IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

C.V. 2010-00456

BETWEEN

NO. 14074 P.C. GARY MOORE

NO. 14930 P.C. SIFONTES

CLAIMANTS

AND

HER WORSHIP MS. NALINI SINGH

CORONER, ST. GEORGE WEST COUNTY, PORT-OF-SPAIN

DEFENDANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

INTERESTED PARTY

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Delivered this 12th day of January 2011

Appearances:

For the Claimants:	Mr. Israel Khan, S.C., Mr. Ulric Skerritt
For the Defendant:	Mr. Russell Martineau, S.C., Mr. Larry N. Lalla, Ms. Renessa Tang Pack
For the Interested Party:	Mr. Gilbert Peterson, S.C., Ms. Eileen Green

JUDGMENT

BACKGROUND

[1] The Claimants in this matter are members of the Trinidad and Tobago Police Service, who initiated judicial review proceedings following an inquest into the death of Damien Antoine ("the Deceased") on the 5th February, 2004. The Defendant is a Magistrate and, by virtue of that office, a Coroner under the **CORONERS ACT, CHAP. 6:04**.

[2] The Defendant, as Coroner for the County of St. George West, held an inquest into the death of the Deceased. After hearing evidence from a sole witness, the Second-named Claimant herein, the Coroner issued warrants for the Claimants on the 2nd February, 2010 for the murder of the Deceased.

[3] The Application for leave was heard and granted by this Court on the 5th February, 2010. After hearing Attorneys for the Claimants, I ordered that leave be granted to the Claimants to file an application for judicial review as set out hereunder in paras. 5 and 10. I also ordered a Stay on the issuance and/or execution of the warrants of the coroner for the arrest of the Claimants until further order of the Court.

[4] This Court subsequently made an Order on the 23rd February, 2010, adding the Director of Public Prosecutions (the "DPP") as an interested party to the proceedings. In addition, by virtue of the same Order, the Coroner was required to file a copy of her reasons and a complete set of the proceedings before her.

[5] This Application for Judicial Review was filed on the 10th February, 2010 by a Fixed Date Claim Form and sought the following reliefs:

i. A Declaration that the decision of the Coroner on the 2nd February, 2010, to issue warrants for the arrest of the Claimants on a charge of murder was contrary to law and in conflict with the policy of the **CORONERS ACT, CHAP. 6:04**, **as amended by Act No. 17 of 1996**.

ii. A Declaration that the decision of the Coroner was in excess of her jurisdiction when she proceeded to make a finding against the Claimants without subjecting to examination, the persons who gave statements to the investigator.

iii. A Declaration that the decision of the Coroner to issue warrants for the arrest of the Claimants on a charge of murder is an abuse of process and is irrational and unreasonable.

iv. An order of Certiorari to remove into this Court and quash the said decision of the Coroner made on the 2nd February, 2010 to issue warrants for the arrest of the Claimants on a charge of murder.

v. An order of Mandamus directing the Coroner either to rehear and determine the inquest or to have same transferred to another coroner for hearing and determination.

vi. An Order staying the issuance and/or execution of the warrants issued by the Coroner for the arrest of the Claimants until further orders of the Court.

vii. Damages.

viii. Costs.

EVIDENCE IN SUPPORT OF THE APPLICATION

[6] This Application is supported by affidavits from both Claimants filed on the 5th February, 2010. The Claimants' evidence regarding what transpired on the 5th February, 2004 when the Deceased was shot, can be summarized as follows.

[7] At around 6:00 p.m., the Claimants received information and instructions from Ag. Inspector Lezama about a kidnapping that was to take place in the Western Division. They were advised to be on the lookout, while on patrol, for persons known or suspected to be involved in kidnapping operations.

[8] Later the same evening at around 7:00 p.m., the Claimants, who were both armed with 9mm service weapons, became part of a mobile patrol in an unmarked Police vehicle, which eventually led them to Phillips Trace, Maraval at around 9:00 p.m.

[9] While proceeding up the hill at Phillips Trace, they observed a group of five (5) men behind a light blue 323 Mazda vehicle which was parked at the dead end of the Trace. The Claimants exited their vehicle and proceeded upwards to approach the group of men. On reaching about ten (10) to fifteen (15) feet from the group, two men from the group, who were standing, fired at the Claimants. The Claimants returned fire, killing the Deceased.

[10] The reliefs being sought by the Claimants are based on the following grounds:

i. The Coroner failed to call witnesses to be examined at the inquest;

ii. The Coroner failed to secure the attendance of the witnesses pursuant to the intention of **SECTION 21** of the **CORONERS ACT**;

iii. The Coroner failed in her duty to conduct a proper investigation and/or to hold a judicial enquiry pursuant to **SECTION 21** of the **CORONERS ACT**;

iv. The Coroner relied on statements of persons who were not examined on oath, or at all.

v. The Coroner placed reliance on the statements of persons without assessing their credibility, particularly having regard to the forensic medical report on the trajectory of the bullets found in the body of the Deceased.

vi. The Coroner failed to consider the forensic report on firearms and ammunition including the spent shells recovered from the scene of the shooting, which would have assisted the Coroner in coming to a reasonable determination of the matter;

vii. The Coroner failed to consider the results of swabs taken from the hand of the Deceased.

THE STATEMENTS OF THE WITNESSES

[11] On the 6th February, 2004, four (4) eye-witnesses gave statements to the Police, namely: Randy Orr, Rondon George, Lyndon Charles and Keon St. Bernard.

[12] Orr, George and Charles in their original statements gave evidence that was consistent with the Claimants' account of the events. George and Orr gave further statements on the 16th February, 2004, which significantly contradicted their original statements. George said in his statement that

there were streetlights at the dead end of Phillips Trace and that the Deceased was forced to lie on his belly by the Police and was shot in that position.

[13] Charles, in his further statement, said that the Deceased was initially on his belly when he was shot in his foot and that he turned onto his back and was shot three (3) more times. Charles explained the contradictory statements by alleging that he was threatened by the Police into giving his initial statement of 6th February, 2004.

[14] Another eye-witness, Dean James, who was seventeen (17) years old at the time of his statement, claims to have known the First-named Claimant for five (5) years prior to the incident. James' statement of the 11th February, 2004, is consistent with the further statements of George and Charles that the Claimants did not act in self-defence, except that he claims that the Deceased was initially shot by the First-named Claimant while the latter was walking away from him, then shot a few more times while on the ground.

[15] Michael Sylvester gave a statement on the 16th February, 2001, which also suggested that the Claimants did not act in self-defence. He stated that he saw a man holding a gun and another man pointing a gun at the Deceased and then he heard a loud explosion. Upon hearing the explosion, Sylvester ran away and as he was doing so he heard two to three additional shots.

Sylvester did not state whether the Deceased was standing or on the ground, or whether the person pointing the gun at the Deceased was in front of or behind the Deceased.

[16] Glenroy Charles and Edwin Joseph, who were not eye-witnesses but gave statements on the 11th February, 2004, stated that someone called 'Laverne' told them that the Police killed the Deceased and also that they heard that shots were fired at the scene later that night.

[17] 'Laverne' was identified by another witness, Heydon Joseph, as his daughter in a statement dated the 9th March, 2004. However, he stated that neither he nor his daughter witnessed any incident on the 5th February, 2004.

THE POST-MORTEM AND BALLISTICS REPORT

[18] The post-mortem report on the Deceased indicated that he was shot four (4) times: once in the chest, left forearm, right thigh and left thigh. The entrance wounds for the first three (3) injuries was from the front. The injury to the left thigh had a lateral entry.

[19] All the bullets had a bottom to top trajectory, *i.e.*, the Claimants were firing at an upward angle which would be consistent with them firing at the Deceased while going up Phillips Trace.

THE RECORD OF PROCEEDINGS AND REASONS

[20] The Coroner, by an Order of the Court, filed transcripts of the proceedings before her which comprised the Record of the proceedings for the inquest ("the Record") on the 12th April, 2010. The Record disclosed that the Second-named Claimant was the only witness called to give evidence before the Coroner on the 29th January, 2009 and for whom, the Coroner had no questions.

[21] Thereafter, on the 2nd February, 2010, the Coroner exercised her right under **SECTION 28** of the **CORONERS ACT** to issue warrants of arrest for the Claimants as she concluded that there was enough evidence before her to make out a charge for murder, contrary to the Common Law.

[22] The warrants of arrest for the Claimants were read into the record and the inquest deemed closed. The Record does not disclose whether the Coroner afforded either the Claimants or their Attorneys an opportunity to be heard or to make any representations before the warrants were issued.

[23] The Coroner also filed on the 12th April, 2010 her reasons ("the Reasons") for arriving at her decision. The Reasons do not form part of the Record, but does indicate that the Claimants were not given an opportunity to be heard before the decision to issue warrants for their arrest was made by the Coroner.

ISSUES

[24] The issues that arise for determination are as follows:

i. Whether a coroner is entitled under the provisions of the **CORONERS ACT**, to consider written statements of persons who have not been examined on oath during the inquest and whose statements have not been tendered into evidence during the inquest;

ii. Whether the **CORONERS RULES 1953 (UK)** have any application to an inquest in Trinidad and Tobago;

iii. If **RULE 28** of the **CORONERS RULES 1953 (UK)** apply to coronial proceedings in Trinidad and Tobago, whether they were properly applied in this case;

iv. Whether the decision was, in the circumstances of this case, an error of law;

v. Whether the Coroner was in excess of her jurisdiction in determining that (a) the **CORONERS RULES 1953 (UK)** applied

to coronial proceedings in Trinidad and Tobago, and (b) admitting into evidence or considering the statements of persons who did not give evidence on oath pursuant to **SECTION 22** of the **CORONERS ACT**;

vi. Whether the Coroner's power to issue warrants under **SECTION 28** of the **CORONERS ACT** was improperly exercised or Wednesbury unreasonable; and

vii. Whether the Court should exercise its discretion to grant relief sought on the claim.

THE LEGISLATIVE FRAMEWORK

[25] The following legislative provisions are relevant to the determination of this matter:

THE CORONERS ACT, CHAP. 6:04 –

SECTION 10 (1):

"*A Coroner having received the report of the District Medical Officer as to the cause of death of any person shall carry out a preliminary investigation as to the cause and circumstances of death.*"

SECTION 10A:

"Where upon completion of a preliminary investigation the Coroner finds that the circumstances of the case warrant a further enquiry he shall hold an inquest in accordance with this Act."

SECTION 20:

"Every inquest under this Act shall be a judicial enquiry and may be held as well on Sunday as on any other day."

SECTION 21:

"A Coroner shall have all the powers conferred on a Magistrate with regard to witnesses by sections 46 to 50 (inclusive) of the Summary Courts Act."

SECTION 22:

"The evidence of every witness shall be taken down in writing in the form of a deposition, which shall be read over to the witness and signed by the Coroner and the witness, or, in the case of the incapacity or refusal of the latter to sign the same, by the Coroner and some other person in whose presence the deposition was taken; and the deposition shall be admissible in evidence in any proceedings in the cases and in which and subject to the conditions to which in similar proceedings in England like deposition taken by a Coroner in England would be admissible in evidence.

This Section shall not derogate from the admissibility in evidence of any such deposition independently of his Act."

SECTION 23:

"Where any person able to give material evidence in respect of any inquest, is from illness, unable to attend at the place where the Coroner usually sits, a Coroner shall have power to take the deposition of such person at the place where such person is."

SECTION 28:

"If, during the course or at the close of any inquest, the Coroner is of the opinion that sufficient grounds are disclosed for making a charge on indictment against any person, he may issue a warrant for the apprehension of the person and take him before a Magistrate, and may bind over any witness who has been examined by or before him in a recognizance with or without surety to appear and give evidence before the Magistrate."

THE EVIDENCE ACT, CHAP. 7:02 –

SECTION 2:

"Whenever any question arises in any action, suit, information, or other proceedings in or before any Court of Justice, or before any person having by law or by consent of the parties authority to hear, receive, and examine evidence touching to admissibility or the sufficiency of any evidence, or the competency or obligation of any witness to give evidence, or the form of the oath or affirmation to be used by any witness, or the admissibility or sufficiency of any document, writing, matter or thing tendered in evidence, every such

question shall be decided according to the law in force in England on the 30th August, 1930."

SECTION 14D:

(1) "*In any criminal proceedings or inquest, any record kept by a Government expert relating to anything submitted to him for examination, analysis or report shall be prima facie evidence of the particulars recorded therein."*

(2) *For the purpose of subsection (1) "Government expert" has the same meaning as that expression bears in section 19(4)."*

SECTION 19(4):

"In this section –

"Government expert" means the following public officers …

(b) Pathologist…"

THE OFFENCES AGAINST THE PERSON ACT, CHAP. 11:08 -

SECTION 7:

"No punishment shall be incurred by any person who kills another person by misfortune or in his own defence, or in any manner without criminality."

THE CRIMINAL LAW ACT, CHAP. 10:04 –

SECTION 4(1):

> **"***A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting lawful arrest of offenders or suspected offenders or of persons unlawfully at large."*

1. ***Whether a coroner is entitled under the provisions of the CORONERS ACT to consider written statements of persons who has not been examined on oath during an inquest and whose statements have not been tendered into evidence during the inquest.***

THE LAW

1. ***The manner in which documentary evidence may be received in an inquest.***

[26] The practice in Trinidad and Tobago in an inquest has always been that statements are submitted to the coroner, who, after a preliminary investigation issues a summons for each person whose statement is relevant to the inquest; such persons are examined on oath and their statements used as the basis for such examination.

[27] Therefore, in the conduct of a preliminary investigation under **SECTION 10** of the **CORONERS ACT** a coroner is entitled to rely upon documentary hearsay evidence.

[28] Strict rules of evidence do not apply to an inquest and, as such, at Common Law hearsay evidence (whether documentary or otherwise) is admissible.

[29] The issue that falls to be determined in this case, however, is whether a coroner is entitled to receive evidence contained in the written statements of persons who have not been examined on oath and whose statements have not been otherwise tendered into evidence by a witness under oath during the inquest.

[30] **SECTION 20** of the **CORONERS ACT** provides that every inquest held under the Act shall be a judicial enquiry**.**

[31] In **Jervis on the Office and Duties of Coroners, 10th Edition**, at para. 12-93, the duty of a coroner conducting an inquest is explained thus:

> "*In theory at least, the coroner's inquest being an inquisitorial proceedings, designed for the coroner … to start with no preconceptions and elicit the true facts regarding the incident in question … The aim was to find out that objective truth in the public interest and not the limited truth.*"

[32] Further, in **Herbert Ferguson v Attorney General, Court of Appeal No. 170 of 1995**, de la Bastide CJ, stated at p. 13:

> *"I accept that an inquest is a judicial inquiry … the coroner's verdict is 'equivalent to an indictment' and that witnesses whose evidence is in favour of a suspected person must be examined equally with witnesses whose evidence may be adverse. I accept these statements are as valid for Trinidad and Tobago as they are for England. The fact that in our jurisdiction a coroner never sits with a jury does not affect the relevance but it does mean that the same person who renders the verdict is always the one who decides what evidence to call. It must there be within his discretion to decide not to call certain witnesses if he reasonably concluded that their evidence cannot affect his verdict."*

[33] Two important principles can be gleaned from the *dicta* above:

i. Some evidence must be called on oath upon which the coroner can act, *i.e.* determine that an indictable offence has been disclosed;

ii. The refusal to call further witnesses can only be exercised if reasonable to do so.

[34] **SECTION 22** of the **CORONERS ACT** contains a mandatory provision, in the Court's view, which requires the evidence of every witness to be taken down in writing in the form of deposition. It follows therefore, that a

coroner has no jurisdiction to receive unsworn evidence (except in the case of a child as provided for by the **CHILDREN ACT, CHAP. 46:01**).

[35] Where, however, a coroner has jurisdiction to receive unsworn evidence, the evidence should not affect the coroner's verdict. In **R v Divine *ex parte* Walton [1930] 2 KB 29**, Talbot J. stated at pp. 36-37:

> "*Even where unsworn evidence had been received the Court would not quash the inquisition unless it appeared that the verdict had been influenced by it - again it is clear that a coroner's inquest is not bound by strict law of evidence – if the inquest has been so conducted, or the circumstances attending it are such that there is a real risk that justice has not been done, a real impairment of the security which right procedure provides that justice is done and is seen to be done, the Court ought not to allow the inquisition to stand. No doubt a coroner has considerable latitude as to the way in which he may conduct an inquest; he is not fettered by detailed rules of procedure; but on the other hand, the proceedings are formal, they are conducted on the lines which are now established by long usage, and the public and those more particularly interested have a right to expect that the verdict will be given upon sworn evidence heard the inquest and upon nothing else.*"

[36] The authorities relied upon by the Coroner do not support the proposition that at Common Law a coroner may receive documentary evidence simply by reading it. Furthermore, in none of the cases cited by the Coroner was evidence received in such a manner.

[37] In **Divine** the issue did not arise, while in **R v H.M. Coroner for Greater Manchester** ***ex parte*** **Tal [1985] QB 67**, the challenge was on the basis that the coroner had admitted hearsay evidence.

[38] **McKerr v Armagh Coroner [1990] 1 WLR 649** and **R v Attorney General of Northern Ireland** ***ex parte*** **Devine [1992] 1 WLR 262** dealt with **RULE 17** of the **CORONERS (PRACTICE AND PROCEDURE) RULES 1962 (NORTHERN IRELAND)(AS AMENDED)**. This Rule permits documentary hearsay evidence to be admitted where "*the attendance of the maker of the document is unnecessary and the document is produced from a source considered reliable by the coroner*". **McKerr** concerned a proposal by the coroner in that case to admit unsworn statements under Rule 17, while in **Devine** the disputed statements where proved by the police officers that had taken them.

[39] It is worth mentioning that even in Northern Ireland, the maker of a document admitted under **RULE 17** may still be required to attend the inquest and give oral evidence.

[40] The case of **R (Paul and the Ritz Hotel Ltd.) v Assistant Deputy Coroner for Inner West London [2007] EWHC 2721**, dealt squarely with the issue of whether a coroner may admit documentary evidence at common law without calling a witness. At First Instance, it was held that such evidence

could only be admitted through a witness as *per* Thomas LJ, paras. 46, 48 and 61, where he said:

> *"In McKerr, Lord Goff had – made clear that the rule making power could be used to regulate the way in which documentary hearsay evidence could be admitted. But Lord Goff also made it clear in ex parte Devine, that the rule making power did not affect the substantive law under which the hearsay evidence, even in documentary form, was admissible at an inquest, provided it could be "otherwise proved" … It seems to us clear that Lord Goff's reference to hearsay documentary evidence being "otherwise proved" must mean that Lord Goff contemplated admission of such evidence through a witness … It follows that in our view the hearsay evidence contained in the statements cannot be admitted under the provisions of Rule 37. It also follows that evidence contained in statements cannot simply be admitted by reading them. The hearsay evidence has to be admitted by calling a witness."*

[41] On appeal, in **R (on the application of Paul) v Assistant Deputy Coroner for Inner West London [2008] 1 WLR 1335**, the Court declined to accede to a submission that at Common Law all evidence, whether or not hearsay, before a coroner had to be by way of sworn evidence prior to the coming into force of the **CORONERS RULES 1953 (UK)**. The Court of Appeal stated however that it would be rare for a coroner to admit documentary evidence without calling a witness. Waller LJ at p. 1342 explained as follows:

"So far as the power of the coroner is concerned … I would accept that it was rarely, if ever, the practice of coroner to admit documentary evidence without the calling of a witness. In particular, it is difficult to think that coroners would have been inclined to statements of witnesses in documentary form even when those witnesses were unavailable for some reason – Perhaps some support for the reluctance of the coroner simply to put documents in evidence is supplied by what in fact happened in Ex p. Devine before the coroner, who, having ruled that statements were admissible by virtue of Rule 17 of the Northern Ireland Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 (SR &O(NI) 1963/199, proved those statements via witnesses."

[42] Further, the author of **Jervis (*supra*) 10th Edition** at p. 173, para. 19-9 says:

"Before admitting such evidence the coroner must publicly announce that he proposes to admit the documentary evidence, which he must briefly describe and also give the full name of the maker of the document that any properly interested person may see or copy if he so wishes, and may object to its admission. Unless the coroner otherwise directs, documentary evidence so admitted must be read aloud. The power … extends to all persons not present for whatever reason."

[43] Additionally documentary evidence may be received where "*in the coroner's opinion it is unlikely to be disputed*", **Jervis (*supra*), 12th Edition**, paras. 12-67.

[44] It is important both from the point of fairness to the persons of interest in the inquest and the interest of the public to ensure that a full and proper inquiry be held by examining all material witnesses on oath, as well as receiving the evidence of persons of interest to the enquiry such as the Claimants. By failing to call material witnesses, the Coroner deprived herself and the Claimants of an opportunity to assess whether the evidence at the close of the inquiry could support a charge of murder, or any offence against the Claimants.

[45] In the circumstances I hold as follows:

i. **By SECTION 22** of the **CORONERS ACT** a coroner, conducting an inquest, is obligated to receive the evidence of a material witness in the manner prescribed therein - that is, the witness must be examined oath, evidence taken down in writing in the form of a deposition which either he or the coroner must sign.

ii. At every inquest all interested parties must be given the opportunity to ask questions of any witness or witnesses called by the coroner to the inquest.

iii. Documentary evidence may be received by the coroner where in his opinion such evidence is unlikely to be disputed.

iv. If a coroner proposes to admit documentary evidence without calling the maker thereof, he or she must publicly announce his intention to do so. He is obliged to briefly describe such evidence

and give the full name of the maker thereof so that any interested person may object to its admission if he considers it necessary.

v. It would only be in a rare and exceptional circumstance that such a course should be adopted by the coroner.

vi. Even if unsworn evidence in the form of written statements were to be admitted by the coroner, he could place no reliance upon or be influenced by such evidence in arriving at his decision at the conclusion of the inquest.

vii. In all circumstances, therefore, I also hold that the Coroner made an error in law in admitting the unsworn statements of the witnesses as evidence and relying upon those statements in order to arrive at a decision to have the claimants charged for the offence of murder.

2. Whether the Coroners Rules 1953 (UK) are applicable to coronial inquests in Trinidad and Tobago.

[46] The Coroner held in her Reasons that pursuant to **SECTION 2** of the **EVIDENCE ACT**

> "*The law pertaining to this question which was in force in England on the 30th August, 1962 was encapsulated by Rule 28 of the Coroners Rules 1953. As such the scope of this rule determines whether there are in fact procedural rules which require a coroner presiding in a court in Trinidad*

and Tobago to call as a witness, a person who has authored a document that a coroner wishes to adduce into evidence at an inquest." (pp. 41-42)

[47] This finding by the Coroner was on the basis that there were no procedural rules in Trinidad and Tobago mandating that a coroner call as a witness a person who authored a document to be adduced in evidence at the inquest.

[48] The Court agrees that **SECTION 2** of the **EVIDENCE ACT** permits the application of the law of evidence in England as at the 30th August, 1962, in the absence of provisions in our local legislation; however, **SECTIONS 14D** and **21** of the **EVIDENCE ACT** regulate the reception into evidence of documentary hearsay in Trinidad and Tobago.

[49] In the absence of such provisions, therefore, it would have been permissible for the Coroner to admit documentary hearsay according to the law of evidence in force in England on the 30th August, 1962. However, SECTION **14D** of the **EVIDENCE ACT** expressly limits the categories of documentary hearsay which are admissible at an inquest.

[50] The Court is of the view that the coroner erred by concluding that the **CORONERS RULES 1953 (UK)** were applicable to the conduct of an inquest in Trinidad and Tobago.

[51] The **CORONERS RULES 1953 (UK)** were limited to inquests in the United Kingdom, however the **EVIDENCE ACT** governed the reception of evidence in judicial proceedings generally in the United Kingdom.

The **EVIDENCE ACT** of Trinidad and Tobago provides for the reception of evidence in judicial proceedings. Additionally, **SECTIONS 20** to **23** of the **CORONERS ACT** made provision for the reception of evidence at an inquest. I therefore hold that the **CORONERS RULES 1953 (UK)** could not override the provisions of these two statutes.

[52] The unintended effect of the Coroner's error in applying the **CORONERS RULES 1953 (UK)** to the conduct of the inquest before her was to alter the way in which evidence is received in an inquest in this jurisdiction. This, she clearly had no power to do.

[53] Even if the **CORONERS RUES 1953 (UK)** were applicable to inquests in Trinidad and Tobago, the Record makes it clear that the Claimants, whom the Coroner identified as persons whose interest could be affected by her decision, were not given an opportunity to require the makers of those statements to attend the inquest and give oral evidence. This denial of a fundamental right is enough in the Court's view to make the inquest flawed, even if the **CORONERS RULES 1953 (UK)** were applicable.

3. ***Whether RULE 28 of the Coroners Rules 1953 (UK) properly applied.***

[54] Even if **RULE 28** of the **CORONERS RULES 1953 (UK)** applies to inquests in Trinidad and Tobago, an issue arises as to whether it was properly applied by the Coroner. **RULE 28** states that:

> "***(1)*** *Documentary evidence as to how the deceased came by his death shall not be admissible unless the coroner is satisfied that there is good and sufficient reason why the maker of the document should not attend the inquest.*
>
> ***(2)*** *If such documentary evidence is admitted at an inquest, the inquest shall be adjourned to enable the maker of the document to give oral evidence if the coroner or any properly interested person so desires."*

[55] The Coroner in her Reasons considered that "good and sufficient" reasons existed under **RULE 28(1)** in the following circumstances:

> *"… the protracted period over which this matter was in abeyance in the Court system was cause for concern in light of the possible prejudice which could clearly accrue to the accused with the passage of more and more time. On this basis the Court felt satisfied that there was good and sufficient reason for admitting and relying upon documentary hearsay evidence."* (pp. 68-69)

"… it was my respectful view that had the Court continued to issue fresh summons to witnesses in the hope that they had appeared in Court to testify, this would have been sufficient to show that the matter was not placed on the trial list within a reasonable time in light of the Court's power in law to admit and reply on documentary hearsay statements in inquest proceedings. As such the documentary hearsay was admitted and relied upon." (p. 70-71)

"In summary I was satisfied that further adjournments of the matter would not have facilitated or allowed the makers of the witness statements to attend the inquest proceedings to testify an oath." (p.71)

"… summary and speedy hearing are desirable objectives of the coroner's jurisdiction. Furthermore, a coroner can rely on hearsay evidence for the purpose of efficiency." (p. 74)

[56] The Coroner's reasons for concluding the inquest without ensuring the attendance of material witnesses for examination on oath must be considered in the light of the following two cases:

R v H.M Coroner for North Humberside and Scunthorpe ***ex parte*** **Jamieson [1955] QB 1** *per* Bingham MR at para. 14:

> *"It is the duty of the coroner as the public official responsible for the conduct of inquests, whether he is sitting with a jury or without, to ensure that the relevant facts are fully, fairly and fearlessly investigated – He must ensure that the relevant facts are exposed to public scrutiny, particularly if there is evidence of foul play, abuse or inhumanity. He fails in his duty if his investigation is superficial, slipshod or perfunctory."*

In **R v H.M. Coroner for Southwark *ex parte* Hicks [1987] 1 WLR 1624,** Peter Pain J**.** at p. 1638 opined:

> *"It is the duty of a coroner to make proper inquiry, no matter the inconvenience that may be caused by doing so; to exclude relevant witnesses in order to avoid an adjournment cannot possibly be justified."*

[57] The Court notes that all the reasons put forward by the Coroner were in favour of ensuring expediency and convenience rather than fairness to the Claimants and upholding the rule of law. Further, no good and/or sufficient reason was proffered as to why the makers of the statements were not called upon or compelled to attend the inquest.

[58] Another consequential issue is whether **RULE 28** in fact gives a coroner power to admit documentary evidence simply by reading it. **SECTIONS 4(1)** and **(2)** of the **CORONERS ACT 1887 (UK)**, which was the law in force in the United Kingdom in 1962, provided:

"4(1). The coroner shall at the first sitting of the inquest examine on oath touching the death all persons who tender their evidence respecting the facts and all persons having knowledge of the facts whom he thinks it expedient to examine.

4(2). It shall be the duty of the coroner in a case of murder or manslaughter to put into writing the statements on oath of those who know the facts and circumstances of the case, or so much statement as is material, and any such deposition shall be signed by the witnesses and by the coroner."

[59] **RULE 28** is to be read in way which conforms with **SECTION 4** of the **CORONERS ACT 1887 (UK)** and the simple effect of this is that while being examined on oath any witness may produce in evidence a document, which he did not make once there is good and sufficient reason for the maker of the document not to attend. **RULE 28** does not permit a coroner to admit statements of material witnesses into evidence without those witnesses being called to testify.

[60] The Court holds that even if **RULE 28 of the CORONERS RULES 1953** were applicable, it was not properly applied by the Coroner. A proper reading of RULE 28 (1) and (2) does not permit a coroner to receive evidence at an inquest other than on oath unless "*good and sufficient*" reason is given as to why that witness could not attend. This Court considers that "*good and sufficient*" reasons would include death, illness or migration of the witness. This list is not exhaustive but rather an indication

of the kind of explanation that should be forward to the coroner for the absence of a witness to give evidence on oath.

4. Whether the decision was contrary to law

[61] I hold that the Coroner erred in law by admitting unsworn statements of witnesses as evidence and relying upon the contents thereof to arrive at a decision that a *prima facie* case for murder was made out against the Claimants. Additionally the application by the Coroner of the **CORONERS RULES 1953 (UK)** to render admissible evidence which would have otherwise been inadmissible is an error of law; the only way in which such evidence could have been properly admitted was through **SECTION 22** of the **CORONERS ACT**.

[62] The approach adopted by the Coroner created a power in coroners in Trinidad and Tobago to alter the law of evidence despite the clear provisions of the **CORONERS ACT**.

5. Whether the decision was in excess of jurisdiction or ultra vires

[63] With regard to the issuance of the warrants of arrest for the Claimants by the Coroner, the Court accepts that she was within her right to do so. However, this decision was based on the improperly admitted evidence of

persons who were not examined on oath before the Coroner. The only admissible evidence before the Coroner came from the Second-named Claimant which was to the effect that both he and the First-named Claimant acted in self-defence; not even the Pathologist's Report which could have been admitted into evidence through a witness on oath was before the Coroner.

[64] The Coroner's inherent jurisdiction to regulate procedures of an inquest does not include a power to act in a way, which is contrary to the provisions of the **CORONERS ACT** or the **EVIDENCE ACT**. To do so would be acting *ultra vires* her jurisdiction.

[65] The Coroner's decision was based entirely upon inadmissible evidence; put another way, there was no evidence before her upon which she could have made a finding that a case of murder was made out against the Claimants.

[66] In **R v Shoreditch Assessment Committee *ex parte* Morgan [1910] 2 KB 859**, *per* Farwell LJ at p. 880:

> "*No tribunal of inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such jurisdiction: such a question is always subject to review by the High Court, which does not permit the inferior tribunal either to usurp a jurisdiction which it does not possess, whether at all or to the extent claimed…*"

[67] Further, in **R v Bedwellty Justices *ex parte* Williams [1997] AC 225,** a committal on the basis of police interviews and not evidence on oath was quashed on the ground that the magistrate's decision was *ultra vires* his jurisdiction, in that the committal was based solely on inadmissible evidence not allowed under Section 6(1) of the Magistrates' Courts Act 1980.

[68] In **R v Dianne (Hammala) [2010] 2 Cr. App. R. 1**, the evidence of an overseas witness was taken by telephone conference and the relevant statute did not authorize evidence to be taken in such form. The resulting conviction was set aside as being unsafe for the same reason.

[69] I therefore hold that the Coroner's decision was in excess of jurisdiction and *ultra vires* her powers under the **CORONERS ACT**.

6. Abuse of power, irrationality and unreasonableness

[70] Under this head the Court had to consider whether the Coroner has acted in such a way that no reasonable coroner would act, having properly directed herself on the law.

[71] In **Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223**, Lord Greene MR stated at p. 230:

> *"It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could have ever come to it, then the courts can interfere…"*

[72] Having held that the Coroner erred in law by admitting inadmissible evidence and relying upon such evidence to come to a decision that a charge of murder be made out against the Claimants, I must now consider whether in the circumstances her decision was unreasonable.

[73] Even an analysis of the inadmissible statements before the Coroner as conducted below does not reveal any evidence upon which such a decision could have been arrived at. In the circumstances, I hold that the decision was unreasonable.

ANALYSIS OF THE STATEMENTS GIVEN BY THE WITNESSES

[74] Upon recitation of the contradictory statements of Rondon George and Lyndon Charles, the Coroner took the view that their original statements support the suggestion of an unlawful killing by the Police but that they "*omitted to mention the fact that the [Deceased] was shot by the Police whilst he was lying on the ground*". There is no basis upon which the Coroner could have come to this conclusion since George stated that the lied and Charles claimed that his original statement was wrong and had only been given

after he was threatened. Randy Orr appears to have been wholly discredited by the Coroner on the ground that he admitted to selling drugs, while Michael Sylvester appears to have been afforded a higher credibility because he had known the Deceased his whole life. The Coroner's view expressed above therefore amounts to no more than speculation on her part as it was not borne out on the statements before her.

[75] The Coroner in an attempt to deal with the contradictory and inconsistent statements, which she admitted into evidence, purported to apply the test laid down in the decision of **R (on the application of Sharman) v H.M. Coroner for Inner North London [2005] EWHC 857**, in resolving the issues raised by the statements:

> *"... whether there is sufficient evidence upon which the jury could safely come to the conclusion beyond reasonable doubt that the firearms of the police were discharged by them in the belief that they were under imminent threat of being shot … any matters of evidence coming from a witness with inconsistent statements, or with had character or with motives; and therefore credibility and truth are now matter I consider to be within the exclusive province of a tribunal of fact i.e. a jury."*

[76] In relation to the ballistics report and the certificate of analysis of the swabs taken from the hands of the Deceased, the Coroner considered that it was unnecessary to consider this evidence as there already existed "sufficient grounds" to raise a question of fact to be determined by a jury.

It is worth noting that the "jury" referred to in **Sharman** was not the trial jury rather the coroner's jury so that there has been an apparent misapplication by the Coroner of the principles in this case.

[77] In **R v H.M. Coroner for Exeter and East Devon** ***ex parte*** **Palmer [1997] EWCA 2951**, it was held that the appropriate test for a coroner sitting with a jury to adopt, in deciding whether or not to leave a particular verdict to the jury is the same as the test on a submission of no case, as established by **R v Galbraith [1981] 1 WLR 1039**. Lord Woolf M.R. in **Palmer** explained:

> "*In considering the standard Wednesbury approach adopted on application for judicial review, in relation to the guidance provided by Galbraith as to when it is and when it is not the responsibility of a judge to leave a particular issue to a jury, one comes to a different conclusion depending on the precise issue involved.* ***If there is no evidence that would entitle a coroner's jury to come to the conclusion that the proper verdict was one of unlawful killing, as a matter of law the coroner is not then entitled to leave that issue to the jury.*** *If he does so, the position is that this court, or the Crown Office judge on the initial application, is not only entitled but required to intervene…* ***In the difficult situation that is the borderline case, it is necessary for an evaluation of the evidence to be conducted by the coroner.*** *In those circumstances, in accordance with Galbraith, the coroner should not involve himself with matters which are properly for the jury to consider. Questions of credibility of the evidence, for example, are matters for the jury to determine. The coroner must not usurp their function in coming to his decision."* (emphasis mine)

[78] While Lord Crane CJ, stated in **Galbraith**, at p. 1042:

> "*… (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of the inherent weaknesses or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made to the stop the case. (b) Where however, the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness' reliability, or other matters generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury … There will of course, always be in this branch of law, be borderline case. They can safely be left to the discretion of the judge.*"

[79] The Court accepts the DPP's submission that although a coroner sits without a jury in Trinidad and Tobago, the same test applies. Therefore, the Coroner was required to carefully assess all the evidence in this case in order to detemine whether the killing of the Deceased was unlawful, justifiable or an act of self-defence.

The evidence of the witnesses as contained in their statements which were relied upon by the Coroner in making her decision was inherently weak for the following reasons:

i. In the case of Orr and Charles, they were contradictory and inconsistent with previous statements given by them;

ii. Their second account, as given in their subsequent statements, plainly contradicted the findings of the pathologist that the Deceased was shot while facing the Police officers;

iii. The account of the witnesses was also contradicted by the Ballistics Report which revealed that the bullets which caused the death of the Deceased had an upward trajectory. This was consistent with the Claimants' account that they fired upon by the Deceased while walking uphill after he shot at them.

[80] The Court holds that on the accounts of the event before her, it was not open to the Coroner to issue warrants for the Claimants for the offence of murder; there was very little or no evidence upon which the Coroner could safely conclude that the Claimants, or either of them, when they shot the Deceased were not acting in self-defence.

7. Grant of Relief

[81] **SECTION 32** of the **CORONERS ACT**, which gives the DPP power to direct that a further inquiry be held and require a coroner to re-open an inquest and take further evidence, is not applicable in the present circumstances.

[82] Having come to the conclusion that:

a. the Coroner erred in law in admitting the unsworn statements of material witnesses into evidence and relying upon them to support a charge of murder against the Claimants;

b. the Coroner also erred in law by applying the **CORONERS RULES 1953 (UK)** to the conduct of the inquest before her;

c. she acted *ultra vires* or in excess of her jurisdiction when she concluded the inquest without examining on oath the makers of the statements and thereby basing her conclusion on inadmissible evidence;

d. her decision to issue warrants for the arrest of the Claimants on a charge of murder was unreasonable because there was no evidence before her upon which such a charge could be founded.

The Court must then determine whether this is an appropriate case for its discretion to be exercised in favour of granting the relief sought by the Claimants.

[83] In **Tal** (*op. cit.*), Goff LJ at p. 83 stated:

> "*… in every case the grant of an application for judicial review is discretionary and that it does not follow that an order of certiorari will be made merely because come error of law has been committed during an inquest.*"

[84] The appropriate test to be applied was laid down in **R v. H.M. Coroner for Inner South London *ex parte* Douglas-Williams [1999] 1 All ER 344**, *per* Lord Woolf MR at p. 347 E-H:

> "*… I cannot suggest a better test for a court to apply when deciding whether it should give relief than that it should be 'necessary or desirable to do so in the interests of justice'. The test has to be applied against the background of the statutory functions of an inquest … and bearing in mind the further guidance given in R v Divine … at p. 308:*
>
> > *'The court is not entitled to attend to mere formalities, nor to criticise minutely the summing up, or the nature of the evidence or of the procedure. But if the inquest has been so conducted, or the circumstances attending it as such, that there is a real risk that justice has not been done, and a real impairment of the security*

which right procedure provides that justice is done and is seen to be done, the court ought not to allow the inquisition to stand.'

It will be in the interests of justice to set aside an inquest on the basis of a misdirection if the misdirection would not have affected the outcome."

[85] The Court considers it in the interest of justice to intervene and correct the errors made by the Coroner by quashing the Decision and remitting it to another coroner for a new inquest.

CONCLUSION

[86] I therefore grant the following reliefs:

i. A Declaration that the decision of the Coroner on the 2nd February, 2010, to issue warrants for the arrest of the Claimants on a charge of murder was contrary to law and in conflict with the policy of the Coroners Act, Chap. 6:04, as amended by Act No. 17 of 1996.

ii. A Declaration that the decision of the Coroner was in excess of her jurisdiction when she proceeded to make a finding against the Claimants without subjecting to examination, the persons who gave statements to the investigator.

iii. A Declaration that the decision of the Coroner to issue warrants for the arrest of the Claimants on a charge of murder is an abuse of process and is irrational and unreasonable.

iv. An order of Certiorari to remove into this Court and quash the said decision of the Coroner made on the 2nd February, 2010 to issue warrants for the arrest of the Claimants on a charge of murder.

v. An order of Mandamus directing that the inquest be transferred to another Coroner for hearing and determination.

vi. That there be no order as to costs.

[87] I would like to thank Counsel for their exhaustive submissions which were of great assistance to me in deciding this matter.

JOAN CHARLES

JUDGE