

IN THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

CLAIM NO. SLUHCV2024/0321

IN THE MATTER of the Constitution Order of Saint Lucia,
Cap. 1.01 of the Revised Laws.

-and-

IN THE MATTER of a claim that the Claimant's rights
under Articles 2(1) and 8 of the said Constitution, have
been contravened by virtue of which the Claimant is
entitled to redress under Article 16 of the said Constitution.

BETWEEN:

FRANCES DANIEL

Claimant

-and-

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Before the Honourable Mr Justice Alvin Shiva Pariagsingh

Appearances:

Mrs. Lydia B. Faisal and Mr. Nigel R. Faisal for the Claimant
Mrs. Nichola George-Benjamin and Ms. Tia Austin for the Defendant

2026: March 16 – Trial
May 04 – Primary Submissions
May 26 – Reply Submissions
July 16, 21 – Further Submissions
July 29 – Decision

**JUDGMENT
Claim for Constitutional Relief**

*Constitutional law – protection of the law – personal constitutional claim by next of kin –
death in police custody – Coroner's verdict of unlawful killing – prolonged failure to
investigate – unresolved police investigation - declaratory relief – investigative order –
constitutional and vindicatory damages – limits on directing prosecution.*

INTRODUCITON:

[1] **PARIAGSINGH, J:** - Before the Court is a claim for relief under the **Constitution of Saint Lucia**.¹ The underlying facts which give rise to this claim are deeply unsettling. It involves the death of the Claimant's son, Chacadan Daniel, whilst in the custody of the State. The State opposes the claim on several basis. A part of the claim was withdrawn which significantly narrowed the issues for determination by the Court.

THE CLAIM:

[2] By her amended claim filed on 2 October 2025 the Claimant seeks the following relief:

- 1) A declaration that the death of Chacadan Daniel in custody constituted a violation of the right to life under Article 2(1) of the Constitution.
- 2) A declaration that the failure of the State to conduct a prompt, thorough and effective investigation into the death constituted a denial of the Claimant's right to the protection of the law under Article 8.
- 3) An order directing the Defendant to cause or facilitate a full, independent and effective investigation into the death with meaningful participation by the Claimant.
- 4) An award of constitutional damages, including vindicatory damages to compensate the Claimant for:
 - i. The anguish, suffering and denial of her rights;
 - ii. The financial loss arising from the death of her son who was her principal helper in her farming activities and generally; and
 - iii. The deterioration of her health and wellbeing caused by the stress and hardship resulting from the death and lack of accountability.
- 5) Such further or other relief as this Honourable Court may deem just.

THE EVIDENCE:

Ms. Frances Daniel:

[3] At the trial, the Claimant Ms. Frances Daniel gave evidence and cross examination was permitted on critical facts only. I will summarise her evidence and cross examination below.

[4] Ms. Daniel is the mother and next of kin of her late son Chacadan Daniel. Her evidence is that her son, who was 22 years old at the time of his death, was arrested by officers

¹ Cap 1.01 of the Revised Laws of Saint Lucia.

attached to the Micoud Police Station in or about mid-October 2013. She says the arrest was said to be pursuant to a bench warrant, but neither she nor Chacadan was shown any such warrant. She also states that she believed the matter had already been dealt with by the District Court.

- [5] Ms Daniel's evidence is that on 23 October 2013, while Chacadan was still detained at the Micoud Police Station and under the control of the police, he was found dead in his cell. She was told by police officers that he had hanged himself with a white cord. However, when she was allowed to see him, she observed him lying on his back on the cell floor, with his arms spread apart and one leg bent. She says what she saw did not accord with the explanation that he had taken his own life.
- [6] She relies on the post-mortem report, which recorded the cause of death as asphyxia due to airway and neck vascular obstruction, consistent with ligature hanging. She also relies on the additional findings of blunt force trauma to the head and abrasions around the neck. She further relies on the Coroner's Inquest, where on 24 July 2015 a jury returned a finding of unlawful killing.
- [7] The substance of Ms Daniel's complaint is not only that her son died while in police custody but that, despite the inquest verdict, there has been no effective, independent or concluded investigation and no person has been charged, disciplined, or held accountable. She says she has written repeatedly to public authorities and has waited for answers for many years without any meaningful result.
- [8] Ms Daniel also gives evidence of the effect of Chacadan's death on her personal and financial life. She says Chacadan was an essential contributor to her farming livelihood. He assisted with cultivating and harvesting crops, making charcoal, transporting and selling produce and generally supporting her. She says that together they earned approximately EC\$700 per week. Since his death, she says she has been unable to maintain the same workload, her income has diminished and farms at Bois Canoe and Dugard were effectively abandoned.

[9] She also describes significant emotional and physical distress, including grief, depression, insomnia, headaches, weight loss and a deterioration in her health. Her evidence is that these effects have worsened by the absence of justice and closure.

[10] In her affidavit in answer, Ms Daniel accepts that the post-mortem report itself does not determine whether the death was self-inflicted or unlawful and that the coroner's verdict is not a criminal conviction of any named person. Her point, however, is that a verdict of unlawful killing should have triggered a proper criminal investigation and prosecutorial consideration. She rejects the Defendant's suggestion that the claim is premature, saying that more than 12 years have passed without any concluded accountability process.

Cross-examination:

[11] In cross-examination, Ms Daniel accepted that she had been a farmer for most of her life and that farming had been a family activity. She said she had 10 children and that, historically, the children helped on the farm. However, she maintained that Chacadan was her last son and her main practical support at the time of his death. She explained that her other sons had married and had their own families while other children had jobs or had moved away.

[12] Counsel challenged her evidence that Chacadan was essential to the farm. Ms Daniel accepted that others had assisted in the past but denied that Chacadan was not the main contributor. She said that after his death she became weak, lost energy and could no longer manage as before.

[13] She was also questioned about the claimed EC\$700 weekly income. She accepted that she had no bank statements proving that figure. Her explanation was that the money was not saved but used for the family's survival and the children's needs.

[14] Counsel suggested that she could have hired workers or rented out the farms. Ms Daniel rejected this as unrealistic, saying she had no money to hire labour and no one to rent the land to. She also denied the suggestion that she had never farmed at Bois Canoe or Dugard.

[15] On her health, Ms Daniel said she had attended doctors after Chacadan's death, including a psychiatrist but stopped because private treatment cost about EC\$300 per visit and she was afraid. She accepted that after the May 2024 medical report which she relies on she did not attend a specialist psychiatric evaluation.

[16] On the State's response, she accepted that the current Commissioner of Police spoke to her once after his appointment but she did not accept that this amounted to any meaningful update because, as she put it, nothing had happened. In re-examination she said the Commissioner told her he intended to put things in order and that police officers would be charged.

[17] I accept Ms. Daniel as an honest witness of the truth. Her evidence was not substantially undermined in cross-examination. Ms Daniel's core evidence was that Chacadan died in police custody, that the post-mortem recorded hanging-related asphyxia together with other injuries and that the inquest jury returned a verdict of unlawful killing. Those matters are supported by documentary exhibits and do not depend solely on her recollection.

[18] The main weaknesses concern the extent of her financial loss and dependency. Her affidavit presents Chacadan as an essential contributor, while in cross-examination she accepted that farming had been a family enterprise and that other children had helped in the past. That however does not wholly contradict her evidence because she explained that by the time of Chacadan's death the others were no longer available. It does, however, qualify the strength of any suggestion that he was the only source of assistance.

[19] There is also limited documentary support for the alleged EC\$700 weekly income. Her explanation is plausible in my view in the context of informal farming more so as I accept her evidence on this issue that money was not saved but used for daily expenses.

[20] Her medical evidence is also somewhat weakened by the fact that she did not pursue specialist psychiatric evaluation after the 2024 medical report. In my view, however, that does not mean she did not suffer grief or distress but it limits the Court's ability to make

detailed findings about diagnosis, causation and continuing medical impact. All of these are issues which go to damages and not liability.

Mr. Verne Garde - Commissioner of Police:

[21] Mr. Verne Garde gave evidence as Commissioner of Police of the Royal Saint Lucia Police Force. He stated that he had held that office from 2 September 2024 and had been a police officer since October 1997. His evidence was partly from his own knowledge and partly from information obtained from Crown Counsel and from police records.

[22] He accepted that Chacadan Daniel was detained at the Micoud Police Station and that he was found dead in his cell there on 23 October 2013. He did not admit Frances Daniel's account of what she saw in the cell but he did not positively deny it either.

[23] On the arrest, the Commissioner's affidavit stated that a warrant was duly issued on 15 October 2013 by the Second District Court for Chacadan Daniel's arrest and that it was lawfully executed. The exhibited warrant is headed "Warrant to Arrest Defendant in First Instance."

[24] The Commissioner relied heavily on the post-mortem report of Dr Stephen King. That report recorded the cause of death as ligature hanging or ligature strangulation, with blunt force trauma to the vertex of the head. The report also stated that the pathologist favoured the scenario of self-inflicted ligature hanging, with blunt trauma to the head from forceful contact with the concrete ceiling of the cell. However, the report also identified an alternative scenario involving blunt trauma rendering the deceased unconscious, followed by ligature strangulation and staging of the scene.

[25] The Commissioner accepted that the Coroner's Inquest returned a finding of unlawful killing but his affidavit emphasised that an inquest is a fact-finding process and not a criminal trial. His position was that the inquest did not apportion criminal guilt and that any constitutional claim was premature before the criminal investigation and any criminal trial had been completed.

[26] He denied that the authorities had failed to investigate. His evidence was that the investigation was still ongoing, that evidence was continually being gathered and that delays had occurred because key evidence and exhibits had not previously been located. He said those exhibits had since been found and that the investigation was proceeding.

[27] He also stated that the file had been passed to the Director of Public Prosecutions and to the Regional Security System for further investigation. He identified General Kerry Waterman of the RSS as assisting the RSLPF. He said that, since becoming Commissioner, he had given the matter his full attention, provided updates to Frances Daniel, and worked to bring the matter to resolution.

Cross-examination:

[28] In cross-examination, the Commissioner accepted that the warrant was issued on 15 October 2013 but he could not identify the signature on it. He also could not say when Chacadan Daniel was arrested under the warrant, how long he had been in police custody before his death, or what court date the warrant related to. He rejected the description of the document as a bench warrant and said it was a warrant of arrest in the first instance.

[29] He accepted that the matter went before a Coroner and that a verdict was returned. Although he could not recall the exact wording, he accepted that the verdict was one of unlawful killing. He further accepted that, where such a verdict is returned, the normal course is to investigate and bring the matter before the court.

[30] When asked why the investigation had taken so long, he said that when he took office on 2 September 2024, he reviewed this case along with others. He said he spoke with the investigators and gave instructions to ensure that all existing and further lines of inquiry were pursued. He identified Mr Waterman as one of the persons involved in bringing the matter to closure.

[31] He denied that the investigation had stalled before his intervention. His evidence was that the investigation was active, that the RSS had taken conduct of aspects of it and

that a forensic pathologist had been engaged. However, he accepted that further lines of inquiry remained to be done.

[32] On contact with Frances Daniel, he said that, to the best of his knowledge, he had spoken with her on two occasions and that she had been briefed from time to time. He also said she had been contacted for DNA evidence and that DNA sampling had been done. This differed from Frances Daniel's evidence that she had spoken to him once.

[33] He explained the roles of the police, the DPP and the RSS. He said there was one investigation, not two. The file originated with the police. In a matter of this nature, the police collate the facts and consult the DPP, who may guide the police, direct further inquiries, or ultimately direct that charges be laid. In re-examination, he confirmed that the DPP does not investigate and that the investigation rests with the RSLPF.

[34] As to the current state of the investigation, he said that in December 2025 forensic analysis was carried out on evidence and forensic testing was done involving some officers and family members. He also said the matter had been referred to a forensic pathologist for a peer review of the first pathologist's report. At the time of cross-examination, the police were still awaiting DNA results and the peer review.

[35] In my view, the Commissioner's evidence contains some important admissions. He accepts that Chacadan Daniel died in police custody, that the Coroner's Inquest returned an unlawful killing verdict and that the ordinary consequence of such a verdict is further investigation with a view to bringing the matter before the court. Those admissions support the central factual foundation of the Claimant's case.

[36] The first weakness concerns delay. The Commissioner maintained that the investigation was active but his cross-examination shows that significant investigative steps were still outstanding more than 12 years after the death and more than 10 years after the inquest verdict. His evidence that he identified further lines of inquiry only after taking office in September 2024 supports his personal diligence, but it also highlights the absence of a clear explanation for the earlier delay.

[37] The second issue is the role of the DPP. The affidavit says the file was passed to the DPP “to take over the prosecution” but in cross-examination the Commissioner clarified that the DPP does not investigate and that the police remain responsible for the investigation. That is not a direct contradiction, but it is an important qualification. It suggests that the matter was not necessarily ready for prosecution but rather, the investigation remained incomplete and subject to DPP guidance.

[38] The third weakness concerns the updates allegedly given to the Claimant. The affidavit says the Commissioner consistently provided updates. In cross-examination, his personal evidence was that he spoke to her on two occasions. The Claimant’s evidence was that she spoke to him once. The difference may not be decisive, but it weakens the suggestion of consistent or meaningful communication, especially where no final outcome had been communicated.

[39] The fourth issue concerns the post-mortem report. The Commissioner relies on the pathologist’s preferred view that the death was self-inflicted ligature hanging. However, the same report also records an alternative scenario involving blunt trauma, unconsciousness, later strangulation and staging. The Commissioner’s evidence does not fully address how that medical ambiguity is to be reconciled with the Coroner’s verdict of unlawful killing.

[40] Overall, I found the Commissioner to be a honest straightforward witness who did not shy away from necessary admissions. The Court was left with the impression however that little happened prior to Mr. Garde becoming Commissioner of Police and frontally tackling this aged investigation. Although Commissioner Garde seems to have accelerated the investigation after a long lull, his evidence confirms that no final investigative or prosecutorial outcome has yet been reached and leaves largely unexplained the substantial passage of time since 2013 and since the 2015 inquest.

Dr Stephen King:

[41] Dr Stephen King is the Pathologist who conducted the autopsy on Chacadan Daniel and prepared the post-mortem report. The report records the cause of death as “ligature

hanging/ligature strangulation” with “contusion to the vertex of the head.” It identifies asphyxia from forceful compression of the airway and neck vessels as the immediate mechanism of death.

[42] The report noted a ligature mark around the neck, together with abrasions to the front of the neck. It also recorded a contusion to the top of the head. The head injury was described as consistent with moderate blunt force trauma and significant enough to cause altered consciousness. The report otherwise noted an absence of major injuries to the body, apart from a healing laceration to the foot.

[43] Dr King’s opinion was that there were two possible scenarios. The first was self-inflicted ligature hanging, with the head injury resulting from forceful contact with the concrete ceiling of the cell. The second was blunt trauma to the head rendering Chacadan unconscious, followed by ligature strangulation and staging of the scene. Dr King stated that, on balance, he favoured the first scenario.

[44] The report is therefore not a simple finding of suicide. It identifies hanging or strangulation as the mechanism of death, favours self-inflicted hanging, but expressly recognises the alternative possibility of an assault followed by strangulation and staging.

Cross-examination:

[45] In cross-examination, Dr King accepted that his role as a pathologist was to give medical findings and opinions, not to determine who caused the death. He accepted that questions of legal responsibility were for the Court.

[46] He accepted that the superficial abrasions on the neck lacked vital reaction and could have occurred after death. However, he distinguished those abrasions from the ligature mark itself. His evidence remained that the ligature mark was ante-mortem, meaning it was caused before death.

[47] On the head injury, Dr King accepted that the blunt force injury to the top of the head was significant enough to alter consciousness. He said he could not identify the precise object or surface involved, only that it was a blunt surface or object. He explained that,

on the self-inflicted scenario, the injury could have resulted from contact with the concrete ceiling or from agonal spasm during asphyxiation, causing the head to strike a surface.

[48] He also accepted the second scenario in his report, that the deceased may have suffered blunt trauma to the head, then been strangled, with the scene staged thereafter. When it was put to him that an unconscious man could not hang himself, he accepted the proposition in principle.

[49] On time of death, Dr King accepted that there was no definitive time of death. He said rigor mortis observed at the autopsy would not assist much because the autopsy took place later. He indicated that evidence from persons who saw the body at the scene, including the doctor and fire officer, would have been important. He also said the note that the body was cold struck him as unusual if death had occurred only minutes earlier.

[50] In re-examination, Dr King explained that he favoured the self-inflicted scenario mainly because of the relative absence of other injuries to the body. He also referred to the discontinuous nature of the ligature mark at the front of the neck, which he considered suggestive of “tenting” rather than full encirclement.

[51] Dr King’s evidence does not contain a direct contradiction in the ordinary sense. However, the cross-examination significantly qualifies the strength of his preferred opinion.

[52] First, although the report favours self-inflicted hanging, Dr King accepted that the alternative scenario of blunt force trauma followed by strangulation and staging was also possible. That is important because the Court is not left with only one medical explanation.

[53] Second, the head injury is a material difficulty. Dr King accepted that it was significant enough to alter consciousness. If the head injury occurred before the ligature event and rendered Chacadan unconscious, that would be inconsistent with self-hanging. Dr

King's preferred view therefore depends on the head injury occurring during or as part of a self-inflicted hanging scenario, rather than as an incapacitating blow beforehand.

[54] Third, the superficial neck abrasions do not conclusively prove that force was applied during life. Dr King accepted they lacked vital reaction and could have occurred after death. However, he maintained that the ligature mark itself was ante-mortem.

[55] Fourth, the time of death remains uncertain. Dr King accepted that there was no definitive time of death and that the observation that the body was cold was unusual if death had occurred only minutes before discovery. This leaves a factual gap which may be relevant to the reliability of the police account of events immediately before the body was found.

[56] Overall, Dr King's evidence supports ligature compression as the medical mechanism of death and gives the Defendant some support because he favoured self-inflicted hanging. However, his cross-examination leaves important forensic uncertainty. His opinion does not exclude unlawful killing, does not identify who caused death and expressly accepts a possible scenario involving blunt force trauma, strangulation and staging.

THE ISSUES:

[57] The case has narrowed materially by the close of trial. Although the amended claim originally sought a declaration that Chacadan Daniel's right to life had been violated, the Claimant's post-trial submissions accept the effect of **Cheryl Bertrand v Attorney General**² and no longer pursue that relief. The case is now put as Frances Daniel's own claim: that the State's prolonged failure to conduct a prompt, effective, independent and conclusive investigation into her son's death in police custody amounts to a continuing breach of her constitutional right to the protection of the law, as declared in section 1(a) of the Constitution and protected by Chapter I, including section 8.

² SLUHCVP2021/0014

[58] In light of the evidence and submissions, the real issues appear to be these:

- 1) Whether Frances Daniel has standing to bring a personal constitutional claim for breach of the right to the protection of the law having regard to **Cheryl Bertrand**.
- 2) Whether the State failed to conduct a prompt, effective, independent and reasonably timely investigation into Chacadan Daniel's death in custody.
- 3) Whether any alternative remedy bars or limits constitutional relief.
- 4) What relief, including declarations, investigative directions and damages, should be granted.

THE LAW:

[59] **Section 1(a) of the Constitution of Saint Lucia** provides that:

“1. Fundamental rights and freedoms

Whereas every person in Saint Lucia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his or her race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

- (a) life, liberty, security of the person, equality before the law **and the protection of the law**;
- (b)

[60] **Section 2(1) of the Constitution** further provides that: “A person shall not be deprived of his or her life intentionally save in execution of the sentence of a court in respect of a criminal offence under any law of which he or she has been convicted.”

[61] Though lengthy, the Court considers it necessary in this case to reproduce **Section 8 of the Constitution** in its entirety. It states as follows:

“8. Provisions to secure protection of law

- (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.
- (2) Every person who is charged with a criminal offence—
 - (a) shall be presumed to be innocent until he or she is proved or has pleaded guilty;
 - (b) shall be informed as soon as reasonably practicable, in a language that he or she understands and in detail, of the nature of the offence charged;
 - (c) shall be given adequate time and facilities for the preparation of his or her defence;
 - (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal practitioner of his or her own choice;
 - (e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and
 - (f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand the language used at the trial, and except with his or her own consent the trial shall not take place in his or her absence unless he or she so conducts himself or herself as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence:

Provided that the trial may take place in his or her absence in any case in which it is so provided by a law under which he or she is entitled to adequate notice of the charge and the date, time and place of the trial and a reasonable opportunity of appearing before the court.

- (3) When a person is tried for any criminal offence, the accused person or any person authorised by him or her in that behalf shall, if he or she so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.
- (4) A person shall not be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.
- (5) A person who shows that he or she has been tried by a competent court for a criminal offence and either convicted or acquitted shall not again be tried for that offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.
- (6) A person shall not be tried for a criminal offence if he or she shows that he or she has been pardoned for that offence.
- (7) A person who is tried for a criminal offence shall not be compelled to give evidence at the trial.
- (8) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.
- (9) Where the existence or extent of any civil right or obligation has been determined in proceedings in any court or before any other authority any party to those proceedings shall, if he or she so requires and subject to payment of such reasonable fee as may be prescribed by law, be entitled to obtain within a reasonable time after the judgment or other determination a copy of any record of the proceedings made by or on behalf of the court or other authority.
- (10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including

the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in subsection (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and the legal practitioners representing them to such extent as the court or other authority—

(a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of 18 years or the protection of the private lives of persons concerned in the proceedings; or

(b) may by law be empowered or required to do in the interests of defence, public safety or public order.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(a) subsection (2)(a) to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2)(e) to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) subsection (5) to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment awarded him or her under that disciplinary law.

(13) In the case of any person who is held in lawful detention the provisions of subsection (1), (2)(d), (2)(e) and (3) shall not apply in relation to his or her trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In this section “criminal offence” means a criminal offence under a law.”

[62] Section 16 of the Constitution provides the procedure for making a claim for breach of the Constitution and sets out the jurisdiction of the High Court. It is not in itself a right or obligation conferring section.

[63] A further question of law arose which the Court considered necessary to be addressed, given the Defendant's submission that section 8 of the **Constitution** is concerned only with persons charged with criminal offences, or with proceedings for the determination of civil rights and obligations, and that on that submission, the Claimant, who was neither charged with an offence nor a party to any such proceedings, cannot rely on section 8.

[64] The Court therefore invited the parties to address the following questions by way of further submissions: (i) whether the protection of the law, in the context of the Constitution, relates only to the class of persons set out in section 8 of the Constitution; or (ii) whether, having regard to the majority decision of the Caribbean Court of Justice in **Jabari Sensimania Nervais and Dwayne Omar Severin v The Queen**³ the Court may apply a more liberal approach to the right to the protection of the law; and (iii) whether section 1(a) of the Constitution creates a broader right to the protection of the law, with section 8 being one subset of that right.

[65] The Claimant submits that, applying the majority decision in **Nervais**, section 1(a) of the **Constitution**, read together with section 8, permits the Court to give effect to the broader scope of the right to the protection of the law. She contends that section 8 provides specific procedural protections in the context of criminal and civil proceedings but does not exhaust the wider right declared in section 1(a). The Claimant further submitted that her reliance on section 1(a) does not introduce a new claim or alter the factual foundation of her claim, but gives effect to the full scope of her right to the protection of the law which was already invoked, because her pleaded complaint has throughout been the State's prolonged failure to conduct an effective investigation into her son's death and the resulting denial of her own right to the protection of the law.

³ [2018] CCJ 19 (AJ)

[66] The Defendant accepted that **Nervais** broadened the interpretation of the right to the protection of the law but contended that it did so only to the extent of recognising safeguards against irrationality, unreasonableness, fundamental unfairness and the arbitrary exercise of power. It nevertheless submitted that section 1(a) remains subject to the limitations contained in sections 2 to 15 and, in this case, to the classes and circumstances specified in section 8. Since the Claimant was neither charged with a criminal offence nor a party to proceedings determining a civil right, the Defendant contended that she could not invoke either section 1(a) or section 8.

[67] The Defendant further submitted that **Nervais** did not displace **Cheryl Bertrand** which held that constitutional claims under sections 2 to 15 of the Constitution are strictly personal and do not survive the alleged right-holder's death. It argued that the pleadings and evidence identify Chacadan Daniel as the affected right-holder and the Claimant's personal grief, distress, alleged financial loss, and dissatisfaction with the pace of investigation do not transform her into the person whose section 8 or any other constitutional rights were contravened.

[68] There is force in the Defendant's submission if section 8 is read in isolation. Section 8(1) to 8(7) deal principally with persons charged with criminal offences. Section 8(8) concerns a court or other authority prescribed by law for the determination of the existence or extent of a civil right or obligation. A police investigation into a death in custody is not, in the ordinary sense, a criminal trial of the Claimant or a proceeding to determine her civil rights.

[69] However, the inquiry does not end there. Section 1 of the Constitution provides that every person in Saint Lucia is entitled to the fundamental rights and freedoms set out therein, including "life, liberty, security of the person, equality before the law and the protection of the law." It also recognises protection for family life, personal privacy and property. Section 1 then provides that the provisions of Chapter I shall have effect for the purpose of affording protection to those rights and freedoms, subject to the limitations contained in those provisions.

[70] The wording of section 1 of the Saint Lucia Constitution is materially similar in structure to **section 11 of the Constitution of Barbados**⁴ considered by the Caribbean Court of Justice in **Nervais**. In that case, the majority held that section 11 was not merely preambular, but an enacting provision which declared fundamental rights, including the right to the protection of the law. The Court rejected the view that the use of the word “whereas” deprived the section of binding effect. It held that the rights declared in section 11 supplied the foundation for the detailed protective provisions which followed.

[71] Of particular importance is the Court’s treatment of the right to the protection of the law. The CCJ stated that the equivalent fair-trial provision did not provide and did not purport to provide, an exhaustive definition of the right to the protection of the law. The Court observed that the right is broad and pervasive and that it would be impossible to encapsulate in a single section all the ways in which it may be invoked or infringed. The fair-trial provision dealt only with the impact of the right on legal proceedings, criminal and civil but the right itself was wider.

[72] I recognise that **Nervais** is a decision binding on this Court. I also recognise that Justice Anderson, in a separate judgment, expressed difficulty with the majority’s conclusion that section 11 of the Barbados Constitution was independently enforceable. However, the majority decision in **Nervais** is binding, particularly because the language and structure of the Saint Lucia provision are materially similar. It is also consistent with the earlier CCJ approach to the protection of the law in **Attorney General v Joseph and Boyce**⁵ and with the generous and purposive approach to constitutional interpretation.

[73] I therefore accept that section 8 should not be read as the sole and complete definition of the right to the protection of the law in Saint Lucia. Rather, section 1(a) declares the right to the protection of the law, and section 8 provides specific procedural protections

⁴ “11. Whereas every person in Barbados is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following namely -(c) the protection of the law;”.

⁵ CCJ Appeal No. CV2 of 2005.

in criminal and civil proceedings. Section 8 is therefore part of the constitutional protection of the law, but it does not exhaust the right declared by section 1(a).

[74] This conclusion does not mean that every dissatisfaction with a police investigation becomes a constitutional claim. Nor does it mean that a complainant or relative has a constitutional right to require that any person be charged or prosecuted. The right to the protection of the law does not transfer prosecutorial discretion from the Director of Public Prosecutions to the Court. It does, however, require the State to act in a manner consistent with legality, rationality, fairness, accountability and the rule of law where its legal processes are invoked in circumstances engaging fundamental rights.

[75] The present case is not an ordinary complaint about investigative delay. It concerns a death in police custody. The deceased was under the exclusive control of the State. The coroner's jury returned a verdict of unlawful killing. The Commissioner of Police accepted in cross-examination that where such a verdict is returned, the normal course is to investigate and bring the matter before the court. Yet, more than a decade after the death and more than ten years after the inquest verdict, the investigation remained incomplete and no reasoned final decision had been communicated to the Claimant.

[76] In those circumstances, the Claimant's complaint falls within the protection of the law declared by section 1(a), read together with the protective provisions of Chapter I, including section 8. The constitutional wrong alleged is not merely that Chacadan Daniel died. Nor is it that the Claimant inherited his constitutional rights. The wrong alleged is that the State failed to provide a legal process capable, within a reasonable time, of addressing a death which occurred in its custody and which had been the subject of an official verdict of unlawful killing.

[77] I am also satisfied that the Claimant is not precluded merely because section 16 refers to contraventions of sections 2 to 15. In **Nervais**, the CCJ rejected the argument that the omission of section 11 from the equivalent enforcement provision meant that the rights declared in that section were unenforceable. The Court held that the Constitution itself envisaged that the stated enforcement provision was not the only method of

bringing proceedings and that the court had an implied or inherent jurisdiction to grant relief to protect and vindicate constitutional rights.

[78] In Saint Lucia, section 16 provides the specific redress procedure for breaches of sections 2 to 15, but it should not be read so narrowly as to render ineffective the protection of the law declared in section 1(a). Further, section 105 of the Constitution confirms the High Court's original jurisdiction in constitutional questions and permits relief where a provision of the Constitution has been, or is being, contravened and the applicant has a relevant interest. The Claimant plainly has a relevant interest in the alleged constitutional failure, because the complaint concerns the unresolved investigation into the death of her son while in State custody.

[79] Accordingly, I reject the Defendant's submission that the Claimant's case must fail simply because she was not a person charged with a criminal offence and because the facts do not fall neatly within section 8(1) or section 8(8). The protection of the law is broader than those specific procedural guarantees. In my view given the exceptional circumstances of a death in custody followed by an unlawful killing verdict and prolonged unexplained investigative delay, the Claimant, as mother and next of kin, is entitled rely on the constitutional right to the protection of the law in section 1(a), read with section 8 and the wider structure of Chapter I.

[80] I also do not regard this as deciding an unpleaded claim. The Claimant's pleaded complaint has always been that the State's failure to investigate denied her the protection of the law. Section 1(a) is relied upon not to introduce a new factual complaint, but to identify the constitutional source and breadth of the right to the protection of the law which the Claimant says has been infringed. The Defendant fully met that case by arguing that section 8 was confined to persons charged with criminal offences and did not extend to the Claimant. The issue was therefore squarely joined, whether the constitutional protection of the law is confined to the express procedural guarantees in section 8 or whether, as the Claimant contends, it is broader.

ANALYSIS:

Issue 1: Whether Frances Daniel has standing to bring a personal constitutional claim for breach of the right to the protection of the law having regard to Cheryl Bertrand

[81] The Defendant's first objection is that the claim is legally defective. It submits that constitutional rights are personal to the right-holder and do not survive death. On that basis, the Defendant relies on **Cheryl Bertrand**, contending that the Claimant cannot bring a constitutional claim in respect of alleged breaches of Chacadan Daniel's rights after his death. The Defendant says that any attempt to vindicate the deceased's right to life, or to claim constitutional damages arising from that right, is impermissible.

[82] In my view that submission is correct to an extent. The Claimant cannot maintain a claim which is, in substance, Chacadan Daniel's own constitutional claim. The Claimant appears to accept this. In her post-trial submissions, she expressly states that, having regard to **Cheryl Bertrand**, she no longer pursues the declaration that Chacadan Daniel's right to life under Article 2(1) was violated. She says the case is now confined to the State's continuing failure to conduct a prompt, effective and independent investigation into his death, which she says breaches her own right to the protection of the law under sections 1(a) and 8 of the Constitution.

[83] The issue is therefore not whether Chacadan's constitutional rights survived his death. They do not, at least for the purposes of a claim by his estate or representative, having regard to **Cheryl Bertrand**. The real issue is narrower; whether Frances Daniel, as the mother and next of kin of a person who died in police custody, may say that the State's prolonged failure to investigate that death has contravened her own constitutional right to the protection of the law.

[84] The recent Trinidad and Tobago judgment in **Tot Lampkin v Attorney General of Trinidad and Tobago**⁶ is relevant to that distinction, though it is not binding on this Court. In that case, the Court had earlier found that the deceased's rights to life and

⁶ CV2021-03178, Trinidad and Tobago (unreported).

protection of the law had been infringed, but it also made a separate declaration that the rights of the deceased's mother and minor son to respect for their family life had been infringed by the acts and omissions of the State. The judgment therefore illustrates an important principle, a constitutional claim by a family member is not necessarily derivative merely because it arises from the death of another person. A close relative may, in a proper case, suffer a distinct constitutional wrong.

[85] That said, **Lampkin** must be approached with caution in the present case. First, it is a decision of the High Court of Trinidad and Tobago, not a binding decision on this Court or in this jurisdiction. Secondly, the Trinidad and Tobago Constitution expressly protects respect for private and family life, whereas the present claim is framed under Saint Lucia's protection of the law provision. Thirdly, **Lampkin** proceeded in part on declarations concerning the deceased's own rights, which would raise difficulties in Saint Lucia after **Cheryl Bertrand**.

[86] The decision in **Lampkin** is therefore not relied upon as authority that constitutional rights survive death, nor as authority binding on this Court. Its assistance lies in its recognition that State failures surrounding the death of one person may, in an appropriate case, give rise to a separate constitutional injury to close relatives. That is the limited use to which I put it. It supports the distinction between a claim on behalf of the deceased's constitutional right, which is not permitted according to **Cheryl Bertrand** and a permissible personal claim relating to the Claimant's own Constitutional rights, but the present case must ultimately be resolved by reference to the Constitution of Saint Lucia and the binding effect of **Cheryl Bertrand**.

[87] In my view the value of **Lampkin** is modest but important. It supports the proposition that the Court should look carefully at the substance of the claim and ask whether the Claimant is truly asserting the deceased's rights, or whether she is asserting an independent constitutional injury suffered by herself. In **Lampkin**, the Court recognised that the mother and child suffered their own constitutional harm from State failures connected to the death. The same distinction is available here too.

[88] On the facts of the present case I find that the Claimant's claim is personal to her. Her complaint is that, after her son died in police custody, the State failed over many years to provide a prompt, effective, independent and conclusive investigation. She says she repeatedly sought answers from State authorities, received no meaningful response and remains without closure or accountability. The Claimant's post-trial submissions put the point squarely, the claim is not brought on behalf of the deceased's estate but is based on the State's continuing failure to investigate and the resulting denial of her own right to the protection of the law.

[89] The Defendant's answer is that section 8 is concerned with protection of the law in relation to persons charged with criminal offences and that the Claimant was not charged, tried, detained, or otherwise subject to criminal proceedings. It also says section 16 requires the contravention to be "in relation to" the person bringing the claim and that no such personal contravention has been shown.

[90] Those points appear attractive at first blush but do not arise in the circumstances of this case. It is true that much of section 8 is expressed in terms of criminal charges, trials and civil proceedings. However, the protection of the law is not exhausted by those specific procedural guarantees. The broader protection of the law requires that where the legal system provides mechanisms for investigation, accountability and redress, those mechanisms must not be rendered ineffective by prolonged and unexplained State inaction. In my view, given the decision in **Nervais**, section 8 is only one manifestation of the right to protection of the law. Section 8 is not where the guillotine falls on the breath of the right.

[91] I do not hold or suggest that every relative of a deceased person may bring a constitutional claim whenever dissatisfied with the pace or outcome of a police investigation. Nor do I hold or suggest that a Claimant has a constitutional right to require the prosecution of any particular person. The present case however is exceptional because it concerns a death in police custody, an official verdict of unlawful killing and a delay of more than a decade without any concluded investigative or prosecutorial outcome. In my view, in such circumstances, the Claimant, the mother and next of kin

of the deceased has a direct and legitimate interest in the State's investigative response. The alleged wrong is therefore not merely the death of Chacadan Daniel, but the continuing failure of the State to provide the Claimant with an effective legal process capable of addressing the circumstances of that death.

[92] On that basis, I find that the Claimant's claim is not an attempt to enforce her son's right after his death. It is a claim that the State's continuing investigative failure has affected her own right to the protection of the law. I therefore reject the Defendant's submission that the claim is barred in its entirety by **Cheryl Bertrand**.

[93] Accordingly, I refuse the invitation to strike out or dismiss the Claimant's claim merely because it arises from her son's death. In my view, properly understood, the claim is not an estate claim. It is a personal claim that the State's continuing failure to investigate a death in custody has denied her the protection of the law.

[94] I hold that the Claimant has standing to pursue her own sections 1 (a) and 8 claim arising from the alleged continuing investigative failure, but she cannot pursue relief for breach of Chacadan Daniel's own constitutional rights.

Issue 2: Whether there was a failure to investigate within a reasonable time, and whether that failure continues.

[95] This is the central factual and constitutional issue in the case. Once the claim is confined to the Claimant's own right to the protection of the law, the question becomes whether the State's response to Chacadan Daniel's death in custody was prompt, effective, independent and capable of producing accountability.

[96] The Claimant's case is straightforward. Chacadan Daniel died on 23 October 2013 while detained at the Micoud Police Station. A Coroner's Inquest was held in July 2015 and returned a verdict of unlawful killing. Yet, by the time of trial in 2026, no investigation had been completed, no prosecution had been commenced and no final explanation had been given to his mother. The Claimant submits that an investigation which remains "ongoing" almost 13 years after a death in custody cannot sensibly be described as prompt or effective.

[97] The Defendant's answer is that there has been no failure to investigate. The Defendant says the investigation remains active, that the file was passed to the DPP and the RSS, that General Kerry Waterman of the RSS has been assisting and that the Commissioner has been working diligently to bring the matter to resolution. The Commissioner's affidavit also says that delays were caused by key evidence and exhibits not previously being located, and that the investigation is now proceeding.

[98] In my view, the State's submission has limited force. The evidence does show that the police have recently taken steps. The present Commissioner said in evidence that after taking office in September 2024 he reviewed the case, spoke with investigators, gave instructions on further lines of inquiry and sought to bring the matter to closure. In cross-examination, he said that forensic analysis and DNA testing had been done in December 2025 and that a forensic pathologist had been asked to conduct a peer review.

[99] The difficulty for the Defendant is that those recent steps do not explain the earlier delay. They show that the present Commissioner treated the matter seriously when it came to his attention, but they also reveal that, more than a decade after the death and more than ten years after the inquest verdict, basic investigative work was still incomplete. By the Commissioner's own evidence, the police were still awaiting DNA results and a peer review.

[100] The Commissioner's evidence also left important factual gaps. He could not say when Chacadan was arrested, under the warrant, how long he had been detained before his death, or what court date the warrant related to. He accepted that the coroner's verdict was one of unlawful killing and that, where such a verdict is returned, the normal course is to investigate and bring the matter before the court. These answers are significant. They show both the seriousness of the duty to investigate and the absence, even at trial, of a complete investigation.

[101] The Defendant says the claim is premature because the investigation is ongoing. In my view that argument is not persuasive on these facts. There may be instances where a constitutional claim should await the completion of an active investigation, especially

where the delay is short, properly explained and the investigative process is visibly moving forward. This is not such a case. The death occurred in 2013. The inquest verdict was returned in 2015. The State is still saying in 2026 that the matter is under investigation. At some point, the continuation of an investigation without conclusion becomes part of the alleged breach rather than an answer to it.

[102] The Claimant's reliance on **Edwards v United Kingdom**⁷, **R (Amin) v Secretary of State for the Home Department**⁸, **Brecknell v United Kingdom**⁹ and **Šilih v Slovenia**¹⁰ is helpful here, although those authorities are not binding in this jurisdiction. I take from them the general principle that a death in custody requires an investigation that is prompt, effective, independent, capable of establishing the relevant facts and sufficiently open to maintain public confidence. The Defendant is right that this Court is not bound by the European Convention jurisprudence and that foreign cases cannot override local authorities. That said, those cases remain useful as persuasive guidance on the content of a meaningful investigative obligation where the deceased was wholly under State control. More so, since the Defendant has produced no authority from this jurisdiction on the very point, they invite me to approach with caution on the foreign authorities.

[103] I emphasise that I do not import the European Convention on Human Rights into the domestic law. The obligation in this case is anchored in the Claimant's right to the protection of the law under the Constitution of Saint Lucia. The European and English authorities are used only because they identify practical features of an effective investigation into a custodial death, promptness, reasonable expedition, independence, capacity to establish the relevant facts, sufficient public scrutiny and appropriate involvement of the next of kin. Those features are consistent with, rather than contrary to, the constitutional guarantee of the protection of the law.

⁷ (2002) 35 EHRR 19.

⁸ [2003] UKHL 51.

⁹ (2007) 46 EHRR 42.

¹⁰ (2009) 49 EHRR 37.

[104] The need for a proper investigation is also reinforced by the medical evidence presented by the Defendant. Dr King favoured self-inflicted ligature hanging, but his report also recognised a second possible scenario of blunt trauma to the head rendering Chacadan unconscious, followed by ligature strangulation and staging of the scene. In cross-examination, Dr King accepted that his role was not to determine who caused the death, that the head injury was significant enough to alter consciousness, and that there was no definitive time of death. That evidence does not prove unlawful killing by any named person, but it does show why the investigation needed to be careful, timely and conclusive.

[105] The coroner's verdict is also an important factor in my view. It is not binding on this Court and does not establish criminal liability but it was an official verdict of unlawful killing following a statutory inquest. The Commissioner accepted the verdict and accepted that it called for further investigation. The State was therefore on clear notice, from at least 2015, that the death required serious follow-up.

[106] The evidential omissions are also relevant. The Claimant points out that the State did not call the officers who were on duty at the Micoud Police Station, the current investigating officer, Acting Inspector Peter St Catherine, or the Fire Service officer who examined the body shortly after discovery. The Claimant submits that the Fire Service officer's observation that the body was cold shortly after the alleged discovery time was material to the time-of-death issue. The absence of these witnesses does not by itself prove a constitutional breach, but it weakens the Defendant's attempt to show that the investigation has been effective and that the delay is justified.

[107] Whilst I accept the Commissioner's evidence without reservation, he was only able to give direct evidence of matters which occurred within the last two years when he assumed office. Any other information which he was able to speak to came from information acquired by virtue of his position. He was however, without criticism, unable to explain or justify the prolonged delay in the investigation.

[108] I find that the State has not provided a coherent explanation for the passage of time between 2013 and 2024 before Commissioner Garde assumed office. It has not shown that the delay was unavoidable. It has not shown that the Claimant was given meaningful information or meaningful participation. It has not shown that the investigation has been capable, within a reasonable time, of producing either accountability or a reasoned decision not to prosecute.

[109] In the circumstances, I find that there has been a failure to investigate within a reasonable time. I also find that the State has not shown that the investigation, viewed as a whole, was sufficiently prompt, effective, transparent or capable of producing accountability within a reasonable time. Although there was some involvement of the RSS and more recent forensic activity, that evidence does not explain the long period of inactivity or lack of conclusion between the death in 2013, the inquest verdict in 2015, and the trial of this claim. The State's prolonged and inadequately explained failure to complete the investigation into Chacadan Daniel's death, particularly after a Coroner's verdict of unlawful killing, amounts to a continuing denial of the Claimant's right to the protection of the law.

Issue 3: Whether alternative remedies bar or limit constitutional relief.

[110] The Defendant submits that constitutional relief should either be refused or limited because other remedies were, or could have been, available to the Claimant. In particular, the Defendant argues that if the Claimant wished to pursue compensation for loss of financial support, personal injury, emotional distress, or other private law loss, she could have pursued ordinary civil remedies. The Defendant also relies on prescription, submitting that claims such as negligence, personal injury, or other civil claims are now out of time and that the Claimant should not be permitted to use constitutional proceedings to avoid ordinary prescription rules.

[111] That submission is not without force, but it requires careful separation of the different remedies sought. The Defendant is right that constitutional proceedings should not be used as a substitute for ordinary civil claims where those ordinary claims would provide

adequate redress. It is also right that, if the Claimant seeks ordinary dependency-style damages, personal injury damages, or damages for financial loss, the Court must consider whether those claims were properly pleaded, proved and whether they are more appropriately private law claims.

[112] However, that does not answer the core constitutional complaint. The essence of the claim is not simply that the Claimant suffered financial loss or grief because her son died. The claim is that the State failed, over many years, to conduct a prompt, effective and independent investigation into a death that occurred in police custody and that this continuing failure denied her the protection of the law. Ordinary civil remedies would not necessarily secure that form of redress. A negligence claim might compensate private loss, but it would not necessarily compel or vindicate the public law obligation to investigate a custodial death effectively.

[113] I accept the Claimant's submissions in answer on this point. The Claimant submits that private law remedies could not by themselves compel the State to discharge its constitutional obligation to conduct a proper investigation. She relies on **Attorney General of Trinidad and Tobago v Ramanoop**¹¹ for the principle that constitutional relief remains available where ordinary remedies are inadequate to vindicate the constitutional right. She also says the breach is continuing because the investigation remains incomplete and the State itself continues to say the matter is still under investigation.

[114] There is also an internal difficulty in the Defendant's position. On the one hand, the Defendant says the claim is premature because the investigation is ongoing. On the other hand, it says relief should be refused because alternative remedies are now prescribed. Those two submissions sit uneasily together. If the State's answer to the complaint is that the investigation is still live and incomplete, it is difficult at the same time to say that time has simply passed and the Claimant should be denied relief due to delay in complaining about the consequences of that very delay.

¹¹ [2006] 1 AC 328.

[115] There is an important distinction between ordinary compensation for private loss and constitutional redress for public law failure. If the Claimant had sought damages only because she lost financial assistance from her son, or because she suffered grief and ill-health following his death, the Defendant's alternative-remedy argument would have had much greater force in my view. The gravamen of the claim is different. It is that the State failed to provide an effective investigative process into a death that occurred in its custody. That form of complaint is not adequately met by a private law claim for damages because such a claim would not necessarily address the constitutional need for accountability, public confidence and a meaningful investigation.

[116] On the alternative remedies issue, I hold that the availability of a private law action for damages does not operate as a bar to the Claimant's constitutional claim itself. I find that the alleged continuing failure to investigate a death in custody is a public law matter not adequately addressed by ordinary private law remedies. Section 16 should not be used to duplicate civil claims, but neither should it be read so narrowly as to leave a parent without any remedy where the complaint is a prolonged failure by the State to provide an effective investigative process.

[117] That said, the alternative-remedy argument is still relevant to the scope of relief. The Court is cautious about awarding substantial damages for financial dependency, medical injury, or ordinary grief where those matters resemble private law claims and where the evidence is not strong. Accordingly, I am minded to confine the remedy to what is necessary to vindicate the proven constitutional breach in the form of declaratory relief, an appropriate investigative direction and any modest constitutional or vindicatory award as discussed below.

Issue 4: What relief should be granted.

[118] Having found that the State failed to complete an effective investigation within a reasonable time, the next question is what relief is appropriate. The Claimant seeks declarations, an order for a full and independent investigation with meaningful participation and constitutional damages including vindicatory damages. The Defendant

says the Court should refuse declaratory relief, reject unpleaded or unsupported damages and dismiss the claim with costs.

[119] The first and most appropriate relief would be declaratory. A declaration is particularly suitable where the Court is concerned with a constitutional wrong consisting of prolonged State inaction. Having accepted the Claimant's case, I declare that the State's failure to conduct and complete a prompt, effective and reasonably transparent investigation into Chacadan Daniel's death in custody within a reasonable time breached the Claimant's constitutional right to the protection of the law, as declared in section 1(a) of the Constitution and protected by Chapter I.

[120] The second question is whether the Court should make an investigative order. In principle, it can. The evidence shows that the Commissioner accepted the unlawful killing verdict and accepted that the normal course after such a verdict is further investigation. He also accepted that the investigation remained incomplete and that DNA results and a peer review were still awaited. In those circumstances, a mere declaration may not be enough as the prolonged delay is the very mischief complained of.

[121] However, the Court must be careful not to trespass upon the constitutional or statutory functions of the police or the DPP. It is not for this Court to direct that any person be charged or prosecuted. Those decisions remain for the lawful investigative and prosecutorial authorities. What the Court is minded to do, having found a breach of the Claimant's right to the protection of the law, is require that the State take practical steps to bring the investigative process to a proper conclusion.

[122] I therefore direct that the Defendant shall cause or facilitate the completion of an effective investigation into the death of Chacadan Daniel within a reasonable time and in any event within six months of this judgment. If the investigation cannot reasonably be completed within that period, the Defendant shall, within the same period, provide to the Claimant and the Court a report setting out the steps taken, the steps outstanding, the reason why completion has not yet been achieved and the anticipated timeframe for

completion. Nothing in this order shall be taken as directing the DPP to institute or refrain from instituting criminal proceedings.

[123] The third issue is damages. The Claimant seeks damages for anguish, suffering, financial loss, deterioration in health and vindication of her constitutional rights. The Defendant challenges each of these heads.

[124] On financial hardship, the Defendant says the Claimant did not prove that Chacadan was her sole source of support, did not produce records proving the alleged EC\$700 weekly income and did not show reasonable mitigation. On emotional and physical distress, the Defendant says there is no specialist psychiatric evidence and that the Claimant did not attend the recommended specialist evaluation.

[125] Those criticisms are significant. In my view the Claimant's evidence supports a finding that Chacadan was important to her livelihood and was, in her words, her main helper. The precise financial claim is however weak. There are no bank records, no accounts and no independent evidence proving the alleged EC\$700 weekly income.

[126] Cross-examination also established that farming had historically been a family activity, even though the Claimant maintained that the other children were no longer available to assist. It would therefore be unsafe to make a substantial award for financial loss on a dependency basis. In any event, it was open to the Claimant to obtain a grant of representation, limited or final and pursue a private law claim on behalf of the estate of the deceased. This could have included a dependency claim alleging her dependency on the deceased. That was not done within the time prescribed. To permit damages to be now recovered would be to deprive the State of the prescription defence. In this regard, I make no order for damages in respect of the Claimant's financial claim.

[127] The Claimant's health evidence demonstrates that she has suffered genuine anguish and distress. I however agree with the Defendant that the absence of specialist psychiatric evidence limits any award for diagnosed psychiatric injury. In this regard, I am cautious to avoid treating ordinary grief, however profound, as if it were fully proved medical injury unless the evidence supports that conclusion. There will therefore be an

uplift of the vindictory damages to take into account the genuine anguish and distress suffered by the Claimant.

[128] The strongest basis for damages is therefore constitutional and vindictory. The purpose of such damages is not to compensate the Claimant for Chacadan's death itself, nor to punish the State, but to mark the seriousness of the denial of constitutional protection. **Ramanoop** supports the principle that an additional award may be appropriate to reflect the gravity of the breach, public concern and the need to vindicate the right. The recent **Lampkin** judgment is also useful by analogy on this point. It recognises that, in cases involving serious State failures connected to loss of life, damages may serve both compensatory and vindictory functions, although it arose under the Trinidad and Tobago Constitution and on different facts.

[129] The award, in my view, should be moderate. This is not a case where the Court is awarding damages for the deceased's lost years, his pain and suffering, or a proven breach of his own right to life. Nor is there a strong evidential basis for a large financial dependency award or a substantial psychiatric injury award. Considering that the Court has found a continuing breach of the Claimant's own constitutional right to the protection of the law, a purely nominal award would not adequately reflect the gravity of a custodial death followed by years of unresolved investigation.

[130] The award I make is a global constitutional award directed to the breach which I have found, the prolonged denial of an effective investigative process and the resulting failure to afford the Claimant the protection of the law. It includes a modest element for the distress and frustration caused to the Claimant by that continuing breach, but its principal function is vindictory, as vindictory damages are measured and proportionate to the seriousness and duration of the constitutional breach established.

[131] Taking into account the age of the award in **Inniss v Attorney General of Saint Christopher and Nevis**¹² of \$50,000.00 made 18 years ago and applying an uplift for the genuine anguish and distress suffered, I award the sum of EC\$75,000.00 as a global

¹² [2008] UKPC 42 – delivered on 30th July 2008

constitutional and vindictory award for the breach of the Claimant's right to the protection of the law.

COSTS:

[132] The general rule is that costs follow the event. The Claimant has been successful in her claim and should have her costs. These costs shall be assessed in default of agreement. In assessing these costs however, the Court will take into account the withdrawal of the part of the claim based on **Cheryl Bertrand**.

ORDERS:

[133] For the reasons set out above, I make the following orders:

- 1) It is declared that the Defendant's prolonged failure by the State to conduct and complete a prompt, effective and reasonably transparent investigation into the death of Chacadan Daniel while in police custody breached the Claimant's constitutional right to the protection of the law, as declared in section 1(a) of the Constitution and protected by Chapter I.
- 2) The Defendant shall cause or facilitate the completion of an effective investigation into the death of Chacadan Daniel within a reasonable time and in any event within six months of this judgment. If the investigation cannot reasonably be completed within that period, the Defendant shall, within the same period, provide to the Claimant and the Court a report identifying the investigative steps taken, the steps outstanding, the reasons for non-completion and the anticipated timeframe for completion.
- 3) The Defendant shall pay to the Claimant constitutional and vindictory damages in the sum of EC\$75,000.00.

- 4) The Defendant shall pay the Claimant's costs of this claim to be assessed in default of agreement within twenty-one days of this order.

**Alvin Shiva Pariagsingh
High Court Judge**

By the Court,

Deputy Registrar of the High Court