

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Cv. #2009/1536

BETWEEN

JEFFREY JOHN

CLAIMANT

AND

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

DEFENDANTS

BEFORE THE HONOURABLE MADAM JUSTICE DEAN-ARMORER

APPEARANCES

Ms. Cindy Bhagwandeem for the Claimant.

Mr. Christopher Sieuchand and Ms. Kahaya Kesara Nanhu for the Defendant.

JUDGMENT

Introduction

1. The claimant instituted proceedings by way of a claim form filed on the 31st of January, 2011. The claimant sought damages for false imprisonment and a declaration that he had been denied his fundamental rights pursuant to s5(2)(c)(ii) of the *Constitution*¹. The claimant also sought a declaration that he had been deprived of his constitutional right to communicate with an attorney-at-law upon arrest.

¹ The Constitution of Trinidad and Tobago Chapter 1:01

Facts

1. On or about the 21st October, 2008 the claimant was arrested at his home at approximately 2:50a.m. He was arrested for failure to pay an outstanding road traffic ticket. It was subsequently proved that the claimant had in fact paid the outstanding ticket. He was released at 10:20 a.m. on the same day.
2. It is undisputed that on the 21st of October, 2008 P.C. Salindra Singh was the warrant officer attached to the Chaguanas Police Station. On that day there was an outstanding warrant for the claimant. P. C. Salindra Singh conducted a warrant exercise and visited the claimant's premises.
3. P. C. Singh in his evidence-in-chief testified that on 8th February, 2008 he received a first instance warrant for the arrest of the claimant. The warrant pertained to the alleged failure of the claimant to pay a ticket which had been issued to him on 9th June, 2006.
4. It is undisputed that at approximately 2:50 a.m., P. C. Singh accompanied by other police officers knocked on the claimant's door informed him that there was a warrant for his arrest and took him to the Chaguanas Police Station.
5. On P. C. Singh's own admission, the officer did not have the warrant in his possession at the time of the arrest. It was the evidence of P. C. Singh that the warrant was executed upon arrival at the Chaguanas Police Station. There was however no evidence before this court to prove the time at which the warrant had been executed.
6. The defendant in their defence alleged at paragraph 3 (d), that the warrant was executed at approximately 6:00a.m. This allegation was not however supported by evidence. At paragraph 9 of his witness statement, P. C. Singh testified as follows:

*“At the police station I read the warrant to the claimant and informed him of his rights and privileges ...”*²

7. The Court is therefore left to conjecture as to the time when the warrant had been executed. An examination of the station diary extracts which had been filed in these proceedings also fail to provide any indication as to the time when the warrant was executed.

Law

8. The law in respect of the tort of false imprisonment is in my view well settled. When the claimant proves the fact of the arrest, the burden shifts onto the arresting officer to justify same³.
9. Arresting officers have traditionally sought to justify arrests in two ways:
- By asserting and proving that an arrest without a warrant had been effected with reasonable cause to suspect that the arrested person had committed an arrestable offence⁴; and
 - That the arrest had been effected on the authority of a warrant.
10. Throughout this case, it had been the defendant’s defence that the arrest had been effected pursuant to a warrant. In my view this is an absolute defence, as long as the arresting officer has satisfied the requirements of s. 49 of the *Police Service Act*⁵; which provides:

² Witness Statement of PC Singh filed on the 29th of March 2010

³ Clerk & Lindsell on Tort 19th edition 15-23

⁴ See s 3 (1) Criminal Law Act. Ch 10:04

⁵ Police Service Act Ch. 15:01.

- “1. When an action is brought against a police officer for an act done in obedience to a warrant ... the officer shall not be responsible for any irregularity in issuing of the warrant
2. In any action brought under subsection (1) the Court shall give judgment for the officer if he fulfils the following conditions
 - a. he gives the warrant ... in evidence;
 - b. he proves that the Magistrate ... signed the warrant.
 - c. he proves that the act complained of was done in obedience to the warrant or order”.⁶

12. By section 47⁷, a police officer is mandated to effect arrests pursuant to an issued warrant even if the warrant is not in his possession.

13. In the case of **Ramkissoon v P. C. Ramdath and A. G.**⁸ the Honourable Justice Edo, as he then was set out the law concerning arrests pursuant to warrants. Justice Edo had this to say:

*“The question of whether Ramdath had reasonable and probable cause for the arrest of the plaintiff, does not in my opinion arise in a case where a warrant has been issued. This question is relevant where arrest has been made without a warrant”.*⁹

⁶ Police Service Act Ch. 15:01. S 49

⁷ Ibid at section 47.

⁸ Ramkissoon v P. C. Ramdath and A. G H.C.S.1146/1976. H.C.3085/1976. At page 6

⁹ ibid

The learned Justice Edoe cited *Clerk and Lindsell on Torts*¹⁰ in order to explain the distinction between ministerial and judicial proceedings. Justice Edoe quoted the learned authors of Clerk and Lindsell as follows:

*Legal proceedings may be either ministerial or judicial. In case of the former, the party employs the machinery of the law entirely at his own risk and is directly responsible for the latter, he appeals to the discretion interposed, and the steps thereupon taken result immediately from the exercise of that discretion and not from the act of the party.*¹¹

The officer who arrests without a warrant employs the machinery of the law at his own risk. Where he first obtains a warrant, having appealed to the discretion of a Magistrate, the arresting officer is protected by the exercise of the discretion of the judicial officer.

14. The claimant has relied on the decision of the Honourable Madam Justice Charles in *Nankishoer Rajpath v A. G.*¹² in which her ladyship held that a lapse of two years between the issue and the execution of a warrant constituted an affront to the liberty of the claimant. Her ladyship held that the warrant in question was no longer a good warrant.
15. In so far as the Court said at paragraph 28 that the matter had been instituted against “the state”, it is unclear from this decision whether the proceedings had been instituted under

¹⁰ Clerk & Lindsell on Torts 14th Edition at para. 686

¹¹ Per Edoe J *Ramkisson v P. C. Ramdath and A. G* H.C.S.1146/1976. H.C.3085/1976. At page 7 quoting from Clerk & Lindsell on Torts (14th Edn.)

¹² *Nankishoer Rajpath v A. G.* Cv 2007/1245

Part 8 of the *Civil Proceedings Rules*¹³ or whether the proceedings were for constitutional relief, pursuant to section 14 of the *Constitution*.¹⁴

Reasoning and Decision

15. The proceedings before me were instituted pursuant to Part 8 of the *Civil Proceedings Rules*¹⁵ by the ordinary claim form. It was an action in tort and was instituted principally in respect of an alleged act of trespass by P. C. Salindra Singh. The Attorney General's liability if any would therefore be vicarious. The Court is then required to consider in the first instance whether an action in trespass had been substantiated against the arresting officer. This question is answered in the affirmative, the Court then proceeded to consider whether the State is vicariously liable.
16. The question which this Court has to consider, bearing in mind the authority of *Nankishoer Rajpath*¹⁶ is whether the warrant ceases to be a "good warrant" by virtue of the delay in its execution.
18. In this regard I am regrettably constrained to depart from the view of my learned sister. The *Police Service Act*¹⁷ is mandatory at section 49(2). The Court shall give judgment for the officer. Of the three conditions specified, none of these, place an expiry date on the warrant.
19. I agree with the Honourable Justice Charles. It is an affront to the liberty of the citizen and indeed to their right to the security of their person to be at risk of being arrested to a warrant many months or years after the offence in question had allegedly been committed.

¹³ Civil Proceedings Rules 1998

¹⁴ Constitution of Trinidad and Tobago Chapter 1:01

¹⁵ Civil Proceedings Rules 1998

¹⁶ *Nankishoer Rajpath v A. G.* Cv 2007/1245

¹⁷ Police Service Act Ch. 15:01.

In my view however, it is not open to the Court to amend the legislation to accord with its view. This is a matter of policy which must be considered and rectified by Parliament. In my view, the defendant has satisfied all the conditions set out at section 49(2).¹⁸

20. In respect of 49(2)(c),¹⁹ it has been the uncontroverted defence of the defendant that the arrest had been effected in obedience to a warrant.
21. In respect of s 49(2)(a) and (b)²⁰ the defendant produced a copy of the warrant, bearing the signature of Her Worship Magistrate Alert this document had been disclosed pursuant to Part 28 *Civil Proceedings Rules*²¹ and no notice was ever filed by the claimant requiring that the original be produced. The claimant must therefore be regarded as having admitted the authenticity of the warrant. The authenticity of this document includes the authenticity of the signature of the Magistrate. Learned attorney-at-law for the claimant has submitted that the warrant is incomplete because it lacks the backing. The backing is not part of the warrant, but the endorsement that proves execution.
22. Accordingly, it is my view and I hold that P. C. Singh and by extension the defendant enjoyed an absolute protection by the conjoint effect of ss 47 – 49, of the *Police Service Act*²² and the warrant of Magistrate Alert. The claim for false imprisonment is hereby dismissed.
23. In respect of the claim for declaratory relief, it is my view that such relief ought properly to have been sought by way of an application under s. 14 of the *Constitution*²³ and Part

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

²¹ Civil Proceedings Rules 1998

²² Police Service Act Ch. 15:01.

²³ Constitution of Trinidad and Tobago Chapter 1:01

56 of the *Civil Proceedings Rules*²⁴. See *Antonio Webster v The Attorney General*²⁵

where Jamadar J.A. stated:

*What may be seemingly unclear is how one should deal with a case under the CPR, 1998 that is predominantly a common law action with only subsidiary legitimate constitutional issues. That is, a case in which the constitutional issues are neither the only or main relief that can be claimed. In my opinion, it would appear that in such a case, because of the supremacy of the constitution and subject to the learning in **Jaroo**, **Ramanoop** and **Belfonte**, the proper approach would be to proceed under Part 56, CPR, 1998 and at the appropriate stage seek directions under Part 56.9, CPR, 1998. Such an approach is procedurally consistent with section 14 of the Constitution, the overarching policy of Part 56, CPR, 1998 and the opinions of the Privy Council on the proper procedures to be followed in seeking constitutional relief and the substantive limitations in relation to doing so.*²⁶

24. Accordingly the claim for declaratory relief is hereby refused.

Dated this 3rd day of July, 2012.

Mira Dean-Armorer
Judge²⁷

²⁴ Civil Proceedings Rules 1998

²⁵ Antonio Webster v The Attorney General C.A.CIV.113/2009.

²⁶ Ibid at page 11. Jamadar J.A.'s ruling was upheld by the Judicial Committee of the Privy Council in Webster v The Attorney General 2011 UKPC 22

²⁷ Kendy Jean- Judicial Research Assistant;
Irma Rampersad- Judicial Secretary