



TRINIDAD AND TOBAGO GAZETTE (EXTRAORDINARY)

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1472

SUPPLEMENT TO THIS ISSUE

THE DOCUMENT detailed hereunder has been issued and is published as a Supplement to this issue of the *Trinidad and Tobago Gazette*:

Legal Supplement Part B—

Public Procurement and Disposal of Public Property (Exemption) (Financing Services) Order, 2023—(Legal Notice No. 270 of 2023).

1473

APPOINTMENT TO PERFORM THE FUNCTIONS OF THE OFFICE OF CHIEF JUSTICE

IN EXERCISE of the power conferred upon her by section 103 of the Constitution of the Republic of Trinidad and Tobago, Her Excellency the President, after consultation with the Prime Minister and the Leader of the Opposition, has appointed the Honourable MR. JUSTICE ALLAN MENDONCA, Justice of Appeal, to perform the functions of the Office of Chief Justice, with effect from 7th September, 2023 to 17th September, 2023, during the absence from Trinidad and Tobago of the Honourable Chief Justice Mr. IVOR ARCHIE.

C. JACKMAN-WALDRON
*Secretary to Her Excellency
the President*

6th September, 2023.

1474

OFFICE OF THE PRIME MINISTER

SEPARATION

IN ACCORDANCE with the Director of Personnel Administration Circular Memorandum No. E: 26/06, dated 25th August, 2006, the undermentioned notice is published for general information:

Retirement

Name	Rank of Officer	Ministry/Department	Date	Remarks
Mrs. Jennifer Ramdeen-Doon	Administrative Officer IV	Office of the Prime Minister	31st October, 2024	Compulsory Retirement

1475

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2023- 03250

IN THE MATTER OF
THE REPRESENTATION OF THE PEOPLE ACT, CHAP. 2:01

AND

IN THE MATTER OF A LOCAL GOVERNMENT ELECTION
FOR THE ELECTORAL DISTRICT OF ARIMA NORTHEAST HELD ON THE 14TH DAY
OF AUGUST 2023

AND

IN THE MATTER OF THE ELECTION PROCEEDINGS RULES, 2001 BETWEEN
JAIRZINHO DOMINGO GUSTAV RIGSBY

PETITIONER

AND

THE RETURNING OFFICER FOR THE ELECTORAL DISTRICT OF ARIMA NORTHEAST
DEEMED TO BE A RESPONDENT BY VIRTUE OF SECTION 107(2) OF THE
REPRESENTATION OF THE PEOPLE ACT)

AND

THE CHIEF ELECTION OFFICER

RESPONDENTS

The Petition of **JAIRZINHO DOMINGO GUSTAV RIGSBY** of LP 55 Dundee Village, Arima, in the Island of Trinidad and Tobago, Part Time Lecturer, shows:

1. The Petitioner, Jairzinho Domingo Gustav Rigsby, is both a person who voted, and had a right to vote and was a candidate with a right to be elected and returned at the Local Government Election for the Electoral District Arima Northeast (hereinafter referred to as "the said election").
2. The said election was held on the 14th August 2023 wherein the Petitioner, Ms. Kim Garcia and Mr. Curt Clement were candidates and on the 14th August 2023 and the Returning Officer, Ms. Marva Carter, declared that there

IN THE HIGH COURT OF JUSTICE ELECTION PETITION—CONTINUED

was a tie between People's National Movement (PNM) candidate Ms. Kim Garcia and the Petitioner based on the preliminary count which found that both candidates received six hundred and twenty three (623) votes. The candidate for the Progressive Empowerment Party got eighty-one (81) votes. However, both a recount/"final count" and a review/"check" were instituted and consequently the Returning Officer declared the election on the 24th August 2023 in favour of Ms. Kim Garcia.

SUMMARY OF PETITION

3. The Petitioner petitions this Honourable Court to scrutinize and review certain ballots which were allowed/deemed valid by the Respondents in the recently concluded Local Government Elections for the district of Arima Northeast. If these impugned ballots are declared null and void and of no effect or struck out by the Honourable Court, same would have a material effect and/or change of the Election Results.
4. In short, and as detailed herein, at the conclusion of the first count of ballots (on election night 14th August 2023) there was a tie between the Petitioner as the UNC candidate and Ms. Kim Garcia as the PNM candidate. Both got 623 votes. However, at the conclusion of the recount/ "final count", the Petitioner received one additional vote (which took his tally to 624 votes) and the Petitioner was declared the successful candidate.
5. Subsequently, a purported review/ "check" of the results to scrutinize "questionable ballots" (ballots marked "Q" pursuant to the Election Rules 101(7) Representation of the People Act Chapter 2:01 (ROPA), was conducted and two additional ballots (previously rejected) were counted

IN THE HIGH COURT OF JUSTICE ELECTION PETITION—CONTINUED

and/or deemed to be valid and in favour of Ms. Kim Garcia. She was then declared the successful candidate (now having attained 625 votes) which overturned the results of the recount/“final count”.

6. Materially, it is these two (2) extra votes/ ballots that the Petitioner takes issue with, and the Petitioner is advised by Counsel and verily believe that these ballots should not have been allowed and/or deemed valid and/or counted in favour of Ms. Kim Garcia.
7. In the case of the first disputed ballot emanating from polling division 2015 box no. 2024 (a ballot rejected in the original count and the recount/ “final count”); this ballot paper contained two “X” markers wherein an “X” was placed within the box next to Ms. Garcia’s name and another “X” was placed on the reverse side of the ballot visibly within the box next to the Petitioner’s name. In the circumstances, and for reasons that will be further explained by Counsel, it is contended that the intention of the voter was unclear, ambiguous, and uncertain and could not be attributed to either candidate. Further, the use of two “X” markers, if anything, evinces an intention to spoil the said ballot and the said ballot should be deemed to be a spoilt/ rejected ballot. It is for these reasons that the ballot was rejected on two previous occasions by duly appointed/ experienced electoral officers and the Petitioner contends that same should not have been overturned as there was no good reason or lawful justification for so doing.
8. In the case of the second disputed ballot emanating from polling division 2030 box # 2526, this ballot paper contained an “X” in the box next to Ms. Garcia’s name. However, at the back of the ballot paper, there was marked

IN THE HIGH COURT OF JUSTICE ELECTION PETITION—CONTINUED

a number (which the Petitioner cannot recall at this time) which contained at least three (3) digits and an "X" which was marked over it in pen. This marking appeared to be distinct, unique and could be identified by the person who marked same additionally the voters intention could not be construed as clear giving the presence of an additional "X" marker.

9. This said ballot was rejected in the original count (on election night) and further rejected during the recount/ "final count" wherein a "Q" was affixed to the ballot. However, when the review/ "check" of results was conducted (wherein all "Q" ballots should have been reviewed pursuant to Election Rule 106(4) ROPA) this ballot was not presented for a review/ "check". Instead, another ballot, which did not contain a "Q" marking (representing questionable ballots) was presented and deemed in favour of Ms. Garcia.

10. In essence, this meant that the wrong ballot was presented for review/ "check" and further that Ms. Garcia benefitted from a double count of a single ballot cast in her favour. This ballot, without the "Q" mark, is easily identifiable because it was cut inadvertently when Ms. Carter attempted to open the envelope of votes in favour of Ms. Garcia during the recount/ "final count". Everyone in the room, at that time, observed this inadvertent cut in the ballot and no one took issue with same and the count continued without issue. No "Q" was affixed to this ballot and same should not have been reviewed/ "checked" pursuant to Election Rule 106(4) ROPA).

11. However, it seems, either by mistake or otherwise, this cut ballot (which no one questioned) found its way into the envelope of "Q" ballots for polling division 2030 instead of and in place of the ballot identified in

IN THE HIGH COURT OF JUSTICE ELECTION PETITION—CONTINUED

paragraph 8 above which was materially disputed and originally rejected (ballot with the number and "X" at the back of same).

12. If this petition results in the disqualification and/or rejection of these two ballots, the Petitioner would then be and should be deemed the successful candidate. If this petition results in disqualification and/or rejection of either ballot, then same would result in an equality of votes and a fresh election would be required. Therefore, the material complaints raised in this petition, if successful, would result in a material change and/or effect on the results of the election.

GROUND OF PETITION

13. That the Petitioner is a citizen of Trinidad and Tobago, a burgess of Arima Northeast Electoral District and entitled to vote therein. He is a member of the United National Congress (UNC) and the candidate duly nominated via letter dated 23rd June 2023 to contest the Local General Elections (LGE) dated 14th August 2023 in the Electoral District of Arima Northeast. The Petitioner filed his nomination with the Election and Boundaries Commission (EBC) via receipt/ Form A-20 dated 26th June 2023 and his name and the party symbol of the United Nation Congress was duly included in the official ballot used by the Elections and Boundaries Commission (EBC) for the Local Government Election held in the Electoral District of Arima Northeast.

14. The Petitioner is entitled to institute these proceedings pursuant to Section 107 (1)(b) ROPA both as a person who has a right to vote at the election and as a person validly nominated as a candidate in the election.

IN THE HIGH COURT OF JUSTICE ELECTION PETITION—CONTINUED

15. At approximately 9:00 pm on 14th August, 2023, the election result was announced by the Elections and Boundaries Commission (EBC). There was a tie between People's National Movement (PNM) candidate Kim Garcia and the Petitioner based on the preliminary count which found that both candidates received six hundred and twenty three (623) votes. The candidate for the Progressive Empowerment Party got eighty-one (81) votes.
16. On 15th August 2023, the Petitioner requested a general recount/ "final count" of the ballots cast and poll cards in the said Local government Elections in the Electoral District of Arima Northeast pursuant to Rules 101(1) of the Election Rules Representation of the People Act, Chapter 2:01 (ROPA) which was conducted on 16th August 2023.
17. On 16th August 2023, the recount/ "final count" started between 4:00 pm and 4:15 pm where the Petitioner and Mr. Godfrey Madoo were present. Also present were the Returning Officer Mrs. Marva Carter, Election Officer, Mr. Singh, Mrs. Susan John, an official from the Elections and Boundaries Commission (EBC), Mr. Colm Imbert, Ms. Beulah Garcia and Independent Observers, Ms. Lynette Bobb, and Mrs. Nikki Celestine. Around 4:20 pm Mr. Godfrey was then replaced by Dr. Stephan Bhagan and by 7:00 pm Dr. Bhagan was replaced by Mr. Brian Baig as the Petitioner's counting agent.
18. Subsequent to the recount/ "final count", the Petitioner gained one (1) extra vote taking his tally to six hundred and twenty-four (624) votes and he was declared the winner of the Electoral District of Arima Northeast.

IN THE HIGH COURT OF JUSTICE ELECTION PETITION—CONTINUED

However, after this review/ "check" process, a check of results was initiated by Ms. Kim Garcia (which took place on 24th August 2023, in accordance with section 106(1) Election Rules ROPA which resulted in two (2) additional votes being allocated to the said Ms. Garcia.

19. It is these two extra votes, varied in favour of Ms. Garcia, which resulted in the overturning of the declaration made in favour of the Petitioner at the recount/ "final count". Ms. Garcia was declared the successful Candidate on the 24th August 2023.

MATERIAL EVENTS OF THE POLLING DIVISIONS (RECOUNT/FINAL COUNT)

20. In polling division 2015, all votes were recounted and reflected the Statement of Poll for PD 2015 where PEP Candidate received two (2) votes, PNM Candidate Ms. Kim Garcia received 16 votes and UNC Candidate Mr. Jairzinho Rigsby received 22 votes.

21. There was one (1) rejected ballot and this was questioned by Mr. Brian Baig. This ballot had what appeared to be a smudge of ink, resembling a fingerprint, but an "X" appeared to be directly in line where the UNC candidate symbol appeared (although on the reverse side of the ballot paper). There was also an "X" in the box next to Ms. Garcia's name. At this point, Mrs. Carter decided that this ballot should be rejected because the intention of the voter was not clear. This ballot was initialled by Mr. Brian Baig and Mrs. Carter. Mr. Imbert then requested that this ballot be deemed a questionable ballot to which Mrs. Carter proceeded to put in an envelope and then seal said envelope.

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22. In polling division 2020, all votes were recounted and reflected in the Statement of Poll for polling division 2020 where PEP Candidate received 4 Votes, PNM Candidate Ms. Kim Garcia received 54 votes and UNC Candidate Mr. Jairzinho Rigsby received 29 votes. All votes in the recount/ "final count" were confirmed by Returning Officer Mrs. Marva Carter. However, there was one (1) questioned ballot. This ballot was in favour of the PNM candidate Ms. Garcia and Mrs. Carter held the decision that this ballot was good, since intent was there for the voter to vote for Ms. Garcia. As far as my memory recalls, this ballot was counted in the original count and therefore did not add to the tally.

23. In polling division 2030, all votes were recounted and reflected the Statement of Poll for Polling Division 2030 where PEP Candidate received 9 Votes, PNM Candidate Ms. Kim Garcia received 62 votes and UNC Candidate Mr. Jairzinho Rigsby received 72 votes. All votes in the recount/ "final count" were confirmed by Returning Officer Mrs. Marva Carter. However, there was one rejected ballot which was questioned by Mr. Colm Imbert. This ballot contained a number with at least three (3) digits written with a pen. Also, an "X" was written on the back of the ballot over the number. There was also an "X" marked in the box next to Ms. Garcia's name. This ballot was also rejected by the returning officer and then marked "Q" as requested by Mr. Imbert.

24. There was a heated debate between Mr. Brian Baig and Mr. Imbert, in the Petitioner's presence and in the presence of other present in the facility, as to the validity of this ballot. The Returning Officer, Mrs. Marva Carter, determined that this ballot should be deemed a

IN THE HIGH COURT OF JUSTICE ELECTION PETITION—CONTINUED

rejected ballot and was not added to the count. This ballot was then questioned by Mr. Imbert, after which Mrs. Carter put the "Q" on the ballot and sealed said ballot in the questionable envelope. As far as my memory recalls, this ballot was already rejected at the original count (election night) and again by Mrs. Carter during the recount/ "final count", and therefore was not added to the overall tally of votes or attributed to either candidate. It is this ballot which the Petitioner mentioned above that seems to have gone missing or mistakenly replaced by the ballot (described in paragraph 10 with a cut on it). The Petitioner contends that if all ballots for Polling Division 2030 and/or for the electoral district are scrutinized, this ballot that was rejected which contained the an identifiable number at the back of the ballot and with "X" marker should be easily found and was not produced for the review/ "check" pursuant to Election Rules 106(4) ROPA.

25. On 17th August 2023, the recount/ "final count" continued at around 10:19 am where the Petitioner and Mr. Godfrey Madoo were present. In polling division 2035-02, all votes were recounted and reflected the Statement of Poll for PD 2035-02 where PEP Candidate received 3 Votes, PNM Candidate Ms. Kim Garcia received 34 votes and UNC Candidate Mr. Jairzinho Rigsby received 77 votes. All votes in the recount/ "final count" were confirmed by Returning Officer Mrs. Marva Carter. There was one rejected ballot which was varied in the UNC favour by Mrs. Carter as there appeared to be no good reason why same was rejected. This was questioned by Mr. Imbert and marked "Q". As far as the Petitioner can recall, this ballot was rejected at the close of polls and was varied by Mrs. Carter during the recount/"final count" in favour of the Petitioner. It is with this variation, pursuant to Section 101(6) Election

IN THE HIGH COURT OF JUSTICE ELECTION PETITION—CONTINUED

Rules ROPA, that the Petitioner then took the lead in the recount/ "final count". This variation was not overturned at the review/ "check".

26. In polling division 2040, all votes were recounted and reflected, with a minor uncontentious adjustment. The Statement of Poll for Polling Division 2040 reflected that the PEP Candidate received 9 Votes, PNM Candidate Ms. Kim Garcia received 93 votes and UNC Candidate Mr. Jairzinho Rigsby received 63 votes. All votes in the recount/ "final count" were confirmed by Returning Officer Mrs. Marva Carter and agreed to by all parties.

REVIEW PURSUANT TO 106 (1) ELECTION RULES (ROPA)

27. Ms. Garcia requested a review/ "check" of questionable ballots, pursuant to Election Rules 106(1) ROPA and this was conducted on 24th August 2023. The review/ "check" was started just after 10:00 am. Present were Mrs. Pamela Ogiste (Deputy/Assistant Chief Elections Officer). EBC officials present were Returning Officer Mrs. Marva Carter, Mr. Singh (Elections Officer), Mr. Colm Imbert, Mrs Beulah Garcia, Mr Jairzinho Rigsby, Mr. Godfrey Madoo and Mr. Curt Clement candidate for the Progressive Empowerment Party (PEP) for the Electoral District of Arima Northeast. The Petitioner then requested the Letter of Application and receipt for this review/ "check" to which Mrs. Ogiste replied that he can receive it any time.

THE REVIEW/ "CHECK" OF QUESTIONABLE BALLOTS AND ALTERING OF RESULT.

28. In respect of PD 2015, the rejected ballot was varied by Mrs. Ogiste. She cited 46(3) of the Election Rules in support of her decision to deem the ballot as a valid one

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as opposed to a rejected ballot. The Petitioner will contend that the said Mrs. Ogiste was wrong to vary the ballot on the application of Section 46(3) of the Election Rules ROPA. Section 46(3) states as follows:

"A ballot paper shall not be rejected by reason only that the "X" is stamped or marked outside the space provided or that more than one "X" is stamped or marked thereon so long as there is a clear indication as to the candidate for whom the elector intended to vote."

However as stated before, the said ballot mentioned above contained an "X" on the reverse side of the ballot next to the UNC candidate and an "X" for the PNM candidate. As such, based on the positioning of these two "X" markers it is **NOT** clear and/or there is no clear indication as to which candidate the elector intended to cast his/her vote for. It is noteworthy, that this ballot was varied by Mrs. Ogiste in favour of Ms. Kim Garcia of the PNM after being rejected by the Presiding Officer Lynette Bobb and Returning Officer Mrs. Marva Carter.

29. The Petitioner contends that this ballot, which had previously been rejected, should not have been varied and/or deemed for the following reasons;

- i. The intention of the voter could not and cannot be discerned. Firstly, there are two "X" markers on the ballot, this alone demonstrates vagueness and uncertainty of the voter's intention because the clear instruction to voters is to use only one "X".

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- ii. Secondly, the fact that the second "X" is affixed discernibly in line with the UNC symbol (although on the reverse side) one cannot be sure that there was intention either to affix the "X" in the Petitioner's favour or to spoil the ballot using two "X" markers.
- iii. Thirdly, *"to put the matter affirmatively"*, the ballot *"must be marked so as to show that the voter intended to vote for some one, and so as to show for which of the candidates he intended to vote. It must not be marked so as to show that he intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all or for which candidate he intended to vote, nor so as to make it possible by seeing the paper itself, or by reference to other available facts, to identify the way in which he has voted."* (Woodward v Sarsons and another Brimingham Municipal Elections Petition [1874-80] All ER Rep 262 - Lord Coleridge CJ). The Petitioner contends that these requirements were not substantially fulfilled and the ballot paper in question should be treated as void and should not be counted and should be struck out.
- iv. It was wrong for the nominee/ representative of the Chief Election Officer, Deputy Chief Election Officer Pamala Ogiste, to have overturned the initial rulings, first impression of fact, of both the Presiding Officer and the Returning Officer as there was no good and/or lawful grounds for doing so.

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- v. Thirdly, as a matter of principle, the Petitioner believes that the concept of voter's intention should be tempered with formality and discipline. It would not be a good precedent if numerous "X" marks were used on ballots, at different positions, and it was then left to the presiding officers, candidates and their representatives to conduct forensic analysis of voter's intention. This could lead to uncertainty, different standards being applied in different cases, and a loss of confidence in the electoral process. The Petitioner is of the view and believes the Honourable Court should make clear to the public, that voters must exercise caution and a level of discipline when casting votes and only use one "X" to indicate his/her intention when casting a vote.
- vi. The Petitioner reserves right to add any further argument in relation to the validity of this ballot.

30. In respect of PD 2030, the ballot mentioned above, which contained a hole, was presented. This ballot did not contain a "Q" mark and should not have been reviewed. Further, this ballot was checked already in the re-count dated 16th August 2023. All parties were present on the 16th August 2023 when the Returning Officer Mrs. Carter used a scissors to open the envelope of Kim Garcia's ballots where she accidentally cut the ballot thus creating the hole as mentioned. This ballot was never questioned by any of the parties present in the count of election night and also in the recount/"final count" dated 16th and 17th August 2023

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respectively. However, this was the ballot that was shown on the 24th August 2023 as the rejected ballot from PD 2030 Box No 2526 in place of the ballot that was rejected (ballot containing numbers and an "X" mark at the back of the said ballot)

31. The Petitioner then questioned Mrs. Carter about the ballot which contained a number written with a pen at the back of the ballot. Also, the "X" was handwritten on the back. She replied by stating "*I do not know what you are talking about*". Then Mrs. Ogiste posited that that ballot was the only ballot present as a questioned ballot in the sealed envelope as far as the Petitioner's memory could recall. Also, when this ballot was shown to all parties to the review/ "check", the "Q" signifying that this ballot was in fact a questioned ballot was not visible to the front or back of the ballot.

32. The Petitioner challenges this ballot on the following grounds:

- i. The ballot that was varied during the check process pursuant to Election Rules 106 (1) ROPA did not contain a "Q" and should not have been reviewed and/or checked. It was illegal and ultra vires the Election Rules to have varied this ballot, it having not been marked with a "Q" and/or properly disputed.
- ii. The Petitioner contends that the wrong ballot was reviewed pursuant to the Election Rules 106(1) ROPA. The ballot initially rejected both in the original count and recount/ "final count", which was marked with a "Q" should have been included in the check process pursuant to Section 106 (1)

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Election Rules ROPA. The failure to include this ballot, and instead include the ballot aforementioned (ballot with cut) meant that Ms. Garcia received two votes for one ballot. Further, the failure to include the correct ballot marked "Q" meant that the rejected ballot was not scrutinised during the Election Rules 106(1) ROPA procedure which is ultra vires the Election Rules.

The Petitioner therefore prays:

- 1) That it may be determined that the two disputed ballots and/or either ballot, made in favour of Ms. Kim Garica during the review/ "check" process should be struck out and or disqualified and or be deemed null and void and to no effect and/or not be counted.
- 2) Alternatively, if the Honourable court deems fit that it may be ordered that there be a (scrutiny or recount) of the votes recorded as having being casted in the election.
- 3) Consequently, it be determined and declared that the Petitioner is the Successful Candidate for the Arima Northeast Electoral District.
- 4) Alternatively, if the Court only strikes out and/or declares one of the two disputed ballots to be null and void and of no effect, then a fresh election be ordered by the Honourable Court.
- 5) That the Honourable Court grant all necessary and consequential orders and directions and such further and/or other relief as the Court shall deem fit.

1475—Continued

IN THE HIGH COURT OF JUSTICE ELECTION PETITION—CONTINUED

Dated this 1st day of September, 2023.

/s/ Jairzinho Rigsby
JAIRZINHO DOMINGO GUSTAV RIGSBY
THE PETITIONER

This Petition was presented by Mr. Arif A. Rahman, Attorney-at-Law for the Petitioner, whose address for service is Address: c/o Vivek Lakhan-Joseph, 65 Gallus Street, Woodbrook.

Email: arifrahman23@gmail.com

It is intended to serve a copy of this petition on:

- 1) The Returning Officer for the Electoral District of Arima Northeast;
- 2) The Elections and Boundaries Commission, Scott House 134-138 Frederick Street, Port of-Spain.

Dated this 1st day of September, 2023.

/s/ Arif Rahman
ARIF A RAHMAN
ATTORNEY-AT-LAW

The COURT OFFICE is at the High Court of Justice, Knox Street, Port of Spain telephone number 223-1060. The office is open between [8.00] and [4.00] Mondays to Fridays except Public Holidays and Court Holidays and Court Holidays.

Petition published pursuant to Section 107(5) of the Representation of the People Act, Chap. 2:01 and Rule 7(3) of the Election Proceedings Rules.

Dated this 08th day of September, 2023.

Kimitria Gray
REGISTRAR (AG.)
SUPREME COURT