

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2010-00838**

**BETWEEN**

**MARK BARTLETT**

**1st Claimant**

**HEIDI BARTLETT**

**2<sup>nd</sup> Claimant**

**MICHAEL MURPHY**

**3<sup>rd</sup> Claimant**

**And**

**THE DIRECTOR OF PUBLIC PROSECUTION**

**1<sup>st</sup> Defendant**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**2<sup>nd</sup> Defendant**

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**Before Hon. Madame Justice C. Pemberton**

**Appearances:**

**For the Claimant: Mr. A. Razack**

**For the Defendant: Ms. R. Hosein**

**JUDGMENT**

[1] On May 7, 2008, Mark Bartlett, Heidi Bartlett and Michael Murphy were all charged with offences under section 49 of the Summary Offences Act.<sup>1</sup> They were all placed before a Magistrate after being formerly charged. The matter came up for hearing in February 2010 and was adjourned. During the hearing, it is alleged that the Attorney for the parties indicated

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<sup>1</sup> Id. at 3.

to the learned Magistrate that he was prepared to “seek a ruling on the points of law raised in regards to disclosure”.<sup>2</sup>

[2] It is further alleged that, “The Magistrate subsequently adjourned my (his) matter to the 8<sup>th</sup> of March 2010, and stated, ‘that she was tired of hearing these applications for disclosure and wanted to proceed to trial’.”<sup>3</sup>

[3] Based on these statements, the parties entertained certain fears as stated hereunder:

*“that by proceeding to trial without the issue of disclosure properly being dealt with and not having the benefit of the Magistrate hear legal arguments as requested by my Attorneys at Law, that my Constitutional right to a fair trial and disclosure of information in the possession of the state, will be breached.”<sup>4</sup>*

[4] By Fixed Date Claim Form, the Claimants approached the Court seeking the following constitutional relief:

*(a) A declaration that the right of the Claimants to liberty, security of person, and enjoyment of property are and not to be deprived thereof, except by due process of law and the right guaranteed to each of them by section 4(a) and (b) of the Constitution of the Republic of Trinidad and Tobago as further particularized in section 5(2)(e),(f)(ii) and (h) thereof have been, are being or is likely to be contravened in relation to each of them, by the failure of the State Authorities to provide each of*

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<sup>2</sup> Id. at para 10.

<sup>3</sup> Affidavit of Mark Bartlett. Filed Mar 5, 2010. Para 11.

<sup>4</sup> Id. at para. 12

*them in advance with any material of which the State Authorities are aware which would tend either to materially weaken the State's case or materially strengthen the case for the Defence in the criminal trial against the Claimants arising out of Magisterial No: 3567/08, 3566/08, 3565/08 (hereafter referred to as "the said proceedings").*

*(b) An order directing the Director of Public Prosecutions to disclose and/or cause to have disclosed to the Claimants the said materials in advance of the commencement of the trial of the said proceedings.*

*(c) Consequent upon (b) above, an order staying the said proceedings against the Claimants pending the disclosure of the said materials as required by (b) above.*

*(d) An order directing the Magistrate seized of the said proceedings to hear and determine according to the law, in the event that the parties are unable to agree, the said materials.<sup>5</sup>*

On April 28, 2010, at the CMC, they all professed their innocence.

- [5] Having perused the papers, I formed the view that there was a preliminary issue arising in this matter. I framed it as, ***"Based on the facts presented, can the reliefs claimed on the Originating Motion be entertained in a Constitutional Court?"*** The parties filed written submissions and the Claimants responded to the Defendants' submissions. I shall only state the salient features of their submissions.

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<sup>5</sup> Originating Motion. Filed Mar 5, 2010. pg. 2-3.

[6] **THE ATTORNEY GENERAL AND THE DIRECTOR OF PUBLIC PROSECUTION**

The crux of the Defendant's submissions is that this is an abuse of the court's constitutional jurisdiction, since there was an alternative remedy. The Claimants' proper remedy lay in judicial review of the Magistrate's decision. Counsel submitted further that, "[t]he pleadings on the face do not disclose any breach of a constitutional right. A mere allegation of a breach of a constitutional right will not suffice to successfully invoke proceedings under section 14(1) of the Constitution."<sup>6</sup> The Defendants' placed reliance on sections 3, 5(1), 5(2) and 15 of the **JUDICIAL REVIEW ACT**<sup>7</sup> and a slew of well known and recognized authorities<sup>8</sup>.

[7] **THE CLAIMANTS' SUBMISSIONS**

In response, Mr. Razack informed the Court that three issues were raised for consideration. These issues were, the constitutional duty of the Director of Public Prosecutions, the duty of the Director of Public Prosecutions and the alternative action to be taken if the Court believes that constitutional relief is inappropriate. Mr. Razack then launched into a foray on these issues.

[8] Mr. Razack further filed what he termed a reply to the Defendant's submissions, in which he identified the constitutional duty of the Director of Public Prosecutions. This was "*to conduct litigation as a minister of justice which includes:*

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<sup>6</sup> Full Written Submissions on Behalf of the Defendant. Filed Jun 30, 2010. Para. 4.

<sup>7</sup> **JUDICIAL REVIEW ACT, 2000.**

<sup>8</sup> **THE ATTORNEY GENERAL FOR GAMBIA V. JOBE (1984) AC 689 AT 700; MATTADEEN V. POINTU, 1999 AC 98; THAKUR PERSAD JAROO [PRIVY COUNCIL 54 OF 2000]; MAHARAJ V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO (1979) AC 385, AT 395 F-G; THE MAYOR, ALDERMAN AND BURGESSES OF SAN FERNANDO V. CHANDRAWATEE RAMLOGAN CIVIL APPEAL NO. 54 OF 1985; HARRIKISSOON V. THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO [1984] 1 ALL E.R. 694; THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO V. GEORGE JOSEPH. CIVIL APPEAL NO. 63 OF 2002; THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO V. DURHAM MCLEAN. CIVIL APPEAL NO. 74 OF 2002.**

- *Obedience to the rights of the accused person/s to a fair trial as guaranteed by the Constitution of Trinidad and Tobago;*<sup>9</sup>
- *That the Director of Public Prosecutions as a Constitutional Officer is under a positive duty to provide statements of witnesses;*<sup>10</sup>

[9] Mr. Razack then, through his submissions, “sought the Court’s guidance on the duty of the Director of Public Prosecutions to ensure that all persons accused in criminal matters can receive a fair trial as guaranteed by the Constitution of Trinidad and Tobago.”<sup>11</sup> To his mind, “[t]hese rights include, [t]he right to disclosure and such fundamental rights given by the Constitution.”<sup>12</sup> Further, “[u]nder the provisions of the Constitution, there are no other procedures to be taken against the Director of Public Prosecutions for breach of Constitutional duties.”<sup>13</sup> In Counsel’s opinion, “[t]his matter necessarily involves an interpretation of constitutional provisions, the right to a fair trial and the rule of law. A magisterial court has no jurisdiction to determine or consider statutory provisions or rule of law.”<sup>14</sup>

[10] Counsel continued:

“Further and in the alternative, should this Court be of the view that a Constitutional Motion and/or Constitutional relief not be appropriate, the Court should set a timetable and give directions for the matter to be dealt with, as it has become evident that in the absence of directions, it

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<sup>9</sup> See Seeromanie Maraj-Naraynsingh v the Director of Public Prosecutions (unreported) C.A. Civ. 33 [2007] and Dhanraj Singh v The Attorney General of Trinidad and Tobago and the Director of Public Prosecutions H.C.S. S395 [2001], H.C.S. 474 [2001].

<sup>10</sup> See Jasper v United Kingdom [2000] 30 EHRR 441, HM v McInnes [2010] UKSC 7, HM v Murtaugh [2009] PCA 11.)

<sup>11</sup> Claimant’s Reply to Defendants’ Written Submissions. Filed Jul. 30, 2010.

<sup>12</sup> Id.

<sup>13</sup> Id. See Minister of Home Affairs v Fisher [1979] 3 All ER 21 at pg 21, at page 26, letters D and E and page 25, letter h.

<sup>14</sup> See ex parte Bennett [1994] 1 AC 42.

*will not be possible for the Claimants to receive a fair trial as guaranteed by the Constitution.”<sup>15</sup>*

## **ANALYSIS AND CONCLUSION**

[11] I considered the submissions carefully. Mr. Razack did not treat with the preliminary issue raised but sought to introduce through his submissions an entirely different case from the one at bar. The submissions bore no relevance to the factual matrix upon which the reliefs which were claimed or for that matter, did they address the preliminary issue which was under consideration. The Defendants’ submissions offered more assistance and stated fundamental positions in law. Mr Razack’s submissions did not meet with my favour at all.

[12] My own view of the matter can be summarised as follows:

- 1) There is no allegation of any breach of any constitutional right on the **case as pleaded** so that the Constitutional jurisdiction of the Court cannot be invoked;
- 2) There is no allegation of any untoward behaviour or dealings by the Director of Public Prosecution on the **case as pleaded**;
- 3) The matter is still alive and is engaging the attention of the learned Magistrate. It was adjourned, not dismissed, so that the learned Magistrate’s alleged utterances cannot, and in fact, did not amount to a rejection of Counsel’s stated “indication” that he was prepared to make certain submissions to the Court. I use the word alleged since there is no corroborating or confirmatory evidence that these indeed were the words used by the Magistrate.

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<sup>15</sup> see Attorney General of Trinidad and Tobago v Ramanooop [2006] 1 AC 328 at page 328, paragraph 30.

4) Even if I were to find that the decision of the Magistrate was reviewable, and that is **not** the case before me, and an adjournment in the way stated and in those alleged circumstances is not commensurate with a definitive position or a decision capable of being reviewed.

5) This action is premature.

[13] I may add that one must not use the constitutional jurisdiction of the court to advance positions which must necessarily engage the Magistrate's attention. It is tantamount to enlisting the High Court to usurp the powers of the magistrate conferred by the Statute<sup>16</sup>. Further, one does not invoke the court's jurisdiction to seek guidance. There must be a factual matrix speaking to infringement of fundamental rights for the court to be moved. Anything else amounts to an abuse of process, which this action has proven to be.

[14] In the premises the reliefs claimed on the originating motion cannot be entertained by a constitutional court at this stage. Having come to that conclusion, I am left with no option but to dismiss the motion filed and order that the Claimants pay the Defendants' costs in the usual manner.

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Fixed Date Claim Form filed on March 5, 2010 be and is hereby dismissed with costs to be paid by the Claimant's to the Defendants'.
2. Defendants' are to file and serve their Statement of Costs on or before October 29, 2010.

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<sup>16</sup> Disclosure is an issue to be dealt with by the Magistrate at that stage of the proceedings. Further a Stay of Proceedings will only be granted in certain specified conditions. Those have not been met in this action.

3. Assessment of costs to take place on December 13, 2010 at 11:00 am, SF02.

Dated this 30<sup>th</sup> day of September, 2010

Charmaine Pemberton  
High Court Judge