Press Summary

17 November 2026

Dominic Pitilal (Appellant) *v* The Attorney General of Trinidad and Tobago (Respondent) (Trinidad and Tobago); Earl Elie (Appellant) *v* The Attorney General of Trinidad and Tobago (Respondent) (Trinidad and Tobago); Ashmeed Mohammed (Appellant) *v* The Attorney General of Trinidad and Tobago (Respondent) (Trinidad and Tobago)

[2026] UKPC 41

On appeal from the Court of Appeal of the Republic of Trinidad and Tobago

Justices: Lord Reed (President), Lord Hamblen, Lord Leggatt, Lady Rose and Lord Doherty

Background to the Appeal

On 21 August 2011, the President of Trinidad and Tobago declared a state of public emergency under Proclamation No.8 of 2011 (the "**Proclamation**") **[3], [8]-[12]**.

Sections 7-12 of the Constitution of Trinidad and Tobago (the "**Constitution**") govern the exercise of that power **[2], [4], [5]**. They also limit the extent to which measures enacted to deal with such an emergency can lawfully derogate from the rights to liberty and protection from arbitrary detention guaranteed by sections 4 and 5 of the Constitution. Specifically, section 7 provides that emergency powers inconsistent with sections 4 and 5 will be lawful, unless they are not reasonably justifiable to deal with the emergency **[1], [2].**

On 23 August 2011 the President made the Emergency Powers Regulations 2011 (the "**Regulations**") **[10]**. These gave police officers wide-ranging powers of arrest and detention, including to make arrests without warrant and to detain persons for up to seven days **[13]**. The Minister of National Security was also empowered to make orders of detention **[14]**-**[15]** and persons detained under those powers could not seek bail or habeas corpus **[16]**.

Earl Elie, Dominic Pitilal and Ashmeed Mohammed (each an **"Appellant"**, together the "**Appellants**") were each arrested under powers purportedly conferred by the Regulations. They challenged the validity of the Proclamation and the lawfulness of their arrest and

detention under the Regulations **[18]-[35]**. They argued no public emergency existed and that, if it did, the Regulations did not satisfy the test to be lawful under the Constitution **[3].**

The High Court found that the Proclamation and Regulations were valid **[36]-[47]**. The evidence relating to a spate of murders in the country supported the view that there was a danger to public safety sufficient to fall within the definition of public emergency under section 8(2)(c) of the Constitution. The powers under the Regulations were rationally connected to stemming the spate of murders, did no more than was necessary to achieve that purpose, and struck a fair balance between the rights of citizens and the interests of the community. It could not be said that they were not reasonably justifiable for the purpose of dealing with the emergency **[36]-[42]**.

As to each Appellant's claim, the High Court found that Sergeant Elie's arrest was in any event unlawful and he received $100,000 in compensation. He was also wrongly denied his right to consult a lawyer under s5(2)(c)(ii) of the Constitution during his interview and received $50,000 for that breach **[43]-[44]**. Mr Pitilal's arrest and detention were lawful but he was also awarded $50,000 for having been refused permission to consult his lawyer **[45]-[46]**. Mr Mohammed's arrest and detention were lawful. The Police expressly disputed that he had been denied access to legal representation at interview, and he failed to challenge that in cross-examination. That aspect of his claim was therefore also dismissed **[47]**.

The Court of Appeal agreed that the Proclamation **[48]-[50]** and Regulations **[51]-[56]** were valid and effective. Moreover, the Court of Appeal held that Mr Pitilal's arrest had in fact been unlawful and awarded him $100,000 **[57]**. However, they disagreed with the High Court that Mr Pitilal and Sergeant Elie were entitled to compensation for having been denied access to a lawyer and so set aside the awards of $50,000 made to them in that regard **[58]**. Sergeant Elie retained the award made to him in respect of his unlawful arrest and detention **[59]**.

The Appellants appeal to the Judicial Committee of the Privy Council on three issues: first, whether the Proclamation was valid; second, if it was, whether the Regulations were valid; and third, the remedies to which each Appellant was entitled **[60]-[65]**.

Judgment

The Board dismisses the appeals insofar as they seek to challenge the validity of the Proclamation and the Regulations. However, the Board finds that the Court of Appeal erred in setting aside the declarations of contravention of Sergeant Elie and Mr Pitilal's rights to consult a legal adviser, and the awards of compensation made to them in that regard. Accordingly, it reinstates those awards and declarations as made by the High Court **[138]**. Lady Rose and Lord Doherty give the judgment, with which Lord Reed, Lord Hamblen and Lord Leggatt agree.

Reasons for the Judgment

Validity of the Proclamation

In deciding that the Proclamation was valid, the Board finds that the Court of Appeal's interpretation of section 8(2)(c) of the Constitution is correct. Properly construed, a public emergency exists where there is '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' **[97]-[99]**.

As to whether the circumstances met that test, the Board's role is not to merely review the decisions of the President or of the courts below; the Board must determine that issue for

itself having regard to the evidence before the courts below **[100]**. That involves considering not merely whether the President could reasonably conclude that a public emergency existed, but whether it did in fact exist **[101]-[102]**. In doing so, the Board has had regard to the evidence **[104]**, the assessment made by the executive and senior members of the security and police services of Trinidad and Tobago **[105]** and to the full analysis of that evidence by the local courts **[106]**. The Board upholds the decision of the Court of Appeal that the Proclamation was justified on the facts and accordingly constitutional and valid **[108]**.

Validity of the Regulations

In making the Regulations to deal with the public emergency, section 7(1) of the Constitution requires that the President have "due regard… to the circumstances" of the situation **[109]**. The Board rejects the suggestion that, owing to the fact that the Regulations were copies of previous regulations made for a different public emergency in 1990, the Board should infer that the President had failed to do so. The Board does not consider the requirement to have due regard to the circumstances imposes an onerous threshold test, but only that it requires appropriate or proper regard to the circumstances of any situation that exists or is likely to arise during the period of the emergency **[109]-[115]**.

The Board also finds that the Appellants have failed to show that the Regulations were not reasonably justifiable. The measures introduced were clearly needed to address the sudden and extreme outbreak of widespread, brutal violence. They also included safeguards, in particular the establishment of a tribunal to review detentions and recommend release. In addition, the emergency could have been ended at any time by a simple majority vote of the House of Representatives and so had strong democratic credentials. Great weight should therefore be afforded to the judgement which was made as to where the public interest lay and where the balance between it and the rights of individuals should be struck **[116]-[129]**.

Remedies for the Appellants

Whatever the seriousness or security sensitivity of the allegations against Mr Pitilal and Sergeant Elie, the Board considers that that is no justification for the police to have denied them their right to consult with a legal adviser [**130**].

Moreover, there is no requirement for an individual to prove "detriment" suffered as a result of being deprived of legal advice in order to obtain compensation. In many cases it will be impossible to know what would have happened had the legal advice been obtained **[131]-[132]**. In the circumstances of their detention, it was imperative that Mr Pitilal and Sergeant Elie were informed of their right to consult a lawyer and were able to do so **[133]**. They may well have benefited from such advice, particularly in circumstances where they argue they were not provided with the evidence said to justify their detention and it is accepted that they could have applied for judicial review of the decision to detain them **[134]**. Accordingly, the Board reinstates the declarations of contravention of their rights to retain and instruct a legal adviser, and the awards made to them for breach of those rights **[136]-[137]**.

References in square brackets are to paragraphs in the judgment.

NOTE:
This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: Cases - JCPC