REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

San Fernando

CV2018-00166

Between

NARISH RAMPERSAD First Claimant

VASHTI RAMPERSAD Second Claimant

M. RAMPERSAD AUTO SUPPLIES LIMITED Third Claimant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO Defendant

Before The Honorable Justice David C Harris

Appearances:

Mr. Ramesh Lawrence Maharaj S.C. leads Mr. Prakash Ramadhar instructed by Mr. Michael Rooplal **for the** Claimants

Mr. Douglas Mendes S.C. leads Mr. Michael Quamina instructed by Mr. Vincent Jardine **for the** Defendant

JUDGMENT

INTRODUCTION

1. By Amended Fixed Date Claim filed March 16th 2018, the Claimants challenge the constitutionality of Article 8 Rules 1 and 4 of the Mutual Assistance (Agreement between Trinidad and Tobago and

the United States of America) Order, pursuant to s. 40(1A) of the Mutual Assistance in Criminal Matters Act Chap. 11:24 (**"the Act"**). They contend that the said Order is inconsistent with the human and fundamental rights guaranteed in Chapter 1 of the constitution, and particularly ss. 4(a) and (b), 5(2)(d) and (h).

2. The genesis of the claim lies with a request made by the Central Authority of Trinidad and Tobago to the USA pursuant to the provisions in the Act, as a result of which request two subpoenas were served on Tanelka Inc.("**Tanelka**"; the "**company**" used interchangeably), a company duly incorporated in Florida, USA and owned by the Claimants, the First and Second Claimants being directors of Tanelka Inc. The terms of the subpoenas seek to compel Tanelka Inc. to give testimony and to produce documents before a Commissioner in the USA.

THE CLAIM[1]

3. The Claimants contend that the request made by the Central Authority is aimed at compelling the directors and owners of Tanelka Inc. to give testimony and produce documents connected with the importation of motor vehicles and automotive parts into Trinidad and Tobago by the Third Claimant from Tanelka Inc. They further contend that the information provided through such testimony and documents will be used by the Comptroller of Customs in Trinidad and Tobago, in investigations conducted to determine whether the Claimants are to be prosecuted for criminal offences, allegedly committed by them in Trinidad and Tobago, in connection with the said importation of motor vehicles and automotive parts from Tanelka Inc.

4. The Claimants state that in July 2016 the Comptroller of Customs and Excise("**customs**") investigated the Claimants for alleged fraudulent evasion of import duties in respect of the importation of motor vehicles and automotive parts which they purchased in the USA from Tanelka Inc. The First Claimant and an official of the Third Claimant were asked questions by customs officials in Trinidad and Tobago in relation to matters referred to in the two subpoenas, to which the Claimants exercised their right to silence and against self-incrimination; they refused to answer the questions posed to them by the Comptroller of Customs and refused to produce the documents the Comptroller requested.

[1] Substantially reproduced from the Claimants' Fixed Date Claim Form, Affidavit in support and Submissions filed.

5. The Claimants further state that on 25th September 2016 and 9th November 2016 the General Manager of the Third Claimant and the First Claimant respectively were interviewed by customs officials about matters concerning the importation of motor vehicles and automotive parts; they again exercised their right to silence and against self-incrimination.

6. The Claimants argue that although they intend to exercise their right to silence and against self-incrimination as guaranteed to them by the constitution, they cannot successfully assert these immunities and privileges in relation to the subpoenas served on Tanelka Inc, as the Commissioner in the USA has the purported power by Article 8 Rules 1 and 4 of the Order, pursuant to the Act. As such, the Claimants further contend that the Commissioner can ignore these constitutional assertions and compel them to testify and produce the said documents, and hold them in contempt if they do not comply with the terms of the subpoena.

7. They state further that if they fail to comply with the terms of the subpoenas, their right to liberty, enjoyment of property and protection of the law, their rights to silence and against self-incrimination, as guaranteed under the constitution, would be violated by the Commissioner exercising his powers to fine or imprison the Claimants. Therefore, they contend, Article 8 Rules 1 and 4 of the Order, pursuant to the Act, contravenes the guaranteed human rights entrenched in the constitution.

THE DEFENCE[2]

8. The Defendant states that there are three criminal complaints against the Claimants, before the Port of Spain Magistrates Court. Further, the Defendant states that the complaints are premised on allegations that tax invoices issued by Tanelka Inc. in favour of the Third Claimant carry greater values for the vehicles supplied, than the values imputed by the Claimants onto the Customs Declaration Forms with respect to the said vehicles. It is contended by Customs and Excise Division, the Defendant states, that the Claimants made a false declaration in an effort to avoid paying the relevant import tax.

9. In furtherance of the criminal investigation, a request was made to the USA pursuant to the Treaty on Mutual Legal Assistance in Criminal Matter(“**the treaty**”) seeking a notarised statement from

[2] Reproduced from the Defendant’s Affidavit in reply and Submissions filed.

Tanelka's Export Co-ordinator, attesting to the authenticity of 166 Tanelka's invoices, a certified copy of Tanelka's Articles of Association and the 166 invoices covering the period 2013-2016 in consecutive numbers. It is as a consequence of this, the Defendant contends, that the Office of International Affairs of the Department of Justice issued two subpoenas, commanding Tanelka Inc. to appear before the Commissioner.

10. The Defendant states that both subpoenas warned that failure to attend and provide testimony and/or the said records would render Tanelka guilty of contempt and liable to penalties under the law. The Defendant however contends that the subpoenas do not purport to compel any of the Claimants to incriminate themselves, but to compel Tanelka to provide the originals of invoices relevant to the criminal charges laid against the Claimants.

11. Further, the Defendant contends that an order to produce documents not created by the production order itself does not violate the Claimants' rights against self-incrimination; the privilege against self-incrimination does not extend to the production of documents or things which have an existence independent of the will of the person relying on that privilege.

12. The Defendant states that Article 8 Rule 4 is not applicable as Tanelka Inc. has not made any claim of privilege – as they would have been required to - under the laws of Trinidad and Tobago.

PROCEDURAL HISTORY

13. During the course of the proceedings, the court requested that the parties file submissions regarding the claim and defence respectively; these were filed as ordered. On 21st May 2018 the Claimants filed submissions in response to the Defendant's submissions of 4th May 2018, wherein the Claimants contend that the actions of the Trinidad and Tobago Central Authority are ultra vires the Mutual Assistance in Criminal Matters Act Chap 11:24 ("**the Act**") at s. 33C.

14. The court then ordered all parties to file submissions on this new issue – whether the actions of the Trinidad and Tobago Central Authority were ultra vires the Act and whether the Claimants can further amend their Fixed Date Claim Form **("FDC")** – and to include this new issue placed before the court in the submissions.

15. The submissions on this new issue were duly filed as ordered. Upon the court considering the submissions of the parties and in particular the Defendant's submissions at para. 2 which raised no objection to the Claimants further amending their FDC, the court ordered on 9th January 2020 that:

    a) The Claimants do file the necessary application to amend the Amended Fixed Date Claim Form filed on the 16th March 2018 on or before the 7th February 2020;

    b) The Re Amended Fixed Date Claim Form annexed to Claimants' written submissions filed on the 16th August 2018 be filed simultaneously with the application to amend;

    c) There be no order as to costs.

16. The Claimants filed their application and Re Amended FDC as ordered; this new issue now forms part of the substantive deliberations to resolve this matter.

CORE ISSUES TO BE DETERMINED

17. **(i) The issue added on amendment:** Whether the actions of the of the Trinidad and Tobago Central Authority are ultra vires the Mutual Assistance in Criminal Matters Act Chap. 11:24 at s. 33C, rendering the actions and subpoenas of the US Authority null, void and of no effect;

    (ii) If not, whether the actions pursuant to the request and the issued subpoenas of the Trinidad and US authorities respectively compelling the claimants to copy, certify and produce certain documents identified in the subpoenas before a US commissioner, infringe the constitutional rights of the Claimants, pursuant to ss. 4(a) and (b), 5(2)(d) and (h) of the constitution of Trinidad and Tobago.

THE STATUTORY LAW

Mutual Assistance in Criminal Matters Act Chap. 11:24:

18. The pertinent section of this Act is s. 33C.[3]

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[3] Section 33C. (1) On an application by the Director of Public Prosecutions, a Judge or Magistrate may issue a letter of request requesting assistance in obtaining such evidence as is specified in the letter of request for use in the investigation or prosecution of an offence. (2) Upon the grant of the letter of request under subsection (1), the Director of Public Prosecutions shall forward

Constitution of Trinidad and Tobago Chap. 1:01:

19. The relevant sections of the constitution, as raised by the Claimants in their claim and submission are ss. 4; 5(2)(d) and (h).[4]

SUBMISSIONS ON ISSUE (i)

Claimants

20. The Claimants submit that s. 33C of the Mutual Assistance in Criminal Matters Act Chap. 11:24 ("the Act") sets out the applicable procedure for processing of requests under the Act, by the Central Authority of Trinidad and Tobago to the USA authorities. This procedure as outlined in the Act was not complied with by the Defendant. A letter of request was made to the US authorities instead of an application from the DPP to a Judge or Magistrate who then facilitates issuance of the letter of request. There is no provision in the Act for an application to be made by letter, except one issued by a Judge or Magistrate, pursuant to s. 33 C(1).

21. The State was under a positive duty to comply with the mandatory provisions of the Act. Their non-compliance contravened s. 4(a) of the Constitution. The actions of the State are *ultra vires* the Act and infringe the rights of the Claimants – liberty and enjoyment of property in violation of the process of law and the protection of the law. The letter request in law is *ultra vires* the Act, null, void and of no effect.[5]

22. The Treaty provides the framework for cooperation between the USA and Trinidad and Tobago; it does not provide the mechanism for mutual assistance requests. The procedure for requests is

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it to the Central Authority for transmission to the central authority of the Commonwealth country or such similar authority of the non-commonwealth country as specified in the letter.

[4] s 4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely: (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law; (b) the right of the individual to equality before the law and the protection of the law;
S. 5. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.
(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—
(d) authorise a Court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to ensure such protection, the right to legal representation; (h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

[5] See <u>De Frietas v Benny</u> (1975) 27 WIR 318; also paras. 9-10 of the Claimants' submissions filed 16th August 2018; Regarding protection of the law, the Claimants also rely on <u>Attorney General of Barbados v Joseph and Boyce</u> [2006] CCJ 3 (AJ) at para 60; <u>The Maya Leaders Alliance v Attorney General of Belize</u> [2015] CCJ 15 at para 47; paras. 24-28 of the said submissions.

not addressed by the Treaty; it only provides guidance on the interactions between the Central Authorities of Trinidad and Tobago and the USA. The procedure for mutual assistance requests is provided for in s. 33C of the Act. Prior to this section, there was no procedure in place for making such requests.

23. Where provisions of an Act differ from the Articles of a Treaty, the Court has to give effect to the provisions of the Act[6] - **<u>Salomon v. Customs and Excise Commissioners</u> [1967] 2 QB 116.**[7]

<u>*Defendant*</u>

24. A Treaty on Mutual Legal Assistance in Criminal Matters was concluded between Trinidad and Tobago and the United States of America at some point in time before 7th March 2003. On that day the Attorney General by Order contained in Legal Notice No. 46 of 2003 and declared that:

> ***"The Agreement between the Government of the United States of America and the Government of the Republic of Trinidad and Tobago on Mutual Assistance in Criminal Matters, referred to in the schedule, shall have the force of the law in Trinidad and Tobago."***

25. The Order came into effect as from the date it was made. As of that date and pursuant to Article 4 of the Mutual Assistance Treaty, the request for mutual assistance could be lawfully made by the Central Authority of T&T to the Attorney General of the USA or a person designated by him. There is no need for any prior application by the prosecuting authority to any judicial authority, nor any need to obtain a court order.

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[6] Bennion on Statutory Interpretation, 6th Ed. Pg 215-217; 265

[7] See para. 16 of the Claimants' submissions in reply to the Defendant's of 16th August 2018.

"Where, by a treaty, Her Majesty's Government undertakes either to introduce domestic legislation to achieve a specified result in the United Kingdom or to secure a specified result which can only be achieved by legislation, the treaty, since in English law it is not self-operating, remains irrelevant to any issue in the English courts until Her Majesty's Government has taken steps by way of legislation to fulfil its treaty obligations. ***Once the Government has legislated, which it may do in anticipation of the coming into effect of the treaty, as it did in this case, <u>the court must in the first instance construe the legislation, for that is what the court has to apply. If the terms of the legislation are clear and unambiguous, they must be given effect to, whether or not they carry out Her Majesty's treaty obligations, for the sovereign power of the Queen in Parliament extends to breaking treaties..."</u>***

26. There was no provision in the Act which compelled the Central Authority to make a request for assistance to the USA AG where requested to do so by a local prosecuting authority – e.g. DPP or Customs and Excise. The power to make such requests was therefore within the Central Authority's discretion.

27. Section 33C was enacted by Act No. 14 of 2004 which was proclaimed on 30th April 2004. When this section was brought into force, the Central Authority was already authorised by treaty, which had the force of law [s. 40(1A)][8], to make requests for mutual assistance on its own, or at the request of a local prosecuting authority, without the need to obtain a court order.
There is nothing in s. 33C which suggests that the legislature intended to provide the DPP with the exclusive power to decide whether a request for mutual assistance should be made.[9] Such an important power must not be assumed to be vested in the DPP unless there are clear words to that effect. There are no such words in s. 33C.

28. Section 33C provides the mechanism whereby the Central Authority may be compelled to make a request for mutual assistance which it might otherwise have declined to make. The request made by the Central Authority in these proceedings is therefore not *ultra vires* the Act.

29. There is no incompatibility between the Treaty and s. 33C. The section does not provide an exclusive procedure for making requests; it provides a procedure whereby the DPP may compel the Central Authority to make a request on his behalf. It does not prevent the Central Authority from making a request pursuant to the Treaty, which by s. 40(1A) has the force of law, a facility which the AG was free to utilise before s. 33C was enacted.

[8] 40. (1) Where a treaty has been concluded whether before or after the commencement of this Act between Trinidad and Tobago and any other territory in relation to the provision of mutual assistance in the detection, investigation, suppression or prosecution of drug trafficking offences committed in Trinidad and Tobago or such other territory, the Attorney General may, by Order subject to negative resolution of Parliament, declare that the treaty shall have the force of law in Trinidad and Tobago subject to such limitations, conditions, exceptions or qualifications as may be specified in the Order.
(1A) Where a treaty has been concluded, whether before or after the commencement of this Act, between Trinidad and Tobago and any other territory, providing for mutual assistance in any criminal matter arising or criminal offence committed in Trinidad and Tobago or such other territory, not including a criminal offence referred to in subsection (1), the Attorney General may, by Order subject to negative resolution of Parliament, declare that the treaty shall have the force of law in Trinidad and Tobago subject to such limitations, exceptions or qualifications as may be specified in the Order.
[9] See Commissioner of Police v Benjamin [2014] 84 WIR 307

FINDINGS ANALYSIS AND CONCLUSIONS – ISSUE (i)

*The issue added on amendment****: Whether the actions of the of the Trinidad and Tobago Central Authority are ultra vires the Mutual Assistance in Criminal Matters Act Chap. 11:24 at Section 33C, rendering the actions and subpoenas of the US Authority null, void and of no effect***

30. The Act and Treaty provide for one entity to act as the conduit for the requests emanating from the Requesting State to the Requested State; the 'Central Authority'. The contention between the parties as reflected in the arguments and written submissions before me do not question that simple fact, but whether the said Central Authority can receive requests from any investigating entity other than the DPP and presumably also, on its own volition.

31. This court accepts the DPP's central constitutional remit is substantially unaffected by the Act – section 33C. The DPP does not have the sole authority to commence criminal proceedings but possesses the power to take over and/or bring any criminal proceeding to an end. This authority remains.

32. The import of section 33C, if I am to follow the reasoning of the Defendant in this matter, is that whereas the DPP, the entity given the prescribed powers in the constitution over all criminal matters, has to have the Court to filter and approve its request to the Central Authority to obtain evidence from the USA, other constitutionally unrecognized entities or lesser authorities in relation to criminal matters, such as the Customs and Excise and presumably other entities such as the Environmental Commission to name one, can by-pass the DPP and go directly to the Central Authority with their requests.

33. At the onset let me say that the legislation does not appear to provide for the Central Authority to act in a judicial capacity and screen matters from the Customs or other prosecuting authorities for a prima facie case (or other accepted standard) for instance, before the Central Authority decides to transmit the request to the Requested State. Indeed the definition section of the Act defines the Central Authority as being *"…the person or authority designated ….for transferring and receiving requests…"*. The Central Authority is substantially a conduit. Can it be that the treaty and Act contemplated that a request end up on the docket of a US Judge/commissioner without

the intervention at any time along the originating process in the requesting state, of a legal enquiring mind and process? The fact that Trinidad and Tobago has designated the Attorney General(or office thereof) – effectively the chief legal officer/Office of the State - as the Central Authority, is coincidental perhaps, maybe even the most appropriate person/department having regard to the international and cross border protocols and considerations that may have to be cultivated and/or maintained, but not determinative of the description and extent of the powers and the functions of the 'central authority'. Rather, the statutory definition of the 'Central Authority' defines the role of the Attorney General(or his designate) in his capacity as the designated 'Central Authority' under the Act/Treaty.

34. It is not easily reconciled by this court that the body with the most expansive and entrenched powers and expertise in criminal matters under the constitution would be circumvented in favour of the Central Authority as is being suggested by the Defendant unless so provided in clear words to that effect. What could possibly be the reason for this circumvention ? I have no doubt that the additional work-load on the office of the DPP is a consideration and perhaps the fact that a later stage, albeit *after the horse bolts*, the DPP may enter, take over and discontinue a matter. But, I am unable to come up with any other that withstands present scrutiny. So, this court looks to those which are raised by the Defendant.

35. The Defendant has argued that the section merely seeks to lay out a procedure for the DPP's application under the Act, one which the Central Authority is compelled to transmit to the Requested State thereby preserving the constitutional powers of the DPP, as opposed to a request from other entities which the Central Authority need not transmit to the Requested State. I do not accept this. I suppose among other things one need determine what mischief is section 33C attempting to deal with in requiring that route through the DPP necessarily involving the approval of the court. If it is that it is intending to ensure that the process of requesting the assistance of a foreign State is pruned back to allow matters with a sound legal basis, or straining out trifling matters including factual considerations (albeit legally significant), matters with no probative value, or matters that run afoul of the constitutional protections afforded Trinidad and Tobagonians for instance, then why would it exempt the Customs or any other entity from this process where the Central Authority is substantially just a conduit for the request ?

36. The Defendant at para 13 of its submissions on the issue, sets out a scenario that it contends provides a reason for the DPP being given the powers to compel the AG to convey the DPP's request in the manner circumscribed in the section 33C; *where the police or some other prosecuting authority is conducting a criminal investigation of a politically sensitive nature to which the Attorney General("AG") is either hostile or from which he wishes to keep his distance and therefore prefer not to cooperate or lend assistance to the prosecuting authority*. For this court's part, I find this an excellent scenario to establish the contrary; that is, it instead provides the reason and justification for the section providing for the sole channel through which all *requests* from prosecuting authorities need pass. Why would the Central Authority be allowed to '*prefer not to cooperate or lend assistance*' to any prosecuting authority other than the DPP? In such a scenario, what does the other prosecuting authority do then; acquiesce, or request of the DPP to take over the matter and make its now circuitous and belated request? This court does not accept that. The Defendant suggests further as a scenario; that suppose the DPP and the Police prosecuting authority do not agree on the prosecuting of a certain matter and the DPP was to then refuse to make a request; what then? The Defendant submits that in such a scenario the Police may make its own request through the Central Authority thereby by-passing the DPP. I must admit that I am unable to understand why this would be considered a desirable end and a motivation(in any event a result of) for the passage of this specific legislation. Firstly, in any event after the commencement of the prosecution to which the DPP is opposed, the DPP can step in and discontinue the matter anyway. Further, the Central Authority would have the right, under the Defendant's argument, to either decline to convey the request or not. It begs the question; why should the Central Authority have the power to indirectly stop a prosecution, even before it starts (a scenario the Defendant argues the DPP ought not to have exclusive right to) and the DPP – given its constitutional role and pre-eminence - not have that power ?

37. Further, the Defendant contends that if the DPP is to have this exclusive power under section 33C as asserted by the Claimant, it must be given in clear words to that effect. In certain circumstances clear words are indeed required to conclude that a certain power has been conferred on an entity. I find that in the circumstances of this case and of section 33C, the plain and the literal reading of the words is clear enough to confer the power that it does. Further still, the position of the DPP is peculiar and section 33C surely must be read in the context of the constitutional provision that has provided for the DPP's powers, to be read into section 33C. Those powers would suggest the

interpretation of section 33C as conferring the DPP with the exclusive powers to convey a request from all prosecuting authorities in Trinidad and Tobago.

38. The mutual assistance process in the court's view is made more efficient by providing one conduit for all prosecuting authorities; that being the DPP.

39. The Claimant in this matter contends as its last limb on this issue, that the provisions of the Act were not complied with in the making of the request by the Central Authority to the USA authorities. No provision is made in the Act for an application to be made by letter from the Comptroller of Customs to the Central Authority. It is only upon an application by the Director of Public Prosecutions (DPP) and the grant of that letter of request by a Judge or Magistrate, that the DPP shall forward that the letter to the Central Authority for transmission to the Central Authority of the Requested State. This is in fact so. I have found this to be the effect of section 33C.

40. To address this **second limb** of this first issue I first restate my conclusion on the limb above: This court is of the view that the legislation is intended to repose in the DPP the powers and apolitical independence that the section 33C speaks to, and the constitutional context intended, and leave it as the sole determinant of the requests forwarded to the Central Authority here in Trinidad and Tobago, for transmission on to the Requested State by the Central Authority. On this basis alone, the request purportedly made under the Act would be still-born.

41. On the **second limb** of this first issue; the Claimants have contended that if the court were to find that the procedure under section 33C was breached, then that would amount to a breach of a fundamental rights of the Claimants leading to their entitlement to all the reliefs claimed, including Damages. The Defendant on the other hand has contended that not all breaches of the law necessarily amount to a breach of a fundamental right. I agree.

42. The central rationale and authority for the Claimants' conclusion is set out in the submissions. At the risk of doing it an injustice, put shortly, it is that: It is a *due process* argument pursuant to section 4(b) of the constitution. I believe the crux of the contention is best captured in the authority provided by both the Claimants and Defendant; <u>The State v Brad Boyce</u> PC App. No. 51 of 2004 per Lord Hoffman: "*In one sense, to say that an accused person is entitled to due process*

of the law means that he is entitled to be tried according to the law. In this sense, the concept of due process incorporates observance of all mandatory requirements of criminal procedure whatever that may be."[10]

43. The Claimants contend that the conditions precedent for the letter of request to the USA government under the Act has not been met in that the DPP was not the originating entity making the request through the Central Authority as provided for under section 33C. That is indeed the finding of this court above.

44. The Claimants contend that as a result of this breach of section 33C, the First and Second Claimants' fundamental rights under section 4(a) of the constitution have been breached resulting in their entitlement to the relief claimed. The argument is fully set out in the written submissions of the Claimants on this issue (amended issue).

45. Put shortly, this court does not agree that the fundamental rights provisions have been breached in relation to the said Claimants. The reasons for this conclusion are fully set out in the written submissions of the Defendant, which this court adopts.

46. The Defendant has relied upon one of the same authority (among several others cited on both sides) of ***Brad Boyce,*** (supra) per Lord Hoffman, in its argument on this last limb on the issue, but instead cites and relies on the additional dicta therein as follows: ***But "due process of law" also has a narrower constitutional meaning, namely those fundamental principles which are necessary for a fair system of justice.*** *Thus it is a fundamental principle that the accused should be heard in his own defence and be entitled to call witnesses. But that does not mean that he should necessarily be entitled to raise an alibi defence or call alibi witnesses without having given prior notice to the prosecution. A change in the law which requires him to give such notice is a change in what would count as due process of law in the broader sense. It does not however mean that he has been deprived of his constitutional right to due process of law in the narrower sense. Lord Millett made this point in Thomas v Baptiste [2000] 2 AC 1, 22, 24, when he said that the term "due process" in the Constitution "does not refer to any particular laws and is not a synonym for common law or statute. Rather it invokes the concept of the rule of law itself and the universally*

[10] See also Phillips JA in Lasalle v AG(1971) 18 WIR 379(391G); Thomas v Baptiste (1999) 54WIR 387 PC.

*accepted standards of justice observed by civilised nations which observe the rule of law … It does not guarantee the particular forms of legal procedure existing when the constitution came into force; the content of the clause is not immutably fixed at that date****….*** *<u>It is therefore not sufficient that the law at the time of the Constitution gave one a right to be immune from further proceedings after an acquittal by a jury. Section 4 entrenched only "fundamental human rights and freedoms"</u>* ***and the question is therefore whether the old common law rule which prevented the prosecution from appealing against an acquittal formed part of due process in its narrower sense as a fundamental right or freedom.*** *Their Lordships do not think that it did".* (Emphasis added).

47. Counsel for the Defendant contends that, in one sense, the concepts of the due process of law and the protection of the law incorporate the observance of the procedure set out in section 33C of the Act (on the assumption that section 33C provides for an exclusive procedure). But the Defendant contends that is not the constitutional sense in which the due process of law or the protection of the law is used. The question they submit, is whether the procedure provided for under section 33C forms part of the due process of the law and the protection of the law in their narrower constitutional sense as <u>fundamental</u> rights or freedoms. That is to say, the question is whether section 33C processes is part of those fundamental principles which are necessary for a fair system of justice[11]. This court accepts that this is the question on this narrow issue.

48. As Senior Counsel for the Defendant, correctly contended in his written submissions, in this court's view, the purpose of the Act is to provide a mechanism for the making and receipt of requests for mutual assistance in criminal matters from and to countries within and without the Commonwealth. The making of a request for assistance to another country cannot breach anyone's constitutional rights, any more than the receipt of a request from a foreign country[12]. The making of a request by the Central Authority of Trinidad and Tobago (or perhaps for that matter even in the more preliminary stage from the prosecuting authority including the DPP to the central authority) obliges a treaty party to honour that request and fulfil it, but there is no requirement that in the fulfilment of that request the foreign country should violate their own

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[11] This is taken verbatim for Senior Counsel's written submissions in Reply filed 26th October 2018.

[12] I have considered the argument that the request is likely to lead to a contravention of the claimants right re: Article 8 of the order etc.

laws, any more than the receipt of a request by Trinidad and Tobago obliges the Central Authority to act unlawfully in fulfilling the request. The assumption is that the request for mutual assistance will be carried out in accordance with the laws of the Requested State. It is the implementation of the request itself which may violate rights, if done unlawfully and not the process of making of the request. In this case for example, the Claimants allege that the implementation of the request violates their right not to incriminate themselves. I note also, that it is not every request that is going to require the provision of incriminating evidence or necessarily result in a party insisting on their privilege such that the request ought to be stymied at the inception here in Trinidad and Tobago[13].

49. It does follow as the Defendant submits[14]; that in as much as the making of a request for mutual assistance cannot violate anyone's rights, the procedures established for the making of such a request cannot automatically become part of the due process rights protected by the Constitution. The procedure established under section 33C, in other words, even if exclusive, is not part of those fundamental principles which are necessary for a fair system of justice[15]. This court accepts this proposition as correct and applicable in the circumstances of this case. In furtherance of its contention, the Defendant submits that it is significant that section 33C does not require a judge or magistrate considering an application for a letter of request to be satisfied of any threshold suspicion or belief that the object of the request is guilty of any offence or that the evidence which is the subject of the request will afford evidence of an offence. There is no assumed filtering process, in other words, and this is because the request itself has no impact upon anyone's rights. This court notes however, that the Act may not specifically set out a *threshold suspicion* for which a court has to be satisfied, but one is surely implied, if only by the fact the section provides for it to be considered by a Judge/ magistrate. In any event it is not a *threshold* criteria to be considered by the Court under section 33, such that if met, constitutes an ingredient either of the issue dealt with on the later proceedings to which the Claimants were subpoenaed nor the substantive criminal hearing in the San Fernando court. The existence of a threshold – however defined - does not in this court's view diminish the import of the Defendant's argument on this issue; for the procedure under section 33C still would not be onerous or central

[13] See Article 8 of the order.
[14] This following is a substantial reproduction of the Defendant's written submissions filed 26th October 2018.
[15] This would also apply to the act by the Customs investigator for instance, in requesting the comptroller to make the request to the Central authority.

enough to be part of those fundamental principles and processes which are necessary for a fair system of Justice. It remains that it is in the implementation of the request in the USA that the potential for breach looms.

50. The request for mutual assistance in this case was ultra vires section 33C of the Act, however. So what is the sanction to the Defendant; what is the appropriate relief to which the Claimants are entitled? The Claimant is entitled to certiorari to quash the request made pursuant to section 33C of the Act.

51. Notwithstanding that the findings of the court above bring this matter to an end, the often times unpredictability of statutory construction being what it is, moves this court to dispose of the other issues **(“Issue (ii)**” below) in this matter were a contrary view to be held and expressed elsewhere.

ISSUE (ii) ***Whether the actions pursuant to the request and the issued subpoenas of the Trinidad and US authorities respectively – to compel the claimants to give certain evidence - infringe the constitutional rights of the Claimants, pursuant to ss. 4(a) and (b), 5(2)(d) and (h) of the constitution of Trinidad and Tobago***.

52. There is no dispute on several matters of fact and law as follows: **(i)** that the right to silence; the right against self-incrimination is a Fundamental right that attracts the protection of the Constitution and the Court;[16] **(ii)** that the subpoenas are addressed to Tanelka Inc ; **(iii) t**hat the Claimants are Defendants in the Trinidad and Tobago Customs & Excise criminal proceedings **(iv)** that the Trinidad and Tobago Customs & Excise criminal investigations and/or proceedings concern the same docs/invoices which are the subject of the subpoenas; **(v)** that the Claimants are directors of Tanelka Inc ; **(vi)** that the subpoenas in the context of the Act/Treaty speaks to the provision of both oral testimony and/or documentary evidence; **(vii) t**hat the letters of request dated the 19th January 2017 and the 25th January 2017 respectively, both identified and requested that one Deviri Sarabjit, Export Coordinator of Tanelka Inc, be required to ***authenticate*** the 166 invoices.

[16] See Mag. App. No. 68 of 2008 Hayden Toney v PC Joseph Corraspe and para. 21 of the Claimants’ submissions filed 13th April 2018.

Copying, certifying and production of the documents

53. The court notes that the Act does not necessarily require the evidence/documents to be 'certified' as requested by the subpoenas. The Act requires that the evidence taken in response to the subpoenas be authenticated by the court in the USA. The subpoenas do require certification however. The *letters of request* from the Requesting State both included certification of the 166 invoices and the incorporation documents of Tanelka Inc.

54. The act of the copying and certification, notably, speak to the ensuring a timely return and preservation of the original documents in the hands of Tanelka Inc, the custodian of the documents/records. The general law of the land requires that the documents only be held by the party taking possession of it – prosecutor or investigator – for only as long as is reasonably necessary to carry out their function in relation to the documents.[17]

55. The Claimants in essence contend that the act of copying and certifying the invoices as true and correct copies of the originals, as commanded to do by the subpoenas, constitute self-incrimination or at least takes away the claim to the privilege against self-incrimination and the right to silence. At the onset this court holds and affirms the proposition submitted in argument, that the right against self-incrimination does not extend to documents, the existence of which are independent of the will of the person relying on the privilege and which had not been created only by virtue of the criminal or administrative investigations or proceedings[18].

56. This court does not accept that the act of copying and certifying the subject invoices, Articles of Incorporation or authenticating the said invoices or any other document that had a prior independent existence, thereby renders the said invoices/documents to be produced to the foreign court by virtue of the subpoenas, to have been created as a *new document* for the purposes of the criminal investigations or proceedings. The reasoning for this is further set out in the said written submissions of the Defendant. The specific fact circumstances of this case, the character of the documents and the somewhat *mindless* actions called for on the part of the Claimants, distinguish the evidential requirement under the subpoena from facts and

[17] See s. 33C(4) of the Act; also Ghani v Jones [1970] 1 QB 69, 709 – Lord Denning.

[18] See para 40 of the Further written submissions of the Defendant dated 16th August 2018. The Claimant has referred to several authorities of the Defendant as not supporting the Defendant's contention, including the Sociedade Nacional case which cited the Rio Tinto matter per Bedlam J. But in that matter, the affidavit in question was clearly a new document. It was a contemporary narrative explaining the unknown and sought-after location, of certain assets of the proposed deponent.

circumstances in those cited authorities by the Claimant, that had afforded protection under the *privilege* to the parties in those cited cases.

57. Shortly put again, the Defendant submits that the privilege against self-incrimination does not extend to the production of documents or things which have an existence independent of the will of the person relying on the privilege. They submit that after an exhaustive examination of the authorities, the Court of Queen's Bench held that the privilege against self-incrimination did not extend to documents the existence of which was "independent" of the will of the person relying on the privilege and which had not been created only by virtue of criminal or administrative investigation or proceedings[19]. In so concluding, submits Senior Counsel for the Defendant, the courts followed several judgments not least of which was the judgments of the Court of Appeal in ***Attorney General's Reference (No 7 of 2000)*** [2001] 1 WLR 1879, ***C plc v P*** [2008] Ch. 1, and ***R v S (F)*** [2009] 1 WLR 1489[20] which were all influenced by the decision of the European Court of Justice in **Saunders v United Kingdom** (1996) EHRR 313 at para 69, which held that: "*The right not to incriminate oneself […] does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers but which has an existence independent of the will of the suspect such as, inter alia,* documents acquired pursuant to a warrant, ***breath, blood and urine samples and bodily tissue for the purpose of DNA testing**."* (emphasis added)

58. Further still, the proposition is distilled in ***AT&T Istel Ltd v Tully***[21], where Lord Griffiths expressed the same thought when he said (at p. 57F): "*I can for myself see no argument in favour of the privilege against producing a document the contents of which may go to show that the holder has committed a criminal offence. The contents of the document will speak for itself and there is no* ***risk of the false confession which underlies the privilege*** *against having to answer questions that may incriminate the speaker. The rule may once have been justified by the fear that without it an accused might be tortured into production of documents but those days are surely past and this consideration cannot apply in the context of a civil action.*"(emphasis added)

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[19] See paras 14 and 16 of the Defendant's written submissions of 4th May 2018; also River East Supplies Ltd v Crown Court of Nottingham [2017] 4 WLR 135.

[20] Senior Counsel for the Claimant cautions against reliance on even UK authorities influenced by decisions out of the European Union, which rely on a different statutory regime and perspective than that which pertains in Trinidad and Tobago.

[21] [1993] AC 45

59. In the Further written submissions of the Defendant on this issue[22]; they contend more particularly, that the copying of a pre-existing document and the certification of it as a true copy of the pre-existing original does not bring about a *new* document into existence. The information which the certified copy contains would still have been created before any crime was suspected and would still have existed quite independently of the will of the person – the Claimants - relying on the privilege. Indeed, the act of copying and certifying is not the evidence which would incriminate the Claimants in the Trinidad and Tobago criminal proceedings. It is the content of the pre-existing original of the document which is copied and certified which may be incriminating, but which was created independently of the prosecution. In the end it *will speak for itself*. The act of copying and certifying does not create a risk of false confession, which is one of the fundamental underlying bases for the rule.

60. This court concludes that the invoices or copies thereof, certified or not, were not created for the criminal investigations or proceedings nor through the use of compulsory powers, but had a prior existence and an *existence independent of the will* of the Claimants. The subpoenas do not compel the Tanelka Inc (or the Claimants for that matter) to produce new documents or fresh evidence as it were, but merely to produce to the court documents that were already in existence and as defined above.

Do the subpoenas compel the Claimants to incriminate themselves?[23]

61. This issue turns on several considerations including: the distinction between the company Tanelka Inc and its shareholders; distinction between the Tanelka Inc and its Directors; role and function of the Directors/Claimants in Tanelka[24]; the existence of any other entity that can lawfully provide the evidence required by the subpoenas who has not claimed the privilege in the Trinidad and Tobago proceedings to which the subpoenas relate; and simply; who is it that is entitled to claim the privilege.

[22] Submissions dated 16th August 2108 at para 40.

[23] On self-incrimination see Rio Tinto Zinc Corp v Westinghoue Electric Corp [1978] AC 547 at 636 Lord Diplock; R v Boynes (1861) 1 B & S 311 at 330 and 738

[24] See the Claimants' submissions in Reply filed 21st May 2018 at para 4; also Ferguson v Wilson (1866) LR 2 Ch App 77 Clarins LJ at pg 89; Lennard's Carrying Co Ltd v Asiastic Petroleum Co Ltd [1915] AC 705 at 713-714. Defendant's submissions filed 4th May 2018 at para 12; also Tate Access Floors Inc v Boswell [1991] Ch 512 at 531 – Sir Nicholas Browne Wilkinson.

62. It is clear that Tanelka Inc is the party to which the subpoenas were directed. Tanelka Inc does not claim the privilege. There is no pleadings and evidence to this effect. Whatever the protection afforded the Claimants personally, that Tanelka Inc is duty bound to appear at the hearing and produce the documents sought in the subpoena, is the simple outcome. What if Tanelka Inc. was being prosecuted in the USA under their law ? What if the officers of the company were able to claim the privilege under the US law. Would that bring the prosecution to an end? Would not the directors of Tanelka Inc have to provide the facility for the company to appear , comply and represent the company?

63. Tanelka Inc is a company and acts through its officers and agents. At the point of the filing of this action, it appears that it is likely (but not necessarily) the only human official officers of the company were the Claimants as Directors. The Claimants have exhibited several Tanelka Inc official documents/filings going back to 2007 or thereabouts. The documents suggest that various other named persons other than the Claimants have at one time or another been officers or agent/representatives of Tanelka; such as Tavia Rampersad, Mahese Rampersad, Tannelle Rampersad, Micheal Sarabjit, and Deviri Sarabjit. The Claimants claim that by appearing, copying and certifying the requested documents in response to the subpoena, by virtue of that, they are forced to relinquish their right to the privilege against self-incrimination in the Trinidad and Tobago proceedings. To be clear; they have, by their conduct and words in the Trinidad and Tobago investigation/proceedings, asserted their claim to the privilege[25].

64. The Defendant submits that the Claimants have claimed to be the only officers of the company or the only persons that can properly and lawfully appear in the US proceedings and copy and certify the documents requested. The Defendant on the other hand contends that the Claimants have misrepresented the position by incorrectly arrogating unto themselves the sole capacity to act for the company and comply with the subpoena thereby creating the false right to claim the privilege. The Defendant contends that on the evidence, there are others that may act as agents/representatives of the company and who are in a position to carry out the dictates of the subpoena without the Claimants' certification. It remains the fact, that Tanelka Inc is not the entity to whom the privilege attaches.

[25] See the correspondence between the parties and the extract of the notes of the interview between the Customs & Excise and the Claimants exhibited to the Claimants' joint affidavits.

65. In any event, the fundamental point is this; if the privilege does not attach to these documents the Claimants cannot avail themselves of the privilege. They then must comply and produce the copied and certified documents as required by the subpoenas. This court has found(as an alternative to the primary finding only) that the privilege does not attach to these documents as claimed. That would be the end of the Claimants' claim to the privilege and resistance to appearing to the subpoena. Tanelka Inc can also comply with the subpoena by appearing in the person of an authorized person or agent that can satisfy the object and intent of the subpoena – production of specified copied and certified invoices on behalf of Tanelka Inc.

66. Just to be clear, ***authentication*** (as appears to be the compelled act over which the privilege is sought in several of the authorities cited in this matter) can be qualitatively different to certification. Certification is a physical act verifying the physical sameness of one document – the copy – with the other – the original. Authentication is open to being a contemporary statement as to the truth of the contents. The privilege attaches to documents that have an independent existence of the other and speak for themselves. Authentication, it appears to this court, may add an additional dimension to the document. It is not merely saying that this copy was printed from the original, but, that the activity to which the content of the documents speaks and/or the content itself, are true. This conclusion no doubt is part of the objectives of the criminal proceedings in which the prosecutor is burdened to prove and in which the Claimants are not required to provide incriminating evidence produced only by virtue of the command of the subpoenas. This is new evidence that would not have existed prior to the subpoenas. The documents must speak for themselves. The Claimants themselves are not required to 'authenticate' the invoices however, but for instance, one Deviri Sarabjit, or other appropriate agent may meet the legal requirement for authentication[26]. So the authentication as long as it does not have to be authenticated by the Claimants(who have claimed the 'privilege') is required to be produced by Tanelka Inc. pursuant to the subpoenas. Certification is a different requirement. The claimants can certify the documents.

67. I note again that it is only the Claimants in their capacity in which they are subject to the criminal proceedings in Trinidad and Tobago, who may claim this privilege. If the documents were subject

[26] The Court makes no findings on this.

to the privilege, then the Claimants, notwithstanding they would be acting for the company, would lose the cloak of protection to which they are entitled, in the Trinidad and Tobago proceedings. The proceedings pursuant to the subpoenas have a life only because of the Trinidad and Tobago investigation/proceedings. It is like an extension of the local investigation/proceedings. The content of the request letter and subpoena may as well have been the substance of an application made before the court in Trinidad and Tobago. At no point has the Defendant asserted that the information obtained pursuant to the subpoenas will not be used against the Claimants in the local proceedings. Indeed if it is not for that purpose, then why request it at all? If it had no probative value would the DPP have sought the request? Perhaps it is the prospect have having to decipher these considerations, why section 33C was envisaged as creating the sole channel for requests.

68. This court holds that if it had held that the request from the Central Authority was a valid and subsisting one and only if, then the Claimants or other lawful agent of the company (including the makers of the documents whosoever that may be) identified by the Claimants as officers of Tanelka Inc, would be bound to appear before the US body and produce to it the said copied and certified documents requested in the subpoenas. The letter of request required more than the subpoenas requested. The Claimants are only duty bound it appears, to produce that which the subpoenas have commanded - certified copies of 166 tax invoices including the specified numbered invoices.

Constitutionality of the Articles 8(1) and (4) of the Order

69. The terms of the Article among other things provide for the USA subpoenas compelling a party to appear, testify or produce documents requested. It provides also that notwithstanding the party asserting a privilege, the evidence or receipt of the documents may be taken and the issue of the Claimants reliance on the privilege be referred to the Requesting State to be resolved there.

70. The Claimants are clear, as is the Law and learning; that the Act was not passed with the requisite majority and required endorsements to override the constitutional protection afforded a party.

71. It is not clear that the documents or other evidence taken in the USA pursuant to this Article 8 of the Order, necessarily becomes admissible in the proceedings in the Requesting State against the

party to which the subpoena was issued (assuming them to be the same), in the face of the assertion of the privilege in that criminal proceeding in Trinidad and Tobago[27].

72. However, the court notes that **(i)** the Commissioner's subpoenas and powers thereto are in relation to Tanelka Inc. which has no claim to the privilege; **(ii)** further, this court has concluded above in the *alternate* findings if you will, that were the *Request* to be valid, the Claimants would not be able to claim the privilege in the Trinidad and Tobago proceedings in relation to the documents commanded under the subpoenas. Either way the application of Article 8 would not be applicable. I accept the Claimants' broader argument, that were the evidence required of the Claimants such as to attract the privilege, the Article 8 would act against the party in an unconstitutional manner[28]. As it stands, although not affecting the Claimants in this matter, it is a law likely to contravene the rights of *any person* who is in fact entitled to invoke the privilege in the courts of Trinidad and Tobago[29].

The pleadings-facts not contested

73. The Claimants contend that the Defendant has not adduced any evidence to deny the Claimants' pleadings that the subpoenas present them with the prospect of their right to silence and their right against self-incrimination being infringed by the Commissioner. The Defendant contends that no such evidence of infringement of these rights has been put to the Defendant to refute.

74. The Claimants rely on the Civil Proceedings Rules (1998) as amended at Parts 10, 31 and 56[30] and the authority of ***M.I.5. Investigations Ltd v Centurion Protective Agency Ltd.***[31]

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[27] I have considered what Senior Counsel for the Claimants refers to as the Canadian approach if you will, in making what this court considers the sensible distinction between compellability and admissibility. Regrettably, our provisions do not comfortably allow for that interpretation.
[28] See section 5(2),(d) of the Constitution.
[29] The reasons for this are comprehensively and I think unassailably, set out in the submissions of senior Counsel for the Claimant.
[30] 10. 5 "Defendant's duty to set out his case (1)The defendant must include in his…"
Part 31.2 of the CPR sets out the form that affidavit must take while Part 31.3 sets out the contents of an affidavit.
Rule 56.11 Any evidence filed in answer to an application for an administrative order must be by affidavit, but the provisions of Part 10 apply to such affidavit.
[31] Civ. App. No. 244 of 2008 "Where a defence does not comply with Rule 10.5(4) and set out the reasons for denying the allegation or a different version of events from which the reasons for denying the allegation will be evidence, the Court is entitled to treat the allegation in the claim form or statement of case as undisputed or the defence as containing no reasonable defence to the allegation…"

75. The ruling in ***M.I.5.*** is instructive as the learned Justices of Appeal used the words "*is entitled to*" implying a discretion lies with the court in treating with a defence which does not comply with Part 10. Even if this court agrees that the defence as presented does not rebut or deny the claim of self-incrimination, this does not in and of itself, make the case for the Claimants.

76. This court has examined the evidence of the Claimants and the authorities presented and has concluded that if the request was lawful in the first place; the right to silence and the right against self-incrimination does not attach to Tenalka Inc. nor to the documents requested under the subpoenas. Further, the letter request of the Central Authority of Trinidad and Tobago confirms that one Deviri Sarabjit was the officer of Tanelka Inc. identified, to provide the documents to the Commissioner[32]. The Claimants' contention that they were the only officers who served for the continuous period 2013-2016, taken on its face, does not negate the ability of any officer of Tanelka Inc, now serving, e.g. Deviri Sarabjit, to attest to the validity of invoices as identified in the letter request/subpoenas and which form part of the company's records.

77. It is not enough that a lack of evidence on the Defendant's will lead directly and definitively to judgment in favour of the Claimants. The court *"is entitled"* to so find, provided that the Claimants' evidence supports and indeed leads to such an outcome.

Approach of court in interpreting our constitution

78. The Claimants' submissions of 25th June 2018 reiterate their reliance on ss. 5(2) (d) and 14 of the constitution of Trinidad and Tobago – right to protection against self-incrimination and seeking redress for infringement of said right. The Claimants have also provided in these submissions, a detailed review of the Canadian perspective reflected in BC Securities Commission v Branch.[33]

79. Suffice it to say that this court recognises the rights of the Claimants under the constitution and the redress available under the said constitution when these rights are infringed. In the Claimants' case, the right to silence and against self-incrimination are at the forefront of this challenge to reject the subpoenas. The Claimants are not wrong in asserting this right and seek redress; the

[32] See Claimants' submissions filed 25th June 2018 at para 3
[33] Para 10 of the Claimants' submissions filed 25th June 2018.

authorities support this.[34] The Court is astute to avoiding the slavish adoption of the foreign courts conclusions without regard to their underlying statutory moorings and philosophical underpinnings that may well have a peculiar cultural relevance to those jurisdictions. This does not negate the historical value of appropriately transposing the sensible principles for our purposes. In the end, while being cognizant of the rights asserted by the Claimants, this court must also follow the evidence – go where it and the applicable law leads. In doing so, it would be the finding of the court, if the section 33 procedure was lawfully complied with, that the documents requested are if fact "*pre-existing*" documents to which the privileges, rights and protection claimed by the claimants under the constitution, do not attach.

DISPOSITION

80. For the reasons stated above, **IT IS HEREBY ORDERED THAT**:

    I. This Court declares that the '*Request*' made by the Central Authority of Trinidad and Tobago to the United States of America (USA) pursuant to the Mutual Assistance in Criminal Matters Act Chap. 11:24 (the Act), to cause the Claimants as owners or Officers of Tanelka Inc. (a company incorporated in the USA) to be subpoenaed before a Commissioner in the USA for them to be compelled to give testimony and to produce documents to the said Commissioner for the purpose of sending same to the Comptroller of Customs in Trinidad and Tobago for the purpose of assisting the said Comptroller in the investigations which are being conducted in Trinidad and Tobago by the Customs Department for it to determine whether the Claimants committed criminal offences in Trinidad and Tobago is ultra vires the Act and specifically section 33C thereof;

    II. This Court declares that the said, now held unlawful '*Request*' is not in contravention of sections 4(a), (b); 5(2)(d) and (h) of the Constitution of Trinidad and Tobago;

[34] R v Director of Serious Fraud Office, ex parte Smith [1993] AC 1; Brown v Scott [2003] 1 AC 687; Attorney General of Trinidad and Tobago v Whiteman [1991] AC 240; Maharaj v Attorney General (No. 2) [1978] UKPC 3; Hinds v The Queen PC App. Nos. 4&5 of 1975.

III. The relief claimed for redress pursuant to section 14 of the Constitution of Trinidad and Tobago is dismissed;

IV. An order of certiorari is granted; the subject *'Request'* by the Central Authority of Trinidad and Tobago to the USA pursuant to s. 33C of the Act is quashed and the State shall do all that is required to be done to give effect to this order and render the subpoenas inoperable and/or void;

81. For the reasons provided in the Judgment above, **IT IS NOTED as follows[35]:**

V. That in any event, if a contrary view to that expressed above were to hold sway; i.e. that the Request made pursuant to section 33C is ultra vires the said section; the following order (and attendant miscellaneous ancillary reliefs) would in this court's view follow;

VI. That the First and Second Claimants by virtue of the subpoenas are not deprived of their privilege against self-incrimination and the right to silence in relation to the copying and certification of the 166 Tax invoices including the specified numbered invoices only;

82. **IT IS FURTHER ORDERED THAT**:

VII. The Defendant to pay the Claimants 85% of their Costs fit for Senior Counsel and Junior Counsel to be assessed before the Master or as otherwise agreed between the parties.

DAVID C HARRIS

HIGH COURT JUDGE

APRIL 28TH, 2020

[35] To be clear, the court's final judgment order is at para 8o.