

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCVP2025/0003

BETWEEN:

**[1] YAN GUSTAVE
[2] FELIX DETERVILLE**

Appellants

and

THE ATTORNEY GENERAL OF SAINT LUCIA

Respondent

Before:

The Hon. Mr. Trevor M. Ward

Justice of Appeal

The Hon. Mde. Cadie St. Rose-Albertini

Justice of Appeal

The Hon. Mr. Reginald T. Armour

Justice of Appeal [Ag.]

Appearances:

Ms. Wauneen Louis-Harris for the Appellants

Mr. Seryozha Cenac and Mrs. Rochelle John-Charles for the Respondent

2025: October 29;
2026: June 17.

Civil appeal – Constitutional law – Statutory interpretation – Constitutional interpretation – Appeal against learned judge’s findings that there was no need for a referendum to be held before the Constitution was amended to replace Saint Lucia’s final appellate court from the Judicial Committee of the Privy Council to the Caribbean Court of Justice - Whether the learned judge erred in holding that section 41(7)(a) of the Constitution is to be read as if the reference to section 107 is deleted and replaced with section 108 – Whether the learned judge erred in failing to find and declare that the Constitution of Saint Lucia (Amendment) Act – the Caribbean Court of Justice (Agreement) Act and the Caribbean Court of Justice (Agreement) Act (Commencement) Order were null and void and of no effect as they had the cumulative effect of undermining the protection accorded by the entrenched provisions of the Constitution and accordingly a referendum was required to enact these measures

On 3rd March 2023 the appellants commenced a claim and sought injunctive relief restraining the Attorney General from amending section 108 of the Constitution to replace the Privy Council with the CCJ as Saint Lucia's final Court of Appeal, pending the hearing and determination of the claim. This was before the Governor General had assented to the Amendment Act. However, by the time the application for injunctive relief was due to be heard on 13th March 2023, the Governor General's assent had been obtained. The judge dealing with the matter at that time granted the appellants leave to withdraw that application given that development. An amended fixed date claim was filed on 8th November 2024, and eventually wended its way before Pariagsingh, J. The appellants argued that to abolish appeals to the Privy Council, the Saint Lucia Constitution required a referendum to be held, approved by a majority of voters. The respondents contended that properly construed, the Constitution did not require a referendum to be held.

In a written judgment dated 20th January 2025, the learned judge agreed with the respondents and dismissed the claim. He found that a referendum was not required because section 41(7)(a) of the Constitution exempted any bill altering section 108 from the referendum requirement in section 41(6)(b). In reaching that conclusion, he applied a purposive approach to the interpretation and held that the reference to section 107 in section 41(7)(a) should be read as a reference to section 108. He therefore adopted the reasoning of the majority in the Court of Appeal's advisory opinion in the AG's Reference (Questions relating to Section 41(2), 41(7), 107 and 108 of the Saint Lucia Constitution Order 1978) which considered, *inter alia*, whether section 41(7)(a) should properly refer to section 108 rather than section 107.

The appeal challenges the dismissal of the claim. The appellant filed five (5) grounds of appeal which are reducible to two (2): (i) that the learned judge erred in holding that section 41(7)(a) of the Constitution is to be read as if the reference to section 107 is deleted and replaced with section 108 and (ii) that the learned judge erred in failing to find and declare that the Constitution of Saint Lucia (Amendment) Act, the Caribbean Court of Justice (Agreement) Act and the Caribbean Court of Justice (Agreement) Act (Commencement) Order were null and void and of no effect as they had the cumulative effect of undermining the protection accorded by the entrenched provisions of the Constitution and accordingly a referendum was required to enact these measures which operated to amend entrenched provisions of the constitution.

Held: dismissing the appeal with no order as to costs, that:

1. The Court of Appeal is legally empowered to interpret the provisions of the Saint Lucia Constitution. In the exercise of that interpretive power, the Court has the authority to correct typographical or drafting errors in the text when the word used produces an absurd result or defeats the legislature's intention. Such obvious drafting errors may be corrected by the Court adding, omitting or substituting words. This is a wholly exceptional power which must be exercised with great caution and the Court must be astute to ensure that it does not engage in judicial legislation as opposed to interpretation. To judicially correct a perceived obvious typographical error, the Court must be abundantly sure of: (1) the intended purpose of the provision; (2) that the draftsman and parliament inadvertently failed to give effect to

that purpose; and (3) the substance of the provision parliament would have made had the error been detected.

Sutherland Publishing Company Limited v Caxton Publishing Co. Ltd [1938] 4 All ER 389 applied; **Inco Europe Ltd and Others v First Choice Distribution** [1999] 1 WLR 270 applied.

2. In relation to the first criterion, the concept of the intention of parliament is an objective one. It is the meaning to be reasonably imputed to parliament based on the language used in its context, not the subjective intent of the draftsman. In other words, the requisite legislative intention is an inference drawn from the statutory provision interpreted in the light of its statutory context. The statutory context includes the language and legislative object or purpose of the statutory provision and the importance of the statutory provision, to the legislative object or purpose of the statute or other provisions thereof.

R v Secretary of State of the Environment, Transport and the regions, Ex parte Spath Holme Ltd [2001] 2 AC 349 applied; **Browne v Francis Gibson** Civ. No 11 Of 1994 applied.

3. Courts typically adopt the principle of purposive construction when seeking to discover and give effect to the intention of parliament. This requires the court to look beyond the words actually used, and resort may be had to various aids to interpretation including internal aids such as other provisions in the same statute which may illuminate the meaning of the words under consideration. Alternatively, external aids such as the statutory and historical background and context may be considered. Nonetheless, the starting point remains to examine the words used by parliament itself. If the words used are clear and unambiguous and do not lead to a result that is manifestly absurd or unreasonable then the Court should not interfere.

Sheikha Amena Ahmed H A Al-Thani and another v Sheikha Aisha Mohammed Ali Abdullah Al Thani and others [2024] UKPC 35 applied.

4. To interpret parliament's intention as seeking to expand appeals to the Privy Council from courts other than the Court of Appeal would be an odd and absurd measure to contemplate given that Saint Lucia's clear and trodden pathway since at least 2003 has been a march towards accession to the jurisdiction of the CCJ, both original and appellate. The historical and statutory antecedents to appeals to the Privy Council in Saint Lucia, set against the momentum towards independence, accompanied later by preparatory ground work for delinking from the Privy Council leads to the ineluctable conclusion that the purpose of section 41(7)(a) was to enable the duly elected government to de-link from the Privy Council without the need for a referendum, provided the specified constitutional parliamentary majority votes were obtained.
5. In relation to the second and third criteria, given what must have been the intended purpose of the provision, the reference to section 107 must obviously be a drafting

error which resulted in the draftsman and parliament inadvertently failing to give effect to the intended purpose of section 41(7)(a). Had the error been detected, parliament would have substituted section 108 for section 107. The Court is empowered to so read the section. It follows that there was no requirement to hold a referendum to amend section 108 as part of the process to abolish appeals to the Privy Council. Similarly, because the purpose of the Amendment Act was to give effect to an agreement concerning appeals from a court having jurisdiction in Saint Lucia to the Privy Council, amending section 41 itself was exempt from the requirement to hold a referendum.

Attorney General's Reference (Questions relating to Sections 41(2), 41(7), 107 and 108 of the Saint Lucia Constitution Order 1978) SLUHCVP2012/0018 (delivered on 24th May 2013, unreported) followed.

6. The appellant's reliance on *Independent Jamaica Council for Human Rights (1998) Limited and Others v Hon. Syringa Marshall-Burnett & The Attorney General of Jamaica* is misplaced. It is readily apparent that the entrenchment provisions under consideration in Jamaica differ in significant respects from Saint Lucia's section 41, which governs alterations to the Constitution and the Supreme Court Order. There is no provision in the Jamaican Constitution that is identical or equivalent to section 41(7)(a). Although section 108 is deeply entrenched, section 41(7)(a) provides a specific exemption to the referendum requirement imposed by section 41(6)(b) where the bill seeking to amend them is to give effect to an agreement between Saint Lucia and the UK in relation to appeals to the Privy Council. The intention seems clearly to have been to facilitate the transition from the Privy Council to the CCJ by a process that bypasses the need for a referendum. Therefore, unlike what occurred in Jamaica, it cannot be said that the steps the government of Saint Lucia took to abolish appeals to the Privy Council impacted entrenched provisions of the Constitution without compliance with the dictates of section 41.

Independent Jamaica Council for Human Rights (1998) Limited and Others v Hon. Syringa Marshall-Burnett & The Attorney General of Jamaica [2005] UKPC 3 distinguished.

JUDGMENT

- [1] **WARD JA:** In the hierarchical structure of the Courts of Saint Lucia the Judicial Committee of the Privy Council ("the Privy Council") once occupied pride of place as the country's Apex Court. That changed in 2023 when the Caribbean Court of Justice ("the CCJ") replaced the Privy Council as the final Court of Appeal through

the **Constitution of Saint Lucia (Amendment) Act**¹(“the Amendment Act”). The appellants commenced a claim on 3rd March 2023 and sought injunctive relief restraining the Attorney General from amending section 108 of the Constitution to replace the Privy Council with the CCJ, pending the hearing and determination of the claim. This was before the Governor General had assented to the Amendment Act. However, by the time the application for injunctive relief was due to be heard on 13th March 2023, the Governor General’s assent had been obtained. The judge dealing with the matter at that time granted the appellants leave to withdraw that application given that development. An amended Fixed Date Claim was filed on 8th November 2024, and eventually wended its way before Pariagsingh, J. The appellants argued that to abolish appeals to the Privy Council, the Saint Lucia Constitution required a referendum to be held, approved by a majority of voters. The respondents contended that properly construed, the Constitution did not require a referendum to be held. The judge agreed with the respondents and dismissed the claim.

- [2] This appeal challenges the dismissal of the claim. The central issue before the judge and on this appeal is whether the Constitution mandated that a referendum be held and approved by a majority of voters in order to abolish appeals to the Privy Council and replace it with the CCJ.

The Judgment Below

- [3] In a written judgment dated 20th January 2025, the judge held that a referendum was not required because section 41(7)(a) exempted any Bill altering section 108 from the referendum requirement in section 41(6)(b). In reaching that conclusion, he applied a purposive approach to interpretation and held that the reference to section 107 in section 41(7)(a) should be read as a reference to section 108. He therefore adopted the reasoning of the majority in the Court of Appeal’s advisory opinion on the **Attorney General’s Reference (Questions relating to Sections**

¹ No. 2 of 2023.

41(2), 41(7), 107 and 108 of the Saint Lucia Constitution Order 1978),² which considered, among other issues, whether section 41(7)(a) should properly refer to section 108 rather than section 107.

The Appeal

- [4] The appellants filed 5 grounds of appeal which in substance are reducible to two. Grounds 1 and 2 essentially say that the judge erred in holding that section 41(7)(a) of the Constitution is to be read as if the reference to section 107 is deleted and replaced with section 108. Grounds 3, 4 and 5 complain that the learned judge erred in failing to find and declare that the **Amendment Act**, the **Caribbean Court of Justice (Agreement) Act**³ and the **Caribbean Court of Justice (Agreement) Act (Commencement) Order**⁴ were null and void and of no effect as they had the cumulative effect of undermining the protection accorded by the entrenched provisions of the Constitution and accordingly a referendum was required to enact these measures which operated to amend entrenched provisions of the constitution.

The Parties' Submissions

- [5] Counsel for the appellants, Ms. Wauneen Louis-Harris, submitted that the right of appeal to the Privy Council is an entrenched constitutional provision that cannot be abolished without a referendum, pursuant to section 41 of the Constitution. The appellants argue that section 41(6) and (7) are entrenched, and any attempt to alter section 108 (which governs appeals to the Privy Council) must be approved by a majority of votes in a referendum. They challenge the conclusion of the judge, and indeed the majority opinion in the advisory opinion, that the reference in section 41(7)(a) to section 107 is a drafting error and should be read as a reference to section 108. Instead, they rely on the dissenting judgment of Mitchell, JA who opined that the reference to section 107 was not a drafting error and that that if Saint Lucia

² SLUHCVP2012/0018 (delivered on 24th May 2013, unreported).

³ No. 34 of 2003

⁴ SI. No. 85 of 2023.

intended to "de-link" from the Privy Council, such an amendment required popular approval via referendum.

- [6] By way of comparison with other Caribbean Constitutions, the appellants referenced section 99 of the Saint Vincent and the Grenadines Constitution which mirrors section 108 of Saint Lucia's Constitution and argued that that similarly worded constitutional provisions in Saint Vincent were interpreted by its government as requiring a mandatory referendum before alterations could be made to section 99. Thus, it is said that a similar requirement obtains in Saint Lucia. They point too to the fact that Jamaica and Antigua and Barbuda also held referenda on the subject in 2018. They infer from this that 'the Governments of Jamaica and Antigua and Barbuda also interpreted their Constitutions in a manner which required the undertaking of a referendum prior to these significant alterations to their constitutions.'
- [7] In relation to grounds 3, 4 and 5 the appellants argued that the **Constitution of Saint Lucia (Amendment) Act**, the **CCJ (Agreement) Act**, and **Statutory Instrument No. 85 of 2023** collectively undermine constitutional protections. It was submitted that because these Acts are "inextricably linked" to the removal of Privy Council access, they are all null, void, and of no effect due to the lack of a referendum.
- [8] The appellants further submitted that even if the reference in section 41(7)(a) erroneously referred to section 107 instead of section 108 it is pellucidly clear that other sections of the Constitution were being impacted by the Amendment Act. These sections include sections 16, 18, 73, 124 and other sections where the CCJ was being substituted for the Privy Council. Because these sections are inextricably linked with section 41, a referendum would have been required in any event. Because none was held, these enactments are null, void and of no effect. The appellants seek to support this argument by reference to the case of **Independent**

Jamaica Council for Human Rights (1998) Limited and Others v Hon. Syringa Marshall-Burnett & The Attorney General of Jamaica.⁵

- [9] Ms. Louis-Harris submitted that the judge did not engage with these latter arguments at all in relation to grounds 3, 4 and 5.
- [10] On behalf of the respondent, Mr. Seryozha Cenac, submitted that a referendum was not required to replace the Privy Council (JCPC) with the CCJ as the apex court. The respondent contends that the reference to section 107 in section 41(7)(a) of the Constitution was a typographical or drafting error. Because section 107 deals with internal appeals from the High Court to the Court of Appeal, referring to it in a section speaking to international agreements for an apex court is "nonsensical". When read instead as a referring to section 108, which specifically deals with appeals to the Privy Council, this achieves alignment with the framers' intent to allow for the "repatriation of Saint Lucia's final appellate jurisdiction" without a referendum.
- [11] Flowing from this, the respondent maintains that because the referendum requirement did not apply under the proper interpretation of section 41(7)(a), the **Constitution of Saint Lucia (Amendment) Act**, No. 2 of 2023, the **Caribbean Court of Justice (Agreement) Act**, No. 34 of 2003 and the **Caribbean Court of Justice (Agreement) Commencement Order**, No. 85 of 2023 are not null and void.

Discussion

- [12] A brief summary of the relevant legislative history is necessary to understand the basis of the appellant's challenge. For this purpose, I will first summarise the pre-existing legislative framework governing appeals to the Privy Council. Save where the context indicates otherwise, all references are to the provisions as originally worded. Thereafter, I examine the provisions of the Constitution that regulate the

⁵ [2005] UKPC 3.

manner in which alterations to those parts of the Constitution governing appeals to the Privy Council could be made, namely section 41. Next, I outline and examine the steps taken by the Government in its quest to abolish appeals to the Privy Council. Finally, I will assess whether the amendments made by the Government purporting to abolish appeals to the Privy Council were compliant with section 41 of the Constitution. This will entail a determination of the proper interpretation of section 41, and in particular section 41 (7)(a).

The Jurisdiction of the Privy Council

- [13] The historical origins of the establishment of the Eastern Caribbean Supreme Court and the right of appeal to the Privy Council, the jurisdictional boundaries between the Saint Lucia Court, the regional court and the Privy Council provide relevant context and is set out in some detail in the advisory opinion issued by the Court of Appeal. A concise summary follows.
- [14] The Constitutional regime that existed at the time when Saint Lucia became an Associated State was the Saint Lucia Constitution Order 1967. Pereira, CJ's, overview commences with a reference to section 124 of the Saint Lucia Constitution, which defines the Supreme Court, Court of Appeal, and High Court as those established by the Supreme Court Order. The Supreme Court Order was enacted by the United Kingdom in 1967 and created the Eastern Caribbean Supreme Court as a 'superior court of record' shared among several Caribbean states. While the Supreme Court Order establishes the courts, it does not detail their specific jurisdiction or powers; instead, these are found in the **Eastern Caribbean Supreme Court (Saint Lucia) Act**,⁶ passed by Saint Lucia's Parliament. Notably, the Supreme Court Order contains no provisions regarding appeals to the Privy Council, which is not a court established by the Supreme Court Order; rather, it is a UK-based institution serving as a final appellate court for overseas territories, former colonies and independent Commonwealth nations.

⁶ Chap 2.01 of the Revised Laws of Saint Lucia.

[15] Appeals to the Privy Council were originally governed by section 3 of the **West Indies Associated States (Appeals to the Privy Council) Order 1967** (“the Appeals to the Privy Council Order). Section 3 provided that an appeal shall lie to His Majesty in Council from decisions of the Court - defined as the Court of Appeal - given in any proceedings originating in the State in such cases as may be prescribed by the Constitution. It makes no provision for direct appeals to the Privy Council from any other court in Saint Lucia.

[16] The relevant provision of the Constitution to which section 3 of the Appeals to the Privy Council Order points is section 108, which prescribes the type of cases which may be appealed to the Privy Council.

[17] Section 108 provided:

“Section 108: Appeals to Her Majesty in Council

(1) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council as of right in the following cases—

(a) final decisions in any civil proceedings where the matter in dispute on the appeal to Her Majesty in Council is of the prescribed value or upwards or where the appeal involves directly or indirectly a claim to or question respecting property or a right of the prescribed value or upwards;

(b) final decisions in proceedings for dissolution or nullity of marriage;

(c) final decisions in any civil or criminal proceedings which involve a question as to the interpretation of this Constitution;

(d) such other cases as may be prescribed by Parliament.

(2) An appeal shall lie from decisions of the Court of Appeal to Her Majesty in Council with the leave of the Court of Appeal in the following cases—

(a) decisions in any civil proceedings where in the opinion of the Court of Appeal the question involved in the appeal is one that,

by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council;

(b) such other cases as may be prescribed by Parliament.

(3) An appeal shall lie to Her Majesty in Council with the special leave of Her Majesty from any decision of the Court of Appeal in any civil or criminal matter.

(4) References in this section to decisions of the Court of Appeal shall be construed as references to decisions of the Court of Appeal in exercise of the jurisdiction conferred by this Constitution or any other law.”

[18] In summary, the Constitution gave Saint Lucians an appeal to the Privy Council as of right from final decisions of the Court of Appeal: (i) in civil proceedings where the matter in dispute exceeded a prescribed value, or (ii) in cases involving the dissolution or nullity of marriage, or (iii) final decisions in any civil or criminal proceedings involving the interpretation of the Constitution.

[19] In other cases, the Court of Appeal could grant leave to appeal in civil cases that involved questions of "great general or public importance" or otherwise. Failing this, the Privy Council itself could grant special leave to appeal any decision from the Court of Appeal in any civil or criminal matter.

[20] An important provision of the Constitution to which it is necessary to call attention at this juncture is section 41. This section contains the entrenchment provisions which stipulate how the Constitution can be amended. The purpose and value of such entrenchment mechanisms are succinctly captured in the words of Lord Diplock in **Moses Hinds and Others v The Queen**:⁷

“...[T]he constitution provides machinery whereby any of its provisions, whether relating to fundamental rights and freedoms or to the structure of government and the allocation to its various organs of legislative, executive or judicial powers, may be altered by those peoples through their elected representatives in the Parliament acting by specified majorities, which is generally all that is required, though exceptionally as respects some provisions the alteration may be subject also to confirmation by a direct vote

⁷ [1976] 1 All ER 353.

of the majority of the peoples themselves. The purpose served by this machinery for 'entrenchment' is to ensure that those provisions which were regarded as important safeguards by the political parties in Jamaica, minority and majority alike, who took part in the negotiations which led up to the constitution, should not be altered without mature consideration by the Parliament and the consent of a larger proportion of its members than the bare majority required for ordinary laws."

[21] Section 41 serves this purpose and provides so far as relevant:

"41. Alteration of Constitution and Supreme Court Order

- (1) Parliament may alter any of the provisions of this Constitution or of the Supreme Court Order in the manner specified in the following provisions of this section.
- (2) A bill to alter this section, Schedule 1 to this Constitution or any of the provisions of this Constitution specified in Part I of that Schedule⁸ or any of the provisions of the Supreme Court Order specified in Part II of that Schedule shall not be regarded as being passed by the House unless on its final reading in the House the bill is supported by the votes of not less than 3/4 of all the members of the House.
- (3) A bill to alter any of the provisions of this Constitution or, as the case may be, of the Supreme Court Order other than those referred to in subsection (2) shall not be regarded as being passed by the House unless on its final reading in the House the bill is supported by the votes of not less than 2/3 of all the members of the House.
- (4) An amendment made by the Senate to a bill to which subsection (2) applies shall not be regarded as being agreed to by the House for the purposes of section 50 unless such agreement is signified by resolution supported by the votes of not less than 3/4 of all the members of the House.
- (5) An amendment made by the Senate to a bill to which subsection (3) applies shall not be regarded as being agreed to by the House for the purposes of section 50 unless such agreement is signified by resolution supported by the votes of not less than 2/3 % of all the members of the House.
- (6) A bill to alter any of the provisions of this Constitution or the Supreme Court Order shall not be submitted to the Governor General for his or her assent—

⁸ These provisions include Chapter VIII, which deals with the Judiciary.

- (a) unless there has been an interval of not less than 90 days between the introduction of the bill in the House and the beginning of the proceedings in the House on the second reading of the bill; and
 - (b) if the bill provides for the alteration of this section, Schedule I to this Constitution or any of the provisions of this Constitution or the Supreme Court Order specified in that Schedule, unless after it has been passed by the Senate and the House or, in the case of a bill to which section 50 applies, after its rejection by the Senate for the second time, the bill has been approved on a referendum, held in accordance with such provision as may be made in that behalf by Parliament, by a majority of the votes validly cast on that referendum.
- (7) The provisions of subsection (6)(b) shall not apply in relation to any bill to alter—
 - (a) section 107 in order to give effect to any agreement between Saint Lucia and the United Kingdom concerning appeals from any court having jurisdiction in Saint Lucia to Her Majesty in Council;
 - (b) any of the provisions of the Supreme Court Order in order to give effect to any international agreement to which Saint Lucia is a party relating to the Supreme Court or any other court (or any officer or authority having functions in respect of any such court) constituted in common for Saint Lucia and for other countries also parties to the agreement.
- (8) ...
- (9) ...
- (10) The conduct of any referendum for the purposes of this section shall be the responsibility of the Electoral Commission and the provisions of sections 37 and 52 shall apply in relation to the referendum as they apply in relation to elections of members of the House and legislation relating thereto.
- (11)
 - (a) A bill to alter any of the provisions of this Constitution or the Supreme Court Order shall not be submitted to the Governor General for his or her assent unless it is accompanied by a certificate under the hand of the Speaker that the provisions of subsection (2), (3), (4) or (5), as the case may be, have been complied with and, where a referendum has been held in pursuance of subsection (6) (b), by a certificate under the hand

of the Chief Elections Officer stating the results of the referendum.

(b) The certificate of the Speaker under this subsection shall be conclusive that the provisions of subsection (2), (3), (4) or (5), as the case may be, have been complied with and shall not be enquired into in any court of law.

(c) In this subsection references to the Speaker shall, if the person holding the office of Speaker is for any reason unable to perform the functions of his or her office and no other person is performing them, include references to the Deputy Speaker."

[22] Section 41 therefore entrenches certain provisions of the Constitution and the Supreme Court Order from alteration unless the process adopted for doing so is compliant with the strictures of section 41. Any bill seeking to alter section 41 itself, Schedule 1 to the Constitution or any of the provisions of the Constitution specified in Part I of Schedule 1 or any of the provisions of the Supreme Court Order specified in Part II of that Schedule, must be passed by the Parliament by the votes of not less than 3/4 of all the members of the House. Any Bill seeking to amend any other provision of the Constitution or Supreme Court Order requires passage by a 2/3 majority vote of all members of the House.

[23] Among the deeply entrenched provisions of Schedule 1 are Chapter 1 dealing with the fundamental rights and freedoms, and the right of appeal. Chapter VIII which deals with the judiciary is similarly entrenched. In terms of Part II of Schedule 1 the deeply entrenched provisions are sections 4 (establishment of the Supreme Court; sections 5 and 6 which govern judicial appointments; sections 8 governing tenure of judges, section 11 governing remuneration of judges and sections 18 and 19 dealing with the establishment of the Judicial and Legal Services Commission and its functions and matters of procedure.

[24] Section 41(6)(b) generally requires a referendum for any Bill that seeks to alter section 41, Schedule I, or specific provisions of the Constitution or Supreme Court Order listed in Schedule 1. Such a bill is required to be approved by referendum

after passage by the Senate and House by a majority of the votes validly cast on that referendum.

[25] Section 41(7)(a) disapplies section 41(6) (b) in the case of any Bill that seeks (a) to alter the deeply entrenched section 107 in order to give effect to any agreement between Saint Lucia and the United Kingdom concerning appeals from any court having jurisdiction in Saint Lucia to Her Majesty in Council; or (b) to alter any provisions of the Supreme Court Order that are necessary to implement an international agreement to which Saint Lucia is a party, pertaining to the Supreme Court or any other court (or any officer or authority with responsibilities concerning such courts) established jointly for Saint Lucia and other countries that are also parties to the agreement.

[26] The controversy here centers around the reference to section 107 which provides:

“Subject to the provisions of section 39(8) an appeal shall lie from decisions of the High Court to the Court of Appeal as of right in the following cases –

(a) final decisions in any civil or criminal proceedings and questions as to the interpretation of this constitution;

(b) final decisions given in exercise of the jurisdiction conferred on the High Court by section 16;

(c) and such other cases as may be prescribed by parliament.”

[27] Self-evidently, section 107 is concerned with appeals to the Court of Appeal from the High Court, limited to questions relating to the interpretation of the Constitution which arise in civil or criminal proceedings and where the Court’s constitutional jurisdiction is engaged in relation to an alleged breach of a fundamental right or freedom. Section 108, on the other hand, is concerned with appeals from the Court of Appeal to the Privy Council.

[28] The real contention between the parties lies with the construction of section 41(7)(a) and whether the reference to section 107 is an error and should properly be a

reference to section 108. This issue exercised the mind of the Attorney General as early as 2013.

The Advisory Opinion

[29] Before taking the course it ultimately adopted in 2023, the Government had, in 2013, sought an advisory opinion from the Court of Appeal on the following questions:

- (1) Whether the reference in section 41(7)(a) of the Constitution should properly be to section 108 instead of section 107. If yes, was the reference to 107 an error;
- (2) If the answer to question 1) is yes, whether the error may be judicially corrected merely upon the determination of this application by the Attorney General, or by an application by the Attorney General to a judge of the High Court, or, must the error be corrected by an alteration to the Constitution;
- (3) If the answer to question (1) is yes, whether the agreement establishing the Caribbean Court of Justice signed on February 14, 2001 and ratified by Saint Lucia on July 5th, 2002 and enacted into the laws of Saint Lucia as the Caribbean Court of Justice (Agreement) Act, No. 34 of 2003 constitutes an international agreement to which Saint Lucia is a party for the purpose of the provisions of section 41(7)(b);
- (4) If the answer to both questions (1) and (2) is yes, whether for the purposes of an alteration of the Constitution to replace appeals to Her Majesty in Council with appeals to the Caribbean Court of Justice, the Agreement between Saint Lucia and the United Kingdom referenced in section 41(7)(a) –
 - (a) may validly be entered into by Saint Lucia alone or in common with one or more other States of the Organization of the

Eastern Caribbean which may have similar constitutional provisions;

(b) may validly be entered into prior to the passage of the bill referred to in section 41(2);

(c) and, if the answer to question 4(ii) is no, at what point in the process of any such alteration of the Constitution pursuant to section 41 may the said international Agreement be entered into.

(5) If the answer to question (1) is no, which “Court (or Courts) having jurisdiction in Saint Lucia” is referenced by section 41(7) of the Constitution.

[30] The opinion of the majority (Pereira, CJ and Blenman, JA) was that the reference in section 41(7)(a) of the Constitution to section 107 was an error and the Constitution ought to be read and construed as if the words ‘section 107’ in section 41(7)(a) were deleted and the words ‘section 108’ substituted. Furthermore, they opined that the Agreement establishing the CCJ signed on February 14th 2001 and ratified by Saint Lucia on 5th July 2002 and enacted into the laws of Saint Lucia as the Caribbean Court of Justice (Agreement) Act, No. 34 of 2003 constitutes an international agreement to which Saint Lucia is a party for the purpose of the provisions of section 41(7)(b); for the purposes of an alteration of the Constitution to replace appeals to Her Majesty in Council with appeals to the Caribbean Court of Justice, the Agreement between Saint Lucia and the United Kingdom referenced in section 41(7)(a) may validly be entered into by Saint Lucia alone or in common with one or more other States of the Organization of Eastern Caribbean States which may have similar constitutional provisions. Such an agreement must pre-date the presentation of the bill to alter the Constitution to give effect to the agreement.

[31] Mitchell JA, dissented. He held that the reference in section 41(7)(a) of the Constitution is properly a reference to section 107 and was not intended to be a reference to section 108. He read the section literally and interpreted it as speaking prospectively to cater to a situation where the legislature might at some time in the future wish to set up a Court not currently provided by the Supreme Court Order. As he explained:

“The constitution is prospective, and is intended to deal with the issues both of today and that will arise tomorrow... There is nothing to say that one day the legislature may not find it appropriate to set up a court system that is not presently contemplated, required or provided for under the Courts Order. As section 41(7)(a) is presently worded it would appear that the framers of the constitution envisaged that some other court might have jurisdiction in time to come that would require the amendment of the wide general jurisdiction presently vested in the High Court.”

[32] Mitchell, JA was of the view that on a plain reading of the Constitution it would appear to have been the intention of the framers of the Constitution that if Saint Lucia wished to amend section 108 to de-link from the Privy Council such an amendment required “popular approval in a referendum”.

[33] The appellants notice of appeal does not challenge the judge’s finding that the AG’s Reference Act is not unconstitutional.

[34] Indeed, the appellants’ contention aligns with the dissenting opinion of Mitchell, JA to the effect that the exemption afforded by section 41(7)(a) is expressly stated to relate to Bills seeking to alter section 107; it makes no reference to section 108. Accordingly, any bill to alter section 108 requires a referendum to be held.

[35] The Attorney General, relying on the Court of Appeal’s advisory opinion, argues that the reference to section 107 is a typographical error and the proper reference must be to section 108, which alone governs appeals from the Court of Appeal to the Privy Council while Section 107 deals with domestic appeals from the High Court to the Court of Appeal.

Developments in 2023

- [36] No immediate action appears to have been taken following the advisory opinion. However, on 17th July 2023, the Government entered into an agreement with the United Kingdom to terminate appeals to the Privy Council.
- [37] On 20th July 2023 it enacted the **Constitution of Saint Lucia (Amendment) Act, 2023** to transition Saint Lucia's final appellate jurisdiction from the Privy Council to CCJ. The key amendments were the systematic substitution of references to "Her Majesty in Council" with "Caribbean Court of Justice" throughout several sections of the Constitution⁹. Section 41(7) (a) was amended by deleting paragraph (a) and substituting the following: "(a) section 108 in order to give effect to the Agreement concerning appeals from a court having jurisdiction in Saint Lucia to the Caribbean Court of Justice."
- [38] Section 108 was amended by deleting it and substituting a new section 108 prescribing, among other matters, the circumstances under which appeals would lie as of right, with leave of the Court of Appeal to the CCJ and with special leave of the CCJ. A new section 108A was introduced specifically abolishing appeals to the Privy Council with consequential provisions relating to pending cases before the Privy Council and enforcement of outstanding unsatisfied Privy Council judgments.
- [39] On 20th July 2023 the **Caribbean Court of Justice (Agreement) Act (Commencement) Order** came into force.

Analysis and Conclusions

- [40] Based on the chronology just outlined, it seems clear that by the time the appellants filed their fixed date claim on 3rd March seeking injunctive relief, section 41, and in particular section 41(7)(a), and section 108 had already been amended without a referendum. The appellants say that in so doing, the Government breached the Constitution.

⁹ 16, 18 etc.

- [41] It appears to be common ground that the question whether or not a referendum was required to abolish appeals to the Privy Council turns on whether the reference to section 107 in section 41(7)(a) was properly to be read as a reference to section 108. It appears that the Government so read it and proceeded on the course it did.
- [42] Both section 107 and section 108 are deeply entrenched. However, depending on the construction put upon section 41(7)(a) section 108 may or may not be exempt from the requirement to hold a referendum.
- [43] There is no daylight between the parties in relation to the Court's interpretive role and powers. Undoubtedly, the Court of Appeal is legally empowered to interpret the provisions of the Saint Lucia Constitution. In the exercise of that interpretive power, it has the authority to correct typographical or drafting errors in the text when the words used produce an absurd result or defeat the legislature's intention: **Sutherland Publishing Company Limited v Caxton Publishing Co. Ltd**¹⁰. Such obvious drafting errors may be corrected by the Court adding, omitting or substituting words: **Inco Europe Ltd and Others v First Choice Distribution**¹¹. This is a wholly exceptional power which is to be exercised with great caution. The court must be astute to ensure that it does not engage in judicial legislation as opposed to interpretation and must be mindful of the need to maintain the boundary between making law and interpreting it.
- [44] The proper demarcation of boundaries is maintained by courts applying three criteria which must be strictly met before the Court may exercise its power of rectification. To judicially correct a perceived obvious typographical error, the Court must be abundantly sure of: (1) the intended purpose of the provision; (2) that the draftsman and parliament inadvertently failed to give effect to that purpose; and (3)

¹⁰ [1938] 4 All ER 389.

¹¹ [1999] 1 WLR 270.

the substance of the provision Parliament would have made had the error been detected: **Inco Europe Limited v First Choice Distribution**.

- [45] In relation to the first criterion, the concept of the intention of parliament is an objective one. It is the meaning to be reasonably imputed to parliament based on the language used in its context; not the subjective intent of the draftsman: **R v Secretary of State for the Environment, Transport and the regions, Ex parte Spath Holme Ltd**.¹² Legislative intention was described in the following terms by Floissac, CJ in **Browne v Francis-Gibson**:¹³

“The requisite legislative intention is an inference drawn from thin statutory provision interpreted in the light of its statutory context. That statutory context includes the language and legislative object or purpose of the statutory provision and the importance of the statutory provision, to the legislative object or purpose of the statute or other provisions thereof.”¹⁴

- [46] Courts typically adopt the principle of purposive construction when seeking to discover and give effect to the intention of parliament. This requires the court to look beyond the words actually used. Resort may be had to various aids to interpretation, including internal aids, for example, other provisions in the same statute which may illuminate the meaning of the words under consideration. Alternatively, external aids such as the statutory and historical background and context may be considered. The value of such an approach is succinctly captured by Lord Hodge in **Sheikha Amena Ahmed H A Al-Thani and another v Sheikha Aisha Mohammed Ali Abdullah Al Thani and 2 others**¹⁵, where at paragraphs 23 & 24 he quotes approvingly, Lord Bingham’s dicta in **R (Quintaville) v Secretary of state for Health**:¹⁶

“The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. Every statute, other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court’s task, within the

¹² [2001] 2 AC 349.

¹³ Civ. No 11 of 1994.

¹⁴ Para. 5.

¹⁵ [2024] UKPC 35. At para 24.

¹⁶ [2003] UKHL13; [2003] 2 AC 687.

permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment." (Emphasis added)

- [47] In all this, however, the starting point is to examine the words used by parliament itself. If the words used are clear and unambiguous and do not lead to a result that is manifestly absurd or unreasonable then the Court should not intervene.
- [48] The foregoing principles inform my analysis in the paragraphs that follow.
- [49] As already noted, section 41(6)(b) is intended to entrench certain provisions of the Constitution and the Supreme Court Order, including, for present purposes, provisions relating to the courts of Saint Lucia, by requiring specified parliamentary majorities and a referendum for any Bill seeking to alter them.
- [50] Section 41(7)(a) accords deference to Bills introduced to give effect to any agreement between Saint Lucia and the United Kingdom concerning appeals from any court having jurisdiction in Saint Lucia to the Privy Council. Section 41(6)(b) does not apply to such a Bill. Consonant with this is section 41(7)(b) which exempts any Bill that seeks to alter any of the provisions of the Supreme Court Order in order to give effect to any international agreement to which Saint Lucia is a party relating to the Supreme Court or any other court (or any officer or authority having functions in respect of any such court) constituted in common for Saint Lucia and for other countries also parties to the agreement.
- [51] A common broad theme that emerges from these provisions is that the strict requirement for a referendum is removed where the Bill is intended to give effect to bi-lateral or international agreements entered into by the Government of Saint Lucia in relation to the Courts of Saint Lucia even though the Bill seeks to alter provisions entrenched by section 41(6)(b).

- [52] In examining the nature of the agreements with which section 41(7)(a) is concerned, it is well to recall that historically and constitutionally, the only Court in Saint Lucia from which appeals lay to the Privy Council is the Court of Appeal. A combined reading of the Supreme Court Order, the Supreme Court Act, the Appeals to the Privy Council Order and the original version of section 108 of the Constitution puts this beyond dispute. Of note also, is the poignant observation made by Pereira, CJ in the Advisory Opinion that while the pre-independence amending provision (section 36) contained a specific reference to the Appeals to the Privy Council Order, that reference was omitted in the post-independence section 41(7)(a).
- [53] The case for saying that section 108 was the intended reference in section 41(7)(a) and not section 107 is strong indeed. Section 107 is concerned solely with appeals from the High Court to the Court of Appeal in the limited circumstances there prescribed. It would seem illogical that in designing a provision aimed at exempting from 41(6)(b) a Bill that alters a provision of the Constitution in order to give effect to any agreement concerning appeals from a court having jurisdiction in Saint Lucia to the Privy Council, the legislature would bypass and ignore the reality that the only court from which appeals lay to the Privy Council was the Court of Appeal and instead refer either to the High Court from which no such appeals lay, or to some other undefined court that may or may not come into existence at some time in the future. Even Mitchell, JA in his dissenting opinion at paragraph [65] had to acknowledge the seeming anomaly this presents.
- [54] Expanding appeals to the Privy Council from courts other than the Court of Appeal would be an odd and absurd measure to contemplate given that Saint Lucia's clear and trodden pathway since at least 2003 has been a march towards accession to the jurisdiction of the CCJ, both original and appellate. Saint Lucia signed the agreement to establish the Caribbean Court of Justice on 14th February 2001 and ratified it on 5th July 2002. This was then enacted into the laws of Saint Lucia as the Caribbean Court of Justice (Agreement) Act, No. 34 of 2003. It is common knowledge and understanding that accessing the appellate jurisdiction of the CCJ

instead of the Privy Council was seen as the final step in the journey to complete the circle of independence from the United Kingdom.

[55] In my view, the historical and statutory antecedents to appeals to the Privy Council in Saint Lucia, set against the momentum towards independence, accompanied later by preparatory ground work for delinking from the Privy Council lead to the ineluctable conclusion that the purpose of section 41(7)(a) was to enable the duly elected government to de-link from the Privy Council without the need for a referendum, provided the specified constitutional parliamentary majority votes were obtained. To read the reference to section 107 as correct would defeat the purpose of the legislature because the erroneous reference to section 107 would have the effect of excluding section 108 from exemption when it is the only section that is rationally connected with the subject matter of appeals from a Saint Lucia Court to the Privy Council. This would in my view be self-defeating and manifestly absurd.

[56] This is not the first time the Court of Appeal has been required to correct a drafting error in the Constitution in order to give effect to the intention of parliament. The Saint Vincent and the Grenadines case of **Browne v Francis-Gibson**¹⁷ which is discussed in the Advisory Opinion is instructive.

[57] The appellant sought leave to appeal to the Privy Council after his election petition was struck out by the High Court and subsequently dismissed by the Court of Appeal. The conflict arose between two constitutional provisions: Section 99 which was the general provision granting a right of appeal to the Privy Council but which by virtue of section 99(6) was stated to be "subject to the provisions of section 36(7)". A discrepancy arose because section 36(7) dealt only with the procedure and practice of the courts. Section 36(8) was the provision that actually prohibited appeals from the Court of Appeal to any higher body in election matters. The Court concluded that the reference to section 36(7) was an obvious printer's error and was intended to refer to section 36(8). The court held that where a "printer's error" is

¹⁷ 1995 50 WIR 143.

obvious and undermines the clear intent of the document, the judiciary has the power to correct it through interpretation to give effect to the intended meaning. It was held that since section 36(8) was the specific and leading provision that actually prohibited appeals from the Court of Appeal to any higher court in election matters, the reference in section 99(6) to section 38(7) was a drafting error which the Court had power to correct.

[58] By parity of reasoning, section 41(7)(a) is concerned with making exemptions for any Bill to give effect to any agreement concerning appeals from a court having jurisdiction in Saint Lucia to the Privy Council. That is the intended purpose of the provision. The only court ever having such jurisdiction is the Court of Appeal, pursuant to section 108 of the Constitution. The reference to section 107 must obviously be a drafting error which resulted in the draftsman and parliament inadvertently failing to give effect to the intended purpose of section 41(7)(a). I am satisfied that had the error been detected, Parliament would have substituted section 108 for section 107. The Court is empowered to so read the section.

[59] It follows from the foregoing that my conclusion is that there was no requirement to hold a referendum to amend section 108 as part of the process to abolish appeals to the Privy Council. Similarly, because the purpose of the Amendment Act was to give effect to an agreement concerning appeals from a court having jurisdiction in Saint Lucia to the Privy Council, amending section 41 itself was exempt from the requirement to hold a referendum.

[60] The appellants fare no better with their argument that even if this is the correct reading of section 41(7)(a) the Constitution of Saint Lucia (Amendment) Act No. 2 of 2023, the CCJ (Agreement) Act No. 34 of 2003, and Statutory Instrument No. 85 of 2023 collectively undermine constitutional protections. It was submitted that because these Acts are "inextricably linked" to the removal of Privy Council access, they are all null, void, and of no effect due to the lack of a referendum since they

impacted sections 16, 18, 73, 124 and other sections where the words “Caribbean Court of Justice” were substituted for the words “Her Majesty In Council”.

[61] In this regard, the appellants’ reliance on the **Independent Council for Human Rights** case in support of this contention is misplaced. At issue in that case was whether the procedure adopted in enacting three bills to abolish appeals to the Privy Council complied with the requirements laid down in the Jamaican Constitution. Section 110 of the Jamaican Constitution is the equivalent of Saint Lucia’s section 108. Unlike section 108, however, section 110 is not entrenched. The **Caribbean Court of Justice (Constitutional Amendment) Act**, No. 20 of 2004 sought to alter section 110 in a manner that closely reflects Saint Lucia’s amended section 108 as described at paragraph [38] of this judgment. In short, it replaced references to Her Majesty in Council with the Caribbean Court of Justice and created a new section 110A expressly abolishing appeals to the Privy Council from any court in Jamaica. However, the Act did not alter other provisions of the Constitution such as the right of appeal granted to the DPP to appeal to the Privy Council and sections of the Constitution that addressed the role of the Privy Council in the removal of judges of the Supreme Court and the Court of Appeal.

[62] Another bill, the **Caribbean Court of Justice Act** 2004, Act 21 of 2004, sought to incorporate the Agreement establishing the Caribbean Court of Justice into the domestic law of Jamaica. A third bill, the Judicature (Appellate Jurisdiction) (Amendment) Act 2004, Act 19 of 2004 sought to amend the Judicature (Appellate Jurisdiction) Act, 1962 which provided at section 35, with leave of the Court of Appeal in the exercise of its criminal jurisdiction, a right of appeal in the Director of Public Prosecutions, the prosecutor or the defendant if the case raised a point of law of exceptional public importance and it was in the interest that a further appeal should be brought.

[63] The entrenchment provisions in the Jamaican Constitution are sections 49(3) and 49(4). In summary, section 49(3) required that any bill seeking to alter certain deeply

entrenched provisions, including section 49 itself, be introduced in the House of Representatives and that at least six months elapse before its passage. The bill also had to be passed in each House by a two-thirds majority of all members and approved by a majority of the electorate.

[64] Other lesser entrenched sections of the Constitution listed in section 49(2) and (4) could be amended following the procedure just described save that no referendum was required. All other provisions of the constitution not enjoying either level of entrenchment in order to be amended still required a majority of the votes of the members of each house present and voting.

[65] The appellants in that case acknowledged that Parliament had the power to abolish the right of appeal to the Privy Council and to establish the CCJ as the final court of appeal but argued that this specific legislative package undermined entrenched provisions of the Constitution in relation to the security of tenure of Jamaica's higher judiciary, such as sections 100, 101, 105 and 106. Specifically, the appellants contended that by transferring final appellate authority to a court that did not enjoy the same "entrenched" constitutional protections as the Jamaican Supreme Court and Court of Appeal, the government was essentially altering the Constitution's protective regime without following the mandatory, more rigorous procedures for constitutional amendment.

[66] The Board ruled in favor of the appellants, declaring the three Jamaican Acts (the bills had been passed by the time the matter engaged the Board) void because they were not passed in accordance with the procedure required by the Constitution to alter the entrenched provisions relating to security of tenure. It was held that even if the legislation only explicitly amended a non-entrenched section (Section 110), its substantive effect was to alter the regime of judicial independence established by entrenched provisions. The Board found that the CCJ, as established by the regional Agreement, did not enjoy the same constitutional protection in Jamaica as the local higher judiciary. The Board perceived a risk of governmental interference

with the judiciary that did not exist under the previous regime because the CCJ Agreement could be amended by executive acts of the contracting states (and ratified by a simple affirmative resolution in Jamaica). The Board determined that since the provision abolishing the Privy Council's jurisdiction could not be severed from the provisions establishing the CCJ because they were presented as a single "package," the failure of the CCJ-related legislation rendered the entire scheme, including the abolition of appeals to the Privy Council unconstitutional.

[67] The first observation I make is that in the Court below no such similar argument was deployed by the appellants. Their argument as set out in their skeleton arguments was framed as follows:

“2.16. The amendments under the Constitution of Saint Lucia (Amendment) Act have “removed the protection of section 108 of the Constitution in order to give effect to the Agreement concerning appeals from a Court having jurisdiction in Saint Lucia to the Caribbean Court of Justice.

2.17. The ultimate effect of the amendment to section 41(7) of the Constitution is to annihilate the requirement for the referendum to alter section 108 of the Constitution which pertains to Appeals to Her Majesty in Council.

2.18. It is on the (sic) basis that the Claimants impugn the Constitution of Saint Lucia (Amendment) Act. The claimants respectfully submit that section 41(6) and (7) are entrenched provisions and the Government of Saint Lucia was enjoined to adhere to the Constitutional procedure to effect any alteration to section 108 of the Constitution.

2.19. Authority for this legal proposition in the Privy Council case of Independent Jamaica Council for Human Rights Hon Syringa Marshall Burnett and the Attorney General, Privy Council Appeal No. 41 of 2004.

2.20 The Privy Council advised that the Appeal be allowed and a declaration made that the Judicature (Appellate Jurisdiction) (Amendment) Act 2004, the Caribbean Court of Justice Act 2004 were not passed in accordance with procedure required by the Constitution and are accordingly void.”

[68] In light of this, the appellants’ contention that the judge did not engage with their submissions is unfounded. His discussion of the Jamaican case commences at paragraph [96] of the judgment under the rubric “**The applicability of Independent**

Jamaica Council for Human Rights (1998) Ltd & Ors v Hon, Syringa Marshall-Burnett and the Attorney General of Jamaica. At paragraphs [96] and later at [99], the judge accurately sums up the nub of the appellant's submissions in relation to the Jamaican case. At paragraph [97] he correctly analyses the ratio of the Board's judgment. He ultimately rejected the appellant's submissions because he reasoned that that case was distinguishable from the appellant's case. His conclusion at paragraph [99] states:

“In this case, the Claimant's arguments were focused on the lack of referendum prior to the accession to the CCJ. The grounds pursued in this claim were not suggesting that the Act or the Agreement weakened the independence of the final appellate court or that the combined effect was that the Act undermined the protection given to the people of Saint Lucia by the entrenched provisions of the Constitution.”

- [69] The judge cannot be criticized for deciding the case on the issues that were canvassed before him.
- [70] Furthermore, and more fundamentally, it is readily apparent that the entrenchment provisions under consideration in Jamaica differ in significant respects from Saint Lucia's section 41, which governs alterations to the Constitution and the Supreme Court Order. There is no provision in the Jamaican Constitution that is identical or equivalent to section 41(7)(a). Although section 108 is deeply entrenched, section 41(7)(a) provides a specific exemption to the referendum requirement imposed by section 41(6)(b) where the bill seeking to amend them is to give effect to an agreement between Saint Lucia and the UK in relation to appeals to the Privy Council. The intention seems clearly to have been to facilitate the transition from the Privy Council to the CCJ by a process that bypasses the need for a referendum. Therefore, unlike what occurred in Jamaica, it cannot be said that the steps the government of Saint Lucia took to abolish appeals to the Privy Council impacted entrenched provisions of the Constitution without compliance with the dictates of section 41.

[71] In my view, given the specific carve-out in section 41(7)(a), if an amendment to section 108, which confers the substantive right of appeal to the Privy Council, does not require a referendum in the circumstances specified in section 41(7)(a) and (b), it is difficult to see why consequential amendments replacing references to “Her Majesty in Council” with “the Caribbean Court of Justice” should require one. Such a result would be absurd.

[72] The appellants also draw reference to the fact that Jamaica and Antigua and Barbuda held a referendum on the matter of abolishing appeals to the Privy Council. This Court is seemingly invited to draw an inference that that this somehow strengthens the argument that amendment to section 108 similarly requires a referendum. The appellants have not engaged in any detailed discussion of those constitutional provisions and without more, this Court is in no position to know whether a referendum was held because it was constitutionally mandated, or because it was thought to be politically prudent. These bare examples are unhelpful to the task of properly interpreting the specific provisions of the Saint Lucia Constitution.

Disposition

[73] For the foregoing reasons, I would hold that on a proper construction of the Constitution, the original reference to section 107 in section 41(7)(a) was a typographical or drafting error which was required to be construed as if the words ‘section 107’ in section 41(7)(a) were deleted and the words ‘section 108’ substituted. It follows that the legislative measures taken by the Government of Saint Lucia in 2023 to transition from the Privy Council to the CCJ were fully compliant with the entrenchment provisions of section 41. I would therefore dismiss the appeal.

[74] I make no order as to costs.

I concur.
Cadie St. Rose-Albertini
Justice of Appeal

I concur.
Reginald T. Armour
Justice of Appeal [Ag.]

By the Court

Chief Registrar