



[2023] JMFC Full 2

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE FULL COURT**

**CLAIM NO. SU2023CV00432**

**CORAM: THE HONOURABLE MRS. JUSTICE LORNA SHELLY WILLIAMS**

**THE HONOURABLE MRS. JUSTICE ANDREA PETTIGREW COLLINS**

**THE HONOURABLE MRS. JUSTICE SIMONE WOLFE REECE**

<b>BETWEEN</b>	<b>MERVIN CAMERON</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>ATTORNEY GENERAL OF JAMAICA</b>	<b>DEFENDANT</b>

**IN THE FULL COURT**

**Mr. Hugh Wildman and Mr. Duke Foote instructed by Wildman and Company for the Claimant**

**Ms Kamau Ruddock instructed by the Director of State Proceedings for the Defendant**

**Heard: 13<sup>th</sup> and 31<sup>st</sup> of July 2023**

**Section 96 (1) of the Constitution- Extension of time- Sections 31(1) and 16 of the Interpretation Act-**

**SHELLY WILLIAMS, J**

**BACKGROUND**

[1] The Director of Public Prosecution (DPP) was slated to retire on the 21<sup>st</sup> of September 2020 when she would have attained the age of sixty. On the 14<sup>th</sup> of

January 2020 the DPP wrote to the Chairman of the Public Service Commission, Mr Alvin McIntosh, CD, JP, requesting an extension of her tenure as DPP. On the 8<sup>th</sup> of July 2020 the Governor General wrote to the Prime Minister, referencing a letter dated the 7<sup>th</sup> of July 2020, written by the Prime Minister, which advised that the appointment of the DPP should be extended for three years. The letter went on to state that in accordance with Section 96 (1) of the Constitution of Jamaica, permission was granted for the extension. An Extraordinary Gazette was published on the 26<sup>th</sup> of August 2020 which stated that the Governor General, acting on the recommendation of the Prime Minister, after consultation with the Leader of Opposition had granted an extension to the DPP for three years with effect from the 21<sup>st</sup> of September 2020.

[2] The Claimant filed a Fixed Date Claim Form along with an affidavit in support challenging the extension granted to the DPP. The Fixed Date Claim Form sought the following declarations: -

1. *A Declaration that the purported extension granted by the Prime Minister and the Governor General of Jamaica to Ms. Paula Llewelyn to remain in office as Director of Public Prosecutions beyond the age of 60 years old, such extension not being gazetted in keeping with section 31 (1) of the Interpretation Act, is illegal, null and void and of no effect.*
2. *A Declaration that in the absence of a gazetted extension given to Ms. Paula Llewelyn to remain in the Office as Director of Public Prosecutions by the Prime Minister and the Governor General of Jamaica, renders the Office of Director of Public Prosecutions vacant.*
3. *A Declaration that any purported appointment given to Ms. Paula Llewelyn as Director of Public Prosecutions, after she has attained the age of 60 years old, is in breach of section 96(1) (b) of the Constitution of Jamaica, rendering such appointment illegal, null and void and of no(effect).*

4. *A Declaration that in keeping with section 96 (1) of the Constitution of Jamaica, in the absence of a valid extension granted to Ms. Paula Llewelyn as Director of Public Prosecutions, she automatically vacates office on attaining the age of 60 years old.*
5. *A Declaration that in the absence of any gazetted extension given to Ms. Paula Llewelyn to remain in office beyond the age of 60 years old, renders any action taken by her as Director of Public Prosecutions without being validly appointed under section 96 (1) of the Constitution of Jamaica, illegal, null and void and of no effect.*
6. *Such further and other relief that this honourable court deems just.*

[3] The affidavit in support of the Fixed Date Claim Form detailed that the Claimant had been convicted for an offence during the period of extension of the tenure of the DPP and as such he had an interest in the legality of the extension granted and standing to pursue the claim. The Claimant is asking the Court to declare that the extension granted to the Director of Public Prosecution (DPP) was null and void and as such the position has been vacant from September 2020.

[4] The Defendant filed an affidavit sworn to by Ms Jacqueline Mendez, Chief Personnel Officer of the Office of the Services Commission, along with exhibits in opposition to the Claim. The exhibits attached to the affidavit of Ms Mendez were:

- (a) a letter from the DPP to Public Service Commission dated the 14<sup>th</sup> January 2020, seeking an extension of her tenure,
- (b) a letter from the Governor General to the Prime Minister dated the 8<sup>th</sup> July 2020 which spoke to an extension being granted to the DPP for three years,
- (c) an Extraordinary Gazette dated the 26<sup>th</sup> of August 2020 which published the extension of the DPP's tenure.

## **Claimant's submissions**

- [5] The Claimant submitted to the Court that the extension granted to the DPP was not in keeping with Section 96 (1) (b) of the Constitution. Mr Wildman argued that there was no proper request by the DPP for an extension. Counsel acknowledged that there was a letter that had been written by the DPP requesting an extension, however, this letter he argued, was addressed to the wrong entity i.e., to the Public Service Commission. His submission was that based on Section 96(1) of the Constitution, any request for an extension must be addressed to either the Prime Minister or the Governor General as they are the persons who would be responsible for extending the DPP's tenure. Counsel submitted that the fact that the letter from the DPP was addressed to the Public Service Commission and not to the Prime Minister or the Governor General was a fatal flaw.
- [6] Counsel for the Claimant argued that there were three parties to the agreement to extend. The first party to the agreement was the DPP who was required to make an application to either the Prime Minister or the Governor General for an extension. The second party to the agreement was the Prime Minister, who was duty bound to consult with the Leader of Opposition as to whether an extension was to be granted. The Prime Minister would then recommend to the Governor General that the extension should be granted. The Governor General was therefore the third party to the agreement. Counsel's submission was that since the letter requesting the extension was addressed to the wrong entity, there was no agreement between the parties.
- [7] Mr Wildman submitted that any extension must be granted before the DPP attains the age of sixty. Counsel's contention was that the three-year extension granted to the DPP was null and void as it was granted to take effect on her birthday. Counsel argued that the extension should have taken effect at least one day before the DPP's birthday. Mr. Wildman relied on Section 31(1) of the Interpretation Act to support his position.

- [8] Counsel, after oral submissions on the 13<sup>th</sup> July, 2023 filed further submissions on the 17<sup>th</sup> July, 2023 in relation to Section 16 of the Interpretation Act. Section 16 of the Interpretation Act places the operational date of Acts and Regulations as the day following the passage of the statute. Mr. Wildman submitted and relied on Section 16 of the Interpretation Act, which in effect provides that the extension took effect not on the 21<sup>st</sup> of September 2020, but on the 22<sup>nd</sup> of September 2020.
- [9] The Claimant's Counsel argued that the flaws in the extension was tantamount to no extension being granted. He relied on several cases in support of his position, including the case of **Paul Chen-Young and Ajax Investments Limited and Domville Limited v Eagle Merchant Bank and Crown Eagle Life Insurance Company Limited and the Attorney General for Jamaica (interested party)** [2018] JMCA App 7 (**Paul Chen Young**).

### **Defendant's submissions**

- [10] The Defendant's submissions were quite succinct. The Defendant argued that there was no breach of Section 96 (1) (b) of the Constitution. Counsel for the Defendant, Ms Kamau Ruddock, argued that there is no set procedure by which a request should be made for an extension. Ms Ruddock submitted that the Prime Minister had consulted with the Leader of Opposition and then recommended to the Governor General that an extension should be granted. That extension was granted as per the recommendation. Her submission was that this was all evidenced by the letter of the Governor General dated the 8th of July 2020, and later the Extraordinary Gazette that was published on the 26<sup>th</sup> of August 2020. Counsel submitted that the Constitution dictates that the agreement to extend must be arrived at before the DPP turns sixty and that the Gazette evidenced that this was the position. Ms Ruddock also relied on the case of **Paul Chen-Young** and asked the Court to note that unlike the facts of that case, the proper procedures had been followed.

## The Law

- [11] The extension granted to the DPP in 2020 has been called into question. The Court is being asked to decide whether there was any breach of Section 96(1) (b) of the Constitution. Section 96(1) (b) of the Constitution states that:

*Subject to the provisions of subsections (4) to (7) (inclusive) of this section the Director of Public Prosecutions shall hold office until he attains the age of sixty years:*

*Provided that—*

*a. he may at any time resign his office; and*

*b. the Governor-General, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, may permit a Director of Public Prosecutions who has attained the age of sixty years to continue in office until he has attained such later age, not exceeding sixty-five years, as may (before the Director of Public Prosecutions has attained the age of sixty years) have been agreed between them.*

- [12] Halsbury gives some assistance as to how statutes are to be interpreted. Halsbury's Laws of England/Statutes and Legislative Process (Volume 96 (2018))/5. Statutory Interpretation/ (1) Introductory/(ii) Legislative Intention and the Legal Meaning/699, states that: -

*on an informed interpretation, there is no real doubt that a particular meaning of an enactment is to be applied, that meaning is to be taken as its legal meaning. If there is a real doubt, it is to be resolved by applying the interpretative criteria.*

- [13] Cross' Statutory Interpretation, 3<sup>rd</sup> edition summarises the rules of interpretation at page 49 in this manner: -

*1. The judge must give effect to the grammatical and ordinary or, where appropriate, the technical meaning of words in the general context of the statute; he must also determine the extent of general words with reference to that context.*

*2. If the judge considers that the application of the words in their grammatical and ordinary sense would produce a result which is contrary*

*to the purpose of the statute, he may apply them in any secondary meaning which they are capable of bearing.*

*3. The judge may read in words which he considers to be necessarily implied by words which are already in the statute; and **he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute....***

- [14] The Privy Council in the case of **Misick v Attorney General of the Turks and Caicos Islands** [2020] UKPC 30, Lord Hamblen and Lord Stephens advanced the approach to be adopted in the interpretation of statutes and stated at paragraph 38 that: -

*In interpreting reg 4(6) the first question is what is the natural or ordinary meaning of the particular words or phrases in their context in the Regulations? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the Governor when making or of the House of Assembly when approving the Regulations that it is proper to look for some **other** possible meaning of the word or phrase, see Pinner v Everett [1969] 3 All ER 257 at 258–259, [1969] 1 WLR 1266 at 1273. In performing that exercise the text of reg 4(6) has to be read in its context in its widest sense, to include the context of the Regulations as a whole, **and** the legal, social **and** historical context, ... As stated in *Bennion on Statutory Interpretation* (7th ed) at para 9.2 context 'is relevant not simply for resolving ambiguities and other uncertainties, but for ascertaining meaning (whether or not there is an ambiguity or other uncertainty), and indeed for identifying whether something is (or is not) ambiguous or uncertain in the first place.*

- [15] The starting point in interpreting this section of the Constitution will be to examine the ordinary meaning of the words in their context. It is only if there is any ambiguity will I resort to any other rule of interpretation.
- [16] One question raised in this case is the ramification if the extension is deemed to be null and void. The answer to that question was extensively dealt with in the case of **Paul Chen-Young**. In that case Morrison P in addressing the issue as to whether retired judges can deliver judgements, stated at paragraphs 67 to 69 of the judgement that: -

*[67] Among the authorities cited to the court was **Surendra Singh and Others v The State of Uttar Pradesh**. While acknowledge the reasoning*

*of the court in that case, the Supreme Court of Uganda nevertheless concluded that, having regard to the provisions of Uganda law, the death or retirement of a judge in that jurisdiction did not necessarily invalidate an undelivered judgment which was signed by the judge before his death or retirement. The explicit basis of this conclusion was a provision of the Uganda Supreme Court Rules that “[w]here judgment, or the reasons for a decision, have been reserved, the judgment of the court, or a judgment of any judge, ... being in writing and signed, may be delivered by any judge, whether or not he or she sat at the hearing...”. For the purposes of this sub-rule, the court observed, “...it is immaterial that the judge is prevented by death or retirement provided that at the time of writing and signing the judgment the judge was a member of the Court”.*

*[68] In **Mr. and Mrs Chimuza v Oswald Dzepasi**, the High Court of Zimbabwe had for consideration of the case of a magistrate who, having heard and recorded the evidence of witnesses for the plaintiff and the defendant, left the service without having written and delivered judgment in the matter. The issue before the High Court concerned the validity of the judgment subsequently rendered in the case, with the consent of the parties, by another magistrate on the basis of his perusal of the record of the proceedings which had taken place before the former magistrate. In concluding that it was a nullity, Mwayera J observed, citing previous authority of the court, that –*

*“...[where] a magistrate retires or is incapacitated [sic] or recuses him/herself or becomes functus officio the proceedings are a nullity. The proceedings are deemed abortive and have to be started afresh before a different magistrate... in the case of a resigned or retired magistrate like in casu... administrative remedies of recalling and having the individual take oath of office to finalise the partly heard matter would cure the anomaly of delay of proceedings starting de novo.*



[69] *If there is a common thread running through these cases, albeit each based on different constitutional and statutory regimes, it seems to me to be this” where a judge dies, resign or retires without having rendered judgment in matters heard by him or her prior to demitting office, absent some specific permission allowing him or her to do so (as, for instance, in section 106 (2), or in provisions found in statute or rules, as in cases like **Ritcey et al v The Queen and Orient Bank Limited v Frederick Zaabwe and Mars Trading Limited**), any ‘judicial’ act subsequently done by him or her will have done without authority.*

In the case at bar, if it is found that the extension was not granted in the manner dictated by Section 96(1) (b) then the acts of the DPP during the period of extension, would be deemed to be null and void.

[17] The Claimant has sought to rely on Section 31 (1) of the Interpretation Act to support his position that the extension granted was null and void. Section 31 (1) states that: -

*All regulations made under any Act or lawful authority and having legislative effect shall be published in the Gazette and unless it be otherwise provided and shall take effect and come into operation as law on the date of such publication.*

This Section of the Interpretation Act was opined upon in the case of **National Housing Trust v Treebros Holding Limited [2018] JMCA App 21** where Brooks JA (as he then was) stated at paragraph 25 that: -

*The effect of section 31 of the Interpretation Act was confirmed by the former Court of Appeal in **Rex v Daniel Lee** (1940) 3 JLR 237. At the time of that case, the equivalent of section 31 was section 8 of the Interpretation Act. Savary J stated that the validity of an order, published in the Gazette, had been raised on appeal. He said at page 238:*

*“During the course of the trial the Jamaica Gazette of the 26<sup>th</sup> August, 1939, which contains the Defence Regulations, and the Jamaica Gazette of the 25<sup>TH</sup> November, 1939, aforesaid were tendered in evidence. By this means the prosecution sought to prove that the Defence Regulations and Order 69 had been duly made. **An attempt was made at the hearing of the appeal to contend that there was no proof of the Defence Regulations having been duly made as the Jamaica Gazette was not the proper means of such proof, but this point was abandoned on the Court pointing out that under section 8 of Cap. 110, the Jamaica Gazette Law, the Jamaica Gazette was prima facie evidence that the Defence Regulations were made.**” (Emphasis supplied)*

- [18] A similar approach was adopted by the Privy Council in the case of **Joachim & Anor v The Attorney General & Anor (St. Vincent and the Grenadines)** [2007] UKPC 6 where Lord Brown of Eaton-under-Heywood stated at paragraph 12 of the Judgment that: -

*The Board has already set out (in para 5 above) section 16 of the 1990 Act which requires that all commissions are published in the Gazette and provides in terms that they “shall take effect from the date of such publication.” In these circumstances it is well-nigh impossible to argue that the Second Instrument, never having been published in the Gazette, has ever taken effect. The approach to be taken to this question is that now established by the House of Lords in **R v Soneji** [2006] 1 AC 340’ see in particular para 23 of Lord Steyn speech. Essentially the question to be asked is whether Parliament can fairly be taken to have intended the consequences of non-compliance to be total invalidity (or, in the present case, total ineffectiveness, since the appellants rightly recognize that the second respondent’s appointed under the Second Instrument is valid and would immediately take effect if ever the Instruments comes to be published in the Gazette). The answer their Lordships unhesitatingly give to that question is that Parliament must indeed be taken to have intended the*

*consequences of non-publication of the commission to be total ineffectiveness. That intention is as plain as can be from the last ten words of section 16: and shall take effect from the date of such publication.”*

In this case the extension had been published as evidenced by the Extraordinary Gazette dated the 26<sup>th</sup> of August 2020. The question raised by Counsel for the Claimant is whether the date the agreement came into effect as per the publication, i.e. the birthday of the DPP, rendered the extension null and void?

- [19] The Claimant has also sought to rely on Section 16 of the Interpretation Act. This Section of the Interpretation Act speaks to Acts and Regulations coming into operation the day after it takes effect. The two questions that arise, based on this section are, whether the publication in the Extraordinary Gazette dated the 26<sup>th</sup> of August 2020 can be deemed a regulation, and if so, what effect does it have on the extension granted to the DPP?

#### **FACTS NOT IN ISSUE**

- [20] There are several facts that are not in issue. These include: -
- a. that the DPP had written to the Chairman of the Public Service Commission requesting the extension on the 14<sup>th</sup> of January 2020. This letter was written prior to the DPP attaining the age of sixty years.
  - b. that there is a letter dated the 8<sup>th</sup> of July 2020, that was signed by the Governor General, that referenced a letter of 7<sup>th</sup> July 2020 from the Prime Minister. That letter advised the extension of the DPP for three years, after consultation with the Leader of Opposition. This letter was written prior to the DPP's 60<sup>th</sup> birthday.

- c. that there was an Extraordinary Gazette dated the 26<sup>th</sup> of August 2020, almost a month before the DPP's birthday, that spoke to the extension being granted for three years.

## **ISSUES**

[21] There are three issues to be decided namely;

- i) Did the DPP apply to the proper entity for an extension of her tenure in office?
- ii) When was the extension granted?
- iii) Whether the extension was in keeping with Section 96(1) (b) of the Constitution?

## **ANALYSIS**

[22] The Claimant has submitted that the appointment of the DPP is contrary to Section 96 (1) (b) of the Constitution. Section 96 (1) clearly states that the retirement age for the DPP is sixty. The DPP, however, can occupy that position up to age sixty-five, if granted an extension. The Section details the prerequisites for an extension to be granted. These three prerequisites are: -

- (a) The Prime Minister is required to consult with the Leader of Opposition before an extension is granted.
- (b) The extension is granted by the Governor General after it has been recommended by the Prime Minister.
- (c) The extension must be agreed upon before the DPP attains the age of sixty.

[23] The first issue raised by Counsel for the Claimant was that the letter requesting the extension by the DPP was addressed to the Public Service Commission and not to the Prime Minister or the Governor General. Mr. Wildman's position was that it is the Prime Minister in whom the responsibility lies to recommend the

extension of the tenure of the DPP after consultation with the Leader of Opposition. Counsel for the Claimant's position was that the letter, having been erroneously addressed to the Public Service Commission, would not amount to an adequate application for an extension.

[24] Counsel for the Claimant when pressed, was unable to provide any authority or established procedure that dictates the manner in which an application ought to be made for an extension, but merely stated that Section 96(1) (b) dictates that these are the persons to whom the application ought to be addressed.

[25] I find that Section 96 (1) (b) of the Constitution makes no reference to a practice or procedure whereby such an application for an extension ought to be made. In fact, it does not make any reference as to whether the application must be made in writing, or whether the DPP herself was duty bound to make a formal application. It is accepted that a letter was written by the DPP to the Public Service Commission requesting the extension. In the absence of an established procedure for the request for an extension, I do not find that there was a breach of Section 96(1) (b) of the Constitution by virtue of the DPP addressing her letter requesting an extension to the Public Service Commission. The letter of the DPP indicated a desire to extend her tenure as DPP and that would be sufficient for an extension to be considered.

[26] Given the remit of the Public Service Commission, it was not inappropriate for the administrative matters pertinent to the extension to be handled by that office.

[27] The second issue raised by Mr Wildman was whether the extension was agreed upon before the DPP attained the age of sixty. Counsel's position was that although the Extraordinary Gazette was published on the 26<sup>th</sup> of August 2020, the Gazette spoke to the extension taking effect on the 21<sup>st</sup> of September 2020.

[28] Section 96(1) of the Constitution dictates that the DPP can continue in office after she attains the age of sixty years, however the agreement for the extension must have been arrived at before she attained the age of sixty. The submissions of

Counsel for the Claimant seemed to have been focused on when the extension would have taken effect as opposed to the occasion the extension was agreed upon. There was clearly an agreement for the DPP to be granted an extension prior to the 21<sup>st</sup> of September 2020. The letter from the Governor General to the Prime Minister dated the 8<sup>th</sup> of July 2020 speaks to a letter he received from the Prime Minister where he, the Prime Minister, had recommended the extension of the tenure of the DPP for three years. That letter was never produced to the Court, but upon a reading of the letter of 8<sup>th</sup> July 2020 it was garnered that there was consultation with the Leader of Opposition. That letter then led to the publication of the extension in the Extraordinary Gazette. The Constitution speaks only to the agreement being concluded before the sixtieth birthday of the DPP. There was clearly an agreement in place before that day, I therefore find no merit in the submissions of Mr Wildman.

[29] The final issue raised by Mr Wildman was that the date the extension was to take effect was the 21<sup>st</sup> of September 2020, which is the birthday of the DPP. Counsel further submitted that the date that the extension would have become operational would have been the 22<sup>nd</sup> of September 2020 as per Section 16 of the Interpretation Act. This, he argued, rendered the extension null and void as it was after the DPP would have turned sixty. Counsel based this submission on Sections 16 and 31(1) of the Interpretation Act.

[30] In analysing these two sections I first turn to Section 16 of the Interpretation Act. Section 16 states that: -

*Where any Act, or part of an Act, or any regulations made thereunder come or comes into operation on a particular day, it shall be deemed to have come or shall come into operation immediately on the expiration of the day next preceding such day.*

The Interpretation Act defines regulations as: -

*regulations” includes rules, by-laws, proclamations, orders, schemes, notifications, directions, notices and forms.*

The said Act defines a Gazette as: -

*Gazette” or “Government Gazette” or “Jamaica Gazette” means the Jamaica Gazette published by order of the Government and includes any Supplements thereto and any Gazette Extraordinary so published;*

Mr Wildman submitted that the publication in the Gazette can be defined as a regulation. Counsel’s position was that this regulation that extended the tenure of the DPP, took effect on the 22<sup>nd</sup> of September and not the 21<sup>st</sup> of September 2020 as stated in the Gazette of the 26<sup>th</sup> of August 2020. I am not convinced that a publication in the Gazette falls under the definition of a regulation, however, the issue of when the extension was granted would still have to be addressed.

[31] Section 31(1) of the Interpretation Act dictates two possible dates on which an extension takes effect. These are: -

(a) The date that the publication is made.

(b) The date stipulated in the gazette as that on which the extension takes effect.

[32] I find that the fact that the extension would have taken effect on either the day of the DPP’s birthday or the day after her birthday is of no moment. This is so for two reasons. Firstly, the extension could not have taken effect until the end of the DPP’s tenure. Secondly Section 96(1) (b) of the Constitution allows for the extension to be granted after the DPP has attained the age of sixty, however, the agreement must have been arrived at before she turned sixty. As previously stated in the judgment, I find that the agreement to extend the tenure of the DPP had

been concluded before the DPP attained the age of sixty. That agreement was evidenced by the Extraordinary Gazette of the 26<sup>th</sup> of August 2020.

[33] I find that the agreement was made prior to the 21<sup>st</sup> of September 2020. Whether the effective date was the 21<sup>st</sup> or the 22<sup>nd</sup> of September 2020 is of no moment. I find no merit in this submission.

[34] Mr Wildman had referenced in his submission about enquires being made about a second extension being granted to the DPP. That issue is not before the Court. It was not raised in the Fixed Date Claim Form.

## **CONCLUSION**

[35] I find that declarations one, two and five being sought by the Claimant cannot be granted. The declarations sought were that:

*A Declaration that the purported extension granted by the Prime Minister and the Governor General of Jamaica to Ms. Paula Llewelyn to remain in office as Director of Public Prosecutions beyond the age of 60 years old, such extension not being gazetted in keeping with section 31 (1) of the Interpretation Act, is illegal, null and void and of no effect.*

*A Declaration that in the absence of a gazetted extension given to Ms. Paula Llewelyn to remain in the Office as Director of Public Prosecutions by the Prime Minister and the Governor General of Jamaica, renders the Office of Director of Public Prosecutions vacant.*

*A Declaration that in the absence of any gazetted extension given to Ms. Paula Llewelyn to remain in office beyond the age of 60 years old, renders any action taken by her as Director of Public Prosecutions without being validly appointed under section 96 (1) of the Constitution of Jamaica, illegal, null and void and of no effect.*



The premise behind those declarations was that the extension granted to the DPP had not been gazetted. The Extraordinary Gazette that contained the extension granted to the DPP was attached as an exhibit to the affidavit of Ms Mendez.

[36] The two other declarations being sought were: -

*A Declaration that any purported appointment given to Ms. Paula Llewelyn as Director of Public Prosecutions, after she has attained the age of 60 years old, is in breach of section 96(1) (b) of the Constitution of Jamaica, rendering such appointment illegal, null and void and of no(effect).*

*A Declaration that in keeping with section 96 (1) of the Constitution of Jamaica, in the absence of a valid extension granted to Ms. Paula Llewelyn as Director of Public Prosecutions, she automatically vacates office on attaining the age of 60 years old.*

I find that the agreement to extend the tenure of the DPP was arrived at prior to her attaining the age of sixty and as such there was no breach of Section 96 (1) (b) of the Constitution.

#### **PETTIGREW COLLINS J**

[37] I have read in draft the judgment of my sister Shelly Williams J and I agree with her reasoning and conclusion. There is nothing that I can usefully add.

#### **WOLFE REECE J**

I too have read in draft the judgment of my sister Shelly Williams J. I agree with her reasoning, application of the law and findings and I have nothing useful to add.

**ORDER**

[38] The declarations, being sought in the Fixed Date Claim filed on 13<sup>th</sup> February, 2022 are all denied.

[39] No order as to costs.

**BY THE COURT:**

**LORNA SHELLY WILLIAMS J, .....**

**ANDREA PETTIGREW COLLINS, J .....**

**SIMONE WOLFE REECE, J .....**