

JCPC 2025/0072
JCPC 2025/0073
JCPC 2025/0074

**IN THE JUDICIAL COMMITTEE
ON APPEAL FROM THE COURT OF APPEAL
OF TRINIDAD AND TOBAGO
BETWEEN**

**(1) EARL ELIE
(2) ASHMEED MOHAMMED
(3) DOMINIC PITILAL**

Appellants

and

ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

PRECIS

1. On 21 August 2011, the President of Trinidad and Tobago, acting on the advice of Cabinet, by proclamation declared a state of emergency under s.7 of the Constitution; on the same day he made the Emergency Powers Regulations, 2011 (“the Regulations”). On 4 September 2011, the House of Representatives extended the period of emergency to 5 December 2011. The appellants were arrested on 23 and 24 November 2011 and then detained under enhanced powers of detention granted to the police and the Minister by the Regulations.
2. In 2015 the appellants brought claims seeking damages for unlawful arrest and detention, contending that the Regulations were invalid because: the emergency identified by the President was not a public emergency as defined by s.7 of the Constitution; and in any event the Regulations had not been made with due regard to the emergency, and the enhanced powers provided to the police and Minister were not reasonably justifiable for dealing with it, as required by s.7 of the Constitution. They also claimed that in any event they had been unlawfully arrested and denied access to a lawyer in violation of their rights.
3. The judge on 19 December 2017 dismissed the appellants’ challenges to the proclamation of a state of emergency and the validity of the Regulations, but allowed the second appellant’s claim that he had been unlawfully arrested. She also allowed his and the first appellant’s claims that they had been denied access to a lawyer. She awarded damages to them both.
4. On the appellants’ appeals, the Court of Appeal on 11 January 2024 affirmed the validity of the proclamation of a state of emergency and the Regulations, but held that the first appellant had also been unlawfully arrested and awarded him damages. On the respondent’s cross-appeal, it set aside the judge’s awards of damages for denial of access to a lawyer.
5. The appellants now appeal to the Judicial Committee, having been granted final leave on 3 June 2025.

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Agreed STATEMENT OF FACTS AND ISSUES

Introduction

1. This appeal concerns the proclamation made by the President on 21 August 2011 declaring a period of emergency under s.7 of the Constitution, the emergency power regulations made thereunder on the same day, and the arrests and detentions pursuant thereto of the three appellants variously on 23 and 24 November 2011 until their release without charge on 5 December 2011, when the period of emergency came to an end.

The Constitution

2. Part III of the Constitution of Trinidad and Tobago provides for the government to declare a state of emergency and to make regulations to deal with such emergency, as follows:

7. (1) Without prejudice to the power of Parliament to make provision in the premise, but subject to this section, where any period of public emergency exists, the President may, due regard being had to the circumstances of any situation likely to arise or exist during such period, make Regulations for the purpose of dealing with that situation and issue orders and instructions for the purpose of the

exercise of any powers conferred on him or any other person by any Act referred to in subsection (3) or instrument made under this section or any such Act.

(2) Without prejudice to the generality of subsection (1), Regulations made under that subsection may, subject to section 11, make provision for the detention of persons.

(3) An Act that is passed during a period of public emergency and is expressly declared to have effect only during that period or any Regulations made under subsection (1) shall have effect even though inconsistent with sections 4 and 5 except in so far as its provisions may be shown not to be reasonably justifiable for the purpose of dealing with the situation that exists during that period.

8. (1) Subject to this section, for the purposes of this Chapter, the President may from time to time make a Proclamation declaring that a state of public emergency exists.

(2) A Proclamation made by the President under subsection (1) shall not be effective unless it contains a declaration that the President is satisfied—

(a) that a public emergency has arisen as a result of the imminence of a state of war between Trinidad and Tobago and a foreign State;

(b) that a public emergency has arisen as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence or of infectious disease, or other calamity whether similar to the foregoing or not; or

(c) that action has been taken, or is immediately threatened, by any person, of such a nature and on so extensive a scale, as to be likely to endanger the public safety or to deprive the community or any substantial portion of the community of supplies or services essential to life.

9. (1) Within three days of the making of the Proclamation, the President shall deliver to the Speaker for presentation to the House of Representatives a statement setting out the specific grounds on which the decision to declare the existence of a state of public emergency was based, and a date shall be fixed for a debate on this statement as soon as practicable but in any event not later than fifteen days from the date of the Proclamation.

(2) A Proclamation made by the President for the purposes of and in accordance with section 8 shall, unless previously revoked, remain in force for fifteen days.

10. (1) Before its expiration the Proclamation may be extended from time to time by resolution supported by a simple majority vote of the House of Representatives, so, however, that no extension exceeds three months and the extensions do not in the aggregate exceed six months.

(2) The Proclamation may be further extended from time to time for not more than three months at any one time, by a resolution passed by both Houses of Parliament and supported by the votes of not less than three-fifths of all the members of each House.

(3) The Proclamation may be revoked at any time by a resolution supported by a simple majority vote of the House of Representatives.

(4) In this Chapter, "period of public emergency" means any period during which—

(a) Trinidad and Tobago is engaged in any war; or

(b) there is in force a Proclamation by the President declaring that a state of public emergency exists; or

(c) there is in force a resolution of both Houses of Parliament supported by the votes of not less than two-thirds of all the members of each House declaring that democratic institutions in Trinidad and Tobago are threatened by subversion.

11. (1) Where any person who is lawfully detained by virtue only of such an Act or Regulations as is referred to in section 7 so requests at any time during the period of that detention and thereafter not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among the persons entitled to practise in Trinidad and Tobago as Attorneys-at-law.

(2) On any review by a tribunal in pursuance of subsection (1) of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered but, unless otherwise provided by law, that authority shall not be obliged to act in accordance with such recommendations.

3. Under s. 22 of the Constitution, the President is the head of state and commander in chief of the armed forces. He is elected by an “Electoral College” of senators in the Senate and the House of Representatives (s.28). Under s.80 *“In the exercise of his functions under this Constitution or any other law, the President shall act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet ...”*.

STATEMENT OF FACTS

4. On Sunday 21 August 2011 the Prime Minister of Trinidad and Tobago made a public statement announcing that, after deliberation with the National Security Council, the Cabinet had decided to impose a “limited state of emergency”, for reasons which she summarised, and said that she would have a meeting with the President of Trinidad and Tobago to give him the Cabinet’s advice [1063].
5. Later that day the President, acting on the Cabinet’s advice, declared a state of emergency in Trinidad and Tobago by Proclamation No.8 of 2011 (“the Proclamation”). By the Proclamation he declared himself satisfied, in accordance with s.8(2) of the Constitution, that *“action has been taken, or is immediately threatened, by any person, of such a nature and on so extensive a scale, as to be likely to endanger the public safety”* [1047].
6. On the same day, pursuant to s.7(1) of the Constitution, the President made the Emergency Powers Regulations, 2011 (“the Regulations”) [1049].
7. On Tuesday 23 August 2011, in accordance with s.9(1) of the Constitution, the President delivered to the Speaker a statement setting out the specific grounds on which the decision to declare the existence of a state of public emergency was based (“the President’s statement”).
8. On Friday 2 September 2011 the Minister of National Security (Brigadier Sandy) introduced to the House a motion on the Government’s decision to declare a state of emergency and read to it the President’s statement. That statement was as follows [1066]:

“The country has been witnessing within recent times the tragedy of multiple murders and an upsurge in gang-related violence. During the period 19-21 August, 2011, there were 11 murders. As of August 21, 2011, there are two hundred sixty murders for this year. Our criminal intelligence gathered by national security agencies shows that the escalation in violent criminal activity is linked to recent success of the police in certain drug trafficking and interdiction exercises, which led to the seizure of large quantities of drugs with a street value of several million dollars. Drugs of a street value in excess of twenty million dollars were seized in just one raid on August 16, 2011. There is the real risk of reprisal and retaliation by gangs that will compromise and will continue to compromise and endanger public safety, law and order. Innocent citizens going about their daily business have lost their lives as a result of the actions of these gangs merely being at the wrong place at the wrong time.

The present unprecedented escalation of murders and other serious acts of violence and lawlessness warrant the adoption of more decisive and stronger action to ensure the safety of the public. There is urgent need to address this threat to public safety and the upsurge in violent crime in the shortest possible time.

The majority of these murders are occurring in specified geographical areas across Trinidad and Tobago, often committed by members of criminal gangs or persons involved in the drug and arms trades. The statistics from the police service reveal that the murders are disproportionately occurring in certain geographical areas where these gangs are based.

As a consequence of these events and facts, I am satisfied that the nature and extent of these events endanger public life and safety to an extent that warrants the declaration of a state of public emergency.”

9. The Minister went on to tell the House that, in addition to these developments, he had received information and assimilation of intelligence from the country’s national security agencies around midday on 21 August 2011 that prompted him, as Minister for National Security, to ask the Prime Minister to convene a meeting of the National Security Council to pass on the information to her that day. After extensive debate and

discussion both at that meeting and then in an emergency Cabinet meeting later in the day, the options were examined in further detail, before deciding to seek the President's concurrence to having a state of emergency declared. There was no way, he told the House, that he would have recommended such a bold option "*had I not given it tremendous thought and consideration myself*", taking into account his own experience in the military [1067].

10. By s.9(2) of the Constitution, the Proclamation had effect for 15 days. On Sunday 4 September 2011 Parliament resolved, pursuant to s.10(1) of the Constitution, to extend the Proclamation for a further 3 months, to expire on 5 December 2011.

The Regulations

11. Regulation 16 of the Regulations gave police the power to arrest a person without warrant and thereafter to detain such person for up to seven days, as follows:

16. (1) Notwithstanding any rule of law to the contrary, a police officer may arrest without warrant any person who he suspects has acted or is acting or is about to act in a manner prejudicial to public safety or to public order or to have committed or is committing or is about to commit an offence against these Regulations; and such police officer may take such steps and use such force as may appear to him to be necessary for affecting the arrest or preventing the escape of such person.

(2) Subject to these Regulations a person arrested by a police officer under subregulation (1) may be detained in custody for the purposes of inquiries.

(3) No person shall be detained under the powers conferred by this regulation for a period exceeding twenty-four hours except with the authority of a magistrate or of a police officer not below the rank of Assistant Superintendent, on either of whose direction such person may be detained for such further period, not exceeding seven days as in the opinion of such magistrate or police officer, as the case may be, is required for the completion of the necessary inquiries, except that no such directions shall be given unless such magistrate or police officer, as the case may be, is satisfied that such inquiries cannot be completed within a period of twenty-four hours.

12. Regulation 17 gave effect to the Second Schedule of the Regulations, providing for detention by order of the Minister of National Security.
13. In particular, paragraph 2 of the Second Schedule provided as follows:
- 2. (1) Subject to the provision of paragraph 4, the Minister may, if satisfied with respect to any person that, with a view to preventing him acting in any manner prejudicial to public safety or public order or the defence of Trinidad and Tobago, it is necessary to provide for his preventative detention, make an order-*
- (a) directing that he be detained; and*
- (b) stating concisely the grounds for such detention, so however, that no defect of any kind on such statement shall invalidate the order.*
- (2) Every order under subparagraph (1) shall come into force upon making thereof, notice of which shall be published in the Gazette within seven days after its coming into force.*
14. Paragraph 4 of the Second Schedule made provision for review of a detained person's case by a tribunal (as required by s.11(1) of the Constitution). By paragraph 9, if the tribunal were to find that there was insufficient cause for a person's detention, it remained a matter for the Minister's discretion whether to release the person or continue to detain them (in accordance with s.11(2) of the Constitution).
15. Regulation 19 made provisions denying bail and habeas corpus to persons detained under the Second Schedule or regulation 16, as follows:
- 19. (1) Notwithstanding any rule of law to the contrary, but subject to these Regulations, no bail shall be allowed in the case of any person-*
- (a) in respect of whom a detention order is in force under the provisions of the Second Schedule;*
- (b) detained under the provisions of regulation 16; or*
- (c) charged with an offence, if it is shown to the satisfaction of the magistrate that it is reasonably apprehended that the person arrested is likely to engage or to incite persons to engage in the commission of breaches of the peace or of any other offence against the person or property or against these Regulations, or any Orders, instructions or directions made thereunder.*

(2) The writ of habeas corpus shall not lie in the case of any person denied bail by or under subregulation (1) and no jurisdiction to grant bail in the case of such denial shall be exercised by any Judge of the Supreme Court under any rule of law or other authority.

(3) Upon the cessation of these Regulations nothing in this regulation shall be treated as continuing to have effect, in consequence of the continuance of any prosecution for an offence hereunder or for any other reason.

Arrests and detention of the appellants

Earl Elie

16. On 23 November 2011 Earl Elie, who was a Sergeant in the Police Service, was arrested while on duty at St Clair Police Station. The arresting officer was Assistant Superintendent Ramdhanie. ASP Ramdhanie told Sergeant Elie that he had instructions to detain him, and took him to Woodbrook Police Station.
17. ASP Ramdhanie told Sergeant Elie that he was detained under the Regulations. Sergeant Elie asked him what for, and ASP Ramdhanie said that he did not know. He was then taken by ASP Ramdhanie to his home, where his house was searched.
18. Sergeant Elie was then taken to Four Roads Police Station and placed in a cell. On the evening of 23 November 2011 he was visited by ASP Edwards of the CID in Port of Spain, who again told him that he was detained under the Regulations. Sergeant Elie asked why, and ASP Edwards replied that he would be informed of the reasons later by investigators.
19. On the same day Deputy Commissioner of Police Mervyn Richardson, pursuant to Regulation 16(3) of the Regulations, authorised in writing the continued detention of Sergeant Elie for seven days, until 30 November 2011. DCP Richardson declared himself satisfied that the continued detention of Sergeant Elie was required for the completion of necessary enquiries as to whether he was likely to act in a manner prejudicial to public safety or public order.
20. On 24 November 2011 Sergeant Elie was told by police officers at the station that he was detained because he had made threats to public safety and was involved in the plot

to assassinate the Prime Minister and other Ministers. On the afternoon of that day he was interviewed by Superintendent Don Lezama in the presence of two other police officers. Before the interview, Superintendent Lezama told Sergeant Elie that, because of the sensitive nature of the investigations, he would not be permitted to consult a legal representative or have one present at the interview.

21. After the interview he was detained in a cell at the police station until 29 November 2011. On that day the Minister of National Security signed a detention order pursuant to paragraph 2 of the Second Schedule to the Regulations, ordering the detention of Sergeant Elie on the ground that he was satisfied that detention was necessary for preventing him from acting in a manner prejudicial to public safety or public order or the defence of Trinidad and Tobago. The order said that the ground upon which it was made was that Sergeant Elie had been named as a person involved in a conspiracy to assassinate the Prime Minister, Attorney General and two other government ministers on 24 November 2011.
22. After the detention order was served on him, Sergeant Elie was handcuffed and taken by police to Golden Grove Prison, where he was stripped and searched and placed in a cell in the part of the prison commonly known as “Guantanamo Bay”. He was then taken from Golden Grove to the Maximum Security Prison, where he was again stripped and searched.
23. On the afternoon of 5 December 2011, which was the last day of the period of public emergency, Sergeant Elie was released without charge. On 6 December 2011 the Commissioner of Police put him on 5 months compulsory vacation leave, ending on 2 May 2012.

Dominic Pitilal

24. On 24 November 2011, several police officers led by Sergeant Joel Grant searched Dominic Pitilal’s home, without a warrant. Mr Pitilal was present at the search. When he asked them whether they had a warrant, the police officers replied that no warrant was necessary as they were exercising emergency powers.

25. Sergeant Grant later deposed that the police were conducting the search on suspicion that they might find arms and ammunition. No arms or ammunition were found, nor any other illegal items. The officers conducting the search received instructions from a Senior Superintendent to arrest Mr Pitilal; and Sergeant Grant then carried out the arrest. Sergeant Grant deposed that he arrested Mr Pitilal in the belief that he “*may be able to assist the police in their enquiries in relation to the group of persons who were trying to destabilize the country*”.
26. On the next day, 25 November 2011, the Deputy Commissioner of Police, pursuant to regulation 16(3), authorised in writing the continued detention of Mr Pitilal for the maximum seven days, from 24 November 2011 to 1 December 2011, declaring himself satisfied that the further period was necessary for the purpose of inquiries.
27. Mr Pitilal was detained at Maraval Police Station and was interviewed by police on 26 November 2011. At his interview he was informed (as Mr Elie had been) that he would not be permitted legal representation because of the serious nature of the threat and the sensitive nature of the nature of the investigations. He was told that police had information that he was involved in a plot to destabilize and create havoc in the country.
28. On 30 November 2011 the Minister signed a detention order pursuant to paragraph 2 of the Second Schedule, ordering the detention of Mr Pitilal on the ground that he was satisfied that detention was necessary for preventing him from acting in a manner prejudicial to public safety or public order or the defence of Trinidad and Tobago. The order said that the ground upon which it was made was that Mr Pitilal had been identified as a person behind “*a plot to destabilize Trinidad and Tobago and cause major panic*”.
29. After the detention order was served on him, Mr Pitilal was handcuffed and taken by police to Golden Grove Prison, where he was stripped and searched and placed in a cell in the part of the prison commonly known as “Guantanamo Bay”. Three or four days later he was taken from Golden Grove to the Santa Rosa Detention Centre, where he was again stripped and searched.
30. On 5 December 2011, Mr Pitilal was released without charge.

Ashmeed Mohammed

31. On 24 November 2011 Ashmeed Mohammed was surrounded outside a bank by a number of armed police officers, and arrested by Police Sergeant Terrence Nobbee on suspicion of possessing arms and ammunition. His van nearby was searched.
32. He was taken to and detained at Maraval Police Station and subsequently at Freeport Police Station. A search of his home later that day turned up no arms or ammunition, or any other illegal material.
33. On 25 November 2011, the Deputy Commissioner of Police, pursuant to regulation 16(3), authorised his continued detention in writing for the maximum seven days, from 24 November 2011 to 1 December 2011, declaring that the further period was necessary for the purpose of inquiries. (At trial, the written authorization could no longer be found and so it is not exhibited in the record) A further search of his home and of a former home on 25 November 2011 again turned up no firearms or ammunition.
34. Mr Mohammed was interviewed by police on 28 and 29 November 2011.
35. On 30 November 2011 the Minister made a detention order pursuant to paragraph 2 of the Second Schedule, ordering the detention of Mr Mohammed on the ground that he was satisfied that such detention was necessary for preventing him from acting in a manner prejudicial to public safety or public order or the defence of Trinidad and Tobago. The order said that the ground upon which it was made was that Mr Mohammed had been named as one of the persons behind a plot to “*destabilise Trinidad and Tobago and cause major panic*”.
36. On the same day Mr Mohammed was handcuffed and taken by police officers to the Santa Rosa Detention Centre, where he was stripped and searched and placed in a cell.
37. On 5 December 2011, Mr Mohammed was released without charge.

High Court proceedings

38. Each of the appellants brought a constitutional motion alleging that he had been wrongfully arrested and detained:

- a. Sergeant Elie issued his claim on 20 March 2015 in proceedings under claim number CV 2015-00892 [155].
 - b. Mr Mohammed issued his claim on 22 July 2015 in proceedings under claim number CV 2015-02521 [303].
 - c. Mr Pitilal issued his claim on 29 July 2015 in proceedings under claim number CV 2015-02594 [11].
39. Each appellant made the same two general claims challenging the emergency powers under which he was arrested and detained:
- a. First, that the President had had no power to make the Regulations because the Proclamation had not identified a public emergency within the meaning of Part III of the Constitution, and specifically s.8(2)(c), and so the President's declaration of a state of emergency was unlawful and of no effect.
 - b. Second, that even if the President had been entitled to declare a state of emergency, the Regulations, and specifically the extraordinary powers of arrest and detention therein, were unlawful and unconstitutional, because they were not reasonably justifiable for the purpose of dealing with the supposed emergency, and the President had not had due regard to the circumstances of the supposed emergency when he made them, pursuant to s.7(1) and (3) of the Constitution.
40. Each appellant made further claims, that even if the Regulations were lawful, aspects of their arrests and detention had not been. They alleged:
- a. That the arresting officer had not had the requisite suspicion under Regulation 16(1) and so their arrests had been unlawful in any event; and
 - b. That after their arrests they had been denied access to a lawyer, contrary to section 5(2)(c)(ii) of the Constitution.

The Respondent's evidence

41. The respondent filed evidence in response denying each claim. The evidence consisted of (a) an affidavit from the Minister of National Security ("the Minister") describing the background to the government's decision to declare a state of emergency; (b) a number of affidavits, both from the Minister and police officers, explaining the feared assassination plot in November 2011 which led to the arrest and detention of the

appellants and others; and (c) affidavits from police officers which addressed particular aspects of each appellant's arrest and detention.

The Minister's evidence as to background of the government's decision

42. The Minister said that on 16 August 2011, \$22 million of cocaine had been seized at Piarco International Airport after a number of previous "drug busts" [1178/6, cf 1067]. This was followed by eleven murders in just three days, including of innocent people *"at the wrong place at the wrong time"* [1178/6].
43. At about midday on Sunday 21 August 2011, he received further information and assimilation of intelligence from either the head of Strategic Service Agencies (Colonel Albert Griffith) or the Deputy Police Commissioner (Mervyn Richardson) that prompted him (as he told the House on 2 September 2011) to ask the Prime Minister, as chairman, to convene a meeting of the National Security Council [1179/7]. At that meeting, he said (as he had told the House), there was extensive debate and discussion about the drug bust and the intelligence received. He added that there was also discussion about *"the real possibility of the national agencies coming under attack before options were recommended by the Council"*. [1179/8]
44. Later that evening, as again he had told the House on 2 September 2011, there was another extensive debate at an emergency Cabinet meeting [1179/9]. He added that at the end of those deliberations *"Cabinet agreed that it would be irresponsible to ignore the intelligence having regard to the extent of damage and the number of lives that could have been lost and had already been lost. We considered that the risk was too high"*. He said that in the past, the government had not acted on information about a threat to the nation which had resulted in serious consequences to citizens' lives and the stability of the government, for instance before the attempted coup in 1990 (in which the houses of Parliament were attacked). He said: *"Cabinet agreed that the consequences would have been too grave not to act on the intelligence received"*. [1180/10]
45. The state of emergency, he said, was seen as the best option as it meant that the Government had the ability to declare martial law and had the support and involvement of the military. *"In my opinion, as then Minister of National Security, the support and involvement of the military was absolutely essential to deter any threat"* [1180/11]; and

“My decision to recommend that a state of emergency be declared was based on an informed response to criminal intelligence and other security developments of which I was aware” [1080/13] Considering the mayhem and bloodshed that could otherwise have been inflicted on law abiding citizens, he was at the time and remained confident that the Government’s decision was correct. *“I was and remain convinced that by declaring the State of Emergency we prevented a crisis of unprecedented proportions”*. It would have been regarded as irresponsible to act otherwise. [1180/22]

46. In particular, he said that the coming into force of the Anti-Gang Act (a point relied on by the appellants) would have been insufficient to deal with the imminent threat and potential devastation. *“This is because the information received indicated that the possible threat was far beyond the normal gang/turf war occurrences for which the Anti-Gang Act was aimed”*. [1184/21]

47. He added that in the first fifteen days of the state of emergency the intelligence and evidence unearthed was disturbing. *“The nature of items such as automatic weapons that we had not seen in the country before being found on premises, was alarming ... As a result of that information I came to the conclusion that the nature and type of weapons found were beyond the scale of normal gang/turf war occurrences ... All the findings led me to conclude that there were frightening plans being devised by criminal for this country, its institutions of security and its intelligence”*. [1181/15] He also received intelligence from Colonel Griffiths and Deputy Police Commissioner Richardson that criminal elements were waiting for the expiry of the fifteen day emergency period before resuming their criminal activities, so he believed that law enforcement officers needed more time further to investigate the intelligence received, and the plan was *“to place all apparatus of the national security service into investigation, detecting and dismantling any threat posed by these criminal elements”*. [1181/15]

48. He concluded that after the national security agencies had collected information, performed operations and made arrests in the period of emergency as extended, they informed him that they were able to bring the threat under control, such that he was satisfied that it was a success. [1184/22]

The evidence as to an alleged assassination plot

49. The respondent relied on a number of affidavits about the alleged assassination plot which led to the arrests and detentions of the appellants and 14 others in November 2011. A brief summary appears in the judge's judgment at [264/14-265/17]:
- a. During the emergency Corporal Williams of the special branch of the police service began to receive information of a plan to disrupt the nation and to assassinate the Prime Minister. Sergeant Elie was named as a suspect. [264/14]
 - b. This information was discussed with the Strategic Services Agency [264/15]. (The judge says that the discussion was with Surajdeen Persad, but in fact he was the Superintendent at special branch dealing with the matter. The people at the Strategic Services Agency with whom the discussions took place were not named in the evidence. The Strategic Services Agency was an intelligence gathering agency independent of the police service: see [1215/13].)
 - c. Corporal Williams, having discussed this information with Superintendent Persad and the Strategic Services Agency, prepared a report which was given to Anne Marie Alleyne-Day (Assistant Commissioner of Police and head of special branch [1199/12]), who in turn forwarded it to Deputy Police Commissioner Richardson to launch an investigation. (The judgment at [264/15] says that it was her view that the best course of action would be to detain and interrogate the suspects, but in fact her evidence was that this was a decision taken on 19 November 2011 by the Minister with the agreement of herself, the Chief of Defence Staff, the Commissioner of Police, Deputy Police Commissioner Richardson and Superintendent Surajdeen [1198/11]).
 - d. Investigations were subdivided into three teams, with one team (not "officer" as the judge said in error) dealing with locating and detaining suspects, the second with conducting interviews and the third dealing with answering telephone calls. [265/16].
 - e. This was the backdrop against which Deputy Police Commissioner Richardson directed the police to arrest Sergeant Elie [265/17]. The judge made no equivalent finding in her short judgments in Mr Pitilal's case and Mr Mohammed's case, but the respondent's position is that this is also clear from the evidence generally, in particular from Deputy Police Commissioner Richardson's evidence at [1190/10-11].

The affidavits about the circumstances of the arrest and detention

50. The respondent adduced a number of affidavits from police officers to dispute various details concerning the precise circumstances of the three arrests and detentions, and about the conditions of the prisons in which the appellants were detained. Given the findings of fact below on these issues, however, nothing would appear now to turn on these points.
51. There was no cross-examination on any of the appellants' or respondent's affidavits.

Judgments of the High Court

52. The appellants' claims were heard together on 10 March 2017 by Madam Justice Dean-Armorer. In three judgment summaries delivered on 1 December 2017 [143] [429] and a full judgment delivered on 19 December 2017 [258], the judge allowed the claims of Sergeant Elie and Mr Pitilal in part and dismissed that of Mr Mohammed.
53. The judge dismissed the general challenges to the Regulations, as follows. First, she held that the President's proclamation of a state of emergency was lawful. Considering s.8(2)(c) of the Constitution, she held that its meaning was plain. To interpret it, she did not need to have recourse to the rules to which Trinidad and Tobago had committed itself, as a signatory to the International Covenant on Civil and Political Rights (ICCPR) and the Siracusa Principles (*The Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR* (1985) 7 HRQ 3). (Trinidad and Tobago acceded to the ICCPR in 1978, after the Constitution came into effect.) That said, she held that in any event on the evidence before the Court, the state of Trinidad and Tobago "*constituted a threat to the life of the nation in a very literal way*", as citizens were being deprived of their lives so rapidly as to merit the use of the words "*a spate of murders*". [279/80]
54. She further held that public statements of the President and the Prime Minister and the evidence before her from the Minister of National Security patently supported the view that there was a threat such as to endanger public safety [281/87]. She referred in particular to the President's description of a spate of murders, and his statement that intelligence suggested that further violence was threatened; and she referred also to the Minister's evidence that Cabinet was of the view that it would have been irresponsible not to act. [281/88]

55. Second, with regard to the Regulations, the judge held that they were lawful and were reasonably justifiable for dealing with the public emergency described by the government. She held, in particular, that they trespassed no further than was necessary upon the fundamental constitutional rights protected by ss.4 and 5 of the Constitution and were proportionate to the gravity of the threat faced by the national community. [289/111-291/120]
56. As for the allegations of specific illegalities in their arrests and detention, the judge held that the following claims were made out.
57. In respect of Sergeant Elie, she found that ASP Ramdhanie, when arresting him, had not had the requisite suspicion under regulation 16(1) and so his arrest and initial detention was unlawful. His detention became lawful upon the Minister's order of 30 November 2011 ordering that he be detained pursuant to the Second Schedule to the Regulations. [291/121-293/127]
58. In respect of Sergeant Elie and Mr Pitilal, she found that police had denied them the opportunity to consult with a lawyer, in breach of their rights under s.5(2)(c)(ii) of the Constitution [293/129] [151/21].
59. The judge accordingly awarded Sergeant Elie \$100,000 for his unlawful arrest and detention up to 30 November 2011 [298/139], and awarded Sergeant Elie and Mr Pitilal \$50,000 each for the breach of their rights under s.5(2)(c)(ii) of the Constitution [151/21] [298/140]. She declined to make an award of vindictory damages in Sergeant Elie's case, because the arresting officer was acting in good faith in the exercise of very serious public duties. She made no equivalent finding in her short judgment dealing with Mr Pitilal's claim [150/21].

Appeal to the Court of Appeal

60. By notices of appeal dated 8 January 2018, each appellant appealed against the judge's decisions [456], [491], [539].
61. Each appellant contended, for the same reasons, that the general rulings of the judge, as to the lawfulness of the Proclamation and Regulations, were wrong.

62. Further, Mr Pitilal contended that the judge had erred in finding that Sergeant Grant had the requisite suspicion when arresting him under s.16(1) of the Regulations.
63. The respondent cross-appealed by notices dated 22 January 2018, contending in particular that the judge ought not to have found that the rights of Sergeant Elie and Mr Pitilal under s.5(2)(c)(ii) of the Constitution had been infringed; or that she ought not to have awarded them compensation for such breach.
64. The appellants contended in particular that, with respect to the proclamation of a state of emergency, the judge:
- a. Failed to appreciate the proper meaning of the constitutional definition of a public emergency, and in particular of a threat *“likely to endanger the public safety”*.
 - b. Failed to interpret what is required for a public emergency in the Constitution in the light of the ICCPR and the Siracusa Principles, or at least to take into account that the ICCPR and the Siracusa Principles gave rise to a legitimate expectation as to what would constitute a public emergency.
 - c. Failed to consider whether the threats identified by the government were so exceptional that the normal measures available to the State for the maintenance of law and order were plainly inadequate to address them.
 - d. Wrongly conflated a *“threat to the life of the nation”* in the ICCPR with a threat to the lives of some citizens, when she found that the evidence constituted a threat to the life of the nation in *“a very literal way”* because there had been a spate of murders.
 - e. Wrongly took into account reasons justifying the emergency in the evidence of the Minister, which had not been specific grounds identified by the President in his statement to Parliament in accordance with the Constitution and had not been debated and approved by Parliament pursuant to Section 9 (1) of the Constitution;
 - f. And failed to consider that the statement of the President referred only to a threat limited to certain areas, and that the Prime Minister’s account of the Cabinet’s decision was that it had agreed to impose a limited state of emergency in hot spots across the country, which was inconsistent with a declaration of a state of emergency over the whole country.

65. As for the lawfulness of the Regulations, the appellants contended in particular that the judge:
- a. Failed to consider or appreciate all the matters that showed that the Regulations had not been made with “*due regard*” to the situation that was said to exist.
 - b. Failed to give any adequate reason for her finding that the Regulations were reasonably justified and infringed fundamental constitutional rights no more than was necessary.
 - c. Failed to appreciate or take into consideration that no evidence or justification had been put forward to show why the ordinary powers of the police were insufficient to deal with the criminal threat that was said to exist, or to give any reason for her implicit finding that they were not sufficient.
 - d. Failed to consider at all the extraordinary power of indefinite detention granted to the executive in the person of the Minister.
 - e. Erred in finding that the powers of detention were tempered by a system of checks and balances, in that she wrongly found that the suspension of habeas corpus was restricted to cases of detention by a Magistrate, and wrongly failed to consider the unfettered power of the Minister.
66. The Mr Pitilal also appealed against the judge’s ruling that the officer who arrested and detained him had the requisite suspicion [463/9].
67. The Respondent cross-appealed against the Judge’s award of damages for breach of s.5(2)(c)(ii) of the Constitution in the cases of Mr Pitilal and Sergeant Elie [481] [517].
68. The appeals were heard together by the Court of Appeal (Mendonça, Moosai, Aboud JJA) on 2 December 2022.

Judgment of the Court of Appeal

69. The Court of Appeal in a judgment delivered by Mendonça JA on 11 January 2024 [685] dismissed the appeals of Sergeant Elie and Mr Mohammed, allowed the appeal of Mr Pitilal in part, and allowed the appeal of the respondent in respect of the claimed breach of s.5(2)(c)(ii) (access to a lawyer).
70. As to the lawfulness of the Proclamation, the Court of Appeal held as follows.

71. The ICCPR, and paragraphs 39 and 40 of the Siracusa Principles in particular, cannot provide any assistance to the construction of section 8(2)(c) of the Constitution; it is not possible to construe the section consistently with what is set out in those paragraphs (paragraph 27 of the judgment of Mendonca JA [701/27]).
72. There is no difficulty in understanding s.8(2)(c); it refers to a situation where the lives or safety of citizens, not just a few but more generally, are endangered. That can occur in a number of ways including criminal activity of such a nature and on so extensive a scale that it endangers the lives of the citizens or threatens the ability of the government to provide for the safety of its citizens (paragraph 35 [705/35]).
73. In assessing whether the circumstances justified the Proclamation, the Court was entitled, indeed obliged, to consider all the evidence before it (including the evidence of the Minister) and not simply the President's statement (paragraph 37 [705/37]). The evidence suggested the possibility of attacks on state bodies which would have an adverse impact on the ability of the police and indeed the government to provide for the public safety (paragraph 39). A reasonable inference from the President's statement was that the police in the exercise of their ordinary powers were unable to provide for the safety of the public (paragraph 41 [707/41]).
74. As for the criticism that the supposed threat was limited to certain areas, the Court of Appeal found that no area of the country was immune from the violence and the evidence suggested that Cabinet had considered all the pros and cons before deciding to seek the concurrence of the President to declare a state of emergency (paragraphs 42 and 43 [707/42-43]).
75. In summary, the evidence supported the conclusion that there existed at the time of the Proclamation a state of public emergency within the meaning of section 8(2)(c) of the Constitution. There was no basis to declare the Proclamation to be invalid (paragraph 48 [709/48]).
76. Turning to whether the Regulations were lawful, the Court of Appeal held as follows.
77. As to s.7(1) of the Constitution, it did not follow from the fact that the Regulations were a copy of those made in 1970 and 1990 that they were not made with due regard to the

situation existing or likely to arise in 2011. The similarity was understandable. The Regulations are meant to address the circumstances of any situation likely to arise during the period of public emergency. That requires an assessment of the risks by the executive to which significant weight is to be given (paragraphs 61 and 62 [723/61-62]).

78. In any event, even if those regulations which dealt with public meetings and possession of documents were not made with such due regard, they could be severed. That would not affect the regulations regarding arrest and detention (that is, those in s.16, 17, 19 and schedule 2), which could be said to be designed to address action taken or threatened that is likely to endanger the public safety in the circumstances described in the President's statement (paragraph 63 [724/63]).
79. As to s.7(3) of the Constitution, and the question whether the Regulations were reasonably justifiable for the purpose of dealing with the situation likely to arise or exist during the period of public emergency, the Court of Appeal discussed and followed the guidance given by the Judicial Committee in the case of Suraj v Attorney General [2022] UKPC 26 (paragraphs 66 to 75 [724-729/75]).
80. The Court held first that the aims identified (i.e. to address the real possibility of national agencies coming under attack by criminals and generally to eliminate or reduce the danger to the public safety) were sufficiently important to justify the limitation of fundamental rights (paragraph 77 [730/77]).
81. Second, the Court held that the Regulations, and in particular the enlarged powers of arrest and detention under regulations 16 and 19 and the Second Schedule, were rationally connected to the objective (paragraph 79 [730/79]).
82. Third, the Court held that it was not the case that less intrusive measures could have been used. It was reasonably to be expected that a situation where action has been taken or immediately threatened of such a nature and on so extensive a scale as to be likely to endanger the public safety would likely reasonably require regulations inconsistent with sections 4 and 5 of the Constitution. The President's statement described a situation with which the police were not able to cope. That required emergency powers in response (paragraph 82 [732/82]).

83. Fourth, considering whether the right balance had been struck, the Court of Appeal considered regulations 16 and 19 and the Second Schedule in turn.
84. As to the power of arrest under regulation 16(1) the Court of Appeal held that this was justified, because it was reasonable that in dealing with a state of public emergency where the public safety is likely to be endangered there should be a power to arrest a person where he is acting or has acted or is about to act in a manner prejudicial to public safety or has committed or is committing or is about to commit an offence against the Regulations (paragraph 87 [733/87]).
85. As to the power of detention without charge for up to seven days under regulation 16(3), this was only on the authority of a senior police officer or Magistrate, and only if such police officer or Magistrate was of the view that inquiries could not be completed within the initial period of twenty-four hours. There were therefore safeguards that would ensure that there was no arbitrary or unnecessary detention. Further, the person detained could pursue a remedy in judicial review (paragraph 90 [734/90]).
86. As for the denial of bail and habeas corpus under regulation 19, regulation 19(b) related to persons detained for inquiries and for the same reasons as above, there were safeguards against arbitrary, excessive and unnecessary detention; and the person detained could pursue the remedy of judicial review (paragraph 92 [735/92]).
87. Under regulation 19(c), persons charged with an offence were denied bail and habeas corpus if a Magistrate reasonably apprehended the matters described. That was reasonable in the context of a state of public emergency where the public safety is endangered. Further, no one suggested that the order of the Magistrate could not be subject to appeal or other review (paragraph 93 [735/93]).
88. As to regulation 19(a) relating to detention of persons under the Second Schedule, this depended on an assessment of the provisions of the Schedule.
89. In the Court of Appeal's assessment, regulations for the detention of persons were reasonably required to deal with the situation and were accordingly permitted by s.11 of the Constitution. The provisions of the Second Schedule mirrored those of s.11 (paragraph 99). The grant of the power of detention to officials who are not judicial officers is not uncommon in democratic states in times of emergency. The provision in

the Second Schedule authorising the Minister to make detention orders was therefore permitted by the Constitution; and in appropriate cases it is contemplated that the remedy of habeas corpus may be withheld (paragraph 101 [738/101]).

90. Further, the detained person was entitled to have his case reviewed by the tribunal under the Second Schedule. He had the benefit of knowing the grounds for his detention and the right to retain and instruct a legal adviser. Further, the decision of the Minister not to act on the recommendation of the Tribunal would be subject to judicial review (paragraph 102 [738/102]).
91. Further, the imposition of a state of emergency remained subject to the supervision of Parliament, and so the democratic credentials of any measure taken pursuant to any Proclamation were strong (paragraph 104 [738/104]). And the court was expected to give especially strong weight to the judgment of the President regarding the importance of the public interest which is sought to be addressed by the Regulations (paragraph 106).
92. Accordingly, in the judgment of the Court of Appeal, the Regulations struck a fair balance between the rights of the appellants and the general interest of the public and were a proportionate means of dealing with the situation during the period of public emergency (paragraph 106 [739/106]).
93. Turning to the arrest of Mr Pitilal, the Court of Appeal held that the arresting officer Sergeant Grant did not have the requisite suspicion under regulation 16(1) because even on his own evidence, he purported to arrest Mr Pitilal for the purpose of inquiries. Mr Pitilal was therefore unlawfully arrested and detained from 24 November 2011 until 30 November 2011 when the Minister made the detention order against him under the Second Schedule (paragraphs 118 and 119 [744/118-119]). The Court of Appeal awarded Mr Pitilal damages for false imprisonment for this six day period in the sum of \$100,000, the same as the award to Sergeant Elie for a similar period (paragraph 121 [745/121]).
94. Turning to the judge's decision to award \$50,000 in damages to Sergeant Elie and Mr Pitilal for the denial of their right of access to a lawyer, in breach of their rights under s.5(2)(c)(ii) of the Constitution, the Court of Appeal found that there was no evidence

that those two appellants had been adversely affected by the absence of an attorney-at-law. They were not charged with any offence. No issue of self-incrimination was raised nor could it be said that their detention was prolonged by the breach of the right. Further and in any event, both appellants had been compensated for the full period of their detention from their arrests to the date of the Minister's detention order (paragraph 131 [748/131]).

95. Accordingly, by separate orders in each appeal, dated 11 January 2024, the Court of Appeal [748/133]:
- a. Dismissed Sergeant Elie's appeal, but allowed the respondent's appeal against the award to him of \$50,000 for breach of his rights under s.5(2)(c)(ii), so as to reduce the award to him just to \$100,000 for the arrest and six days wrongful detention;
 - b. Allowed the appeal of Mr Pitilal in part by awarding him \$100,000 for wrongful arrest and unlawful detention from 24 November to 30 November 2011, but allowed the respondent's appeal against the award to him of \$50,000 for breach of his rights under s.5(2)(c)(ii), so that his award too came to just \$100,000; and
 - c. Dismissed the appeal of Ashmeed Mohammed.
96. In relation to costs, the Court of Appeal:
- a. Ordered Sergeant Elie to pay the respondent's costs of the appeal and cross-appeal;
 - b. Ordered Mr Pitilal to pay the respondent's costs of the cross-appeal and half of its costs of the appeal; and
 - c. Ordered Mr Mohammed to pay the respondent's costs of the appeal.

Appeal to the Judicial Committee

97. By three separate orders all dated 3 June 2025, the Court of Appeal granted each appellant final leave to appeal against the decisions of the Court of Appeal dated 11 January 2024.

STATEMENT OF ISSUES

98. The issues in the appeal to the Judicial Committee include the following.
99. With respect to the lawfulness of the Proclamation:

- a. What in law is the threshold for a declaration of a public emergency under section 8(2)(c) of the Constitution?
 - b. Do the ICCPR and the Siracusa Principles inform the meaning of s.8(2)(c), or at least do they give rise to a legitimate expectation as to the circumstances in which a public emergency can be declared, and if so, what are the consequences on the facts of this case?
 - c. Was the Court of Appeal entitled to find that the situation described by the President, Prime Minister and Minister of National Security met the definition of a public emergency for the purposes of s.8(2)(c)?
 - d. Did the Court of Appeal err in relying on the affidavit evidence of the Minister of National Security if and to the extent it went further than that which he placed before Parliament when he explained to it the justification for a period of public emergency?
100. With respect to the lawfulness of the Regulations:
- a. Did the Court of Appeal err in holding that they had been made with due regard to the situation that existed or was likely to arise?
 - b. Did the Court of Appeal err in holding that the relevant regulations were reasonably justifiable for the purpose of dealing with the situation that existed during the period of public emergency? And in particular:
 - i. Did the Court of Appeal err in holding that the power of arrest on mere suspicion, under regulation 16(1), was reasonably justifiable?
 - ii. Did the Court of Appeal err in finding that the power to detain for seven days without charge for the purpose of inquiries, under regulation 16(3), was reasonably justifiable?
 - iii. Did the Court of Appeal err in holding that the grant to the executive of the power of indefinite detention without charge, under the Second Schedule, was reasonably justifiable?
 - iv. Did the Court of Appeal err in holding that the suspension of bail and habeas corpus in respect of persons detained under the powers above, under regulation 19, was reasonably justifiable?
101. If the Court of Appeal erred and the proclamation was unlawful, or the relevant regulations were not reasonably justifiable (or were not made with the requisite due

regard), for what period should compensatory damages should be awarded to Mr Mohammed, and for what additional period should compensatory damages be awarded to Mr Pitilal and Sergeant Elie; and further, on this premise, should a vindictory award of damages also be awarded to each of the Appellants?

102. Did the Court of Appeal err in finding that there was no reason to make any award to Sergeant Elie and Mr Pitilal in respect of the breach of their rights under s.5(2)(c)(ii) of the Constitution?

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**IN THE JUDICIAL COMMITTEE
ON APPEAL FROM THE COURT OF APPEAL
OF TRINIDAD AND TOBAGO
BETWEEN**

**(1) EARL ELIE
(2) ASHMEED MOHAMMED
(3) DOMINIC PITILAL**

Appellants

and

ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

CHRONOLOGY

21 Aug 2011	Prime Minister's public statement announcing state of emergency	1063
	Proclamation No.8 of 2011	1047
	Emergency Powers Regulations, 2011	1049
2 Sep 2011	President's statement debated in the House of Representatives	1066
4 Sep 2011	House resolves to extend emergency for 3 months, to expire on 5 December 2011	
Nov 2011	Alleged assassination plot formed.	
23 Nov 2011	Sergeant Elie arrested	
	DCP Richardson authorises the continued detention of Elie for seven days until 30 November	1252
24 Nov 2011	Police arrest Pitilal and Mohammed	

25 Nov 2011	DCP Richardson authorises the continued detention of Pitilal until 1 December DCP Richardson authorises the continued detention of Mohammed until 1 December	
29 Nov 2011	Elie detained by order of the Minister	1264
30 Nov 2011	Pitilal detained by order of the Minister Mohammed detained by order of the Minister	1071 1435
5 Dec 2011	Appellants all released State of emergency comes to an end	
20 Mar 2015	Elie issues claim	155
22 Jul 2015	Mohammed issues claim	303
29 Jul 2015	Pitilal issues claim	11
1 Dec 2017	Judgments of Dean-Armorer J in Pitilal and Mohammed cases	143 429
19 Dec 2017	Full judgment of Dean-Armorer J in Elie case	258
8 Jan 2018	Appellants appeal to the Court of Appeal	456 491 539
22 Jan 2018	Respondent cross-appeals	481 517
2 Dec 2022	Appeals heard by Mendonça JA, Moosai JA, Aboud JA	

11 Jan 2024	Judgment of Court of Appeal	685
19 Feb 2025	Appellants granted conditional leave to appeal to the Judicial Committee	750
3 Jun 2025	Appellants granted final leave to appeal	489
		537
		565