



## CARIBBEAN COURT OF JUSTICE

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**MEDIA RELEASE**  
(For immediate release)

**No. 04:2024**  
**Date: 19 January 2024**

### **CCJ DECLARES COURT OF APPEAL HAS JURISDICTION TO GRANT LEAVE TO HEAR APPEAL FROM EVENLY DIVIDED FULL COURT**

**Port of Spain, Trinidad and Tobago.** On Friday 19<sup>th</sup> January 2024, the Caribbean Court of Justice (CCJ) granted the application for special leave in the case of *Bharrat Jagdeo v Annette Ferguson* [2024] CCJ 2 (AJ) GY and thus decided that the Court of Appeal of Guyana has jurisdiction to grant leave to hear an appeal from an evenly divided Full Court.

In Guyana, decisions or judgments made by High Court Judges can be appealed in the Full Court of Guyana which is a division of the High Court. An appeal of the Full Court decision is heard in the Court of Appeal of Guyana. Where two Judges sit in the Full Court, there may be an evenly divided bench and the parties must look to legislation to determine the course of any appeals.

The Applicant was Dr Bharrat Jagdeo, who is the Defendant in libel proceedings in the High Court of Guyana filed by Ms Annette Ferguson. Default judgment was entered against Dr Jagdeo, and he applied to set it aside. He was unsuccessful and appealed to the Full Court. The appeal was heard by two Judges, and they were evenly divided. Dr Jagdeo then applied to the Full Court for a recall of the divided judgment and for the matter to be reassigned to an odd-numbered Full Court bench, but that application was refused.

Dr Jagdeo thereafter sought permission from the Court of Appeal to appeal the effect of the divided Full Court judgment. The Court of Appeal held that it did not have the power to grant leave since the Full Court had not delivered an appealable decision. Subsequently, Dr Jagdeo sought permission to appeal to the CCJ. He asked the CCJ to determine whether he was entitled to appeal to the Court of Appeal, and to stay the hearing for assessment of damages against him that was pending before the High Court.

In a judgment authored by Justice Anderson, with which Justice Burgess concurred, the CCJ held that section 75 (2) of the High Court Act should be interpreted to mean that where there is an evenly divided Full Court, the appeal to the Full Court is dismissed and that the original High

Court decision stands as the decision of the Full Court. Accordingly, that decision is subject to the regime of appeals as set out in the Court of Appeal Act. A contrary interpretation would forever immunise the decision of a single judge of the High Court from the reach of judicial review and would be inconsistent with the wording and objective of the section 75 of the High Court Act.

This case was distinguished from the CCJ's previous decision in *Guyana Sugar Corporation v Seegobin* in which there was an attempt to appeal against the decision of one of two judges in a divided Full Court. In that case, it was held that divided decisions are not directly appealable to the Court of Appeal.

Justice Barrow authored a dissenting opinion which would follow the CCJ's decision in *Guyana Sugar Corporation Inv v Seegobin*. He reasoned that where the decision of a single High Court judge is affirmed because there was an evenly divided Full Court on an appeal, there is no adjudication and so, there is no decision of the Full Court which can be subject to further appeal. On the point of whether the Applicant was entitled to a rehearing, he stated that there is no common principle in common law courts that determines whether the failure of a divided court to agree, should result in a rehearing or not.

The dissenting opinion concluded that the legislation provides for adjudication by two judges, but with the option to apply for good reason for a hearing by three judges. An applicant should know in advance, and it was a material consideration for an applicant that if their application resulted in an even division of the Full Court, that meant they could go no further. The legislation seemed to have contemplated that if there was an even division, the applicant would have failed to persuade two out of three High Court judges and should go no further. Based on the dissenting judgment, the application for special leave to appeal would be dismissed and costs awarded to the Respondent.

Having regard to the opinions expressed, the CCJ ordered that (i) the application for special leave be granted and treated as the substantive appeal and that the appeal be upheld, (ii) that the decision of the Court of Appeal that it has no jurisdiction to grant leave be reversed, (iii) that the case be remitted to the Court of Appeal for consideration whether to grant leave to appeal in all the circumstances of the case, and (iv) that the hearing for assessment of damages against the Applicant be stayed pending the final determination of this matter or until further order.

The matter was decided on written submissions by the Honourable Justices Anderson, Barrow, and Burgess. Devindra Kissoon and Natasha Viera acted for the Applicant. Lyndon Amsterdam acted for the Respondent.

The CCJ's full judgment is available via [www.ccj.org](http://www.ccj.org).

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago

on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica, Saint Lucia and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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