 25 September 2006, an assertion that not even counsel for the Attorney-General and the Minister was prepared to make. However, from what has already been seen of it, the transcript totally refutes that assertion. As to the final position of Mr Welch, that, to my mind, is entirely without significance. It is, after all, well-established law that, in matters of jurisdiction, the acquiescence or consent of a party cannot get around a limitation imposed by statute. To cite

authority for a principle so firmly-rooted and of such long standing would be to incur the risk of appearing pedantic. Authority can, if required, be found in *Halsbury's Laws of England*, 4th ed, vol 10, at para 317.

Stay of Execution and Declaratory Judgments

[28] But there is, in my respectful view, another formidable ground on which this Court is, subject to the acknowledgment made in para **[33]** below, prevented from seeking to make a determination of the applications on their merits. It stems from the nature of the relief granted by the judgment of the court below. The applications have all been sought to be presented by the applicants, and supported by the interested parties, on the basis that such relief was declaratory in nature. That has been common ground. And, as has already been demonstrated, the fact that the sixth item of relief claimed by the claimants was an order that the relevant inspection should cover a certain period is a matter of no more than academic interest in the light of the reality that the court below granted a declaration instead of an order.

[29] But, as Mr Marshalleck, for the interested parties, himself accepts at one point in his skeleton argument (substantially echoed by counsel for the Attorney-General and the Minister in his final address to this Court), the judgment is entirely non-coercive in nature. The consequences of that are significant and are well set out in *Chief RA Okoya & ors v S Santilli & ors*, SC 200/1989, a decision of the Supreme Court of Nigeria (Nnamani, Uwais, Karibi-Whyte, Kawu and

Agbaje JJ) which was brought to the attention of this Court by Mr Marshalleck. One of the issues considered in that case was '[w]hether a defendant who has filed an appeal against purely declaratory orders made against him is entitled to apply for a stay of execution of those orders pending the hearing and determination of the appeal'. Dealing with this issue in the leading judgment, Agbaje J referred to the following as being a 'consensus' among academic writers cited by counsel for the plaintiffs:

'First: (i) Executory judgment declares the respective rights of the parties and then proceeds to order the defendant to act in a particular way, eg to pay damages or refrain from interfering with the plaintiff's rights, such order being enforceable by execution if disobeyed.

Declaratory judgments, on the other hand, merely proclaim the existence of a legal relationship and do not contain any order which may be enforced against the defendant.

Second: A declaratory judgment may be the ground of subsequent proceedings in which the right having been violated, receives enforcement but in the meantime there is no enforcement nor any claim to it'.

Agabje J continued thus:

'It appears to me that the starting point ... is the consensus that a declaratory judgment may be the ground of subsequent proceedings in which the right ... violated receives enforcement but in the meantime there is no enforcement nor any claim to it. So, until subsequent proceedings have been taken on a declaratory judgment following its violation or threatened violation there cannot on the clear authorities I have referred to above, a stay of execution of the declaratory judgment because prior to the subsequent proceedings, it merely proclaims the existence of a legal relationship and does not contain any order which may be enforced against the defendant.'

[30] I would point out before proceeding that, as far as 'subsequent proceedings' are concerned, it is clear from what has been seen earlier in this judgment (para **[7]**) that the sole supporting affidavit filed on behalf of the Attorney-General and the Minister must be taken as purportedly filed on 25 September 2006 and that, since the applications of those two applicants were mentioned to the court below as soon as the injunction was granted on that date, as is shown by the preceding extract from the transcript in question, those applications can only have been filed at a time prior to the making of application for an injunction. Certainly, the affidavit evidences no knowledge of the making of such an application. It seems clear, therefore, that these applications were prematurely filed, ie at a point of time when the only relevant orders in being were of a purely declaratory character. It is this same application of the Attorney-

General and the Minister that came on for hearing before this Court on 11 October 2006.

[31] Proceeding now, I will point out that Agabje J completed his consideration of the issue as follows:

‘The conclusion I reach is that there cannot be (*sic*) a stay of execution of declaratory judgments. ... It follows in my judgment that a defendant who has filed an appeal against a declaratory judgment or order is not entitled to apply for a stay of execution of that judgment or order. Such an application in the circumstances will be misconceived.

[32] Nnamani J, in his concurring judgment, said:

‘It seems to me that all the academic writers and the decisions to which we were referred are agreed that there can be no execution of a declaratory order. That position has recently been taken by the decision of this Court in *Government of Gongola State v Turkur* (1899) 4 NWLR (Pt 11) 592. This is because as this Court there said, a declaratory order merely declares a legal situation or rights or relationship. It is complete in itself, the declaration being the relief. It does not order anyone to do anything. Having arrived at this position, it follows that there can be no stay of execution of such an order for there is really nothing to stay.’

Counsel for the Attorney-General and the Minister, while making no reference to the case of *Chief RA Okoya*, accepted the legal proposition expressed in the final sentence of the immediately preceding quotation.

[33] I recognise that what I have set out above under the rubric Stay of Execution and Declaratory Judgments directly addresses the applications only to the extent that the applicants contend that a stay of execution includes a stay of the operation and effect of a judgment. Clearly, in so far as the applicants argue that this Court has independent jurisdiction to order stays of the operation and/or effect of judgments, my reasons for holding that, if there is such a jurisdiction in this Court, the same had yet to come into play at the close of the hearing on 26 October 2006, must stand alone.

[34] Strictly *de bene ese*, argument was heard by this Court (a) on the further jurisdictional question whether it is open to us to grant such a thing as a stay of the operation and/or effect of a judgment and (b) on the merits of the applications. In view of the conclusion expressed above, I, for my part, am satisfied that it is unnecessary to determine this further jurisdictional question and, in the absence of the required jurisdiction, inappropriate to express an opinion as to the merits of the applications.

CAREY, JA

35. The question which arises for consideration in this case, is whether this court has jurisdiction to grant a stay of the “operation of judgment” or the “effect of a judgment”. This is as a consequence of a judgment of the Chief Justice whereby he granted certain declarations and held section 22A of the Public Utilities Commission (Amendment) Act 2005 to be unconstitutional as also Statutory Instrument No. 108 and No. 109. The appellants had applied for stays in terms stated above as they have lodged appeals against that judgment. The grounds advanced on behalf of the Attorney General were that the judgment is adversely affecting not only the efficient corporate governance and management of the Belize Telecommunications Limited (BTL), but also the rights of persons who bought shares in BTL on the strength of the Public Utilities Commission (Amendment) Act 2005 (No. 30 of 2005) and Statutory Instruments Nos. 108 and 109 of 2005. The grounds put forward by BTL were that the judgment makes it impossible to manage the affairs of BTL and if enforced, the judgment could operate to unravel acts undertaken by BTL in the period since the promulgation of the Public Utilities Commission (Amendment) Act 2005 (Nos. 30 of 2005) and Statutory Instruments Nos. 108 and 109 of 2005 and if the appeal to the Court of Appeal were to succeed, in part or in whole, the effect could be to oblige BTL to redo acts previously and needlessly unraveled, and by reason of the above two grounds could potentially cause irreversible prejudice to BTL, its officers, its shareholders and third parties.

THE QUESTION OF JURISDICTION

36. None of the three counsel who made submissions in support of their respective applications was able to refer us to a specific provision, whether in the Court of Appeal Act, Cap 90 or the Court of Appeal Rules, which gave the court jurisdiction to hear applications for stay, either, of “the operation of a judgment” (the Attorney General’s relief) or, of “the effect of the judgment” (the BTL relief). Nothing daunted, they nevertheless invoked the inherent jurisdiction of the court to ensure that its decisions were not rendered nugatory by construing the existing provisions expansively and also by analogy to Canadian legislation relevant to stays.

37. It is as well to set out the rules which explicitly deal with stays, that is, stays of execution and stays of proceedings. Order II Rule 16(1)(c) is in the following form:

“In any cause or matter pending before the Court, a single judge of the court may upon application make orders for –

- (c) a stay of execution on any judgment appealed from pending the determination of such appeal;”

It is important to mention in this connection Rule 16(2) which states as follows:

“Every order made by a single judge of the Court in pursuance of this rule may be discharged or varied by any judges of that Court having power to hear and determine the appeal”

And mention must be made as well of Rule 17(1) which provides:

“Applications referred to in rule 16 shall ordinarily be made to a judge of the Court, but, where this may cause undue inconvenience or delay, a judge of the Court below, may exercise the powers of a single judge of the court under that rule.”

Finally, to complete the list of specific rules as to stay, I include Rule 19(1). It states:

“An appeal shall not operate as a stay of execution of proceedings under the judgment appealed from, except so far as the court below or the Court may order, and no intermediate act or proceeding shall be invalidated, except so far as the Court may direct’.

38. These rules, I would suggest, make it clear that a single judge of this court, as also a judge of the Supreme Court in exercising the powers of a single judge of this court where the single judge is unavailable, has power to entertain the specific applications set out in Rule 16(1)(a) to (e):

“and may hear, determine and make orders on any other interlocutory application”.

It will be necessary to deal hereafter with the “catch-all” provision seeing that Mr. Kaseke relied on it as conferring explicitly, jurisdiction on this court to hear this matter. To return to the analysis, however, the full court is given a power of review of the order of the single judge or the Supreme Court judge when exercising single judge functions under Rule 16(2). The terms “stay of execution” or of “proceedings pending appeal” have been considered over the years in a great many cases, so that as terms of art their meaning has been clarified and their import settled. In Halsbury (4th edition) Vol. 17 para. 401, with respect to the meaning of “execution”, it is stated –

“The word “execution” in its widest sense signifies the enforcement of or giving effect to the judgment of orders of courts of justice. In a narrower sense, it means the enforcement of those judgments or orders by a public officer under the writ of *fiery facias*, possession, delivery, sequestration ...”

Lord Denning MR in, *re Overseas Aviations Engineering (G.B.) Ltd. [1963] 1 Ch. 24 at p. 39* stated:

“Execution means quite simply the process for enforcing or giving effect to the judgment of the court and it is “completed” when the judgment creditor gets the money or other thing awarded to him by the judgment”.

In the instant case, the applicants were granted declarations, which are orders declaring the legal status or legal entitlement of the applicant. There was no order requiring enforcement by an officer of the court. Plainly therefore, an application for stay of execution was not maintainable.

39. As to the nature of a “stay of proceedings”, this was considered in the Privy Council case of *Minister of Foreign Affairs Trade and Industry v. Vehicles and Supplies Ltd. and another* [1991] 4 ALL ER 65 where, as appears in the headnote, it was held that:-

“A stay of proceedings was an order which put a stop to the further conduct of proceedings in court or before a tribunal at the stage then reached, the object being to prevent the hearing or trial taking place. As such it merely meant that any proceedings taking place while the stay was in force were ineffective and it was not an order enforceable by proceedings for contempt since by its nature, it was not capable of being breached by anyone and thus could have no possible application to an executive decision which had already been made. Furthermore, a stay could not act as an injunction by a side wind”.

There could be no grounds for saying, in the context of this case, that any proceedings exist on which a stay could take effect. Accordingly any application for a stay, whether of execution or of proceedings would be doomed to fail - in the case of a stay of execution, because the judgment awarded nothing which required execution by officers of the court and of course, as respects, stay of

proceedings, there were none to stay. Jurisprudentially speaking, a declaration can not be enforced by any process of execution. Declarations in the ordinary course of things, are recognized by all parties concerned in the matter but they can equally be ignored, in which event, the party who has been granted the declaration, may have to file an action seeking appropriate relief. That action could not be stayed as is demonstrated in *Minister of Foreign Affairs v. Vehicles and Supplies Ltd. (supra)*.

40. Before dealing with the jurisdictional base to hear the applications filed by the appellants, I pause to consider a question posed by a member of the court to Mr. Kaseke whether the application for stay should not first be made to a single judge of the court. So far as Mr. Kaseke was concerned, he argued that he was before the court and it was inconceivable that the single judge could have more power than the court itself. But that response, does not answer the question which was posed. Rule 17(1) ordains that:-

“Applications referred to in rule 16 shall ordinarily be made to a judge of the court, but where this may cause undue inconvenience or delay, a judge of the court below may exercise the powers of a single judge of the court under that rule”.

It is a safe conclusion that applications under Rule 16 are to be heard by a single judge of the court. Where such a judge is unavailable, then the application should be made to a judge of the Supreme Court. Recourse is not to the full

court. What is to be noted is that the full court is given the power to review the order of the single judge. The scheme of the Rules makes it clear that such applications should first be placed before the single judge. I do not think that an applicant has the right to leap-frog the single judge and request the matter to be placed before the full court. Having by some means gained access before the full court, it is, not a basis for the argument that the court can have no less power than a single judge to entertain the application. It is a seductively attractive argument but, in my opinion, it must fail because the rules do not establish alternative methods of application at the discretion of an applicant. The scheme under the Rules is that the application for stay is to be heard by a single judge and a power of review is given to the full court. When it is said that the full court has the power of the single judge, it is no different from the rule that the Court of Appeal has the power of a judge of the Supreme Court but no one supposes that the Court of Appeal is entitled to hear actions from the Supreme Court. For these reasons, in my judgment, there is no power in the full court to entertain applications for stay: the application should be made to a single judge. The rationale for this course must be to maximize the available resources and to prevent or minimize delay.

41. I can now turn to consider the submission advanced by Mr. Kaseke who was joined by both Mr. Williams, S.C., and Mr. Marshalleck, that the closing words of Rule 16(1) confer a jurisdiction on this court or, for that matter, on a single judge of the court to hear the present application. The words “or any other interlocutory application”, it was contended, provides this amplitude of power. So

far as Mr. Kaseke's position is concerned, he did not flinch from saying that where any application of an interlocutory nature was made this court has jurisdiction to entertain it. The only qualification he would make, is to say, provided the application had something to do with the case. Such a proviso is of universal application and adds nothing to the point.

42. With all respect to this submission, it flies in the face of reason. It creates an absurd situation in that Rule 16(1) which confers a jurisdiction as regards certain specific applications, proceeds in the same rule to confer a jurisdiction to hear any or every other application. The end result could be achieved as a matter of the utmost simplicity, by drafting the provision in those terms. Sosa, J (as he then was), exercising the powers of a single judge of this court, in an application for a writ of habeas corpus – In the matter of *Tommy Crutchfield (unreported) CA 7/98 28 July 1998* held that – “a single Justice of Appeal has only such jurisdiction, in so far as it extends beyond the types of order enumerated therein [viz. R16(1)(a) to (e)], must be limited to orders in interlocutory applications otherwise authorized to be made under the Act or Rules”. He had support for that approach in a judgment of Cotran, C.J., exercising jurisdiction as a single judge of this court in *Anparicio Valladarez v. Armando Williams CA 4/1989*. In that case, the application was for an extension of time to serve notice of appeal on the respondent notwithstanding that the time limited for so doing by the Rules had expired. Neither the Act nor the Rules provided for an extension. The Chief Justice said this:-

“Whilst it is true that a single judge of the court is empowered under Order 11 rule 16(1)(e) of the Rules to make orders for “extension of time” this presupposes that such power to extend is allowed by the Rules as for example under order 11 rule 3(3)...”

These judgments, I have no doubt, are eminently correct as representing the true construction to be placed on the final words of Rule 16(1). A construction which avoids creating an absurdity but gives effect to the provision is to be preferred. It follows that I cannot agree that the words at the end of the rule, confer the jurisdiction contended for by the appellants.

43. Mr. Kaseke ultimately rested jurisdiction on the Court’s inherent jurisdiction to ensure that its process is respected and is not abused and frustrated. Mr. Williams also attempted to run up an inherent jurisdiction flag. He referred us to *Bacongo v. Department of Environment of Belize* [2003] 1 WLR 2839 where the Privy Council declined to express any view on the inherent jurisdiction of this court. The Board took the view that although it had no statutory power, it stated that it was satisfied that it had an inherent jurisdiction to ensure that any order which it makes in the eventual hearing of the appeal should not be rendered nugatory. The Board pointed to its granting of conservatory orders in death penalty cases as illustrative of that power. We were invited to emulate the approach of the Board and claim that power. I decline the invitation not from timidity but because this court although exercising appellate jurisdiction as does the Judicial Committee is not a final court: it is an

intermediate court. The example to which reference was made, it should be noted, was to a death penalty case. The similarity between that scenario and the instant case is far to seek. A Court of Appeal is a creature of statute and has such power as is conferred by the statute. Article 100 of the Belize Constitution defines its jurisdiction thus:-

“The Court of Appeal shall have such jurisdiction and powers to hear and determine appeals in civil and criminal matters as may be conferred on it by this Constitution or any other law”.

The case of *Vernon Harrison Courtenay and W.H. Courtenay & Co v. Attorney General, Civil Appeal No. 9 of 1997 (undated)* a judgment of this court, was cited as an example of this court claiming to have inherent jurisdiction. The Court in its judgment stated as follows:

“The inherent jurisdiction of the Court of Appeal to ensure that its process is respected and that it is not abused and frustrated can reach no further than the extent of its jurisdiction as defined in the Constitution and in the Court of Appeal Act”.

In the event, the court did not find any factual base on which to apply this jurisdiction in the case before it. Consequently, this case, simply provides no assistance in dealing with the instant case: it hardly qualifies as an authority.

44. It was also submitted by Mr. Williams that the inherent jurisdiction which he claimed with respect to this court, had a statutory base in sections 13 and 19 of the Court of Appeal Act. These sections together set out the jurisdiction of the court and the powers it may exercise on the hearing of appeals. This contention must be dismissed as entirely misconceived. Our attention was also drawn to a Canadian case *RJR MacDonald Inc v. Canada (Attorney General)* [1994] 1 RCS 311 where the word “other relief” in r. 27 of the Supreme Court Rules and Section 65.1 of the Supreme Court Act of Canada fell to be construed, as showing a persuasive approach to sections 13 and 19 of the Court of Appeal Act, Cap. 90. These provisions are not in the least concerned with the powers of this court in relation to interlocutory matters. The Canadian case, in my opinion, is therefore incapable of affording any guidance.

45. Another limb on which Mr. Williams sought support was section 12 of the Court of Appeal Act, Cap. 90 which enacts as follows:

“Where in any case no special provision is contained in this or any other Act, or in rules of court, with reference to any jurisdiction of the court in relation to appeals in criminal and civil matters such jurisdiction shall be exercised by the Court as nearly as may be in conformity with the law and practice for the time being in England in the Court of Appeal”.

That provision, as he argued, allowed this court to import the jurisdiction of the English Court of Appeal into this court to the extent that the Court of Appeal Act or Rules contain no such provision. The English Court of Appeal has accepted

that it has jurisdiction to stay a public law decision. He cited *Regina (Pharis) v. Secretary of State for The Home Department* [2004] EWCA CIV. 654, [2004] 1 WLR 2590.

46. That wide interpretation, Mr. Williams was constrained to concede, was incorrect. He accepted that the jurisdiction to be exercised pursuant to that provision is the jurisdiction which the Act and the rules allow and that it is that jurisdiction which may, under section 12, be exercised in accordance with the law and practice in England. It would require very clear words to cede the authority of the Belize Parliament to the U.K. Parliament. It is not the case that whenever the law in the United Kingdom changes, a like occurrence manifests itself in Belize.

47. Curiously, Mr. Williams who had not applied for a “stay of execution” sought to rest his thesis that the court had jurisdiction to entertain his application for an order “staying the effect of the judgment”, on Rule 16(1)(c) quoted at para. 3 above, which gives power to a single judge of the court to grant “a stay of execution on any judgment appealed from pending the determination of [an] appeal”. Any submission in reliance on this rule must be unreal given the undoubted fact that no order made by the Chief Justice required the appellants to “do” anything. The orders made were declarations. They could not be enforced by any officer of the court. I suggest that it is a sleeveless errand to consider cases construing the meaning of “execution”, and for my part, I do not propose to follow Mr. Williams along that path.

48. Mr. Marshalleck rested his argument for this court's jurisdiction on (a) the final words of Rule 16(1), (b) the inherent jurisdiction of the court, (c) section 12 of the Act, namely the importation of the practice which he interpreted like, Mr. Williams, to mean the jurisdiction of the English Court of Appeal and (d) presumably Rule 16(1)(c) – the power to grant stays of execution – where “execution”, it is argued includes – “the effect of a judgment”. It is to be noted that notwithstanding the deployment of this argument, confidence did not allow him to apply for a stay of execution. I have already dealt with the like submissions and need only say that, for the reasons already set out, I am not persuaded they are valid.

49. That conclusion makes it wholly unnecessary to consider whether the affidavits filed in support show sound reasons for a stay of the effect or the operation of the judgment. The facts so far as they go show, in my judgment, good grounds for an accelerated hearing of the appeal.

CONCLUSION

50. These represent my reasons for agreeing with others of my brothers that the orders for stay should be refused. I also agreed that the respondents should have their costs, to be taxed if not agreed.

CAREY JA

MORRISON JA

51. On 26 October 2006, the court dismissed applications made on behalf of the Attorney General, the Minister of Public Utilities (“the applicants”) and Belize Telecommunications Ltd. (“BTL”) for a stay of “the operation” and of “the effect” respectively of a judgment of the Chief Justice dated 19 September 2006. The court promised to put its reasons in writing and these are my reasons for concurring in that decision.

52. The background to these applications can be stated shortly. On 13 August 2005, the legislature enacted the Public Utilities Commission (Amendment) Act (Act No. 30 of 2005). Pursuant to this Act, the Minister of Public Utilities made and issued Statutory Instruments Nos. 108 and 109. In Claim No. 338 of 2005, the claimants/respondents mounted a constitutional challenge impugning the Act and the statutory instruments. The matter was heard by Conteh CJ who, in a judgment handed down on 19 September 2006, concluded that section 22A of the Act and Statutory Instrument No, 109 of 2005 made pursuant to the section were incompatible with the Constitution of Belize. The learned Chief Justice made certain consequential declarations accordingly. From this decision, the appellants have filed an appeal on several grounds which are not now relevant.

53. On 25 September 2006, the applicants filed an application in this court “for an order staying the operation of the judgment of the Hon. Chief Justice dated 19th September 2006” until after the determination of the appeal. They were during the course of the hearing of the application joined by the interested party/appellant, BTL, which in an application dated 17 October 2006 asked for an order “staying the effect” of the judgment of the Chief Justice for the same period. In support of their application, the applicants relied on an affidavit sworn to by the Attorney General of Belize, the Hon. Francis Fonseca, in which he stated that “the judgment of the Hon. Chief Justice had created uncertainty in the corporate governance and management of BTL.” BTL relied on an affidavit sworn to by Mr. Dean Boyce, a director of BTL, which also complained of the uncertainty caused by the judgment which, it was said, made management of the company “exceedingly difficult.” The application was supported by the interested parties Belize Bank Ltd. and Thiermon Ltd., both of which also filed affidavits in support.

54. In the experience of all members of the court, the applications for a stay, whether of “the operation” or “the effect” of the judgment of the Chief Justice were, as a matter of first impression, entirely novel. After hearing extensive submissions from Dr. Elson Kaseke, Mr. Rodwell Williams S.C. and Mr. Andrew Marshalleck in support of the applications, as well as from Mr. Lionel Welch in opposition, I remained of the view that there was no jurisdiction in this court to make the orders sought. In this brief judgment setting out my own reasons for concurring in the result described at paragraph 1 above, I will confine myself to a

consideration of the principles to be derived from the relevant statute and the rules. In so doing, I naturally intend no disrespect to counsel, all of whom deployed the several arguments advanced with skill, energy and admirable tenacity.

55. This court has such jurisdiction as is conferred on it by the Constitution (section 100(1)) and the Court of Appeal Act (“the Act”, section 3(1) and section 13). In **Re Tommy Crutchfield (Civil Appeal No. 7 of 1998)**, Sosa J., as he then was, sitting as a single judge of this court pursuant to section 101 (3) of the Constitution, section 3(4) of the Act and Order II, Rule 17(1) of the Court of Appeal Rules, 1965 (“the Rules”), compared the jurisdictional provisions in the Act with those relating to the Supreme Court (in particular, section 17(1)), and concluded as follows:

“It is obvious, at a mere glance, that, whilst the Supreme Court was sought to be given all the jurisdictions, powers and authorities of the High Court of Justice in England at the time the Supreme Court of Judicature Act came into force, the Court of Appeal was, by the Act proper, sought to be conferred only with the particular jurisdiction delimited in section 14 [now section 13] thereof. No attempt was made to vest the Court of Appeal with all the jurisdictions, powers and authorities of any English appellate court.”
(see page 4 of the judgment).

56. As this court observed in **Wilfred Lauriano v The Attorney General and the Superintendent of Prisons (1995) 47 WIR 74, 87**, “It is a trite proposition that all appellate jurisdiction must be derived from a statutory provision”, and it is against this background that the powers of this court in relation to these applications fall to be determined. Order II, rule 19(1) of the Rules provides as follows:

19.1 An appeal shall not operate as a stay of execution or of proceedings under a judgment appealed from except so far as the court below or the court may order and no intermediate act or proceedings shall be invalidated except so far as the court may order.

57. However, rule 16(1) does give to a judge of this court powers in the following terms:

16.-(1) In any cause or matter pending before the Court a single judge of the Court may upon application make orders for -

(a) giving security for costs to be occasioned by any appeals;

(b) leave to appeal in forma pauperis;

(c) a stay of execution on any judgment appealed from pending the determination of such appeal; [emphasis supplied]

(d) *an injunction restraining the defendant in the action from disposing or parting with the possession of the subject matter of the appeal pending the determination thereof;*

(e) *extension of time;*

and may hear, determine and make orders on any other interlocutory application.

58. At the outset of these applications, a question arose (posed by the court) as to whether the applicants and BTL had first sought the leave of Conteh CJ before moving this court for the orders already referred to. After some discussion on the point, the court was told by counsel that such an application had in fact been made to the Chief Justice, but had been refused. While a subsequent careful reading of the transcript that was made available to us of what actually took place before the Chief Justice does not provide explicit support for what we were told by counsel, I am content for the purpose of this judgment to approach the matter on the basis of counsel's assurances to the court, which I would not expect to have been lightly or carelessly given.

59. Insofar as the scope of the power conferred by rule 16(1) is concerned, I am in respectful agreement with the view expressed by Sosa J. in **Re Tommy Crutchfield**, where that learned judge commented as follows:

“If a court of appeal, the raison d’etre of which is to hear and determine appeals, can only have such appellate jurisdiction as is conferred on it by statute, then a fortiori it can only have such original jurisdiction as is conferred on it by statute. Guided by these considerations, I reached the conclusion that a single Justice of Appeal has only such jurisdiction as is conferred on him by rule 16(1) and that such jurisdiction, insofar as it extends beyond the types of order enumerated therein, must be limited to orders in interlocutory applications otherwise authorised to be made under the Act or the Rules.” (see page 8 of the judgment).

60. Far from extending the scope of the orders which the single judge is empowered to make, I am of the view, again in agreement with Sosa J., that the words “any other interlocutory application” at the end of the itemized list of orders in rule 16(1) should be given a narrow interpretation. It follows from this that the powers of the single judge under rule 16(1) are limited to the orders specifically listed. As Mr. Welch commented in his reply to the submissions made in support of the applications, if the rule makers had intended the words “orders on any other interlocutory application” to have the expansive meaning contended for by Dr. Kaseke for the applicants and Mr. Williams S.C. for BTL, there would have

been no need to enumerate the jurisdiction of the single judge in the manner in which the rule does.

61. In the instant case, the order most resembling those sought is that referred to at rule 16(1)(c), that is, a stay of execution. The word “execution” is not defined in either the Act or the Rules, but it is, as Lord Denning MR observed in **Re Overseas Aviation Engineering (G.B.) Ltd. [1963] Ch. 24, 39**, “a word familiar to lawyers ... [it] means, quite simply, the process for enforcing or giving effect to the judgment of the court.” (Lord Denning’s dictum is cited as authority for the definition in almost identical terms given in Halsbury’s Laws of England (4th ed.), volume 17 at paragraph 401). This definition clearly connotes, in my view, the setting in motion of some form of process to give effect to the judgment of the court. The judgment of Conteh CJ does not call for the applicants to do any act or, indeed, to take or refrain from taking any steps. It is in fact a declaratory judgment and not a coercive order requiring the parties to do or not to do any act (see Lewis “Judicial remedies in Public Law” (1992) at page 196). To that extent, therefore, these applications cannot be treated as being for stays of execution, since there is nothing in the subject matter of the Chief Justice’s judgment that can involve execution in the accepted meaning of the word.

62. The applicants and BTL were clearly not unaware of this obstacle, hence their having chosen to frame these applications as carefully as they have done (stay of “operation” and “effect”). But it is also for this very reason that had these

applications been made before a single judge of the court they would have been bound to fail, on the simple ground that the orders sought are not of a kind which it is within that judge's power to make. (Neither would the applicants have been assisted by a stay of proceedings, even if such an order were available, for the reasons stated by Lord Oliver delivering the judgment of the Judicial Committee in **Minister of Foreign Affairs Trade and Industry v Vehicles and Supplies Ltd** [1991] 4 All ER 65, 72 – 73).

63. The applicants further urged this court to have regard to the practice in the United Kingdom in comparable circumstances, on the basis of section 12 of the Act which provides as follows:

Where in any case no special provision is contained in this or any other Act, or in rules of court, with reference to any jurisdiction of the court in relation to appeals in criminal and civil matters such jurisdiction shall be exercised by the Court as nearly as may be in conformity with the law and practice for the time being in force in England in the Court of Appeal.

64. Implicit in this submission, it seems to me, is the proposition that section 12 is to be regarded as some kind of continuous reception of law provision, effective to import from England into the practice of this court such jurisdiction as may be required in particular cases to meet perceived lacunae. As a matter of language, I think that there are considerable difficulties in interpreting the section

in this way (the references in the section to “any jurisdiction” and to “such jurisdiction”, for instance, beg the question what is the source of that jurisdiction, which leads one to the section of the Act that describes the court’s jurisdiction in civil cases, that is, section 13, which is itself in specific rather than general terms).

65. Faced with a similar submission in **Leonard Mask v Belize Hotels Ltd (Civil Appeal No. 20 of 1998)**, Sosa JA expressed the view that the object of section 13 was not to confer jurisdiction on the Court of Appeal, “but to provide for the manner in which jurisdiction otherwise vested in the Court must be exercised, i.e., in conformity, as nearly as may be, with the law and practice in force in the English Court of Appeal” (see page 5 of the judgment). I respectfully agree. It is not in my view competent of this court to assume a jurisdiction not conferred on it by the Act or the Rules, by open-ended reference to the law of England.

66. I cannot leave the issue of the jurisdiction of the court to make orders such as the ones sought by these applications without making mention of the judgment of this court in **Vernon Harrison Courtenay & W.H. Courtenay & Co. v The Attorney General (Civil Appeal No. 9 of 1997)**. This was an application for a stay of criminal proceedings, pending the hearing of certain constitutional challenges. Although the court (Georges P, Young and Liverpool JJA) dismissed the application on the ground that it had no jurisdiction to entertain it, the

applicants and BTL found some comfort in some language used in the judgment of the court, particularly as it related to the “inherent jurisdiction” of the court and the power to grant stays. Thus at page 4, it was stated as accepted “that the Court of Appeal as a superior court of record has an inherent jurisdiction to maintain its authority and to prevent its processes from being obstructed and abused.” However, on the page following (page 5) the comment is made that the court’s inherent jurisdiction “can reach no further than the extent of its jurisdiction as defined in the Constitution and in the Court of Appeal Act.” It is against this unexceptionable background that the judgment goes on to state (at pages 5 – 6) that “Where there is an appeal pending before the Court it does have the power to issue stays to preserve the status quo so that a successful appellant does not find himself or herself deprived of the fruits of success on appeal by reason of events taking place between the filing of the appeal and its determination.”

67. Dr. Kaseke fastened upon this last statement to support a broad submission that this court has jurisdiction to issue stays to preserve the status quo, as a matter not only now of principle, but in the light of this earlier decision, of precedent binding on this court. In my view, the decision does not support any such general principle. A reading of the general statement upon which reliance is placed in its context makes it clear that the court was plainly referring to its jurisdiction as it derived from the Act and the Rules. To that extent, the reference to an inherent jurisdiction, though admittedly possibly apt to confuse if taken out of context, was no more than a confirmation of the inherent power of the court to

maintain its authority by ensuring that its processes are respected and not abused or frustrated. In this regard, it is of some interest to note the language used by Willmer LJ in **Aviagents Ltd. Balstravest Investments Limited** [1963] 1 All ER 451, 452, a case cited by Mr. Marshalleck to show the extent of the inherent jurisdiction of the English Court of Appeal, when that learned judge remarked that it seemed “inconceivable that this court should not have inherent power to control its own proceedings by striking out a notice of appeal in a case where an appeal is plainly not a competent appeal.” That this court in **Courtenay & Courtenay v The Attorney General** intended to convey no more than this is clear from the comment in the penultimate sentence of the judgment (page 7), distinguishing **Transport Equipment Ltd. v Valambhia** [1994] 1 L.R.C. 114 (a Tanzanian case that had been cited to it), that in that case “the inherent jurisdiction was invoked in a matter clearly within the jurisdiction of the Court.”

68. I have been considering the jurisdiction of this court to make orders of the type that were sought in this case, primarily in the context of the powers of the single judge as set out in Order II, rule 16(1). For reasons which are not entirely clear, these applications were in fact made to the court itself. While the Act and the Rules are silent on this, I think it must be the case, as the applicants submitted, that the powers of the court in these circumstances cannot be any less than those given to the single judge by Order II, rule 16(1). From a practical point of view, I doubt that it would have been an efficient use of judicial time for

this court to have, at the outset of the matter, declined altogether to hear the applications on the basis that they ought properly to have been initiated before a single judge of the court. However, in so saying I do not wish to be taken to be sanctioning for the future any further departures from the Rules, which are there to be obeyed and not ignored. Order II, rule 16(2) specifically provides that orders made by a single judge pursuant to rule 16(1) may be discharged or varied by the court itself and it should be regarded by the practising profession as the invariable norm that such applications are to be made to a single judge in the first instance and thereafter considered by the court, if thought necessary. In this regard I wish specifically to associate myself with the views expressed by Carey JA on this point at paragraph 40 of his judgment in this case, which I have had the advantage of reading in draft and with which I entirely agree.

69. These are my reasons for concurring in the decision of this court set out in the opening paragraph of this judgment.

MORRISON JA