

**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA
CONSTITUTIONAL AND ADMINISTRATIVE DIVISION**

2022-HC-DEM-CIV-FDA-865

BETWEEN: -

VINCEROY JORDAN

Applicant

-and-

THE ATTORNEY GENERAL OF GUYANA

Respondent

BEFORE: Hon. Madam Justice Damone F. J. Younge

Appearances: Mr. R. Forde, S.C. with Mr. S. Pieters for the Applicant

Mr. A. Nandlall, S.C. with Mr. N. Hawke, Ms. D. Kumar, Ms. R. Clarke and Ms. S. Lall for the Respondent

Date: 26th April 2023

DECISION

The Application

- [1] These proceedings have been instituted after decades of the failure by the President and the Leader of the Opposition of the Co-operative Republic of Guyana to agree on the appointments of a substantive Chancellor and Chief Justice. It raises issues of considerable constitutional and juridical significance.
- [2] On the 22nd June 2022, the Applicant, Vinceroy Jordan instituted proceedings against the Respondent seeking:
- a) A Declaration that since the assumption of the office of President by Irfaan Ali on the 2nd day of August 2022, he has failed to engage in any process as required by Article 127 of the Constitution to obtain the agreement of the Leader of the Opposition in order that the offices of Chancellor and Chief Justice are held by persons with permanent appointments.

- b) A Declaration that the failure of the President from the 2nd day of August 2020, to initiate the process contemplated by Article 127 of the Constitution in order that the offices of Chancellor and Chief Justice are held by persons with permanent appointments is a gross dereliction and abdication of the duty of the President under the Constitution.
- c) A Declaration that in the event that there are no persons holding a permanent appointment or persons holding an acting appointment to the offices of Chancellor and or Chief Justice, the President is under a continuous constitutional duty and obligation to forthwith initiate the process contemplated by Article 127 of the Constitution in order that the said offices be held by persons with permanent appointments.
- d) A Declaration that the President between the 2nd day of August 2020, to the 15th day of March, 2022, and the 13th day of April 2022, the President has no valid and constitutional excusable basis and or reason for failing to initiate the process contemplated by Article 127 of the Constitution in order that the offices of Chancellor and Chief Justice may be held by persons with permanent appointments.
- e) An Order directed to the President through the Attorney General compelling the President to forthwith initiate the process contemplated by Article 127 of the Constitution in order that the offices of Chancellor and Chief Justice be held by persons with permanent appointments.
- f) An Order directed to the Attorney General, the Representative of the State, compelling the President to forthwith initiate the process contemplated by Article 127 of the Constitution in order that the offices of Chancellor and Chief Justice be held by persons with permanent appointments.
- g) Costs.
- h) Such further and other relief as counsel may advise and this Honourable Court deem just.

[3] The Applicant is the Vice Chairman of the People's National Congress Reform, a political party which forms part of the A Partnership for National Unity + Alliance for Change coalition party and is also a member of the National Assembly. He supports this Application with an Affidavit, in which he deposes that since assuming office on the 2nd August 2020 to date, His Excellency, the President, Dr. Mohamed Irfaan Ali, has refused to initiate the process contemplated by Article 127 of the Constitution of the Co-operative Republic of Guyana ("the Constitution") in respect of permanent appointments to the offices of Chancellor and Chief Justice.

- [4] He further deposed that the President, since his assumption to office, refuses to initiate that process until the Leader of the Opposition and Opposition recognize him and his Government as legitimate. In support of these claims, the Applicant has referred to comments attributed to the President in the print media and several correspondences, including some between the current Leader of the Opposition, Mr. Aubrey Norton, M.P. and the Hon. Minister of Parliamentary Affairs and Governance, Ms. Gail Teixeira, M.P., were exhibited to his Affidavit.
- [5] The Applicant contends that the failure of the President to initiate the process required by Article 127 of the Constitution is a breach of the Constitution and "is a gross dereliction and abdication of the duty of the President under the Constitution." Further, that the President "has no valid and constitutional excusable basis and or reason for failure to initiate the process contemplated by Article 127 of the Constitution in order that the offices of Chancellor and Chief Justice may be held by persons with permanent appointments."
- [6] In an Affidavit in Defence sworn to by Ms. Teixeira, the Respondent urges the dismissal of this Fixed Date Application as being unmeritorious. She admits the comments attributed to His Excellency, the President reported in the 3rd April 2021 edition of the Guyana Chronicle Newspaper, as well as several correspondences referenced by the Applicant in his Affidavit. Ms. Teixeira however, highlighted events which she says frustrated the intention of the President to engage in the process as contemplated by Article 127 of the Constitution.
- [7] The deponent stated that since the People's Progressive Party Civic took office after the General Elections in August 2020, the then Leader of the Opposition did not recognize the current Government as legitimate and for this reason refused to engage in any talks with the Government. As a result of the position taken by the then Leader of the Opposition, the President indicated that he would not engage in any consultations with an Opposition which does not recognize his Government's legitimacy. Notwithstanding the foregoing, Ms. Teixeira stated that in October 2021, his Excellency publicly stated that he was ready to meet with the then Opposition Leader to consult on key appointments to various constitutional offices.
- [8] She also averred that in December 2021, Mr. Norton took over as the Leader of the People's National Congress Reform but was only elected Leader of the Opposition on the 13th April 2022 several months after his predecessor resigned from that position. For those months the office of Leader of the Opposition was vacant so that there was no one with whom the President could have engaged. After the appointment of Mr. Norton, as the Leader of the Opposition, on the 20th April 2022, His Excellency again made publicly known his intention to meet with the Leader of the Opposition to consult on various constitutional appointments. Ms. Teixeira reiterated that the President remains

committed to engaging with the Leader of the Opposition regarding the appointments of Chancellor and Chief Justice. This has been repeatedly publicized she said.

- [9] The Court's record indicates that no Affidavit in Reply was filed, so that the averments of the Respondent are not challenged. The Court notes that the instant proceedings were filed just over two months since the appointment of Mr. Norton as the Leader of the Opposition.

Historical Background

- [10] For decades the two major political parties in Guyana have been at an impasse in relation to these particular judicial appointments. Regrettably, for as long as there has been no agreement between the President and the Leader of the Opposition the country has been without a substantive Chancellor and Chief Justice. This state of affairs is a stain to our country's otherwise richly woven legal tapestry.
- [11] The ingloriousness of our country's unique position has not escaped the notice of jurists in the region, particularly that of the Presidents of our apex court, the Caribbean Court of Justice ("the CCJ"). Sir Dennis Byron, then the President of the CCJ., speaking on 'The importance of an Independent and Impartial Judiciary - Placing the spotlight on Judicial Accountability' on the occasion of the 37th Annual Guyana Bar Association Dinner on 11th November 2017 called it "a most unfortunate state of affairs." Mr. Justice Adrian Saunders, the current President of the CCJ., several years later on 9th April 2022, speaking on 'Advancing Caribbean Jurisprudence, Securing Sustainable Development' on the occasion of the Guyana Bar Association's inaugural Law Week Dinner, was similarly frank and unsparing, referring to it as a "significant blot on an otherwise impressive Guyanese legal and judicial landscape."
- [12] This unhappy situation was ushered in by the Constitutional (Amendment) (No. 4) Act 2001, Act No. 6 of 2001 which altered the mechanism for appointing the substantive Chancellor and Chief Justice under Article 127 of the Constitution. Article 127(1) of the Constitution, as amended, provides for the President to appoint the Chancellor and the Chief Justice "after obtaining the agreement of the Leader of the Opposition." However, for decades successive Presidents and Leaders of the Opposition have failed to agree on the substantive appointment of these office holders. This created a disconsolate quagmire which has resulted in an unattractive and prolonged succession of acting appointments to these important constitutional offices.
- [13] In 2001, the then substantive Chief Justice, Hon. Madam Justice Désirée Bernard was elevated to the position of Chancellor of the Judiciary and upon her elevation, the Hon. Mr Justice Carl Singh was appointed substantive Chief Justice. Justice Singh held the office of Chief Justice until 2005 when Chancellor Bernard demitted office as Chancellor to be appointed as a judge of the CCJ. Upon

Justice Bernard's ascension to our apex court, Justice Singh was appointed by the then President to act as Chancellor pursuant to Article 127(2) of the Constitution.

- [14] Unfortunately, since Justice Bernard joined the bench of the CCJ in 2005, the office of Chancellor has been filled by successive acting appointments starting with the acting appointment of Justice Singh until his retirement in 2017, and now the Hon. Madam Justice Yonette Cummings-Edwards. Similarly, the office of Chief Justice has also, since 2005, been filled by the acting appointments of the Hon. Mr. Justice Ian Chang, S.C., until his retirement followed by Justice Cummings-Edwards until her elevation to acting Chancellor and most recently by the Hon. Madam Justice Roxane George, S.C. The acting appointments to the top two positions of the Judiciary, an independent arm of the State, continues unabated seemingly with no end in sight.

Applicant's Submissions

- [15] The Applicant submits that the President has been guilty of inordinate and unreasonable delay in discharging the Constitutional duty conferred on him by Article 127 of the Constitution. Reliance has been placed on the decision emanating out of Kenya in **Adrian Kamotho Njenga v. The Hon. Attorney General, et al Petition No. 369 of 2019 [2020] eKLR**. Senior Counsel for the Applicant makes a comparison between the matter at bar and the decision of the Kenyan High Court. He avers that in **Adrian Njenga (supra)**, the President of Kenya was condemned by the Court for his delay in appointing judges when he was enjoined to do so. In that case, the High Court of Kenya, whilst noting that their Constitution does not set a time limit for the appointment of the judges by the President, was of the view that such appointments must be immediate since the President played no other role in the process except to formally make the appointments as recommended by Judicial Service Commission. Counsel submits that, in both the Kenyan case and the case at bar, there was a delay in the discharge of the constitutional duty imposed on the President.
- [16] In the context of Article 127, Counsel for the Applicant argues that the President is not expected to delay consultation with the Leader of the Opposition for the substantive appointment of Chancellor and Chief Justice even where no time limit has been set for such an engagement. In such circumstances, the President is enjoined to act 'with all convenient speed.' In this regard, the Court's attention was adverted to Article 232(9) of the Constitution which provides that it is the **Interpretation and General Clauses Act, Cap 2:01** which should be applied for the purposes of interpreting the Constitution. Section 39 of that Act stipulates that where, in any written law "no time is prescribed or allowed within which anything shall be done, such thing shall be done with all convenient speed, and as often as the prescribed occasion arises."

[17] The Applicant submits that His Excellency has failed to act with all convenient speed to engage with the Leader of the Opposition to obtain his agreement for the substantive appointments to be made under Article 127(1) of the Constitution. The delay and/or refusal by the President to commence the process required by Article 127 of the Constitution for more than two years is unreasonable and in breach of the duty imposed by the Constitution.

Respondent's Submissions

[18] Senior Counsel for the Respondent has submitted that the President is committed to complying with all his constitutional obligations and duties and is on record as saying that he is prepared to make the appointments to the offices of Chancellor and Chief Justice. Counsel urges the Court to look at the President's duty to comply with Article 127(1) of the Constitution in the context of the political travails which surrounded the office of the Leader of the Opposition since His Excellency has taken office.

[19] He argues that the **Adrain Njenga** case (*supra*) is distinguishable from the instant matter. Noting that in the Kenyan case, the only role of the President of Kenya was to formally appoint the Judges. However, in this case, appointments to the offices of Chancellor and Chief Justice requires the agreement of the Leader of the Opposition. This agreement is a necessary pre-condition to any such appointment. Senior Counsel argues further, that the successive Leaders of the Opposition have contributed to the delay in commencing the process set out in Article 127 of the Constitution.

[20] Having regard to the doctrine of separation of powers, he urges the Court to treat 'very delicately' with what has been a historical impasse which, according to him, is close to enjoying its first resolution. Counsel submitted that it would be prudent for the Court to exercise 'judicial restraint' and allow the two constitutional actors (*no pun intended*) to perform their Constitutional duties since both parties have expressed a commitment to comply with Article 127 of the Constitution. Counsel relied on the case of **Christopher Ram v. The Attorney General [2019] CCJ 14 (AJ)**, in which the CCJ stated at that,

...It would not therefore be right for the Court, by the issuance of coercive orders or detailed directives, to presume to instruct these bodies on how they must act and thereby pre-empt the performance by them of their constitutional responsibilities. It is not, for example, the role of the court... to lay down timelines and deadlines that, in principle, are the preserve of political actors guided by constitutional imperatives. The Court must assume that these bodies and

personages will exercise their responsibilities with integrity and in keeping with the unambiguous provisions of the Constitution.

[21] Senior Counsel for the Respondent argues that following the CCJ's admonition in **Christopher Ram** (*supra*) the Court in like manner ought not to direct how or when the President and the Leader of the Opposition should execute out their Constitutional duty. Counsel argues further that Article 127 (1) of the Constitution vests the power to appoint the Chancellor and the Chief Justice in the President after obtaining the agreement of the Leader of the Opposition, as such it is the President who must initiate the process. He submits that, given the history of Article 127(1) and the marked absence of an agreement between the President and the Leader of the Opposition since its amendment in 2001, and the short period of time the current President has had to comply with its provisions, that the Court ought to refuse the reliefs sought.

Issue

[22] Having regard to the contents of the Fixed Date Application and the reliefs sought, as well as the Affidavit in Defence filed, this Court considers that the only issue to be determined is whether in the circumstances of the instant case, the delay in initiating the process for the appointment of a substantive Chancellor and Chief Justice by the President under Article 127(1) is a breach of the Constitution and/or whether such a delay amounts to a gross dereliction and abdication of the duty of the President under the Constitution.

Law and Analysis

[23] It cannot be disputed that to date there has been no engagement between the President and Mr. Norton, the current Leader of the Opposition, regarding the substantive appointments of the Chancellor and the Chief Justice. This is not a fact in issue. Such appointments are to be made under Article 127 of the Constitution which provides that,

- (1) The Chancellor and the Chief Justice *shall* each be appointed by the President, *acting after obtaining the agreement of the Leader of the Opposition.*
- (2) If the office of the Chancellor or Chief Justice is vacant or if the person holding the office of Chancellor is performing the functions of the office of President or is for any other reason unable to perform the functions of his or her office, or if the person holding the office of Chief Justice is for any reason unable to perform the functions of his or her office, then, until a person has been appointed to and has assumed the functions of such office or until

the person holding such office has resumed those functions, as the case may be, those functions shall be performed by such other of the Judges as shall be appointed by the President after meaningful consultation with the Leader of the Opposition.

[24] It is apparent upon a reading of Article 127(1), that the Constitution imposes a mandatory obligation on the President and the Leader of the Opposition to come to an agreement on the individuals to be appointed substantively as Chancellor and Chief Justice. The utilization of the word “shall” in the Article shews sufficient certainty of this. Former President of the CCJ Sir Dennis Byron, in his address at the Guyana Bar Association Dinner in 2017 (*supra*) expressed some very strong views on our historic impasse. He said this:

The Constitution is the supreme law of the land, and no authority is above it. It is the duty of the court to interpret it and ensure that its provisions are applied. The delay in complying with section 127(1) of the Constitution has long reached a level of justiciability and the most appropriate authority for resolving this situation is the court system. *Section 127(1) ascribes an obligation to the President and the Leader of the Opposition that is mandatory in nature and not discretionary. Any failure in fulfilling this obligation must therefore be regarded as a breach of the Constitution.* [emphasis added]

[25] Article 127(2) of the Constitution makes provision for when the offices of Chancellor and Chief Justice are vacant or the persons holding those offices are for any of the stated reasons unable to perform their functions then those functions “shall be performed by such other of the Judges as shall be appointed by the President after meaningful consultation with the Leader of the Opposition.” It is under this Article that the seemingly endless “acting” appointments of Chancellor and Chief Justice have been made.

[26] In this regard, this Court is of the considered view that, despite the existence of Article 127(2), it could not have been the intention of the framers of the Constitution that Article 127(1) would not be complied with for decades resulting in perpetual acting appointments to these substantive posts. Acting appointments, by their very nature, suggest that they are for a short term and made on a transient basis. Article 127(2) is not, and ought not, to be used as a lacuna or loophole through which a President and/or a Leader of the Opposition can abdicate his/her mandatory constitutional obligation under Article 127(1) of the Constitution.

[27] This Court is of the firm belief that Article 127(1) of the Constitution was fashioned by the framers with the aim of consensus building and political comity. So much so that the bar was raised for these constitutional appointments from mere “consultation” with the Leader of the Opposition to “agreement” of the Leader of the Opposition. This is recognition that all political stakeholders should have a part to play in the ultimate selection of these important constitutional posts. Therefore, the

Constitution must have also intended that the President and the Leader of the Opposition would act with abundant good faith in the discharge of their duty under Article 127 of the Constitution. It must have also been envisaged that some level of expediency in filling these important constitutional offices would be exercised to ensure the competent functioning of the judicial arm of State.

- [28] The absence of substantive appointments to the offices of Chancellor and Chief Justice, particularly for the protracted length of time that we have experienced in Guyana, fails to insulate the judiciary from attacks on its independence as provided for in Article 122A of the Constitution which threatens the very fabric of our thriving democracy. In this regard, Justice Saunders along with Dr. Arif Bulkan and Tracy Robinson in their treatise Fundamentals of Caribbean Constitutional Law at page 372 had this to say,

The requirement in Guyana that the President and the Leader of the Opposition must agree on the selection of the Chancellor and Chief Justice has been "a recipe for paralysis" and led to *insecure and long-term acting appointments for the most senior judges which is contrary to judicial independence.* [emphasis added]

- [29] The authors also mentioned the decision of William Ramlal, J (as he then was) in **Committee for the Defence of the Constitution Inc. v. The Attorney General of Guyana, No. 995-5/A DEM 2006 (unreported)**, a case that concerned the constitutionality of the appointment of Justice Singh to act as Chancellor while also functioning as Chief Justice. Ramlal, J at page 30 of his judgement said that:

...failure to act by the parties named in Article 127(1) of the Constitution and who have the constitutional responsibility for the appointment of the Chancellor for such a prolonged period of time *flies in the face of Article 122A (1) of the Constitution.* [emphasis added]

Article 122A speaks to the independence of the judiciary and provides that, "All courts and all persons presiding over the courts shall exercise their functions independently of the control and direction of any other person or authority, and shall be free and independent from political, executive and any other form of direction and control."

- [30] Still speaking about the dicta of Ramlal, J in **Committee for the Defence of the Constitution** (*supra*), Justice Saunders and company said further at page 373 that:

Arguably, even without a time limit imposed by the Constitution, the judge could have grounded his decision on judicial independence since an acting appointment for over two years was inimical to good governance and the rule of law. Since 2005 neither of the positions of Chief Justice nor Chancellor has been confirmed and they remain acting appointments, a most

unsatisfactory situation given the seminal litigation that comes before them in which the state is a litigant and has a strong vested interest in the outcome. [emphasis added]

[31] To date, regrettably, Article 127(1) of the Constitution has never been complied with since its amendment in 2001. This fact tells its own story. The Respondent has laid out the circumstances which have impacted the initiation of the process towards obtaining the agreement of the Leader of the Opposition for substantive appointments to be made to the offices of Chancellor and Chief Justice. This has not been refuted by the Applicant, so that this Court, in making a determination on the issue raised in this case, must take these factors into account. The Applicant has not denied that before the appointment of Mr. Norton as Leader of the Opposition, his successor refused to recognize His Excellency, the President, and his Government as legitimate. In those circumstances, this Court cannot find fault in the submission by counsel for the Respondent that so long as that position obtained, how then could there be any engagement by the President with the Leader of the Opposition? A delay occasioned by these circumstances appear reasonable and rational.

[32] The Hon. Chief Justice George (ag) in the case of **Aubrey C. Norton v. The Attorney General of Guyana, et al 2022-HC-DEM-CIV-FDA-902** referred, at paragraph [63], to the dicta of Justice Jamadar, JCCJ in **Air Services Limited, et al v. The Attorney General, et al [2021] CCJ 3 (AJ) GY**. Chief Justice George (ag) is reported as saying:

While Jamadar, J observed that the onus is on the State and Public Authorities to initiate the consultation process and ensure that its requirements are satisfactorily met, he further observed that the consultative process requires active engagement, mutuality, sincere receptivity, and genuine openness to correctly understand and appreciate the recommendations. As such, *though the onus is primarily on the President to initiate the consultation process and to ensure requirements, as set out in art 232, are met there is a corresponding onus on the party being consulted to reciprocate. As we say colloquially, one hand cannot clap.* [emphasis added]

[33] Similarly, in the instant case, although the onus is on the President to initiate the consultative process for appointments under Article 127(1) since it is in him that the power to appoint resides, from the period August 2020 when he took Office to April 2021 when Mr. Norton was appointed the Leader of the Opposition, there was no reciprocal party with whom he could have engaged given the refusal of the then Leader of the Opposition to engage. There was no active engagement, mutuality and sincere receptivity on the part of the then Leader of the Opposition to partake in such a process.

[34] It appears from the evidence before the Court that it was only after Mr. Norton was appointed as Leader of the Opposition that any interest in consulting with the President was demonstrated. It was shortly after Mr. Norton's appointment that there were correspondences back and forth between

him and Ms. Teixeira regarding the discharge of his constitutional duties to consult on certain appointments. The last letter in the series was dated 7th June 2022 and written to Ms. Teixeira by Mr. Roysdale Forde, S.C who signed as the representative of the Leader of the Opposition. In that letter, Mr. Forde identified two specific persons for appointment to the offices of Chancellor and Chief Justice and signaled the Leader of the Opposition's "unconditional agreement" with the substantive appointment of the named persons. It was a few weeks after the date of that letter that the instant proceedings were instituted.

- [35] The Applicant has contended that over two years has elapsed without the President making any effort to commence the process required to comply with Article 127(1), calling it a "gross dereliction and abdication of duty." However, Article 127(1) of the Constitution does not prescribe a time limit within which the President and the Leader of the Opposition are to act to obtain agreement. Ramlal, J in **Committee for the Defence of the Constitution** (*supra*) has said at pages 28 and 29 of his judgment:

In light of the Declarations sought by the Plaintiff I have to return to Article 127 of the Constitution. The Affidavit evidence of both parties establishes conclusively that His Excellency the President and the Leader of the Opposition have not reached agreement as to who is to be appointed "to hold" the Office of the Chancellor pursuant to Article 127(1) of the Constitution. This, therefore, means that Article 127(2) of the Constitution comes into operation and it is herein constitutionally provided, inter alia, for a person to be appointed to perform the functions of the Office of Chief Justice after meaningful consultation with the Leader of the Opposition. *This Article does not place any restriction as to the time limit within which such a person is to perform the functions of the Office of Chancellor nor does it place any time limit for "agreement" or "consultation."* Further, the Constitution as a whole has not placed any restriction of any kind which can make such an appointment become unconstitutional nor can I find anything in the Constitution which makes provision for such an appointment to become unconstitutional because a person "continues to perform the functions of the Office of Chancellor." As a matter of fact Article 127(2) expressly provides for the person to perform the functions of the Office of Chancellor and the import of this Article is that such a person will perform the functions of the Office of the Chancellor until agreement is reached pursuant to Article 127(1) or until the person performing those functions relinquishes that appointment or until it comes to an end by death, retirement, resignation of that person or by order of a Court of competent jurisdiction. [emphasis added]

- [36] The absence of such time strictures in Article 127 of the Constitution ought, in this Court's view, to enjoin the President and the Leader of the Opposition to act with all convenient speed to make these

substantive appointments given their fundamental importance to the functioning of an equally important arm of the State. The applicability of s. 39 of the Interpretation and General Clauses Act to the interpretation of the Constitution has been provided for by the Constitution itself. As to what would be considered "with all convenient speed" must of necessity turn on the circumstances of each case.

[37] In the case of **Mohabir Anil Nandlall v. The Minister of Legal Affairs, HC-DEM-CIV-FDA-1874 (unreported)** Chief Justice George (ag) in considering the duty of the Minister to bring the Judicial Review Act into operation touched on the utility of s. 39 of the Interpretation and General Clauses Act to circumstances where no time limit is prescribed in statute. She said, at page 4, that in such a case, s. 39 "fills that gap by stating that it shall be done with all convenient speed." As to what this term means, the learned Chief Justice (ag) referred to the case of **Stephen Edwards v. the Attorney General, et al [2008] CCJ 10 AJ** where the CCJ noted at paragraph [22] of their judgment that s. 39 is "*a potent reminder...of the need for expedition in all matters of the Constitution.*"

[38] Her Honour, after considering several authorities on the subject, concluded at page 6, that "though the phrase 'all convenient speed' does not impose a specific time limit, courts apply it by considering whether the acts or matters or issues to which it applies have been done expeditiously and without unreasonable delay in the particular circumstances."

Conclusion

[39] The appointment of a substantive Chancellor and Chief Justice is mandated by the Constitution to be done by the President acting after having obtained the agreement of the Leader of the Opposition. The named parties have a mandatory obligation to comply with the provisions of the Constitution to make these appointments. This necessarily requires active engagement, mutuality and sincere receptivity by the Constitutional actors. Whilst the Constitution does not give time limits as to when this process is to begin or end, it is expected that, even without the Court's intervention, the President and the Leader of the Opposition would act with some expedition to bring this impasse to a swift end.

[40] In the matter now under consideration, this Court finds that given the particular circumstances attendant to this case, the delay in initiating the process for the substantive appointment of the Chancellor and Chief Justice by His Excellency, the President under Article 127(1) is not a breach of the Constitution. Further, this Court is unable to find that such a delay meets the threshold of gross dereliction of constitutional duty on the part of the President.

- [41] The period referenced by the Applicant and upon which his claim is based is stated to be from August 2020 to April 2022. However, from the evidence put before this Court for much, if not all, of that time the Leader of the Opposition was not prepared to enter into any engagement regarding any appointments. There is no doubt in this Court's mind, and there is no evidence which persuades this Court otherwise, that the stance of the then Leader of the Opposition contributed to the delay now being complained of by the Applicant who himself is a member of the party in Opposition. The evidence suggests that it was only from April 2022 that the current Leader of the Opposition indicated his interest in consulting. Therefore, by all accounts, the way is now clear for this engagement to commence, and no further delay or excuses ought to be countenanced.
- [42] The Respondent has said that "the President has repeatedly stated his intention and commitment to comply with all his duties under the Constitution." In this Court's view, there would be no better way that the President can demonstrate this unassailable devotion and commitment to his duties than by acting with alacrity to initiate the process for the eventual substantive appointment of Chancellor and Chief Justice. Even though this Court adopts the view of the CCJ in **Christopher Ram** (*supra*) that it would not be appropriate for the Court to dictate timelines and dates by which the Constitutional actors must engage, the sordid history of non-compliance with Article 127(1) of the Constitution dictates that this issue be given the highest priority by those with the Constitutional responsibility to ensure that the substantive appointments are made.
- [43] For too long Guyana has been without substantive office holders for the two top positions in the Judicial arm of the State, a situation which continues to be untenable and unacceptable to the citizenry and inimical to the independence of the judiciary that the Supreme Law of the land provides for. Any further delay in commencing this process should be eschewed so that this "significant blot on an otherwise impressive Guyanese legal and judicial landscape" is not perpetuated further.
- [44] Having considered the Fixed Date Application together with the Affidavit in Defence and the written as well as oral submissions by counsel for the parties, this Court holds that, in the circumstances of the instant case, the delay in initiating the process for the substantive appointment of the Chancellor and Chief Justice by His Excellency, the President under Article 127(1) between the period August 2020 and April 2022 is not a breach of the Constitution nor is it a gross dereliction of constitutional duty on the part of the President. This Court also holds that the position taken by the Leader of the Opposition during the stated period, directly contributed to the delay in the commencement of engagements, the aim of which is to bring finality to the matter of the substantive appointments of the Chancellor and Chief Justice.

[45] The findings of the Court notwithstanding, having regard to the import and constitutional significance of the matters raised in these proceedings, the following declarations are made:-

- a. A Declaration that Article 127(1) of the Constitution creates a mandatory constitutional duty and obligation on the part of the President and the Leader of the Opposition to comply with its provisions.
- b. A Declaration that for as long as there are no substantive appointments to the offices of Chancellor and Chief Justice under Article 127(1) of the Constitution, the President and the Leader of the Opposition are under a continuous mandatory constitutional duty and obligation to engage in a process which results in compliance with Article 127(1) of the Constitution.
- c. A Declaration that notwithstanding that Article 127(1) of the Constitution does not set any timelines for compliance with its provisions, the duty imposed on the Constitutional actors by Article 127(1) of the Constitution must be discharged with all convenient speed.
- d. A Declaration that any protracted or further delay in complying with Article 127(1) of the Constitution is, and would be, inimical to the independence of the Judiciary as set out in Article 122A of the Constitution.

[46] In light of the public interest nature of the matters considered in this Fixed Date Application, it is Ordered that each party shall bear his own legal costs.

Damone Young

**Hon. Madam Justice
Damone F. J. Young
Puisne Judge**