



IN THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

In the matter of

1. ATTORNEY GENERAL OF GUYANA

2. SPEAKER OF THE NATIONAL ASSEMBLY

VS

DESMOND MORIAN

CIVIL APPEAL NO.19 OF 2016

Transcript Ref/COA

Date:	Day	Month	Year
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ATTORNEY GENERAL OF GUYANA AND SPEAKER OF THE NATIONAL ASSEMBLY  
VS DESMOND MORIAN.

PRODUCED BY: THE VERBATIM COURT REPORTING UNIT

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*Hema Ramcharan*  
2021-04-13

(Civil Appeal No. 19 of 2016)

***Proceedings started at 15:35 hrs.***

**Marshal:** Rise, Their Honours, Justices of Appeal and additional Judge of the High Court.

The Attorney General and another versus Desmond Morian.

**Mr. N. Hawke:** If it pleases, Your Honours, Nigel Hawke with Deborah Kumar and Ms. Beverly Bishop-Cheddi for the Appellants.

**Mr. R. Jaigobin:** May it please, Your Honours, my name is Rajendra Jaigobin and I beg to hold for Mr. Nandlall for the Respondent.

**Justice of Appeal D. Gregory:** Good afternoon, Counsel. I must first apologise for this late start. I had an incident a little earlier in the day so it delayed me but we're ready to start. The members of the Court will indicate their positions. Justice Holder will go first and then the other members will follow.

**Justice F. Holder:** Now this is an appeal against the decision of the learned Chief Justice Ian Chang, made on the 19<sup>th</sup> of February, 2016, whereby he held that Winston Gordon Felix and Keith Winston Harold Scott were not lawful members of and cannot sit in the National Assembly of the 11<sup>th</sup> Parliament of Guyana since their names were not among those extracted by the A Partnership for National Unity and Alliance for Change list of candidates to hold seats on behalf of the persons named in the successful list, that Article 105 of the Constitution has no application to Members of the National Assembly whose names were unsuccessful list of candidates, that is, Winston Felix and Keith Harold Scott, and that appointments of Ministers does not entitled Winston Gordon Felix and Keith Winston Harold Scott to hold seats as Members of the National Assembly.

The facts which gave rise to this appeal maybe shortly stated. Based on the results of the general and regional election held on the 11<sup>th</sup> of May, 2015, the Guyana Elections Commission, in accordance with Section 99 of the Representation of People Act Chapter 103 hereinafter Chapter 103 declared in the Official Gazette legal supplement dated 5<sup>th</sup> of June, 2015, the results of the elections pursuant to Article 62 and 61 of the Constitution, as well as the names of persons who, as a result of the said elections, were extracted to become Members of the National Assembly from the official list of candidates. By virtue of the Guyana Elections Commission's declaration, APNU and AFC... slash AFC was allocated thirty-three seats in the National Assembly while the People's Progressive Party/C was allocated thirty-two seats.

Although Mr. Winston Felix's and Keith Scott's names were on the successful top up list of candidates for the APNU/AFC, their names were not amount to those extracted from the APNU/AFC list to become Members of the National Assembly. However, on the 6<sup>th</sup> of June, His Excellency President David Granger purported to appoint Mr. Winston Gordon Felix and Keith Scott as Ministers of Government in accordance with Article 103 (3) and 105 of the Constitution, 11<sup>th</sup> Parliament was convened on the 11<sup>th</sup> of June, 2015, and Mr. Felix and Scott subscribe to and took the oath of office of non-voting Members of the National Assembly.

On the 1<sup>st</sup> of July, the Respondents mounted a challenge to the Ministers' appointment by way of notice of motion seeking the following relief, a declaration that Mr. Winston Gordon Felix keep Winston Harold Scott are not lawful members of and cannot sit in the National Assembly of the 11<sup>th</sup> Parliament of Guyana. An order directing the Second-Named Respondent to prevent Winston Gordon Felix and Keith Winston Harold Scott from sitting in the National Assembly of the 11<sup>th</sup> Parliament of Guyana, unless or until their names were extracted from the APNU/AFC national

top up list from May the 11<sup>th</sup>, 2015, general elections. Such further or other orders is may be just and appropriate.

The learned Chief Justice Chang found in their favour and granted the declarations. Consequent upon the ruling of the learned Chief Justice Ian Chang, the Appellant's appealed to this Court arguing *inter alia* that the entire decision of the learned Chief Justice was wrong in law because he had no jurisdiction to entertain such a claim by way of notice of motion. It was contended that the issues raised in the notice of motion were matters to be brought by a way of an elections petition. The issue on this appeal is whether the Respondent's challenge to the Ministers' appointment ought to have been brought by an election petition and not a notice of motion.

Counsel for the Appellant submitted that the learned Chief Justice had no jurisdiction to grant the relief sought in the Respondent's notice of motion because Article 163 of the Constitution in conjunction with the National Assembly's (Validity of Elections) Act Chapter 104, referred to as "Chapter 104", sets out the method or set out the method for approaching the High Court to challenge all matters concerning election... elections.

It was contended that the High Court lacked jurisdiction because the Respondent's notice of motion is in fact an application challenging the allocation of seats in the National Assembly and, as such, he must proceed by elections petition as mandated by Article 163 of the Constitution and Section 3 and Rule 3 of Chapter 104.

In support, the Appellants relied on Christopher Ram and the Attorney General, Peters and another and Attorney General and another, Gladys Petrie and the Attorney General and Seecomar Singh and Butler.



1 Conversely, Counsel for the Respondents submitted that not every legal challenge in connection  
2 with or in relation to an election must be commenced by an election petition, rather only challenges  
3 seeking a determination of any question which arises under Article 163 (1) should be by election  
4 petition under and by virtue of Section 3 and Rule 3 of Chapter 104. He then submitted that the  
5 notice of motion was properly brought before the High Court because the Respondent is not  
6 challenging the qualification of members or allocation of seats of the Assembly, but seeking rather  
7 to challenge the Ministers' appointment by the President which does not fall within the ambit of  
8 Article 163 (1). They relied on Zufikar Mustapha and the A.G., Bibi Shafoor Shadick and Ronald  
9 Bulkan and Eddie Davis Ventos and Chief Elections Officer were cited to support the position that  
10 not all elections challenges must be brought by elections petition.

11 Now the relevant provisions of the Constitution of Guyana provide – I'm reading from Article 64

12 "All questions as to membership of the National Assembly shall be determined by the High  
13 Court in accordance with the provisions of Article 163."

14 Article 163 of the Constitution which grants the High Court jurisdiction to determine whether a  
15 person is eligible to be a Member of Parliament provides, subject to the provision of this Article,  
16 the High Court shall have exclusive jurisdiction to determine any question regarding the  
17 qualification of any person to be elected as a Member of the National Assembly, whether – I will  
18 go straight to (2) – whether a seat in the Assembly has become vacant... Sorry. Yes, that's one.  
19 Seats in the Assembly have been lawfully allocated and, either generally or in any particular place,  
20 an election has been lawfully conducted or the results thereof have been or may have been affected  
21 by an unlawful act or omission.

1 They're other provisions which I will not read. I've referred to them but I wouldn't read them to  
2 bore you. Chapter 104 prescribes the manner in which proceedings for determination of the  
3 question under Article 163 (1) (a) (b) and (c) should be referred to the Court. Section 3 of Chapter  
4 104 states any question referred to in Article 163 (1) (a) (b) and (c) of the Constitution may, in  
5 respect of an election refer to in Article 62 of the Constitution and with a view to secure appropriate  
6 remedial orders, be refer to the Court and shall thereupon be determined by it in accordance with  
7 this Act. Every such reference shall be by petition.

8 President presented to the Court in accordance with this Act and the Rule 3 of the National  
9 Assembly (Validity of Elections) Rules Chapter 104 provides "except by way of an election  
10 petition for redressing conformity with the act, there shall be no reference to the Court of any  
11 question regarding qualification of any person to be elected as a Member of the National Assembly  
12 or whether the election... results of an elections may have or has been affected by any unlawful  
13 act or omission or whether the seats in the Assembly have been lawfully allocated or whether any  
14 election... whether any election the results thereof are declared by Elections Commission in  
15 pursuance of Section 99 of the Representation of the People's Act has been lawfully conducted,  
16 and it prescribes the form the petition should take.

17 Now, I have carefully examined the above provisions and agreed that they do in fact confer  
18 exclusive jurisdiction on the High Court to hear and determine questions relating to membership  
19 and elections to the National Assembly and also the manner in which the power may be invoked  
20 and exercised. However, the above provisions permit challenges by way of an elections petition in  
21 the following specific cases only; that qualification of any person to be elected as member to the  
22 National Assembly, the lawful conduct of elections and/or the elections result were affected by

1 unlawful conduct and allocation of seats in the Assembly or if a seat has become vacant or any  
2 member of the Assembly is required to ceased to exercise any of his functions as a member.

3 Now in Singh and Ramlakan and Butler, and Gladys Petrie and others and Attorney, Bollers, C.J.,  
4 had this to say about the High Court's exclusive jurisdiction with respect to elections matters

5 "On an analysis of Article in relation to the matters which concern us here, it is clear that  
6 Parliament is here conferring an exclusive jurisdiction on the High Court to determine  
7 certain questions. These questions center around the qualifications of any person to be  
8 elected as a Member of the National Assembly, whether generally or in any particular place  
9 an election has been lawfully conducted or the result of an election affected, whether the  
10 seats in the Assembly have been lawfully allocated or a seat has become vacant or any  
11 member of the Assembly is required to ceased to exercise any of its functions as a member  
12 regarding the filling of a vacancy of whether any person has been validly elected as  
13 Speaker."

14 The thrust of the Appellant's argument is that the question on the validity of the appointments of  
15 Mr. Felix and Scott falls under Article 163 (1) (b) (2) because it is in fact a question whether the  
16 seats allocated to Felix and Scott were lawfully allocated. There's no definition of what is meant  
17 by an allocation of seats but Parliament prescribed for how seats are allocated in the Assembly by  
18 virtue of Chapter 103. Section 96 of Chapter 103 states

19 "The Chief Elections Officer shall calculate the total number of valid votes of electors  
20 which have been cast for each list of candidates and thereupon shall ascertain the results of the  
21 election in accordance with Sections [94...]"

22 Sorry,

1            "...97 and 98. Section 97 provides for the allocation of seats.

2        This is what 97 (1) and (2) state

3            "The total number of votes cast for all the lists of candidates shall be divided by 53 and the  
4            whole number resulting from that division shall be known as the electoral quota. The  
5            number of votes cast for any list shall be divided by the electoral quota and shall be  
6            allocated to that list a number of seats equal to the whole number resulting from that  
7            division..."

8        and that it goes on to prescribe a formula which in the interest of time I wouldn't read but it's all  
9        provided there. Section 98 of Chapter 103 provides for the method of extraction of the names of  
10       the persons who will be Members of the National Assembly. It states

11           "When seats have, in pursuance of Section 97 (b), are allocated to any list of candidates,  
12           the representative of the list or if the representative is unwilling or unable by reasons of  
13           illness, absence so to do, the [Chief...]"

14        sorry,

15           "...the deputy representative of the lists or in any case of any such unwillingness or  
16           inability on the part of the deputy representative, a majority of the person's name in that  
17           list may designate in writing any person able and willing so to do. Who shall extract from  
18           the said list as many names belonging to candidates selected for that purpose including his  
19           own name if he has not been declared, elected as President under Article 177 of the  
20           constitution."



1 Now conversely, Article 103 and 105 of the Constitution prescribes how Ministers are appointed  
2 by the President; then I wish to go to Section 29 of Chapter 104 which is also relevant. Section 29  
3 states, that's Section 29 Sub Section 1,

4 "Where on an election petition, the Court determines that the seats in the National  
5 Assembly were not allocated in accordance with Section 97 of the Representation of the  
6 People Act, the Court shall so declare and may order that seat to be reallocated in  
7 accordance with those provisions and that the membership of the Assembly be  
8 redetermined and redeclared in accordance with Section 98 of the Act."

9 A careful examination of the foregoing provisions reveals that seats are allocated in the National  
10 Assembly to any list of candidates by the Chief Elections Officer in accordance with the prescribed  
11 formula.

12 While ministerial appointments by the President are done under the provisions of the Constitution,  
13 it is therefore my view that an allocation of seats under Section 97 of Chapter 103 is separate and  
14 distinct from a Ministerial appointment by the President under the Constitution. Further, on a  
15 construction of Section 29 (3), Section 29, Section 3 and Rule 3 of Chapter 104, I am of the view  
16 that Article 163 (1) (b) (2) is not concerned with the appointments by the President under Article  
17 103 and 105. Section 29 and 3, Section 3 and Rule 3, shows clearly that when one seeks to  
18 challenge the allocation of seats under Article 163 (1) (b) by an election petition it is a challenge  
19 to the seats that were allocated to a list of candidates in accordance with Section 97 of Chapter  
20 103. It follows therefore that the challenge to any appointments made by the President under any  
21 provision of the Constitution would not fall within the ambit of Article 163 (1).

1 I have set out here a few authorities dealing with Article 163 which I think I, in the interest of time,  
2 I wouldn't read. I would go straight to my conclusion.

3 As already stated above, Mr. Felix and Scott were not extracted from the APNU list of candidates  
4 nor were they allocated seats in the Assembly in accordance with Section 97 of Section 103;  
5 instead they're appointed as Ministers of Government under Article 103 and 105, there's no  
6 dispute of this fact. What is in dispute is whether the President's appointment amounted to an  
7 allocation of seats permitting a challenge under Article 163 (1) (b) (2).

8 After careful examination of the foregoing provisions and authorities in line with the Respondent's  
9 complaint, it is my view that the facts and circumstances of this case do not amount to a challenge  
10 in any of the specified cases referred to in Article 163 (1), (a) (b) or (c). Respondent challenged  
11 the appointment of the Ministers, which I've already stated is separate and distinct from an  
12 allocation of seats and does not fall within the ambit of Article 163 (1). It is therefore my view that  
13 the Respondent's application by way of notice of motion was proper and an elections petition was  
14 not required... the required procedure.

15 Further, since the only ground argued before this Court, and for which skeletal submissions were  
16 received, challenged the procedure... challenged the propriety, sorry, of the procedure invoked. It  
17 is reasonable to conclude, because the grounds were not withdrawn, that the Appellants have  
18 conceded to the Respondents' challenge to the Ministers' appointment and the decision of the  
19 learned Chief Justice Ian Change must be affirmed. In the premises, I would dismiss this appeal.

20 **Justice of Appeal D. Gregory:** Upon their appointment as Ministers of Government after the May  
21 2015 National Elections, Ministers Winston Felix and Keith Scott were appointed as Members of  
22 the National Assembly by his Excellency the President. Their names had been included in their

1 party's list of candidate, that's the APNU/AFC list, for election to the National Assembly but their  
2 names had not been extracted to take up any of the thirty-three seats allocated to their party after  
3 the elections results were determined.

4 The Ministers took up two of four additional seats provided for non-elected Members of the  
5 Assembly. Desmond Morian the Respondent in this appeal and a candidate on the PPP/C list of  
6 candidates for those elections filed a notice of motion in the High Court challenging the  
7 membership of the two Ministers as non-elected members. He alleges the breaches of several  
8 provisions of the Constitution of Guyana contending that their appointment as non-elected  
9 members was in contravention of Article 60, 103, 105, 160 and 232 of the Constitution.

10 He contended that the combined effect of those Articles was that the two Ministers were elected  
11 Members of the National Assembly by virtue of their inclusion... by virtue of their inclusion on  
12 their party's list of candidates for election. The effect of those provisions was that all persons on  
13 the list were elected members once the list was successful at the elections. Their party had been  
14 successful and had been allocated to thirty-three seats in the Assembly based on the system of  
15 proportional representation. Although the names had not been extracted for any of the thirty-three  
16 seats allocated to their party, the two Ministers had already been elected as members as part of the  
17 list and could not be appointed as non-elected members to take up any of the four additional seats  
18 provided for non-elected members or technocrat Ministers. It was contended that such an  
19 appointment was contrary to the spirit and intendment of the provisions quoted above, those  
20 provisions of the Constitution.

21 Chief Justice Chang, as he then was, ruled in favour of the Applicant and he made a number of  
22 declarations and those declarations were – I can summarise them – that the Ministers are Elected  
23 Members of the Assembly. He declared also that despite their status of Elected Members, the two



1 Ministers do not hold seats and cannot sit in the National Assembly since their names were not  
2 among those extracted from the APNU and the AFC lists of candidates. And he also declared that  
3 Article 105 of the Constitution has no application to Elected Members of the National Assembly,  
4 that is, persons whose names were on a successful list of candidates and those two Ministers'  
5 names had been on the list and, finally, that despite their appointment by the President to be  
6 executive Ministers of the government, such an executive appointment did not entitle them to hold  
7 seats or to sit as Members of the National Assembly.

8 Being dissatisfied, the Attorney General has appealed the ruling on several grounds. The grounds  
9 and additional grounds as mentioned by my brother, Justice Holder, challenged not only the  
10 findings of law – that's the Chief Justice's interpretation and findings on the relevant provisions  
11 of the Constitution that were quoted above – but he also... additionally, Attorney General  
12 contended that Chang, C.J., had no jurisdiction to entertain the motion in the first place as the  
13 challenge was an election matter which invoked the special jurisdiction of the High Court and  
14 which could only have been brought by way of a petition pursuant to Article 163 of the  
15 Constitution.

16 Although the grounds of appeal challenged the substantive findings of the Chief Justice as well as  
17 the procedure utilized in approaching the High Court, at the hearing the arguments on behalf of  
18 the Appellant were not ... no arguments were put forward against the substantive findings of the  
19 Chief Justice as to the effect of those specific provisions of the Constitution which related to the  
20 Ministers' appointment as Members of the Assembly. The arguments were directed only to the  
21 issue of the jurisdiction of the High Court to entertain the constitutional motion given the nature  
22 of the orders sought.



1 Mr. Hawke for the Attorney General submitted that the claim fundamentally concerned who were  
2 the persons properly qualified to be Elected and Non-Elected Members and voting and non-voting  
3 Members of the National Assembly. Counsel stated that there was no need to proceed by way of  
4 motion when an alternative procedure existed at the time to properly challenge the seats of the two  
5 Ministers by an election petition.

6 Mr. Hawke referenced the case of Peters against ... Peters and another against the Attorney  
7 General and another where the Applicants had sought to challenge the results of an election by  
8 invoking Fundamental Rights Provision of the Constitution of Trinidad and Tobago. The Court  
9 analysed several cases and said,

10 “If a party has access to a Court of competent jurisdiction to decide the matter in issue, he  
11 has no basis on which to invoke the Court’s jurisdiction by way of constitutional motion  
12 under Section 14 (1) of the Constitution of Trinidad and Tobago.”

13 In my view [inaudible] the case has several distinguishing features from the case before this Court.  
14 In that case, there was an election petition already before the Court and it was found by the Court  
15 that there would be opportunity in the existing petition to meet the challenges that had been brought  
16 by the constitutional motion, so the Applicants had sought to move a separate challenge invoking  
17 the Fundamental Rights Provision when there was already an existing elections petition which is  
18 not the case here and so I do not believe that that case and the principles discussed in that case,  
19 quite aptly fit the facts in the instance case.

20 Mr. Nandlall for the Respondent submitted that the challenge in this case did not fall within any  
21 of the categories set out in Article 163 (1) and, therefore, did not attract the special procedure of  
22 an election petition. The Respondent was simply saying that the Ministers could not be appointed

1 as non-elected technocrat Ministers under Article 103 (3) and 105 as they had already been elected  
2 as Members of the Assembly. He said the challenge did not involve any question of the conduct  
3 of the elections or the qualification for membership of the Assembly or the allocation of seats; and  
4 he referenced a number of cases which illustrated that the Courts have dealt with matters related  
5 to elections in fit cases, even during an elections period; and he cited those examples just cited by  
6 Justice Holder,s where judicial review applications were entertained and determined by the Court,  
7 for example, in Eddie Ventus and in Zulfikar Mustapha where a fixed-date application was  
8 entertained by the Court and the Court rejected in Mustapha the argument regarding the need for  
9 a petition. [See also Baldwin Spencer against Guy Yearwood, a case from Antigua and Raphael  
10 Trotman and Others against the Attorney General]. All these citations are provided in the  
11 judgment.

12 In overruling the objection to his exercise of jurisdiction to hear the motion, Chang, C.J., concluded  
13 at page 14 of his judgment:

14 “It is obvious that the issues which have been considered and determined by this Court, do  
15 not relate to any challenge to the legal validity of the conduct of the election or to the allocation of  
16 seats to successful lists of candidates of the respective political parties rather, on the *a priori*  
17 assumption that the election had been validly conducted and all allocation of seats validly made.  
18 The issues relate to matters which arose *ex post facto* the completion of the election processes.  
19 And he went on to say,

20 “The determination of such issues could not therefore be matters which attract a challenge  
21 by way of an election petition.”

1 And so in light of those submissions, in light of the ... the focus of the Appellants' arguments at  
2 the hearing, the main issue in this appeal is whether the High Court did have the jurisdiction to  
3 hear the challenge brought by notice of motion instead of by an election petition. However, in light  
4 of the broader substantive issues which were raised in the grounds of appeal but which were not  
5 argued, I would uphold the findings of the Chief Justice on those substantive issues as contained  
6 in his judgment.

7 Now, on the jurisdiction, the relevant provisions are Articles 64 and 163. Article 64 states that

8 "All questions as to membership of the National Assembly shall be determined by the High  
9 Court in accordance with the Provisions of Article 163."

10 And then Article 163, so far as is material, provides that

11 "All questions regarding the qualification ..."

12 And then it sets out a number of categories of matters which must be determined under the  
13 particular jurisdiction that Article 163 created and I would not list them, they are well-known,  
14 qualification of any member and... so I would not go into the provisions of Article 163 but  
15 essentially, Article 163 provides that

16 "The practice and the procedure of the High Court in relation to the jurisdiction and powers  
17 conferred upon it or under this Article shall be provided for the by the National Assembly."

18 And that procedure was set out, of course, in the National Assembly (Validity of the Elections)  
19 Act, Chapter 1:04 and Chapter 3 has already been referred to and also the regulations under that  
20 Act essentially provides for elections petition to be brought to be determine the particular  
21 categories of matters identified under Article 163 of the Constitution.



1 So, although Article 64 speaks to all questions as to membership, Article 163 (1) sets out the  
2 specific question which the special procedure of petition to which that special procedure would  
3 apply.

4 It is clear that the challenge to the appointment of the Ministers is not – and if we go through each  
5 of the categories listed in Article 163, the first is challenges to the qualification of Members of the  
6 National Assembly and the challenge to the appointment is not a challenge to qualification of  
7 membership as specifically provided for in Article 155 (1) of the Constitution. So far as material,  
8 that Article states that no person shall be qualified for election as a Member of the National  
9 Assembly who is a citizen of a foreign country, to summarise, certified to be insane and under  
10 sentence of a Court or holds any ... the officers, any functionary so those are the qualifications for  
11 membership of the National Assembly and it is well established that such qualifications are  
12 determined at the time of submission of the list of candidates earlier in the process even at  
13 nomination stage for election to the National Assembly and that is not the specific question which  
14 is involved in this challenge.

15 Likewise, the challenge does not concern either generally or in any particular place, that's 155 ...  
16 sorry, 166 (1) (b). The challenge does not concern either generally or in any particular place  
17 whether an election has been lawfully conducted or the results thereof ... the result thereof has  
18 been or may have been affected by any unlawful act or omission.

19 The next category – I don't think that part is in dispute, the part that I've just read, that category.  
20 The next category under Article 163 (1) (B) (ii), is whether the seats in the assembly have been  
21 lawfully allocated and as discussed by Justice Holder, allocation of seats have a specific meaning  
22 and context in the Constitution and the combined effect of Article 60 (2) and Article 160 (1) is that  
23 Members of the National Assembly are elected in accordance with the system of proportional



1 representation and then each party presents a list of candidates for elections to the Assembly and  
2 votes are cast in favour of lists and 160 (1) states:

3 “That the seats of the said Elected Members in the Assembly shall be allocated between  
4 the lists in such a manner that the proportion of seats allocated to each list, bears to the  
5 number of votes cast in favour of that list in such a way as to minimize disproportionality  
6 between the percentage of votes cast and the seats allocated.”

7 and a formula is provided for under Section 97 of the Representation of the People Act for the  
8 calculation of the percentage and the allocation of seats and Paragraph 3 of Section 97 provides  
9 for the allocation of seats to each list. Section 98 of the same Act, Representation of the People’s  
10 provides for membership of the National Assembly, after seats have been allocated pursuant to  
11 Section 97 of the same Act.

12 So, any question concerning allocation of seats is concerned with the process of allocation of seats  
13 to lists, as discussed above. The challenge in this case was not for that process of ... was not against  
14 that process of allocation. This challenge concerned appointments of the two Ministers to the  
15 Assembly outside of the thirty-three allocated seats. For this reason, there is no requirement for an  
16 election petition to bring this challenge because allocation of seats is I hope I have explained,  
17 concerns a different process and this challenge was separate and it came about after the allocation  
18 process had been completed.

19 And so, having regard to the particular Provisions of Article 163, Article 64, Article 163, the  
20 categories and the meanings and the contexts of the particular categories that are set out in Article  
21 163, it was clear in my view that this challenge did not require an election petition and that the  
22 challenge by way of motion was properly brought and properly determined by the Chief Justice

1 and so for the reasons that I have outlined, I would dismiss the appeal on both the procedural  
2 grounds and the substantive grounds.

3 **Justice of Appeal, R. Persaud:** Sister and I am in agreement there with and I have nothing to add.  
4 I would dismiss this appeal with ...

5 **Justice of Appeal, D. Gregory:** Cost?

6 **Justice of Appeal, R. Persaud:** ...costs?

7 Costs Mr. Hawke, Mr. Jaigobin? Can you agree?

8 **Mr. N. Hawke:** My application would've been for each party to bear their own cost having regard  
9 to the fact that this was a matter of public interest and bear in mind there're upcoming elections  
10 that this certain the Court's judgment will give guidance to all the parties.

11 **Mr. R. Jaigobin:** Your Honours, I would respectfully insist on a sum awarded in the Court's  
12 discretion. While the determination of the issue is certainly an important one, at the end of the day,  
13 costs were incurred by the Respondent. Work still had to be done by his representatives and his  
14 Attorneys. May I suggest, Your Honours, I think certainly two hundred thousand (\$200,000) is a  
15 fair sum. I don't think it is excessive. The High Court has been awarding half a million dollars  
16 (\$500,000) in matters that go to trial, though I'm not going to ask for that.

17 **Justice of Appeal, D. Gregory:** Alright, the view of the Court is that it was a matter which was  
18 heard in the public interest. The ... perhaps the issues are not as live now as they were some time  
19 ago. We also note that many of the grounds of appeal were not argued and it was only on the  
20 procedural grounds that the appeal went forward and also the... okay, just ... and some of the  
21 submissions which had been put forward earlier were in fact repeated before this Court on the

1 procedural aspect of the case; so we believe that each party be in order to bear their own cost is  
2 quite just.

3 **Mr. N. Hawke:** Obligated.

4 **Marshal:** Court, rise. This Court now stands adjourned.

5 *Proceedings ended at 16:22 hrs.*