THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO.: SLUHCV2022/0424

BETWEEN:

ALEXANDER ELLIOTT
(a minor acting by his next friend, NAYA ELLIOTT

Claimant

and

[1] THE BOARD OF MANAGEMENT OF THE ST. MARY'S COLLEGE SECONDARY SCHOOL
[2] THE ATTORNEY GENERAL

Defendants

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence High Court Judge

Appearances:

Mr. Al Elliott with Ms. Mecaira Malaykhan for the Claimant
Mr. Deale Lee for the First Defendant
Mrs. Tina Louison with Mrs. Rochelle John-Charles for the Second Defendant

Present:

Ms. Naya Elliott, next friend
Mr. Anthony Bousquet, Chairman of the 1st Defendant
Ms. Gianneti George, Acting Deputy Chief Education Officer

2023: February 27;
November 17.
Re-issued: 23rd November 2023

JUDGMENT

[1] **CENAC-PHULGENCE, J**: This decision concerns a claim filed by Alexander Elliott ('the minor") acting through his mother Naya Elliott ("Mrs. Elliott") as his next friend against the Board of Management of the St. Mary's College Secondary School ("St. Mary's College" or "the Board" as the context requires)

and the Attorney General of Saint Lucia alleging certain breaches of his constitutional rights.

Material Facts

[2] The facts of this case are largely undisputed. The minor was at the time of the incident which gave rise to this claim a third form student at St. Mary's College. The Board of St. Mary's College issued a Code of Conduct ("the Code") to all students including the minor. The rule for the purposes of this claim is rule 1.19, the relevant part of which mandates that students' hair "must be properly groomed at all times (and) at no point should students' hair be more than one centimetre long or high."

[3] Where there is a breach of this rule, the Code of Conduct provides several avenues to remedy that breach, including: bench detention, a written warning and sending the student home only to return when the necessary change is made; banning the student from playing games for a period of two weeks during breaks or the remainder of the term; or holding a parental conference to resolve any failure to comply.

[4] Contrary to this rule, the minor wore his hair more than one centimetre long. On 5th September 2022, the minor was removed from classes for failing to abide by rule 1.19 of the Code and instructed to call his parents to have his hair cut. Accordingly, he was sent home and told not to return until he made the necessary changes to abide with rule 1.19 of the Code.

[5] Several entreaties by email and otherwise were made by the Principal at the time, Mr. Don Howell ("the Principal") to the minor's parents, more particularly his father, Mr. Al Elliott ('Mr. Elliott"), to either cut or cover his hair, each of which was refused by the parents. The evidence reveals that at no time was a reason given to the Principal or anyone at the Board for their refusal to have the minor's hair cut or covered.

[6] The minor did not comply with the Principal's requests, and his mother as his next friend sought and obtained an interim injunction which was granted by the Court on 9th September 2022 and continued on 7th October 2022 ordering the Board to permit the minor to attend school and classes at St. Mary's College pending the hearing and determination of the substantive hearing of this claim.

[7] By this claim, the claimant seeks declarations that (i) rule 1.19 of the Code breaches the minor's rights to freedom of conscience, freedom of expression and human dignity; (ii) rule 1.19 of the Code is unjust as it is arbitrary in nature and oppressive; (iii) any educational institution's rule which unjustifiably compels the cutting of one's hair is oppressive of and offensive to fundamental human rights, freedoms and dignities and unjust; and (iv) that any educational institutional rule which unjustifiably mandates the covering of one's natural hair is oppressive of and offensive to fundamental human rights, freedoms and dignities and is unjust.

[8] The claimant also seeks an order that the second defendant regularise rules regarding hair at all educational institutions for compliance with the fundamental human rights and freedoms enshrined in the **Constitution of Saint Lucia**[1] ("the Constitution").

[9] The only disputed fact is the allegation that on 5th September 2022, the minor was punished by the Principal and told to sit outside his office for an indefinite period which prevented him from attending classes from 8:30 a.m. to 2:30 p.m. This, the claimant contends caused him humiliation and embarrassment and trespassed his dignity as an individual.

[10] The Principal denies this allegation and counters that the minor was asked to sit outside his office to wait for his mother to pick him up which would have been less disruptive than to remove him from classes. The Principal further notes that it was never intended that the wait would be so protracted and after some time when the minor's parents had not arrived, he was allowed to return to classes.

[1] Cap 1.01, Revised Laws of Saint Lucia 2020.

These facts though disputed are not very material to resolution of the issues in the claim.

Burden of Proof and Pleadings

[11] The burden of proving that rule 1.19 of the Code breaches the claimant's constitutional rights rests on the claimant.

[12] It is to be noted that while the claim and affidavit in support speak to breaches of the minor's right to freedom of expression and conscience and to dignity, they do not specifically refer to the relevant sections of the Constitution except for in the heading of the documents where reference is made to sections 1 and 10. This is in contravention of CPR 56.3(4)(b)[2] which requires a claimant in constitutional proceedings to clearly identify in the pleadings the sections of the Constitution which are alleged to have been breached. It is noted that not even in the joint pre-trial memorandum submitted does the claimant identify the sections of the Constitution which he claims have been breached.

[13] Despite this deficiency, the Court is able to ascertain having clarified and confirmed with Counsel for the claimant, Mr. Al Elliott ("Mr. Elliott") that the sections alleged to have been breached by rule 1.19 of the Code are sections 1, 9 and 10 of the Constitution. I therefore proceed on that basis.

[14] The purpose of CPR 56.3(4)(b) is to enable the other side to be clear as to the breaches of the Constitution alleged to enable them to adequately respond to the claim. The Court has on occasions too numerous to count stressed the importance of pleadings being adequate and properly identifying the case which the other side must meet.[3] In particular, the court has stressed this in relation to public law cases where it is settled law that a claimant who seeks to claim breach of constitutional provisions must show on the face of the pleadings the nature of the alleged violation or contravention that is being asserted.[4]

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[2] In the old Civil Procedure Rules it was rule 56.7(4)(c).

[3] East Caribbean Flour Mills Limited v Ormiston Ken Boyea, Saint Vincent and the Grenadines Civil Appeal No. 12 of 2006, delivered 16th July 2007.

[4] See Shankiel Myland v The Attorney General of Grenada GDAHCV2012/0045 (delivered 9th May 2014) unreported.

Issues:

[15] Having considered the joint pre-trial memorandum filed by the parties, the issues in this claim can be usefully summarised as follows:

Issue 1-Whether the rights conferred under the Constitution are capable of breach by an assisted school?

Issue 2-Whether section 1 is justiciable?

Issue 3-Whether rule 1.19 of the Code breaches the minor's right to freedom of conscience under section 9 of the Constitution?

Issue 4-Whether rule 1.19 of the Code breaches the minor's right to freedom of expression under section 10 of the Constitution?

Issue 5-Whether the implementation and enforcement of rule 1.19 of the Code and the requirement that the minor cut or cover his hair breaches the minor's human dignity?

Issue 6-Whether the rule is in conformity with the provisions of the UN Convention of the Rights of the Child (UNCRC) and whether the UNCRC creates domestic obligations to allow the claimant to sue for a breach of its provisions?

Issue 7-Whether the Court should order the second defendant to issue regulations mandating the compliance of all school rules with the Constitution?

Introduction

[16] This case is about the claimant's desire to have acceptance and accommodation of what he asserts is his right to individual expression in the wearing of his hair in keeping with his chosen mode of self-expression, that is, to grow his natural hair and not cut it. The salient question in this case is how far should the school and/or the Court go in endorsing this extent of freedom of expression by individual students in light of rules/regulations for uniform laid down by the Board of St. Mary's College.

Issue 1-Whether the rights conferred under the Constitution are capable of breach by an assisted school?

[17] Mr. Deale Lee ("Mr. Lee"), Counsel for the first defendant in his written submissions submitted that the rights conferred under Chapter I of the Saint Lucia Constitution are for protection against State action and they do not apply

to the actions of one private entity against another. This is different he argued from the position under the Charter of Fundamental Rights included in the Constitution of Jamaica which expressly provides that the protections apply to the actions of natural and legal persons in addition to actions of the State. The distinction between the two forms of fundamental rights was considered in the Jamaican case of **Tomlinson v Television Jamaica**.[5] Counsel referred to paragraph 85 of the said decision which states:

> "Prior to the promulgation of the Charter, the rights and freedoms guaranteed under the Constitution were protected against infringement and abuses of the State to the extent that those rights and freedoms did not prejudice the rights and freedoms of others. That was described as the vertical application of Charter rights."

[18] Mr. Lee therefore argued that the **Education Act**[6] distinguishes between public schools which are owned and operated by the State and assisted schools which are owned by private entities but operated with the assistance of State funds and resources. The first defendant is the Board of Management of an assisted school and not a public school. It is therefore not an arm of the State. In light of the well-established principle that relief under chapter 1 of the Constitution is only available against the State and its organs, Mr. Lee submitted that the relief being sought is not available against the first defendant.

[19] Counsel for the second defendant, Mrs. Tina Louison, ("Mrs. Louison") in relation to this issue raised by Mr. Lee was of the view that the St. Mary's College being an assisted school which is contemplated and falls under the **Education Act** and the rules having to be sanctioned by the **Education Act** was enough to bring the first defendant into the realm of public law.

[20] It is clear to me that the St. Mary's College is an assisted school under the **Education Act**. However, when I assess the definition of public school, it appears to me that St. Mary's College could be considered a public school as well. "Public schools" is defined as schools which are wholly or mainly

[5] (2020) 98 WIR 406.
[6] Cap. 18.01, Revised Laws of Saint Lucia 2020.

maintained at the public expense and to which the general public has access without any conditions other than those authorised by or under this Act. In light of this, I am of the view that St. Mary's College is not a private entity given the obvious State involvement in many aspects of its operation and maintenance and the many areas of its operation which the **Education Act** regulates and provides for. In short, the school is capable of breaching a student's constitutional rights.

Issue 2: Justiciability of section 1 of the Constitution

The Law

[21] The **Constitution** provides at section 1(b) and 16(1) as follows:

Section 1(b):

> "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) …
> (b) freedom of conscience, of expression and of assembly and association;
> (c) …"

Section 16(1)

> "If any person alleges that any of the provisions of sections 2 to 15 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress."

[22] In **Cheryl Betrand and another v the Attorney General**[7] the Court of Appeal took the view that constitutional provisions such as section 1 of the Constitution are introductory and prefatory in nature, are unenforceable and not justiciable. Notwithstanding this, the Court said that to the extent that such sections are declaratory of rights, regard is to be had to them in construing justiciable provisions in the Constitution.

[7] SLUHCVAP2021/0014 (delivered 22nd May 2023, unreported) at paragraph [119] et seq.

[23] This is in keeping with the approach consistently applied by the Privy Council that the section is in the nature of a preamble and prefatory or explanatory of the scheme of the sections which follow and is declaratory of every person's entitlement to rights and freedoms subject to limitations to that entitlement as are contained in the sections that follow. Importantly, sections like section 1 do not confer any separate and independent or freestanding right not contained in the subsequent provisions.

[24] The Privy Council in the Bahamian case of **Newbold v Commissioner of Police**[8] had to deal with section 15 of that Constitution which is identical to section 1 of the Saint Lucia Constitution and in so doing the Board concluded that the section was a preamble and did not create an independent freestanding right as evidenced by the use of whereas and the exclusion from the 'redress' clause.

[25] In contrast, the Caribbean Court of Justice ("CCJ") in **Nervais v R; Severin v R**[9] took the opposite view when considering section 11 of the Barbados Constitution which is in pari materia to section 1 of the Saint Lucia Constitution. The CCJ concluded that section 11 was not a preamble as preambles are located directly after the title and date of assent of the legislation and sets out the reasons it is desirable to enact it. The location of section 11 the court found militated against such a conclusion. The CCJ also ruled that it was a general principle of constitutional interpretation that limitations were to be interpreted narrowly and the rights construed broadly. Therefore, the fact that section 26 (section 16 in Saint Lucia Constitution) did not mention section 11 (section 1 in Saint Lucia Constitution) did not deprive it of justiciability. The court has an implied and inherent power to grant redress and could do so on a claim brought under section 11.[10]

[8] [2014] UKPC 12 [31]-[35].
[9] [2018] CCJ 19 (AJ).
[10] [2018] 92 WIR [22], [25]-[31], [38]-[42].

Discussion and Analysis

[26] The claimant submits in his skeleton submissions that his rights as enumerated at section 1(b) of the Constitution were violated by the implementation and enforcement of the Code. The first and second defendants counter that section 1 of the Constitution is merely preambular and as such cannot be relied on by the claimant. The first defendant refers to several cases from this jurisdiction and from the Privy Council concluding that similar provisions were not justiciable, and a claim could not be sustained under them. On the strength of those submissions the defendants would have been correct, and this Court would have no jurisdiction to entertain this ground.

[27] However, since the passage of legislation by the Saint Lucia Parliament to make the CCJ its final appellate court, those decisions of the Privy Council while being highly persuasive no longer binds this Court.[11] Therefore, the approach taken by the CCJ in **Nervais** is the better view for two reasons (a) section 1(b) is not located immediately after the title and date but follows a series of statements (lettered a-j) which are facially the preamble to the Constitution and which conclude with the words "…now, therefore, the following provisions shall have effect as the Constitution of Saint Lucia" and (b) the court as the guardian of the Constitution has a duty to give the widest possible meaning to the rights provisions of the Constitution. Consequently, this Court may exercise its inherent jurisdiction to grant relief under section 1(b) where a claimant alleges a violation of his right to freedom of conscience or freedom of expression as in this case.

[28] Furthermore, even if I had concluded differently that the Privy Council decisions bind this Court and the section is not justiciable, it is my considered view that it would not impede the claim. While the fixed date claim form does say in the heading that the claim is based on section 1(b), it also says section 10. Moreover, the claimant is also relying on sections 9 and 10 of the Constitution although the sections are not expressly stated. Both of these sections are in the

[11] Statutory Instrument No. 85 of 2023.

substantive part of the Constitution, and the Court has jurisdiction to grant relief under section 16 in relation to breaches of the said sections.

[29] In conclusion, applying the CCJ decision of **Nervais** to the instant case, it is my view that section 1(b) is justiciable and, in any event, even if the opposite conclusion is reached, it does not bar the Court's consideration of the claim.

[30] However, in the instant case for reasons which I will outline later, the claimant has not indicated how the minor's freedom of expression or conscience has been breached by the first or second defendant. Therefore, while the section 1(b) is justiciable, the claimant has not met the burden of proving the breach.

Issue 3-Whether rule 1.19 of the Code breaches the minor's right to freedom of conscience under section 9 of the Constitution?

The Impugned Rule

[31] Rule 1.19 of the Code falls under the rubric "Personal Hygiene and Grooming" and outlines the requirement that no student's hair length or height shall exceed 1 centimetre. The rule sets out the areas of unacceptable behaviour, explains why the behaviour is unacceptable and establishes sanctions for cases of infringement. I have set out the full text of the rule so that the impugned part can be read in context. The full rule reads as follows:

[table on next page]

Personal Hygiene and Grooming

"You must observe the basic rules of personal hygiene and cleanliness. You must keep your hair properly groomed at all times. (neatly trimmed and combed). **At no point should student's hair be more than one (I) centimeter long or high.** St. Mary's College students are not allowed to attend school with their hair in plaits, braids, other similar hair styles and fancy haircuts. Neither should students alter the natural colour or texture of their hair. The Principal's decision in this matter is final. Students must not embellish or physically alter the appearance of their hair by the use of chemical agents or their skin with tattoos.	Failure in this area makes close proximity to you uncomfortable for everyone. Your appearance conveys to others something of your character and reflects on the standards and image of the College. In addition, the Education Act requires that students maintain at least minimum standards of attire and grooming. These create unnecessary distractions and can lead to copy-cat responses.	1. Bench detention 2. Written warning Student is sent home to return, when necessary, change is made to his appearance. 3. Two week ban from playing games during breaks. 4. Ban from playing games during breaks for remainder of term. 5. Parental conference to resolve matter.

The Law

[32] The **Constitution** declares at section 9(1):

> "Except with his or her own consent, a person shall not be hindered in the enjoyment of his or her freedom of conscience, including freedom of thought and of religion, freedom to change his or her religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his or her religion or belief in worship, teaching, practice and observance."

[33] Section 9(5) states:

> "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—
> (a) in the interests of defence, public safety, public order, public morality or public health;
> (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or
> (c) for the purpose of regulating educational institutions in the interests of the persons who receive or may receive instruction in them,
> and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society."

[34] Several courts and treatise have defined freedom of conscience and what it encompasses. In **Re Eric Darien (a Juror)**[12] the court acknowledged that the freedom covers thought, religion or a sincerely held belief.

[35] In **Dale Virgo and ZV by her mother and next friend Sherine Virgo v Board of Management of Kensington Primary School and Others**,[13] the Jamaica Supreme Court had to deal with a similar matter involving a young girl at a primary school who was told to cut her hair. The parents had asserted that they had taken a Nazarene vow which prohibited the cutting of the hair but there was no evidence before the court that the school was informed of the vow or the belief by the parents that the young girl's hair should not be cut. The full court ruled that it cannot be automatically assumed that they were practicing Rastafari and the duty was on the parents to communicate the belief to the school. It is not for the school to seek out the information. If one's conscience is not made known, he cannot claim a right arising from it.

[36] In **Brendan Courtenay Bain v UWI**[14] it was held that the right to freedom of conscience includes the ability to think and do as one chooses.

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[12] [1974] 22 WIR 323.
[13] [2020] JMFC Full 6 [147].
[14] [2017] JMFC Full 3 [90].

[37] In his treatise, **The Constitutional Law of Jamaica**, Professor Lloyd Barnett said:

> "The enjoyment of the right of freedom of conscience involves the right to carry out the external practices of one's creed, to endeavour to persuade others to adopt one's belief as well as the right to organize and manage its activities and ceremonies."[15]

[38] The **Council on European Rights Handbook**[16] says clearly that an opinion is not the same as belief. For it to be a belief, it must be serious, coherent and important.

Discussion and Analysis

[39] Against the backdrop of the foregoing authorities, I analyse the claimant's case.

[40] On this issue, the claimant submits in written submissions that the freedom of conscience is not solely a religious freedom but includes religious freedoms. It is a freedom of one's thoughts and consciousness. He submits further that the Board, by forcing the claimant to cut his hair, takes away the freedom to form his own thoughts and imposes the thoughts of the Board, defeating the right afforded to the claimant by the Constitution.

[41] The claimant also submits that an individual does not need to declare his conscience or his or her reason for any particular conscience; that an individual may hold on to a conscience even if only because it pleases him or her to do so; and that an individual may change a once-held conscience if it pleases him or her to do so.

[42] The claimant is correct that section 9 of the Constitution does not limit the right to freedom of conscience to religious thought and that it could include the minor's belief that he should no longer cut his hair. The claimant argues that the minor's right to wear his own natural hair is an expression of his freedom of conscience.

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[15] Lloyd Barnett, 'The Constitutional Law of Jamaica', (Oxford University Press for The London School of Economics and Political Science. 1977), p.405.
[16] Jim Murdoch "Protecting the Right to Freedom of Conscience, Thought and Religion under the European Convention on Human Rights", p.16.

[43] However, it is important to note that not every opinion rises to the level of belief and is shielded by the Constitution. In the instant case, while the minor may seriously hold the opinion that his hair is not to be cut or covered, it is not coherent or important when balanced with the interests of the whole i.e., to ensure the orderly and efficient discipline and management of St. Mary's College. I place heavy reliance on the Jamaican authorities and writings as the freedom of conscience provision in the Jamaican Constitution is largely the same as that of Saint Lucia's Constitution. As such, while the right under section 9 gives the minor the right to think as he chooses, and even for him to change a previously held thought, there is a requirement that for that choice to be respected, it must be communicated.

[44] I agree with the submissions of the first defendant when Mr. Lee says that the defendants and the court cannot be expected to assume or guess what belief the claimant is seeking to adhere to.

[45] According to Mr. Howell's evidence, he told the minor's father that the minor would not be allowed to proceed to class until a valid excuse was received or he complied with the school rule. The minor's father had indicated that he would send an excuse but never did, thus leaving the school clueless as to the reason for the minor's non-compliance.

[46] The claimant's submission that there is no need to communicate one's belief is therefore unsustainable. There can be no expectation that one will respect a belief that is unknown to them nor can that unknown belief be used to justify a decision not to conform with a school rule post facto.

[47] The second defendant submits that it was critical for the claimant to have adduced evidence to support the contention that his right to freedom of conscience is engaged, far less breached. It is submitted that albeit religious and such beliefs are an inner matter, it is still necessary to state the belief and to establish objective facts related to the exercise of that right and to provide cogent evidence of same especially in a situation where the infringement of the

right is asserted.[17] Bald assertions without more are insufficient to ground a constitutional challenge.

[48] The facts in this case clearly show and it is undisputed that when the minor entered the St. Mary's College on the day of enrollment, his next friend, his mother, Mrs. Elloitt signed a Parental Agreement Form acknowledging receipt of the 11th Edition of the Code of Conduct 2018-2019 which contained rule 1.19 and agreed to abide by the Code. The Parental Agreement Form[18] clearly states that Mrs. Elliott 'having received, read and understood the Code of Conduct agreed to their full observance' on the admission of her son, Alexander Elliott. According to Mr. Howell in his affidavit in support of the claim, the minor was fully compliant with the rule upon entry into St. Mary's College in 2020 and his hair was in keeping with the rules.

[49] There is no evidence that post this agreement or compliance for over a year, that this 'belief' about growing his hair and wearing his own natural hair in a particular manner contrary to the Code was ever communicated by the claimant to the Board or the Principal. In fact, according to Mr. Howell's evidence, the minor had always been compliant with rule 1.19 of the Code. A review of Mrs. Elliott's affidavit in support as Mr. Lee puts it 'is bereft of any evidence as to what belief the claimant was seeking to express or uphold through the way he wore his hair and how the school rule prevents him from maintaining that belief'.

[50] It is therefore not hyperbolic to state that a belief is to be proudly held and clearly communicated. It is not a sword that it is to be kept sheathed and only to be revealed when there is an action which the party does not like.

[51] Consequently, I find that the failure of the claimant to indicate to the school the reason for his refusal to cut or cover his hair or to comply with rule 1.19 of the Code, prevents him from claiming a breach of the right to freedom of conscience since the Board or St. Mary's College was unaware that there was a valid,

[17] European Court of Human Rights Kosteski v The Former Yugoslav Republic of Macedonia Application no. 55170/00.
[18] See page 45 of Electronic Trial Bundle.

serious, coherent and important belief that is to be respected. In a word, the claimant's failure to communicate the reasons for his non-compliance stripped him of any claim to a breach of freedom of conscience as it would be an affront to logic for the Board to be held liable for a breach it had no idea it was perpetrating.

Issue 4-Whether rule 1.19 of the Code breaches the minor's right to freedom of expression under section 10 of the Constitution?

The Law

[52] Section 10 of the Constitution states as follows:

> "(1) Except with his or her own consent, a person shall not be hindered in the enjoyment of his or her freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his or her correspondence.
>
> (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—
> (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
>
> (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or
>
> (c) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions,
> and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society."

[53] In the CCJ case of **Quincy McEwan v Attorney General of Guyana**[19] the court held that a person's choice of attire is inextricably bound with their identity and sense of self and how they dress and present themselves is integral to their right to freedom of expression.

[54] In **Maurice Tomlinson v Television Jamaica and others**[20] it was held that expression is different from speech and includes a wide range of expression that conveys meaning from the mind of the communicator to the person intended to be communicated with.

[55] In the Canadian case of **Irwin Toy Ltd v Attorney General for Quebec**[21] the court said that "expression" has both content and form, and the two can be inextricably connected. Activity is expressive if it attempts to convey meaning. That meaning is its content. Freedom of expression the court said was entrenched in the Constitution so as to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all the expression of the heart and mind, however, unpopular, distasteful or contrary to the mainstream.

[56] In **Virgo**[22] the Jamaican court pointed out that hairstyles worn with intent may be considered expression. Brown J said that the right to freedom of expression encompasses any form of expression that is used to communicate a particular idea and he accepted that this includes hairstyles worn with intent.

Discussion and Analysis

[57] The authorities indicate that the right to freedom of expression comprises any means which conveys meaning. If how a person wears his/her hair is meant to communicate a message, it could be part of the freedom of expression.

[19] [2018] CCJ 30 (AJ).
[20] [2012] JMSC Civ [253].
[21] (1989) 58 DLR (4th) 577, 606.
[22] Ibid (n7) [133].

[58] If a rule unreasonably curtails or restricts this freedom, it would breach the freedom of expression. It is therefore possible that by not cutting his hair, the minor may be communicating any number of things.

[59] The case of **Virgo** while only persuasive, is instructive that hairstyles worn with intent may be expression. However, Brown J made the point that every hairstyle does not convey a message and in a majority of cases is worn without intent to convey any meaning whatsoever. In this case, unlike in **Virgo**, the affidavit of Mrs. Elliott provides no indication as to what the minor's 'hairstyle' is intended to convey.

[60] The second defendant submits that for the claimant to prove an infringement of the right to freedom of expression, he must show that he intended to express a particular belief or idea with the wearing of the hairstyle in breach of the rule, and that its prohibition by the school suppressed the belief or idea. The second defendant submits quite correctly that he who asserts that his freedom of expression is being infringed must identify the idea he had attempted to express.

[61] I think this is a case of a hairstyle being worn with no intent to convey a meaning. This is clear to me as the affidavit of Mrs. Elliott is devoid of any evidence of this and it is only in the written and oral submissions of Counsel for the claimant that he attempts to give what that intent is when he speaks of the minor 'embracing thoughts of his natural hair growth'.

[62] I note though that this does not feature in the claimant's evidence in support of the claim. The only thing which Mrs. Elliott says in the affidavit in support is: "I believe that my son's constitutional rights to freedom of conscience and freedom of expression are breached by the school rule that mandates that his hair is to be cut to an arbitrary height." The cases are clear that a mere allegation that a right has been infringed is not sufficient to invoke section 10 of the Constitution or any section for that matter.

[63] The second defendant places reliance on three cases on this issue, **Dale Virgo** being one of these from which I have quoted extensively throughout this judgment. I focus on the other two cases relied on. In the case of **Mahmut TIG v Turkey**[23] the applicant was refused entry to a university campus on the grounds that he had a beard. The applicant brought a complaint to the EEuropean Court of Human Rights ("ECHR") contending that his rights under Article 10 of the Convention, which is materially similar to section 10 of the Constitution of Saint Lucia, were breached by the refusal.

[64] The Court noted that, even in very specific circumstances, "assuming that the right to freedom of expression may include the right for a person to express his ideas by the way he wears his beard, it has not been established that the applicant was prevented from expressing a particular opinion within the meaning of Article 10 by the prohibition on wearing a beard". This was the case as the applicant maintained that he wore a beard because it was part of his physical appearance but he did not claim to be inspired by particular ideas and or convictions. Therefore, the Court found that the impugned measure could not as such constitute an interference with freedom of expression as contemplated under the Convention.

[65] In **Paul Kara v The United Kingdom**,[24] the applicant was a bisexual male transvestite and wore clothes which are conventionally considered as "female". The applicant indicated that he dressed in female clothing to express his identity and sexuality and the innate feminine aspects of his personality. He received warnings from his employer on the many occasions he wore female clothing to work until he received a letter instructing him to desist from wearing women's clothing to work as it was contrary to their Code of Conduct. The applicant complained to the ECHR that the restriction on his mode of dress at work constituted an interference with his right to freedom of expression in violation of Article 10 of the Convention.

[23] European Court of Human Rights Application No 8165/03) (24 May 2005).
[24] European Court of Human Rights Application No. 36528/97.

[66] The Court disagreed and found that:

> "although the right to freedom of expression may include the right for a person to express his ideas through the way he dresses ... , **it has not been established on the facts of this case that the applicant has been prevented from expressing a particular opinion or idea by means of his clothing. The Commission concludes, therefore, that an examination of this complaint as it has been submitted fails to disclose any appearance of a violation of Article 10 of the Convention"**. (my emphasis)

[67] The second defendant submits that choosing to express oneself and grow one's natural hair without intent to express a particular idea or belief is not expression which section 10 is intended to protect. The claimant also had to go further and show that he had communicated that belief or opinion or idea to the school and that the school being aware of same infringed upon the right to do so.

[68] Following the case of **Virgo**, there must at least be pleaded facts and evidence of the intention being communicated by the particular hairstyle. Without that evidence the claimant has failed to discharge the burden of proof and I therefore find that there is no breach of his right to freedom of expression.

[69] Even if I am incorrect and the fact that there is no evidence of the intent behind the hairstyle does not preclude a finding of a breach of the claimant's right to freedom of expression, it must be remembered that the right to freedom of expression is not an absolute right. Section 10(2) of the Constitution also provides that nothing done under the authority of a law which is reasonably justifiable in a free and democratic society is to be considered a breach of the rights. As such, while the claimant would have discharged his obligation to show a prima facie breach of the right, the measure may be reasonably justifiable in a free and democratic society.

[70] It is to be noted that the first defendant is empowered under section 49 of the **Education Act** to establish a code of conduct and standards of discipline for the school. Section 49 provides that a public school or an assisted school may, after consultation with its Board of Management where such Board exists, introduce rules to govern the attire, conduct and discipline of students.

[71] The St. Mary's College is what is termed an assisted school under section 117 of the **Education Act**.[25] An assisted school is an educational institution whose property is owned by a private proprietor, denominational body, a trust, an individual or any incorporated or unincorporated body and which has agreed to receive public funds for one or more of the purposes stated in the Act. Two such purposes are the payment of salaries of the staff and provision of school furniture and equipment. It is clear that St. Mary's College through its Board is empowered by the **Education Act** to make rules the like of rule 1.19.

[72] According to the evidence of the Board, the St. Mary's College has a current school population of 600 students and has been the premier secondary school for the education of boys for over a century. The Principal in his affidavit in response to the claim credits the success of its students to the discipline, moral traits and traditions instilled by the school. According to Mr. Howell the guidelines for establishing discipline, morals and traditions observed by the school are contained in the Code of Conduct and this Code forms the foundation for the St. Mary's College and the success of its students.

[73] The Board's evidence is that rule 1.19 of the Code exists with the objective of avoiding the distractions which can be caused by certain hairstyles and to avoid copycat behaviour. Mr. Howell in his affidavit in support says that the rule relating to students being properly groomed had been included in previous versions of the Code. However, the specification that the length of the hair should not exceed 1 centimeter was added in the 11th edition of the Code which was adopted in 2018. According to Mr. Howell's evidence prior to the 2018 publication, there was an issue with the application of the grooming rule as its application was subjective and based on personal preferences of teachers, deans and principals and this gave rise to complaints and discrimination. The addition of the 1-centimeter rule was to bring objectivity to the application of the rule on grooming and this rule is applied equally to all students. It is to be noted that the length of hair was specified rather than a general statement that hair is

[25] See paragraph 5 of the affidavit of Dawson Ragunanan filed by the 2nd Defendant on 21st November 2022.

to be kept short and neat to avoid the subjective application of the rule and ensuring instead fairness and a reduction in the possibility of discrimination.

[74] Mr. Howell's evidence is that the school has to be dealing with grooming issues on a daily basis, students with uncombed hair or who may need a haircut. He says generally there is no need to employ sanctions as there is always dialogue with the students and generally, they comply when spoken to. In cases where there is resistance, he says various measures are employed.

[75] The potential outcome of such a wide unfettered acceptance of a child's variance from the rule in question being self-expression based on a decision which he has made to grow his hair and not cut it may very well lead to a student coming to school dressed or with their hair in any hairstyle or manner they wished based on their perception of freedom of expression. This would mean that whatever a student thinks is expression is acceptable and any school rule dealing with uniform and dress would always be seen as suppressing expression.

[76] In the affidavit of Mr. Dawson Ragunanan, Chief Education Officer, he says: 'It is my understanding that the Code was prepared after consultation with students, parents/guardians, teachers and the school's alumni.'

[77] The second defendant submits that this is the recommended approach in the case of **G (by his litigation friend) v Head Teacher and Governors of St Gregory's Catholic Science College**.[26] The court in that case at paragraph 14 stated:

> "Most schools in England have rules on appearance. There ... ... is no legislation that deals specifically with school uniform or other aspects of appearance such as hair colour and style, and the wearing of jewellery and make-up, and this is non-statutory guidance. It is for the governing body of a school to decide whether there should be a school uniform and other rules relating to appearance, and if so what they should be. This flows from the duties placed upon the governing body by statute to conduct the school and to ensure that school policies promote good behaviour and discipline amongst the pupil body."

[26] [2011] EWHC 1452.

[78] The court went on to strongly recommend that in setting its uniform/appearance policy the governing body consults widely on its proposed school uniform policy and changes to an established policy including with current pupils/carers, prospective pupils and parents/carers. Consideration should also be given to whether the proposed policy amounts to an interference with the right to manifest a religion or belief, and whether it is discriminatory.

[79] In the end, the court made the point that the school will need to weigh up the concerns of different groups and it might not be practical to accommodate fully the concerns of all groups.

[80] As stated above, section 10 of the Constitution does not create a right which is absolute and as such the rights to freedom of expression can be limited if it can be said to be reasonably justifiable in a democratic society.

[81] In **De Freitas v Minister v Permanent Secretary of Agriculture and Fisheries**[27] it was held that to determine whether any such limitation is reasonable and justifiable is to ask whether (a) the legislative objective is sufficiently important to justify limiting a fundamental right; (b) the measures designed to meet the legislative objective are rationally connected to it; and (c) the means used to impair the right or freedom are no more than necessary to accomplish the objective.

[82] In **R. v Oakes**,[28] the court identified as a fourth consideration, the proportionality element which is whether there is proportionality between the effects of the limiting measure and the objective or as it was stated by Lord Sumption in **Bank Mellat v Her Majesty's Treasury (No.2)**[29] whether, having regard to the three matters (a-c) outlined in **De Feitas** and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community.

[27] [1999] 1 AC 69.
[28] [1986] 1 S.C.R 103.
[29] [2013] UKSC 39 per Lord Sumption at para. 20.

[83] Applying **De Freitas**, it is my view that rule 1.19 (i) has a sufficiently important objective in that it was implemented to ensure the uniform enforcement of the school's grooming policy and to ensure order and discipline is maintained at the school; (ii) the rule is rationally connected to that objective as it is capable of achieving its objective and is not based on irrational or arbitrary considerations and has long achieved the goal of maintaining order and discipline at the St. Mary's College which has undoubtedly contributed to its status as the number one boys' school in Saint Lucia; and (iii) the measure is applied equally to all students of all ethnicities and allowances are made for students who have special reasons for not cutting their hair to communicate to the school that reason and for them to be given leave to wear their hair as is.

[84] As argued by the second defendant in submissions, the rule promotes effective teaching and learning time in school, supports the distribution of the educational instruction, prevents disorder and distractions that can have a detrimental impact on the core function of the St. Mary's College as an educational institution. The second defendant argued that even if the rule infringes a fundamental right (which I am not prepared to find), its objectives are sufficiently important to justify that infringement as the rule was implemented in the pursuit of ensuring that there is maximisation of the opportunity to acquire an education which has a direct impact on public order. Further, the second defendant submitted that the means employed to achieve this objective are not unduly harsh or arbitrary; it is not an intrusive measure and is not applied provided an excuse is submitted to the school.

[85] The second defendant also argues that the rule is not deleterious as it is only if a student deliberately or arbitrarily refuses to comply with the rule, refuses to provide an excuse for non-compliance and further, as in this case refuses to accept the compromise position proposed to him to cover his hair, that the student's education at that particular school becomes an issue.

[86] Importantly, in this case, the principal provided the minor and his parents a suitable alternative to cutting his hair i.e., covering it while at school. The father's

insistence that he has trained his child not to wear hats inside as the reason for refusing this suggestion is untenable. The claimant in the affidavit of Mrs. Elliott in support of the claim and in his submissions argued that covering of the hair was not part of the school rule.[30] However, he omitted to realise that the rule afforded the Principal the discretion and flexibility to apply whatever other sanction considered necessary and the Principal did exactly that. This is supported by Mr. Howell's evidence at paragraph 11 of his affidavit where he indicates that when the minor was not compliant with the said rule in May 2022 he had spoken to the minor's father and given that it was near the end of the school year, he asked him to 'dab' the hair so that it would better conform with the rule. The minor complied with that request.

[87] Brown J in **Virgo** found that the school's policy regarding the wearing of locks as a hairstyle did not infringe the claimant's right to self-expression if the reason her hair was locked was simply a decision as to self-expression that her parents had taken as to the adornment applicable to manifest their lifestyle.

[88] In **Virgo**, it was argued that the acquisition of an education is of such pparamount societal concern, that any infringement or interference of a right in the pursuit of ensuring that there is a maximisation of the opportunity to acquire an education, must be regarded as demonstrably justified in a free and democratic society and I fully agree. Maintaining school discipline is a legitimate objective.

[89] The claimant has placed heavy reliance on US case law only. It is worth mentioning that the claimant relies on <u>three</u> US cases, **Black v Cothren**,[31] **Seal v Mertz**[32] and **Gere v Stanley**.[33] In the first two cases, the only option given to the students was to cut their hair in order for them to attend school which is distinguishable from the facts of the instant case. In this case, the rule does not

[30] Paragraph 6 of the Affidavit in support filed 14th October 2022.
[31] 316 F. Supp. 468 (D. Neb. 1970) August 6, 1970.
[32] 338 F. Supp. 945 (1972).
[33] 320 F. Supp. 852 (1970).

mandate the cutting of hair but simply says that hair must be a particular length or height however that is achieved.

[90] In the third case, the US court dismissed the claimant's claim and acknowledged the need for a balance to be struck between the right of the individual and the interest of the whole in the maintenance of the order and discipline of the school. That to my mind is critical.

[91] I have chosen to have regard to the authorities from Jamaica and England as they are more reflective of the societal values and norms in this country. Mr. Lee submitted, and I agree that a multiplicity of authorities support the legitimacy of school rules including rules providing for deportment. The cases also support the constitutionality of such rules once provision is made for freedom of conscience.

[92] In conclusion, I find that rule 1.19 does not breach the claimant's rights to freedom of expression. If I am incorrect, and the rule does breach the claimant's right under section 10(1), I have considered the limitation placed by the rule in the context of section 10(2) and find that the rule is still not unconstitutional as it is reasonably justifiable in a free and democratic society. I therefore come to the same conclusion that there was no breach of the minor's rights under section 10 of the Constitution.

Issue 5-Whether the implementation and enforcement of rule 1.19 of the Code and the requirement that the minor cut or cover his hair breaches the minor's human dignity?

[93] The claimant claims a breach of his dignity[34] but pleads no evidence in support of such a claim nor does he ground his claim in a recognisable right under the Constitution.

[34] See paragraph 18, 21 of the Affidavit in Support of Mrs. Elliott filed on 14th October 2022.

[94] The only mention of dignity is in the preamble to the Constitution at paragraph (e) and I must confess that I am at a loss as to how this is applicable to this case. The concept of human dignity is not a fundamental human right espoused by the Constitution but is contained in the WHEREAS section of the Constitution which states that the people of Saint Lucia:

> (b) believe that all persons have been endowed equally by God with inalienable rights and dignity;
>
> (c) …
>
> (d) …
>
> (e) realise that human dignity requires respect for spiritual values; for private family life and property; and the enjoyment of an adequate standard of economic and social well-being dependent upon the resources of the State;

[95] As submitted by the second defendant, the preamble is a mere introduction to the subsequently conferred rights and there can be no separate breach of human dignity as it exists under the Constitution since the preamble is not an independent provision conferring any freestanding rights. It is my view that this ground must be dismissed.

Issue 6- Whether the rule is in conformity with the provisions of the UN Convention of the Rights of the Child (UNCRC) and whether the UNCRC creates domestic obligations to allow the claimant to sue for a breach of its provisions?

[96] The United Nations Convention on the Rights of the Child[35] at Articles 28 and 29 which have been identified by the claimant provide that:

> **"Article 28**
>
> 1. States Parties recognize the right of the child to education, …
> 2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
> 3. …"
>
> **"Article 29**
> 1. States Parties agree that the education of the child shall be directed to:
> (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

[35] UN Commission on Human Rights, Convention on the Rights of the Child., 7 March 1990, E/CN.4/RES/1990/74, available at: https://www.refworld.org/docid/3b00f03d30.html [accessed 20 July 2023]

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

Discussion and Analysis

[97] At the outset I must point out that the claimant's pleadings do not contain anything regarding rule 1.19 of the Code being in violation or not conforming with the provisions of the UNCRC but for the reference to articles 28 and 29 in the heading of the claim form. Additionally, he does not seek any relief as regards breach of these Articles.

[98] In his submissions, the claimant sought to engage the Court in discussion of other articles of UNCRC which were never foreshadowed in his pleadings and therefore would have caught the defendants by surprise, that is articles 30 and 31. All the claimant does in the submissions is to reproduce the articles from the UNCRC. There are no specific submissions made in relation to the articles.

[99] The first defendant is correct that despite the fact that the UNCRC was ratified by Saint Lucia, it has not been incorporated into domestic law and as a dualist state that failure does not create any local obligations for the Board and by extension the State. This is so notwithstanding the CCJ decision in **Joseph v Boyce**[36] that there is an expectation that the State will not violate its international agreements and local legislation is to be construed with those obligations in

[36] CCJ Appeal No CV 2 of 2006 BB Civil Appeal No 29 0f 2004.

mind. Counsel, Mr. Elliott, in oral submissions conceded that the UNCRC whilst instructive is not binding.

[100] Additionally, the articles referred to do not advance the claim any further as the **Education Act** does provide in section 14 that all persons are entitled to receive an educational programme appropriate to their needs in accordance with the Act. This ground must therefore be dismissed.

[101] I note that the second defendant in their submissions addressed the statutory right to education as outlined in section 14 of the **Education Act** but that is not the claimant's pleaded case. His case is that the rights under the UNCRC are what was breached. In any event, the right to education outlined in section 14 of the **Education Act** was not breached by rule 1.19 of the Code as the claimant was not denied the right to attend the St. Mary's College or to receive an educational programme appropriate to his needs and in any event, he has failed to show how the rule in particular affected this entitlement. He was simply asked to comply with the school rules in order to attend class. The claimant has failed to advance any discernable claim on this point.

Issue 7-Whether the Court should order the second defendant to issue regulations mandating the compliance of all school rules with the Constitution?

[102] Having found that rule 1.19 does not breach the minor's right to freedom of expression and freedom of conscience, there is no need to consider this relief claimed as there would be no basis for ordering the second defendant to regularise the rules for schools within its control. It is accepted that as stated by the Privy Council in **Gairy v The Attorney General**[37] that where there has been an established breach of a fundamental right of the Constitution, a claimant is not constrained by the principles governing applications for judicial review and that a court has the power to grant such an order.

[37] [2001] UKPC 30 at 23.

[103] On this issue, Mr. Lee for the first defendant submitted that there has been no challenge to the section of the **Education Act** which empowers the various Boards of Management and the Ministry of Education to create rules. Therefore, the rule making power has been properly delegated by the legislature which under the separation of powers doctrine is responsible for rule making. According to Mr. Lee, there is no evidence that the Ministry of Education has adopted or instituted rules of dress or deportment applicable to all schools. For the Court to make an order directing the Ministry of Education to make rules of conduct covering all schools and the contents of such rules as sought by the claimant would amount to a usurpation of the role and powers of the legislature and constitute a violation of the separation of powers doctrine. Such action would be outside the powers of the court. I completely agree with Mr. Lee's submissions in this regard.

[104] Mrs. Louison for the second defendant submits that the claimant has failed to establish that there has been a continuing failure of schools and or their respective Boards of Management to fulfill their functions and or exercise their discretion to make rules which failure has amounted to a breach of the claimant's constitutional rights.

[105] Notwithstanding my finding at paragraph [102] above, I am of the considered view that even if I had found that there was such a breach, to order the second defendant to regularise the rules for schools within its control would amount to a usurpation of the Ministry of Education's function and the various Boards of Management of schools and moreover would go beyond what is required to resolve this dispute which involves only rule 1.19 of the Code of the St. Mary's College and no other school. In addition, this claim alleges a breach of only the claimant's constitutional rights by virtue of rule 1.19 and therefore the claimant cannot seek blanket orders to enforce the constitutional rights of others.

[106] The **Education Act** sets out how rules are to be made and it is therefore left to the Board or governing body of a school to decide whether there should be rules relating to appearance and if so, what these rules ought to be. Each Board and its school are entitled to have different considerations in their determination of

the policies/rules as relates to hair in keeping with section 49 of the **Education Act**. The second defendant submits, and I concur that the order sought by the claimant is inappropriate in these circumstances and ought not to be made.

Conclusion

[107] Whether the rule in question is in need of review or may be considered outdated or unreasonable by some are separate issues and should not be conflated with whether the rule infringes particular rights under the Constitution. The claimant's case was confined to the latter.

[108] The court must determine the issues before it based on the evidence presented by applying the substantive and procedural law. While I am aware that this decision is of interest to many, this decision is based solely on what was presented to the Court by the parties and their Counsel.

[109] In concluding this discussion, I borrow and whole-heartedly adopt the words of Brown J in **Virgo** where he said[38]:

> "[153] … **schools cannot survive or be run without rules for the various constituents that make up the school population. We are certainly allowed our freedom of expression, within what moves and drives our conscience, but schools cannot be left to guess what it is, if it falls outside of set rules, guidelines and norms that are in a particular organisation.**
>
> [155] It cannot be right or just for each individual to vary the rules of engagement with these organisations, simply because a right exists to participate and avail ourselves of the benefit of publicly funded institutions, without proper reasons or justification, and simply on the basis that it does not fit in with their choices and mode of self-expression.
>
> [156] **Self-expression for many people vary from day to day, week to week, and I dare say from hour to hour, and take on wide and varied forms. I cannot envisage an orderly school society, and certainly not an institution run for the benefit of large numbers of children, often interacting in close proximity, where they are exempted from the rules of the school, simply on the basis of individual self-expression. If that were so, except for religious and other personal idiosyncrasies, self-expression in their attire and adornment would potentially then, be just based on the student's**

[38] At para 153,155-156.

> **own, or their family proclivities, or the unstated choices of each of their parents for self-expression by their family, taken in their individual homes. I am wary of opening what may be considered the "flood gates" of self-expression applicable to school communities and the choice of adornment for the children therein and the impact it would have on the core function of the educational institution."** (my emphasis)

[110] The St. Mary's College is one of many secondary schools in Saint Lucia and I think it sends the wrong message to accept to be bound by rules, defy them and then say that the school must accept such defiance because it is in the minor's right to wear his hair as he chooses. As stated in the very Code of Conduct: "It is the responsibility of parents who choose to send their sons to St. Mary's College to understand and accept the philosophy and traditions of the school and to abide by its regulations EA s 17a. Parental support for the College's position and co-operation with the College authorities will help their children grow as individuals and become respectable and responsible citizens."

[111] School discipline, like parental discipline, is an integral and important part of training children to be good citizens - to be better citizens. Mr. Lee referred to the case of **JK (suing on behalf of CK) v The Board of Directors of R School et al**[39] where the Kenyan Court in considering the constitutionality of a school rule prohibiting boys from wearing dreadlocks and the school's requirement that the petitioner, a six-year-old shave his locks in order to comply with the school's code of conduct, made the following statement:

> "Before considering these issues, it is important to acknowledge the right of educational institutions to set rules of conduct for their students. Courts will not ordinarily interfere with those rules and regulations except in very exceptional circumstances. The court recognises that it is those charged with the responsibility of educating children and nurturing them into adults who respect the rule of law and the rights of others who are best placed to make regulations for students, and enforce them. Only if it is demonstrated that such rules or the enforcement thereof violate the rights of those subject to them, or the Constitution, will the court intervene."[40]

[39] [2014] eKLR.
[40] Per Ngugi J at paragraph 27.

[112] As the court observed at paragraph 28 of its decision in **Fredrick Majimbo & Another vs The Principal, Kianda School, Secondary Section**[41] the school must be allowed to govern its student body on the basis of the provisions of the Education Act and its Code of Conduct, and the court will be very reluctant to interfere unless very strong and cogent reasons for interfering with its decisions are placed before it.

[113] Where a minor or parents have an issue with school rules, the options for resolution are many: find an alternative school whose rules accommodate the minor's/parent's opinions about how he/she should wear his/her hair; have an objective discussion with the Board or school Principal; encourage the minor to write his/her views and seek an audience with the Principal through avenues such as the Student's Council. The leadership of a school in this situation could use the matter as an opportunity to engage the student body in discussion through debates and other medium to hear the views and perhaps that would encourage the Board/school leadership to take a look at the particular rule in light of the feedback received. This would be in keeping with section 49(3) of the **Education Act** which mandates that the rules be reviewed with the students of the school at the commencement of each school year and would also follow the guidance of the court in **G v Head Teacher and Governors of St. Gregory's Catholic School** referred to at paragraph [77] above.

[114] It must be remembered that it is not everything we do not like that rises to the level of a breach of the Constitution and in this case, I find that rule 1.19 of the Code does not breach the claimant's rights set out in sections 1, 9 or 10 of the Constitution.

[41] High Court Petition No. 281 of 2012.

Order

[115] For all the reasons set out above, the claim is dismissed and the claimant is not entitled to any of the relief which he seeks. I make no order as to costs as I do not think the claimant was unreasonable in bringing this claim.

[116] I thank Counsel for their assistance in this matter and all parties for their patience as they awaited this judgment.

Kimberly Cenac-Phulgence
High Court Judge

By The Court

DP. Registrar