



**Training by the Caribbean Court of Justice
for the Judiciary of Jamaica on Referral Proceedings
11 January 2025**

Briefs of Cases where possibility of Referral to the CCJ was Raised

Linton v The Attorney General of Antigua and Barbuda

AG 2009 HC 23

The Claimant, Lennox Linton, a national of the Commonwealth of Dominica, travelled to Antigua and Barbuda for employment. He was a media worker and possessed a Caribbean Community Skilled Certificate issued by Dominica which certified him as a media worker. Upon arriving in Antigua and Barbuda, he was given permission to stay for six (6) months. This permission to stay in Antigua and Barbuda was revoked and he was placed on a flight back to Dominica.

Linton filed judicial review proceedings against the Defendant, the Attorney General, seeking damages, declarations, and an order of certiorari to quash the decision to revoke his permission to stay in Antigua and Barbuda.

Linton claimed that as a media worker he had a legitimate expectation that he would be allowed to seek employment in Antigua and Barbuda. He relied on the rights set out in the Revised Treaty of Chaguaramas (RTC) which entered into force on 1 January 2006. Specifically, Linton relied on Art 46¹ of the RTC which provides that certain categories of skilled Community nationals have the right to seek employment within the Community. He also relied on the statements by Government Officials in Antigua and Barbuda to the effect that qualified skilled CARICOM nationals would be entitled to come to Antigua and Barbuda to work. The Attorney General stated that the Caribbean Community Skilled Certificate which Mr Linton possessed did not entitle him to remain in Antigua and Barbuda for any extended period of time and that the Immigration Authorities had no authority to grant him permission to stay in Antigua and Barbuda for six (6) months.

¹ “1. Without prejudice to the rights recognised and agreed to be accorded by Member States in Articles 32, 33, 37, 38 and 40 among themselves and to Community nationals, Member States have agreed, and undertake as a first step towards achieving the goal set out in Article 45, to accord to the following categories of Community nationals the right to seek employment in their jurisdictions:(a) University graduates; (b) Media workers; (c) Sportspersons; (d) Artistes; and (e) Musicians recognised as such by the competent authorities of the receiving Member States.

2. Member States shall establish appropriate legislative, administrative and procedural arrangements to: (a) facilitate the movement of skills within the contemplation of this Article; (b) provide for movement of Community nationals into and within their jurisdictions without harassment or the imposition of impediments”.



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The issues that arose for the court to resolve were as follows: (a) Whether any issue arose requiring the interpretation or application of the RTC; (b) Whether, on entering Antigua and Barbuda, Mr. Linton was obliged to present the CARICOM Skilled Nationals Certificate to the Immigration Authorities; (c) Whether Mr. Linton was entitled to remain in Antigua and Barbuda for six (6) months, based on the permission he had obtained; (d) Alternatively, whether Mr. Linton had a legitimate expectation that he would be allowed to remain in Antigua and Barbuda for the duration of the six (6) months, in order to seek employment; (e) Whether the decision to revoke the permission that was granted to Mr. Linton was reviewable; (f) Whether the permission to stay was lawfully revoked; (g) Whether, in the circumstances that obtained, Mr. Linton was unlawfully removed/deported from Antigua and Barbuda; (h) What were the remedies, if any, to which Mr. Linton was entitled.

Since Mr. Linton relied heavily on the RTC to buttress his case, the court was of the preliminary view that this case was one which could well have brought into focus the interpretation and the application of the RTC. The court invited Counsel to address whether matters arose requiring the court's referral to the CCJ but there was a bit of hesitancy on their part to do so. Counsel for the Attorney General argued that the RTC was an unincorporated treaty so that the court may look at the unincorporated treaty for the limited purpose of determining whether the terms of the RTC amounted to a representation by the Executive giving rise to a legitimate expectation.

Blenman J. formed the view that issues of international law could well have arisen. The Court was mindful of the mandatory requirement of the RTC for domestic courts to refer any issue relating to the interpretation and application of the RTC to the CCJ. However, the Court found that the RTC was not part of the local law of Antigua and Barbuda and as such there was no requirement to refer the matter to the CCJ.

The Court also found that Mr Linton submitted a CARICOM Skilled Nationals Certificate on entry to Antigua and Barbuda, and therefore ought to be allowed a six-month stay pursuant to s5(1) CARICOM Skilled Nationals Act, 1997. The Court found that the decision of the Immigration Authority to revoke Mr Linton's permission to stay in Antigua and Barbuda was reviewable on the ground of illegality and irrationality. The Court further found that there was no basis upon which the Immigration Authorities could have lawfully revoked Linton's permission to remain in Antigua and Barbuda. Mr Linton was therefore unlawfully removed from Antigua and Barbuda. The Court however did not agree with Mr. Linton that he had a legitimate expectation to remain in Antigua and Barbuda for six (6) months as the Caribbean Community Act which incorporated the freedom of movement provisions into domestic law was not yet proclaimed, and the Caribbean Community Act clearly stated that it was to come into force by Notice published in the Gazette.

Mr. Linton was awarded damages of \$20,000 for breach of his opportunity to seek employment and wrongful arrest/expulsion from Antigua and Barbuda.



Hadeed v The Attorney General of Trinidad and Tobago, The Law Association of Trinidad and Tobago, The Registrar of the Supreme Court of Trinidad and Tobago
CV2018-02726 (Trinidad and Tobago)

The Claimant, Dianne Hadeed, a Saint Lucian citizen, resided in Trinidad and Tobago since 2012. She was a qualified attorney who sought admission to practice law in Trinidad and Tobago pursuant to s15(1A) of the Legal Profession Act Chap 90:03, which states that only nationals of Trinidad and Tobago can be admitted to practice law on obtaining qualifications not recognised by the Council of Legal Education Act Chap 39:50 and the regional agreement for legal education. Ms. Hadeed did not have the recognised qualifications. The Registrar of the Supreme Court refused to process her application to be admitted to practice law under Section 15(1A) on the basis that she is not a national of Trinidad and Tobago.

Ms. Hadeed filed a constitutional motion against the Defendant, the Attorney General of Trinidad and Tobago, alleging that the decision (1) was unconstitutional, (2) discriminated against her as a CARICOM national, and (3) breached her rights under the Revised Treaty of Chaguaramas (RTC). The Law Association of Trinidad and Tobago (LATT) and the Registrar of the Supreme Court of Trinidad and Tobago were also joined to the proceedings as interested parties.

Counsel for Ms. Hadeed applied to the Court to have certain questions referred to the CCJ as the matter involved the interpretation and application of her rights under the RTC. Counsel for the Claimant submitted that the questions she had now raised were properly within the jurisdiction of the CCJ to answer, fairly arose from the material filed in the substantive proceedings, and the answers of the CCJ would substantially if not totally determine the litigation before the Supreme Court. The Defendant, Registrar and the LATT submitted that none of the questions sought to be referred to the CCJ were questions which arose in the substantive proceedings; the matter did not involve the interpretation or application of articles of the RTC, which are unambiguous, and resolution of the issues were not necessary for the Court to deliver judgment as it must still determine the constitutionality of section 15(1A) even if it is in breach of Community law. The LATT had further submitted that a referral at that stage was neither convenient nor desirable and not in accordance with the overriding objective. The LATT also contended that the obligation to refer contained in section 5(1) of the CARICOM Act and section 6(4) of the CCJ Act may well be unconstitutional as the statutes were passed by a simple majority in Parliament. These provisions interfere with the constitutionally entrenched jurisdiction of the Supreme Court of Trinidad and Tobago. A simple majority therefore did not suffice to confer such jurisdiction on the CCJ to determine finally questions of Community law binding on the Supreme Court.



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Kokaram J found that Art 214² of the RTC, which provides for referrals to the CCJ, had been incorporated into domestic law by the Caribbean Community Act. He acknowledged the value of the referral jurisdiction of the CCJ, noting that “both national courts and the CCJ are enjoined in a cooperative exercise of working out in a uniform manner community rights important for the functioning of the Caribbean Community”.³ He further noted that “such a referral mechanism recognises the need for dialogue between the national court and the CCJ to ensure a uniform approach to issues of Community law”.⁴

The application for the matter to be referred to the CCJ was ultimately dismissed. The Court looked at the timing of the application, noting that it was on the eve of the hearing of the constitutional motion. Kokaram J. considered that it would be unfair to the Defendant to launch at that stage of the proceedings what was in fact a new case of alleged breaches of the RTC and that the Defendant would not have had a fair opportunity to advance its full case. Further, he held that the issues relating to the breaches of the RTC were not part of the constitutional motion before the Court and therefore it was not necessary to determine those issues in order to deliver judgment. Additionally, a referral which would stay the constitutional proceedings on the eve of the trial was not necessary or proportionate and would not give effect to the overriding objective.

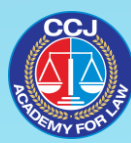
Kokaram J. declined to address the question of the validity or constitutionality of the referral jurisdiction under the CARICOM Act and CCJ Act. However, he reiterated the importance of referrals by national courts to the CCJ to ensuring uniformity in the application of Community law and Community rights. He indicated that to do otherwise would encourage national courts “to create a patchwork of jurisprudence on Community rights which may not be altogether coherent or consistent”.⁵

² “Where a national court or tribunal of a Member State is seised of an issue whose resolution involves a question concerning the interpretation or application of this Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment.”

³ [5].

⁴ Ibid.

⁵ [81].



***DCP Successors Limited v The Trade Administrator, The Trade Board Limited,
Commissioner of Customs & Excise, Jamaica Customs Agency, Blue Power Group Limited
[2022] JMSC Civ 62 (Jamaica)***

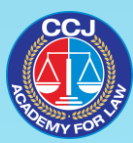
The Claimant, DCP Successors Ltd, manufactures soap noodles in Dominica and exports its soap noodles and final soap products to the CARICOM region. Jamaica soap producers import already manufactured soap noodles from countries outside the CARICOM (Malaysia and Indonesia) and add fragrances, oil, and moisturisers, reshape them and repackage the soap for sale to the CARICOM region. The soaps were classified by Jamaica as goods of Community origin and were exempted from the payment of the Common External Tariff (CET).

DCPS initiated proceedings in the High Court of Jamaica against The Trade Administrator, The Trade Board Limited, Commissioner of Customs & Excise, Jamaica Customs Agency, Blue Power Group Limited challenging the decision of the Jamaican Government certifying the soap product produced in Jamaica as goods of community origin. DCPS also sought orders against the Jamaican Blue Power Group (the Jamaican soap producers) in relation to the classification of the product so that the correct CET could be applied. Among the remedies prayed were damages against the 1st – 4th Defendants for breach of statutory duty.

Counsel for DCPS later applied to the Judge seeking orders that the matter be referred to the CCJ as the case touched and concerned the interpretation and application of the Revised Treaty of Chaguaramas and so the Court ought to refer the questions to the CCJ in accordance with Art 214 of the RTC.

Staple J (Ag.), in determining the application first considered two issues: (1) Whether the Court was seised of the issues; and (2) Whether the resolution of the issue involves a question on the interpretation/application of the RTC or the validity, meaning or application of instruments made under the RTC. He then considered whether a decision on the question is necessary to enable the Court to deliver judgment.

The Court held that at the current stage in which the application was made, the evidence was not yet fully before the Court. The trial date had not yet been set. Disclosure was still being made between the parties pursuant to the Case Management Orders of the Court. As a result, issues that



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were currently before the Court may change, others may be added and others dropped. It was only at the stage of trial, when all the evidence was before the Court, that the Court could say what were the issues for its determination. This may be at the stage of Pre-Trial Review at the earliest. The Court therefore held that it was not seised of the issues. Further, the judge was not satisfied that it was the appropriate Court to make the determination of the necessity of the referral given the intermediate stage of the proceedings. Accordingly, he dismissed the application to refer the matter to the CCJ.