

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

**CCJ Appeal No GYCV2019/007
GY Civil Appeal No 100 of 2018**

BETWEEN

ZULFIKAR MUSTAPHA

APPELLANT

AND

THE ATTORNEY GENERAL OF GUYANA

RESPONDENT

AND

**THE CHAIRMAN OF THE GUYANA
ELECTIONS COMMISSION**

RESPONDENT

Before The Honourables

**Mr Justice Saunders, PCCJ
Mr Justice Wit, JCCJ
Mr Justice Hayton, JCCJ
Mr Justice Anderson, JCCJ
Mme Justice Rajnauth-Lee, JCCJ**

Appearances

Mr Douglas Mendes, SC, Mr Chandrapratesh Satram, Mr Davesh Maharaj, Mr Mohabir Anil Nandlall and Ms Kandace Bharath for the Appellant

Mr Hal Gollop, QC, Mr Ralph Thorne, QC, Mr Basil Williams, SC and Mr Nigel Hawke for the Respondent

**THE JUDGMENT
of
The Honourable Justices Saunders, Wit,
Hayton, Anderson and Rajnauth-Lee**

**Delivered
on the 12 day of July 2019**

JUDGMENT OF THE COURT

- [1] This case involving the Guyana Elections Commission (or GECOM) was brought to determine the lawfulness of the appointment of its Chairman. The case was heard on 8 May 2019 immediately before the hearing of a consolidated set of cases that dealt with the validity of a motion of no confidence passed in the Government on 21 December 2018 (“the no confidence motion cases”). On 18 June 2019 this Court rendered its judgments.¹ In each case the Court arrived at a number of conclusions without making specific declarations or orders. In this, “the GECOM Chairman case”, the Court concluded that the process that resulted in the unilateral appointment by the President of a Chairman of GECOM was flawed and in breach of the Constitution.
- [2] As occurred in the no confidence motion cases, counsel involved in the GECOM Chairman case requested that the Court should not make any consequential orders on the above conclusion without first hearing submissions from the parties on the nature of the consequential orders that should be made by the Court. The Court acceded to this request and accordingly ordered the parties to make written submissions to the Court no later than 1 July 2019. Since the two sets of cases are in some respects related, the Court received submissions covering both.
- [3] The need to issue consequential orders and directions in this case has been rendered largely unnecessary because we understand that the GECOM Chairman has voluntarily resigned his office since the delivery of our judgment on 18 June 2019. It is now a matter of the greatest public importance that the President and the Leader of the Opposition should, as soon as possible, embark upon and conclude the process of appointing a new GECOM Chairman. This imperative is now of the utmost urgency in light of our decision in the no confidence motion cases that the motion was validly passed thereby triggering the need for fresh general elections. The Court refers to the views we expressed at paragraphs 26 – 29 of our earlier judgment in this matter as a suitable frame of reference for the process leading to such an appointment.²

¹ See *Christopher Ram et.al. v The AG of Guyana et.al.* [2019] CCJ 10 (AJ); and *Zulfikar Mustapha v The AG of Guyana and the Chairman of the Guyana Elections Commission* [2019] CCJ 9 (AJ).

² See *Zulfikar Mustapha v The AG of Guyana and the Chairman of the Guyana Elections Commission* [2019] CCJ 9 (AJ).

- [4] In all the circumstances it is necessary for us only to make the following declarations and orders.

ORDERS

- [5] The Court orders and declares as follows:
- (a) The process utilised to appoint Justice Patterson to the post of GECOM Chairman was flawed and in breach of the Constitution;
 - (b) The said appointment is void;
 - (c) Costs in this appeal and in the courts below are to be paid to the Appellant and borne by the Attorney General.

/s/ A. Saunders

The Hon Mr Justice A Saunders, President

/s/ J. Wit

The Hon Mr Justice J Wit

/s/ D. Hayton

The Hon Mr Justice D Hayton

/s/ W. Anderson

The Hon Mr Justice W Anderson

/s/ M. Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee