REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

C.V. 2009-00398

BETWEEN

RONALD DANIEL

CLAIMANT

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

RESPONDENT

Before Hon. Madame Justice C. Pemberton

Appearances:

For the Claimant: Mr. G. Ramdeen instructed by Ms C. Homer-Nanan

For the Defendant: Mr. M. Bhimsingh instructed by Mr T. Davis

JUDGMENT

[1] **FACTS**

On 5th February 2009 Mr. Ronald Daniel ("RD") filed a Constitutional motion seeking redress for alleged breaches of the Constitution under Section 4(a), (b) and 5(2) (h). The following facts are not in dispute:

(1) On April 26, 2004, RD was convicted and sentenced to 4 years imprisonment with hard labour for the offence of armed robbery. He was transported to the State Prison, Golden Grove, Arouca, on that day to start his term.

(2) Whilst there, he formed the view that his sentence was too harsh and appealed the Magistrate's decision on the ground of severity of sentence. He completed his Notice of Appeal on April 27, 2004, the next day.

(3) After some time, he, acting on his own understanding of the Prison Rules and advice from his Attorney, decided to withdraw the Appeal.

[2] RD then deposed to the following as his account of the facts leading up to the filing of these proceedings;

(1) On May 25, 2007, RD claims that he informed the Prison Authority, through a prison officer (not identified) of his intention to withdraw the Appeal and asked for the requisite forms to be supplied to him. RD reported that certain utterances were made to him to the effect that the day of his request for the form, a Friday, was not convenient as there was no transport available to take him to Port of Spain. He was allegedly told, "You have to wait till Monday if you want to withdraw your Appeal."

(2) On May 28, 2007 he renewed his request and he received the forms from another prison officer (not identified). These forms were duly completed. RD was informed (person not identified) that the Prisons Authorities would deliver them to the Court.

(3) RD further deposes that having withdrawn his appeal "the Prison Authorities continued to detain me. I did not know on what basis the authorities continued my detention. As was indicated to me by the officer on 25th May 2007, I was taken to the Port of Spain Prison, Frederick Street, Port of Spain. My detention by the Commissioner of Prisons continued at the Port of Spain prison until my release on the 8th June 2007."

[3] In response to this, the Attorney General spoke through Ramkaran Ramnarine POII ("RR") stationed at the Remand Prison, Arouca, who outlined the salient happenings of the 25th May 2007. These are:

(1) That he is in charge of the Reception at the said Prison. RR gave a list of his duties which included "receiving and discharging inmates at the facility, and filling out of Withdrawal of Appeal forms, where inmates wish to do same".

(2) That he was detailed to work the 6:00 a.m. – 1:00 p.m. shift in company with "POI Keith St Louis, POI Darren Francis and PO Dexter Hewitte".

(3) Upon notification of intention to withdraw an Appeal by a prisoner, the prisoner is escorted to the Reception Area where he signs the Notice in quadruplicate. Arrangements are then made for the Prisoner's transport to Port of Spain.

(4) That at no time during his hours of work did RD bring to him or any other officer stationed with him information concerning his filing a Notice of Withdrawal of Appeal.

[4] Marvin Diaz ("MD") POI, provided further evidence. He stated as follows:

(1) On 25th May 2007 MD was detailed to the Reception Area on the 1:00 p.m. – 9:00 p.m. shift by Officer in Charge Mahadeo GoCool (Gokool). During that period, he worked with other officers, Stephon Pascall, Dion Garcia, Wade Gibbs and Sheldon St Rose.

(2) When Notice of Intention to withdraw an Appeal is communicated, the prisoner is escorted to reception area where he signs the form in quadruplicate. The forms are sent to the Warrant Section, Maximum

Security Prison**. There is no need for the Prisoner to be escorted to Port of Spain.**

(3) On 25th May 2007, RD was **not** brought to him nor any other officers stationed with him, with respect to completing the requisite Notice of Appeal Forms.

[5] Mr. Daniel in his Motion now prays that the Court would order:

(a) A declaration that the failure and/or neglect and/or omission of the State more particularly the Commissioner of Prisons, his servants or agents to provide the Claimant with a form for the withdrawal of his appeal on the 25th May 2007 when the Claimant gave oral notice of the withdrawal of his appeal was in **breach of the Claimant's rights to due process and protection of the law** as guaranteed under section 4(a), (b) and 5(2) (h) of the Constitution.

(b) A declaration that the failure and/or neglect and/or omission of the State more particularly the Commissioner of Prisons, his servants or agents to transmit to the Registrar of the Supreme Court the Claimant's Notice of Withdrawal dated the 28th May 2007 on or before the 28th May 2007 was unconstitutional and in **breach of the Claimant's fundamental rights** as guaranteed and enshrined under section 4(a), (b) and 5(2) (h) of the Constitution of Trinidad and Tobago.

(c) A declaration that the **detention of the Claimant from the 25th May 2007 until the 6th June 2007 was unlawful and unconstitutional** and in breach of the Applicants fundamental rights not to be deprived of his liberty except by due process of law.

(d) An order that **monetary compensation including aggravated and exemplary damages** be paid to the Applicant for the above unconstitutional action and for all damages and consequential loss suffered by the Applicant as a result thereof.

(e) …

(f) …

(g) …

[6] According to Messrs Ramdeen and Seepersad the issues for determination in this motion are as follows:

(1) Whether RD's rights under Sections 4(a) and (b) and 5 (2) (h) of the Constitution were infringed when:

(a) On 25th May 2007 the Defendant through a Prison Officer (name unknown) failed to provide RD with a form for the Notice of Withdrawal of his Appeal when he gave an oral indication to the said officer (name unknown) of his desire to withdraw his Appeal;

(b) The Prison Service **failed and/or neglected and/or omitted to transmit** the Notice of Withdrawal of Appeal to the Registrar of the Supreme Court;

(c) The Prison Service detained him from the 25th May 2007 until the 6th June 2007

(2) If the issues at 1 are decided in favour of RD whether an award of damages including aggravated and exemplary damages should be made to RD.

[7] The Attorney General in answer to this claim raised the following issues:

(1) Having filed and subsequently withdrawn his appeal, how is remission pursuant to Prison Rule 285 calculated?

(2) Have there been breaches of Section 4(a), (b) and 5(2) (h) of the Constitution of Trinidad and Tobago?

(3) The question of res judicata and abuse of process.

(4) The question of reasonableness of the defendant's action in transmitting the Notice of Withdrawal.

(5) The question of unlawful imprisonment.

[8] From the outset, I wish to indicate that I shall be concentrating on issue 1, of the Claimant's issues mirrored in issue 2 of the Defendant's issue and issue 3 of the Defendant's issues.

[9] **EVIDENCE**

It is instructive that RD did not file or seek to file an Affidavit in Response to these facts or a notice seeking to cross examine these deponents. To me it would have been important to do so, so as to resolve the conflicting evidence. Instead he chose to attack the evidence by reference to the CPR.

RD'S OBJECTION's TO MATERIAL IN RR AND MD's AFFIDAVIT.

RD's objections went to the admissibility of evidence contained in MD and RR's affidavits on the ground that they offend Part 31.3(1) CPR, that is that no proper foundation has been laid to receiving this evidence. Suffice it to say that in relation to both affidavits sworn by RR and MD, the proper foundation was laid. MD did not have to indicate how long he has been assigned to the Remand Prison. He deposes that he was an officer for the past thirteen (13) years and that he was assigned to the

Remand Prison at the relevant time. He gave a list of his duties which are *inter alia "filling out of Withdrawal Forms when inmates wish to do same" and "receiving and discharging inmates at the facility".* He gave evidence of the practice when a Notice of Withdrawal of Appeal was received by reception. That evidence lays the foundation for the meat of his testimony, which was that on the material date and during his shift he received no notice of Withdrawal of Appeal from RD. The evidence is therefore admissible.

[10] With respect to paragraph 7, it is obvious that MD can only give this evidence from his own knowledge. The only objection that can be taken to this information is that it has not been corroborated by the other officers, but this goes to weight and not to admissibility. RD ought to have countered with rebuttal evidence. Since there is none, this issue remains an unresolved factual issue. With respect to RR's affidavit, my views are the same.

[11] Further, RD in his principal affidavit omitted to give of his alleged communication to the Prison Officer on duty of his desire to withdraw his Appeal, neither did he give the name or names of the Prison Officers with whom he interacted on 25th May 2007. I state this in passing.

[12] **THE EVIDENCE AS IT STANDS**

Messrs. Ramdeen and Seepersad are quite correct in their assertion that "If the inmate is not brought to the reception area by the officer to whom the request is made the officers at the reception area could not have any knowledge of the Claimant's intention to withdraw his appeal. The role of the reception officer in assisting an inmate with withdrawing his appeal only becomes activated when the inmate is brought to the reception area by an officer".

[13] **ANALYSIS**

Let us examine all of the facts as presented by the parties. RD maintains that he made a request of an officer whose name he did not share with the court. RD did not share with us the time at which this request was made. It is true that the Attorney General provided no evidence in rebuttal with respect to that specific point. RR and MD both state that during the periods which they manned the Reception Area RD was not brought to them with respect to filing a Notice of Withdrawal of Appeal.

[14] How must I treat with this? In these circumstances, can I conclude that RD has provided uncontroverted evidence to support his claim of the Prison Authority's failure "to provide RD with a form for the Notice of Withdrawal of his Appeal when he gave an oral indication to the said officer (name unknown) of his desire to withdraw his Appeal"? I think not. This again is an unresolved factual issue.

[15] Faced with these contradictions, one cannot say that there are not serious issues of facts in the matter at bar. In **JAROO**[1] it was clearly emphasized that in Constitutional matters, the issues to be heard were that of law, not of fact. Lord Hope opined, *"the originating motion procedure under section 14(1) is appropriate for use in cases where the facts are not in dispute and questions of law only are in issue. It is wholly unsuitable in cases which depend for their decision on the resolution of disputes as to fact."*[2] The discrepancy which arises in the facts makes this matter unsuitable as a Constitutional motion.

[16] Even if I accept RD's version of the facts, can this be a case of *mala fides* on the part of the Prison Authorities so as to support RD's claims of breach of his constitutional rights? As posited by Mr Bhimsingh, and with which I agree, in order for the court to make a finding that there was a breach of constitutional rights on the ground that a

---

[1] **JAROO** citation. See fn. 19 at para. 36.
[2] Id. at para 36.

public authority is found to have acted with *mala fides*, there must be clear and cogent evidence. Has RD provided such evidence? The answer is obviously no.[3]

[17] **DUE PROCESS**

SECTION 4(A) – THE RIGHT OF AN INDIVIDUAL TO… LIBERTY THE RIGHT NOT TO BE DEPRIVED THEREOF EXCEPT BY DUE PROCESS OF LAW.

The Constitution guarantees that a person is not to be deprived of his liberty save by "due process" of the law. There is not, in any person, a right to liberty without more. That right must be read together with the right to "due process". The whole right must be read together and cannot be disjointed. That is the clear language, purpose and intent of Section 4 (a). It is unarguable that RD was denied his liberty. That is settled. Whether he was denied his right to due process must be made out in his evidence.

[18] **DUE PROCESS UNDER SECTION 4 (A) OF THE CONSTITUTION**

The issue of "due process" was dealt with in **THOMAS v BAPTISTE**[4] and in **BOODRAM**[5]. These cases remind us that the right to "due process" guarantees to an individual a justice system which is "fair". It does not guarantee a justice system that is infallible.

[19] **EVIDENCE**

On 1st June 2007, RD approached these courts seeking to secure his release from Prison. Madame Justice Dean Armorer on June 8th, 2007, granted a Writ of Habeas

---

[3] CA No 12 of 1999 **POLICE SERVICE COMMISSION v WADE HYDE** where Sharma J.A. as he then was stated that cogent evidence must be advanced to establish a violation of procedural provisions. See further CV 2005 -00655 **SEEROMANI MAHARAJ-NARAYANSINGH v DPP AND AG** where it was stated that the Claimant must not only state the facts but must prove them in order for this claim to succeed.

[4] **THOMAS v BAPTISTE AND OTHERS** (1998) 54 WIR 387.

[5] **BOODRAM v THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** [1996] A.C. 842.

Corpus in his favour. RD then filed a private action against the Commissioner of Prisons and the Attorney General[6]. In CV 2007-00398 RD requested as follows:

- Damages and all consequential loss suffered by the Claimant for the **false imprisonment** of the Claimant by the Second Defendant being an Officer of the State of Trinidad and Tobago acting in the course of his duties for **the period 28th May 2007 until 8th June 2007.**
- Aggravated and exemplary damages.
- Special damages in the sum of $1,100.00 representing loss of earnings for the period 28th May 2007 until the 8th June 2007.

[20] By virtue of an Order of the Court, action CV 2007-00398 was dealt with before Jamadar J. (as he then was), who determined the suit in favour of Mr. Daniel[7]. His order read as follows:

1. Leave be and is hereby granted to the claimant to enter judgment against the first and second named defendant.
2. Judgment is hereby entered against the first and second named defendant.
3. Damages be assessed before a Master sitting in chambers on a date to be fixed by the Court Office.

---

[6] **RONALD DANIEL v THE ATTORNEY GENERAL OF T&T AND JOHN ROUGIER, THE COMMISSIONER OF PRISONS**. CV2007-02390. JAMADAR J. (as he then was).

4. That the first defendant do pay the costs of both applications filed on the 20th day of September 2007 and the 7th day of November 2007 to be assessed by the Master at the assessment of damages.

[21] At the assessment, Master Sobion entered a consent order in these terms:

> **IT IS HEREBY ORDERED BY CONSENT** That the Defendants do pay the Claimant damages agreed in the sum of Forty Two Thousand and Five Hundred Dollars ($42,500.00).
>
> **IT IS FURTHER ORDERED** that the Defendants do pay the Claimant's costs assessed in the sum of Eleven Thousand, Two Hundred and Seventy Five Dollars ($11,275.00).[8]

[22] **SUBMISSIONS**

CLAIMANT'S SUBMISSION

Messrs. Ramdeen and Seepersad did not analyze this evidence in their submissions. Instead they focused on the legal principles with respect to the allegation that RD's right to due process of the law was infringed. They drew my attention to paragraph 7 of the Claimant's affidavit which spoke to his decision to withdraw the appeal and paragraphs 8, 9, 10, 14, and 17 thereof which spoke to his allegations that the Prison Authorities delayed in converting his desire to withdraw his appeal into a reality. In fact, it was asserted that RD's attempt to withdraw his appeal "was 'pre-empted' by the action of the Prison Officer in failing to provide the Claimant with the prescribed forms to effect the withdrawal". These actions they submit falls squarely within Lord Millett's Dicta in **THOMAS v BAPTISTE**[9], where the Learned Judge stated "it is the

[8] Order of Sobion M. Dec. 10, 2008 in matter CV 2007-02390.
[9] See fn. 4.

general right accorded to all litigants not to have the outcome of any pending appellate or other legal process pre-empted by executive actions".

[23] **THE DEFENDANT'S SUBMISSIONS**

Mr Bhimsingh submitted there is no evidence to show that the Claimant was deprived of the opportunity to withdraw his appeal or to file his Notice of Withdrawal. The Respondent has acknowledged that they have taken it upon themselves to transmit the Claimant's Notice of Withdrawal where there are no statutory provisions compelling them to do so. Unlike the case where there has been a failure to transmit the Notice of Appeal within the requisite timeframe with dire consequences, the withdrawal of an appeal is entirely within the discretion of a Prisoner on remand. Mr Bhimsingh contends that it was RD who controlled his decision as to when he should withdraw his appeal. The evidence shows that he was supplied with the Notice of Withdrawal which was transmitted to the court. In the circumstances, Mr Bhimsingh submitted that RD had available to him the processes for withdrawing his appeal. That right was not stymied by the Prison Authorities. RD's claim based on due process could not succeed.

[24] **ANALYSIS**

Messrs. Ramdeen's and Seepersad's reliance on Lord Milette's dicta is flawed on two grounds. First, where is the evidence that RD's right to due process was pre-empted? The mere fact that RD was able to file for and obtain a grant of a writ of H*abeas Corpus* in CV2007-01853 and that he was able to prosecute and obtain an order of the Court in that CV2007-02390, showed that RD was wrongly kept imprisoned and that he was deprived of his liberty. Whether that deprivation of liberty was compounded by the lack of due process is **the** question for deliberation. If we apply the dicta already alluded to, it would seem that the evidence to sustain the argument

that the due process requirement was breached, is lacking. In my opinion, RD cannot successfully argue that he was denied "due process" of the law.

[25] Further the Authorities relied upon by Messrs Ramdeen and Seepersad all speak to clear cases in which those applicants' rights to due process were interfered with by executive action. In those cases, the applicants' lost their rights to appeal the Magistrates' decisions by the non delivery or late delivery of Notices of Appeal. This is not the case here. RD filed his Notice of Appeal and made his own decision to withdraw same after it had lost its value to him. He was not deprived of due process. The claim fails on this ground.

[26] **SECTION 4 (b) THE RIGHT OF THE INDIVIDUAL TO EQUALITY BEFORE THE LAW AND THE PROTECTION OF THE LAW**

CLAIMANT'S ARGUMENTS

RD has submitted that the failure of the Prison Authorities to deliver his Notice of Withdrawal forthwith has infringed this provision. Messrs. Ramdeen and Seepersad choose to argue this issue on the basis of dicta of Lord Diplock in the **Mc LEOD**[10] case, **THE CENTRAL BROADCASTING**[11] case and the local decision on **KARIM v THE ATTORNEY GENERAL**[12]**.** In the face of no evidence as to the time when RD made his request known, Counsel advances that it was the duty of the Prison Authorities to transmit RD's notice forthwith. The approach suggested is that the court must "balance the interest of both parties involved". Counsel opined "such a duty cannot be considered onerous on the Commissioner of Prisons, as it is only in the case of

[10] **THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO v Mc LEOD** [1984] 1 WLR 522.
[11] **COUNCIL CENTRAL BROADCASTING SERVICES LIMITED ET AL v THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** Privy Council Appeal No. 49 of 2005.
[12] **AARON KARIM v THE ATTORNEY GENERAL** HCA NO. 1358 OF 2004.

persons who have completed serving their sentence upon delivering that the duty to deliver forthwith would arise".

[27] **RESPONDENT'S CASE**

As indicated above Mr. Bhimsingh is of the opinion that there is no statutory duty on the Prison Authorities, in the terms pressed by RD.

[28] **ANALYSIS**

I agree that there is no statutory duty imposed on the Commissioner of Prisons to transmit Notices of Withdrawal of Appeal. However, good administration which recognizes the need for the observance of Fundamental Human Rights would inspire practices and at some point infer duties on public bodies. In this case my view is that the Prison Authorities upon learning that an applicant, similarly circumstanced to RD, that is that he desires to withdraw his appeal should act with alacrity in effecting that desire.

[29] The question is, do these apparent faults in administration amount to breach of the constitutional right of protection of the law. As with all other allegations or breach or rights, the person alleging must bring evidence to prove these breaches. The evidence does not show that RD's right of protection has been infringed. There may have been a delay in processing the applicant and that was acknowledged through the grant of the Writ of *Habeas Corpus* and the order of Jamadar J. (as he then was). Those actions in themselves show that RD's protection of the law remained intact throughout.

[30] I lay great storm on the analysis of this provision through the cases of **BOODRAM**[13] and **FORBES**[14]**.** One of the principles which are laid down by these cases is that

[13] See fn. 5.

access to the court to vindicate a person's rights is in itself a tangible demonstration of the protection of the law. The learned judges' also indicate that the trial of the issue would be the "due process" to which a person is entitled. As long as a litigant can avail himself of opportunities to approach the court to pursue and protect his rights as is clearly evident in this case one cannot complain of a breach of Section 4(b) of the Constitution. RD's claim therefore fails on that ground.

[31] **SECTION 5 (2) (h): PARLIAMENT MAY NOT DEPRIVE A PESON OF THE RIGHT TO SUCH PROCEDURAL PROVISIONS AS ARE NECESSARY FOR THE PURPOSE OF GIVING EFFECT AND PROTECTION TO THE AFORESAID RIGHTS AND FREEDOMS.**

CLAIMANT'S SUBMISSIONS

"What is at issue here is whether Sections 5 (2) (h) would impose a duty upon the State to deliver the Notice of Withdrawal forthwith in the circumstances of the Claimant's case. In the determination of this issue the wording of Section 5 (2) (h) is most material. The Section does not simply provide for the making of "provisions", had it done so the State may have been able to satisfy such a duty. What the section does is impose a duty to provide provisions that are necessary for the purpose of giving effect and protection to" the Claimant's rights and freedoms protected by Section 4 and 5".

[32] **DEFENDANT'S SUBMISSIONS**

Mr Bhimsingh repeated and relied on his earlier submissions as it related to the Claimant's alleged request of 25th May 2007. He submitted that in all of the circumstances of this case both factual, evidential and legal, RD, had available to him the processes for withdrawing his appeal which he exercised, and the ability to approach the court once he felt that his rights were impeded.

---

[14] **CLINTON FORBES v ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** P.C.A. No. 2 of 2001.

[33] **ANALYSIS**

The answer to this is short. There are no authoritative cases for the **duty** advanced by Messrs Ramdeen and Seepersad. As I stated before proper administrative steps ought to be put in place to ensure that delays as occurred in this case in the Prison system or any delays whatever are exceptional. In any event those alleged actions or inactions are insufficient to demonstrate that RD's right to move the court for the protection of his liberty had been infringed. The case fails on this ground.

[34] **RES JUDICATA AND ABUSE OF PROCESS**

Messrs. Ramdeen and Seepersad did not address this issue. Mr Bhimsingh urged me to disallow this motion on the ground that RD is estopped from continuing this matter on the basis of res judicata. He based this proposition on both the facts and case law.[15] Mr Bhimsingh further reminded me that it was within the courts discretion to allow this motion to proceed under section 14 of the Constitution. He alluded to Mohammed J. in **HAYNES**[16] who expressed the view that once there are disputes of facts "in diametric opposition to what the Applicant was contending" that the Applicant is under duty to withdraw the Constitutional Motion". These should encourage me to dismiss the motion.

[35] **ANALYSIS**

RES JUDICATA

I wish to echo the sentiments of Mohammed J. in **RALPH BISSOON V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**[17] in which he examined the two relevant issues when identifying *res judicata*; are the **same parties** involved in both actions

[15] Pages 12 and 13 of Attorney General's submissions.
[16] **HAYNES v THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** HCA 612 OF 1999.
[17] **RALPH BISSOON v THE ATTORNEY GENERAL OF TRINDAD AND TOBAGO**. HCA S1872 OF 2002. Pages. 10-11. Mohammed J.

and are the matters dealing with the same substantive issue? I cannot give better expression to the analysis provided by the learned judge, so I quote:

(i) Were the parties in the Habeas Corpus proceedings the same as the parties in this motion?

In order for res judicata estoppel to apply, one of the constituent elements is that the parties to the later litigation must have been parties to the earlier litigation or their privies – see **SPENCER BOWER, TURNER AND HANDLEY** at **para. 19** under the heading **"The Constituents of res judicata estoppel".**

The parties in the Habeas Corpus proceedings were clearly different since the Respondent therein was the Commissioner of Prisons. It is of no real significance, in my view, that Counsel representing the Attorney General (and the Commissioner of Prisons) appeared in the Habeas Corpus proceedings since in the final analysis the Attorney General was not and indeed could not have been a proper party to those proceedings.

(ii) Is the question that was "really involved" in the Habeas Corpus proceedings the same as that involved in these proceedings?

A detention may be illegal without necessarily being unconstitutional. The essential purpose of Habeas Corpus proceedings is to determine the legality of the detention and though it need hardly be said, not its constitutionality…

I therefore disagee with Mr Bhimsingh and find that RD's claim cannot be dismissed on this ground.

[36] **ABUSE OF PROCESS**

Mr Bhimsingh did not really discuss this as a separate issue. There is no contest that the factual bases in the case at bar and the two previous actions are the same. In fact when one look at the relief prayed in CV 2007-02390 it is the same relief prayed for in the instant action[18].

[37] Mr Daniel swore in his affidavit in support of this action that, *"[b]y the order of Mr. Justice Jamadar it was ordered that the Defendant Attorney General and Commissioner of Prisons were liable for false imprisonment by virtue of detaining me from the 6th June 2007 until 8th June 2007"*[19]. However that is not reflected in any of the Orders of the Court as seen above. There is also no accounting for the difference in time period as he stated in his affidavit, which was allegedly the basis of the Order and the relief sought in this application. Therefore it stands to reason that I must read the Orders of Jamadar J. (as he then was) and Sobion M., as they are written.

[38] When I examined the Statement of Case in CV2007-02390 and compared it with Mr. Daniel's affidavit for this Constitutional Motion, the similarities are striking. Paragraph 13 of the Statement of Case reads:

> *The acts and conduct of the Second Defendant acting in then course of his employment in unlawfully incarcerating the Claimant for the period 28th May 2007 until the 8th June 2007 were oppressive, arbitrary and unconstitutional and the Defendants are liable in aggravated and exemplary damages.*[20]

[39] This raises two issues. First, it can be argued that this action was intended to re-open whether RD's claim could attract an award of aggravated and exemplary damages as

---

[18] See para. 19 infra.
[19] Affidavit of Ronald Daniel. Para. 12 Filed Feb 5, 2009. CV 2009-00398.
[20] Statement of Case. Para. 13 Filed Jul. 9, 2007 CV 2007-02390.

redress for breaches of the Constitution. I say this, if the Court was minded to grant those damages, it would have stated so in its Order. It is clear that paragraph 13 was not referenced at all in the Jamadar J.'s (as he then was) Order. The award of exemplary damages is not a limb of damages which is treated lightly by the Court. As **RAMANOOP** demonstrates, the nature of the action plays a pivotal role in determining if exemplary damages are awarded[21]. It is noted that even within the limitations of qualifying for exemplary damages additional factors affect the quantity of the damages awarded[22].

[40] RD's case clearly did not meet the minimum requirements to be considered for an award of exemplary damages. If RD had wished to press the issue he would have asked the Court to vary the Order or he would have appealed it. He did neither. Further, when one looks at the Order of Sobion M. we see that the parties consented for damages to be entered for a certain figure with no mention of aggravated or exemplary damages being included. It would seem therefore, that the present action is an attempt to win the Court's attention to consider the issue of aggravated and exemplary damages which ought to have been raised in the false imprisonment action.

[41] If that was **not** RD's intention and if I were to accept RD's contention that the agreed period of false imprisonment addressed in CV2007 - 00398, was 6th – 8th June 2007, then the following questions must be raised:

---

[21] **SIEWCHAND RAMANOOP v THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO.** Page 19 states, "Whether it be an award for exemplary or vindicatory damages by the Constitutional Court one thing is quite clear, it certainly will not be an award which a person would receive in tort, although this could be a realistic starting point."

[22] Id. at page 20. Several factors may be considered in assessing the basic figure for example:

- The nature of the Constitutional Right breached.
- The circumstances surrounding the breach including the gravity and duration.
- The frequency with which the particular breach occurs in society.
- A realistic approach between the frequency of the breach and the need to deter others from committing similar breaches.

1. Having agreed that the false imprisonment was for two days and having received compensation **BY CONSENT** before Master Sobion in the false imprisonment action, is it open to RD now to file these proceedings seeking the reliefs which he has sought?

2. Could his claim be defeated on the ground of abuse of process, the second ground advanced by the Attorney General?

[42] I note that Mr Ramdeen did not respond to the Attorney General's submissions, so I am at liberty to take them as agreed. Nevertheless, I shall proceed to give my reasons why I must answer these questions in this way:

(1) It is not open to RD to file these proceedings.

(2) RD's claim can be defeated as it is an abuse of the Court's process.

[43] The authors of The Caribbean Civil Court Practice at p. 235 state:

> *The concept of 'abuse of the court's process' in the form of re litigation is wider than res judicata or issue estoppel. It covers re litigation where a party failed to bring his whole case forward in one go and wishes to supplement it or bring in other parties in a second set of proceedings.*

I would modify this passage and would add leaving out one of the parties on the motion and suing only one party as occurred in this case.

[44] **NATURE OF ACTION**

To determine if there is an abuse of process, one has to look at the **nature of the action** filed and available parallel remedies. Several cases examine the type or nature of an action and its treatment by the Courts. One such matter is **PATRICK**

CHOKOLINGO V THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO.[23] RD to my mind had correctly commenced his action in the common law court. Having come this way, he could have obtained exemplary damages.

[45] Jamadar J.A. in **ANTONIO WEBSTER**[24] recognized that constitutional issues **may** be dealt with on actions commenced by Claim Form. Would it not be an abuse of process to allow RD to re-litigate those already settled issues so as to afford him an award and assessment of damages at a higher plane?

[46] The Privy Council in **JAROO** stated that "the mere allegation of constitutional breach was insufficient to entitle the applicant to invoke the jurisdiction of the court under … section 14 (1) of the Constitution if it was apparent that ***the allegation was*** … ***or an abuse of the process of the court…".***

[47] Section 14 relief on applications for redress under the Constitution is discretionary. There is no reason advanced by RD to me for the exercise of my discretion to allow RD to prosecute this action. This to me is affording a litigant an opportunity to misuse the Court's resources by attempting to rehash a previously litigated issue or issues, which ought to have been litigated. I repeat that the substantive issues in both, the false imprisonment and the constitutional motion, are the same, and the Order of Jamadar J. (as he then was) effectively dealt with these issues.

[48] In any event, it is important to note that RD is not asking that the Order of Jamadar J. (as he then was) be set aside or varied in any way, but that I consider this claim as it relates to his Constitutional relief. To me RD is asking for another bite at the cherry, under the guise of seeking Constitutional relief. I cannot, with respect, allow this.

---

[23] **PATRICK CHOKOLINGO v THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**. 1 [1981] WLR 106, 111-112. LORD DIPLOCK.

[24] See para. 24.

[49] Constitutional relief must not be abused. This is the mantra of the Court. The Court would have dealt with the unconstitutionality of the matter when CV 2007-02390 was heard. Since the Court did not deal with it, RD had a right to appeal. Where there is common law relief one ought not to invoke the Constitutional jurisdiction of the Court, especially in this case where the common law jurisdiction pronounced and awarded damages.[25] RD had, and exercised his right to seek a parallel remedy which was available to him. It seems that through this action at bar RD is attempting to return to the "halls of justice" via a Constitutional motion. I wish to reverberate the sentiments of Lord Diplock in **HARRIKISSOON V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** when he stated,

> The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safe guard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action.[26]

[50] The views expressed in **SIEWCHAND RAMANOOP V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**[27] and **THAKUR PERSAD JAROO V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**[28], also demonstrate that this case was not an exceptional case so as to attract Constitutional relief. Consequently, this matter is an abuse of process.

---

[25] **JAROO** and **BISSOON AT PG. 5** supported my view through the theory "parallel remedies".
[26] **HARRIKISSOON v ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** [1980] AC 265, 268. LORD DIPLOCK.
[27] Op cit fn. 12
[28] **THAKUR PERSAD JAROO v THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO** PCA NO. 54 OF 2000. LORD HOPE. PARA 29 states, "The right to apply to the High Court which section 14(1) of the Constitution provides should be exercised only in exceptional circumstances where there is a parallel remedy [available to the Applicant.]"

[51] **CONCLUSION**

RD has not convinced me that his liberty was threatened as a result of a lack of "due process" or that he was denied equality of the law or the protection of the law. He has not made out that the right to procedural safeguards guaranteed under Section 5(2) (h) has been breached. The evidence clearly shows that he was afforded, and took every opportunity to secure his freedom. Further, the contradictions in facts have made this matter unsuitable for constitutional relief.

[52] The Attorney General raised the two issues, *res judicata* and abuse of process. Although I made the finding that this matter could not be dismissed on the ground of *res judicata,* I do find that this present action constitutes an abuse of process of the Court, and as a result I would not and could not permit the continued prosecution of this claim. Having come to that conclusion, I cannot accede to RD's prayers for relief in this matter.

[53] In the premises, RD's Constitutional motion filed on February 5, 2009 is dismissed with costs to be assessed.

IT IS NOW ORDERED AS FOLLOWS:

- The Notice of Motion filed on February 5, 2009 be and is hereby dismissed.
- That the Claimant do pay 75% of the Defendant's costs.
- That the Defendant do file a Bill of Costs on or before May 6, 2011.
- That the parties do return on July 12, 2011 at 11:00am in POS 17 for the Assessment of Costs.

Dated this 24th day of March 2011.

/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE.