

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-01937

**BETWEEN**

**PETER LEWIS**

**CLAIMANT**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**DEFENDANT**

**Before the Honourable Mr. Justice A. des Vignes**

**Appearances:**

Mr. Kenneth Thompson for the Claimant

Ms. Giselle Jackman

Instructed by Ms. Patricia Cross for the Defendant

**JUDGEMENT**

**The Facts**

1. The Claimant was a police constable who, in February 1995, was charged with falsification of accounts. Following preferment of the charge, he was suspended by the Police Service Commission (the Commission) on three quarters pay. On the 21<sup>st</sup> June 2001, the Claimant was convicted of the offence in the Magistrate's Court and fined \$4,000.00 or nine (9) months in prison. The Claimant appealed his conviction and sentence but, on the 11<sup>th</sup> December 2003, the Court of Appeal dismissed his appeal and affirmed his conviction and sentence.

2. In November 2004, the Commission, in accordance with the provisions of the Constitution (Amendment) Act 2000, (hereinafter referred to as “the Amendment Act”) dismissed the Claimant from the Police Service with effect from the 10<sup>th</sup> November 2004, the date of receipt of the letter of dismissal.

### **The Proceedings**

3. On the 29<sup>th</sup> May 2009, the Claimant filed a Fixed Date Claim against the Defendant claiming the following reliefs:

- (a) A declaration that the Amendment Act does not apply to the Claimant;
- (b) A declaration that the provisions of section 3 of the Amendment Act are unconstitutional, void and of no legal effect since it was not passed by the required three-fifth votes of all the members of both Houses of Parliament;
- (c) A declaration that the State, by passing the Amendment Act without the requisite majority, has contravened the Claimant’s rights guaranteed by sections 4(a), 4(b) and 5(2)(e) of the Constitution;
- (d) A declaration that the dismissal of the Claimant by the Commission pursuant to the provisions of the Amendment Act has contravened the Claimant’s said rights;
- (e) A declaration that the Claimant’s dismissal was unconstitutional, void and of no legal effect;
- (f) An Order directed to the Defendant, its servants or agents requiring it to reinstate the Claimant with no loss of pay or seniority;
- (g) An Order for monetary compensation to be assessed in favour of the Claimant for the loss and damage which he has suffered as a direct result of the aforesaid contravention of his rights.

4. This claim was supported by an affidavit of the Claimant in which he made the following allegations:

- (a) The Commission did not institute disciplinary proceedings against him as provided for in the Police Service Commission Regulations (hereinafter referred to as “the Regulations”). Had it done so, the Claimant would have been entitled to exercise his right of appeal to the Public Service Appeal Board under section 132 of the Constitution;

- (b) Having been dismissed by the Commission pursuant to the provisions of the Amendment Act, the Claimant could not exercise his right of appeal because section 132 only permits appeals against decisions made in disciplinary proceedings and does not extend to decisions made pursuant to the Amendment Act;
  - (c) The Commission has thereby contravened the Claimant's fundamental rights to (i) the enjoyment of property and not to be deprived thereof except by due process of law; (ii) protection of the law; and (iii) a fair hearing in accordance with the principles of fundamental justice as guaranteed by section 4(a), 4(b) and 5(2)(e) of the Constitution.
  - (d) The Amendment Act did not apply to his case because he was charged in 1995 when that Act was not in force;
  - (e) The Amendment Act is unconstitutional, void and of no legal effect because it was not passed with the requisite majority in both Houses of Parliament.
5. On the 23<sup>rd</sup> July 2009, the Defendant filed an affidavit in opposition to the Claimant's claim in the name of Sandra Balanta Abraham, The Acting Deputy Director of Personnel Administration.
6. In her affidavit, Ms. Abraham accepted as correct the facts recited by the Claimant as to his conviction for falsification of accounts in the Magistrate's Court in June 2001 and the dismissal of his appeal by the Court of Appeal in December 2003. Thereafter, by letter dated 17<sup>th</sup> February 2004, the Director of Personnel Administration (the DPA) notified the Claimant that his conviction and the dismissal of his appeal had been duly noted by the Commission and the Commission invited the Claimant to submit any representation he wished to make, within fourteen (14) days of receipt of the letter, with respect to the penalty to be imposed on him in accordance with section 129 of the Constitution as amended by the Amendment Act. This letter was received by the Claimant on the 15<sup>th</sup> June 2004 but, up to September 2004, the Claimant had not submitted any representation with respect to the penalty to be imposed on him.
7. By letter dated 22<sup>nd</sup> October 2004, the Commission notified the Claimant of its decision to dismiss him from the Police Service with effect from the date of receipt of the letter, which was the 10<sup>th</sup> November 2004.

### **The Defendant's Application to dismiss**

8. On the 21<sup>st</sup> December 2009, the Defendant applied to the Court for an Order that the Claimant's Claim be dismissed as an abuse of the process of the Court, namely that the impugned decision or conduct was susceptible of adequate redress by a timely application to the court under its ordinary, non-constitutional jurisdiction.
9. Firstly, the Defendant argued that it was an abuse of the process of the Court for the Claimant to bring this claim for constitutional reliefs when there existed suitable alternative remedies available to him under the ordinary, non-constitutional jurisdiction of the Court such as an action for judicial review, the common law action for breach of contract or an action for unfair or wrongful dismissal.
10. Secondly, the Defendant argued that, based on the decision of the Court of Appeal in **Omar Maraj v. The Public Service Appeal Board**<sup>1</sup>, the Claimant's right of appeal to the Public Service Appeal Board provided for by section 132 of the Constitution was not precluded by the amendment to section 129 of the Constitution effected by the Amendment Act. Accordingly, the Claimant's contentions that his constitutional rights had been infringed by the passage of the Amendment Act were misconceived and erroneous.
11. On the 5<sup>th</sup> February 2010, the Claimant filed submissions in reply in which he repeated in large measure the facts and arguments set out in his affidavit. At paragraph 35, however, he succinctly summarised his complaints in the following manner:

*“In the instant case, the Claimant's complaint is that the Commission dismissed him pursuant to Act No. 43 of 2000, the Bill for which was required to be passed with a special majority as it affected his fundamental rights aforesaid but was not so passed, and by reason thereof, the said Act and consequently his dismissal are unconstitutional.”*

### **The Issues**

12. The following issues arise for determination in this matter:
  - (i) Does the Amendment Act apply to the Claimant?

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<sup>1</sup> Civ. App. No. 100 of 2006

- (ii) Did the Claimant have suitable alternative remedies available to him under the ordinary, non-constitutional jurisdiction of the Court in respect of his dismissal from the Police Service by the Commission?
- (iii) Is the Claimant entitled to claim constitutional relief at this stage, having regard to the lapse of time between his dismissal and the commencement of this action?
- (iv) In any event, is section 3 of the Amendment Act 2000 unconstitutional?
- (v) Did the Commission, by dismissing the Claimant pursuant to the provisions of the Amendment Act, contravene the Claimant's constitutional rights conferred upon him by section 4(a), 4(b) and 5 (2)(e) of the Constitution?

**Does the Amendment Act apply to the Claimant?**

13. Section 129 of the Constitution was amended by the Amendment Act. Since those amendments, subsections (5) to (7) have now been added and which are as follows:

- “(5) Notwithstanding subsection (4), where an officer is convicted of a criminal charge in any court and the time allotted for an appeal has elapsed or, if the officer has appealed, the appeal process has been completed or an order has been made under section 71 of the Summary Courts Act, a Service Commission may consider the relevant proceedings on such charge and if it is of the opinion that the officer ought to be dismissed or subjected to some lesser punishment in respect of the conduct which led to his conviction on the criminal charge or to the making of the order, the Commission may thereupon dismiss or otherwise punish the officer without the institution of any disciplinary proceedings.*
- (6) In furtherance of subsection (5)—*
  - (a) a certificate of conviction issued by the court shall be sufficient evidence of an officer's conviction for an offence;*
  - (b) a certified copy of an order made under section 71 of the Summary Courts Act shall be sufficient evidence of the commission by the officer of the offence for which he was charged.*
- (7) An officer referred to in subsection (5) shall be entitled to show cause why he should not be dismissed from office.”*

14. The Claimant has argued that the Amendment Act does not apply to him because when he was charged in 1995, it was not in force. On that basis, the Commission was wrong to have dismissed him pursuant to the provisions of the Amendment Act.
15. I do not agree with the Claimant's arguments on this point since, as at the date of his conviction and his appeal, the amendments were in effect. When the Commission, through the DPA, wrote to the Claimant on the 17<sup>th</sup> February 2004, it made it clear that the Commission was not seeking to penalise the Claimant based on a charge laid against him in 1995 but rather on his conviction and the dismissal of his appeal, both of which occurred after the amendments came into effect.
16. Accordingly, as at the effective date of his dismissal on the 10<sup>th</sup> November 2004, the Amendment Act was in force and, in my opinion, the Commission was entitled to invoke the provisions thereof to dismiss the Claimant.

**Did the Claimant have suitable alternative remedies available to him under the ordinary, non-constitutional jurisdiction of the Court in respect of his dismissal from the Police Service by the Commission?**

17. Based on the recent decision of the Privy Council in **Public Service Appeal Board v. Omar Maraj**<sup>2</sup> (which shall be examined in more detail below), the Claimant was entitled to file an appeal with the Public Service Appeal Board within fourteen (14) days of receipt of the decision of the Commission. In any such appeal, he was entitled to include in his grounds of appeal that there had been an error of law.
18. Further, the Claimant could have sought to challenge the Commission's decision to dismiss him by way of an application for judicial review on any of the applicable grounds set out in section 5 of the Judicial Review Act 2000: **Rawle Gift v. The Attorney General**<sup>3</sup>; **Balliram Roopnarine v. The Attorney General**<sup>4</sup>.
19. The Claimant failed to take any such step. In fact, unlike Mr. Maraj in the **Omar Maraj case**, he did not even attempt to pursue an appeal to the Public Service Appeal Board but allowed more than four years to elapse before he brought this action to challenge the constitutionality of the

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<sup>2</sup> [2010] UKPC 29

<sup>3</sup> HCA No. 1885 of 1983

<sup>4</sup> CV 2007-04461

Amendment Act, based on the erroneous assumption that he had been deprived of his right of appeal by the Amendment Act.

20. It has been made clear by several decisions of the Privy Council over the last thirty years that the right to apply to the High Court for constitutional relief should be exercised only in exceptional circumstances where there is a parallel remedy. In **Jaroo v. Attorney General of Trinidad and Tobago**<sup>5</sup>, Lord Hope of Craighead, in delivering the judgment of the Board, reviewed the authorities on abuse of process in the context of constitutional motions starting from the dicta of Lord Diplock in **Harrikissoon v. Attorney General of Trinidad and Tobago**<sup>6</sup> and summarised the position as follows:

“39 ...before he resorts to this procedure, the applicant must consider the true nature of the right allegedly contravened. He must also consider whether, having regard to all the circumstances of the case, some other procedure either under the common law or pursuant to statute might not more conveniently be invoked. If another such procedure is available, resort to the procedure by way of originating motion will be inappropriate and it will be an abuse of the process to resort to it.”

21. This principle has also been considered and clarified in the more recent decision of the Privy Council in **Attorney General of Trinidad and Tobago v. Ramanoop**<sup>7</sup> where Lord Nicholls of Birkenhead put it this way (at para. 25):

“25. In other words, where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court’s process....”

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<sup>5</sup> [2002] 1AC 871

<sup>6</sup> [1980] AC 265 at 268

<sup>7</sup> [2005] 2 WLR 1324

**Is the Claimant entitled to claim constitutional relief at this stage, having regard to the lapse of time between his dismissal and the commencement of this action?**

22. The Claimant was dismissed in November 2004 and brought these proceedings in May 2009. Having regard to this delay, I am of the opinion that the burden lay upon the Claimant to provide a cogent explanation for his delay in seeking to invoke the Court's constitutional jurisdiction.

23. In **Felix Durity v. The Attorney General of Trinidad and Tobago**<sup>8</sup>, Lord Nicholls of Birkenhead provided the following guidance to a court when considering the impact of delay upon a Claimant's entitlement to constitutional relief:

“35. ....When a court is exercising its jurisdiction under section 14 of the Constitution and has to consider whether there has been delay such as would render the proceedings an abuse or would disentitle the claimant to relief, it will usually be important to consider whether the impugned decision or conduct was susceptible of adequate redress by a timely application to the court under its ordinary, non-constitutional jurisdiction. If it was, and if such an application was not made and would now be out of time, then, failing a cogent explanation, the court may readily conclude that the claimant's constitutional motion is a misuse of the constitutional jurisdiction. The principle is well established. On this it is sufficient to refer to the much repeated cautionary words of Lord Diplock in *Harrikisson v. Attorney General of Trinidad and Tobago* [1980] AC 265. 268. An application made under section 14 solely for the purpose of avoiding the need to apply in the normal way for the appropriate judicial remedy for unlawful administrative action is an abuse of process.”

24. I have carefully reviewed the Claimant's affidavit in support of this application and I have not found therein any special or exceptional facts or circumstances that would have rendered the alternative forms of legal redress inadequate. Further, the Claimant has not provided any explanation for the lengthy delay in bringing this action. In the absence of any such exceptional features or any explanation for delay, therefore, I am of the view that the Claimant is attempting to avoid the consequences of being out of time for pursuing any of the alternative remedies that were available to him.

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<sup>8</sup> Privy Council Appeal no. 52 of 2000

25. In the circumstances, based on the fact there were suitable alternative remedies available to the Claimant under the ordinary, non-constitutional jurisdiction of the Court as well as the long, unexplained delay in commencing this action for constitutional relief, I am of the view that the institution of this action by the Claimant is an abuse of the process of the Court.

**Is section 3 of the Amendment Act unconstitutional?**

26. Notwithstanding my finding that these proceedings are an abuse of the process of the Court, I still consider that I ought to express my opinion on the issues of the constitutionality of the Amendment Act and whether or not the Claimant's constitutional rights have been infringed, since the facts concerning the dismissal of the Claimant are not in dispute and I have had the benefit of extensive submissions from both sides on these issues.

27. The Claimant is seeking a declaration that the Amendment Act is unconstitutional, void and of no legal effect on the ground that section 3 thereof purports to give Service Commissions the power to impose penalties on public officers save as a consequence of disciplinary proceedings but the Bill was not passed with the requisite three-fifths majority of all members of both Houses of Parliament as required by section 13 of the Constitution.

28. In his affidavit, the Claimant complained that he suffered the loss of his salary, allowances, pension and gratuity as a consequence of his dismissal by the Commission pursuant to the powers conferred on the Commission by the Amendment Act and not pursuant to disciplinary proceedings instituted in accordance with the Regulations and, in particular, regulation 84 thereof. At paragraph 18 of his affidavit, he elaborated on why he was dissatisfied with being dismissed pursuant to the summary powers conferred on the Commission by the Amendment Act:

*“18. Had the Commission instituted disciplinary proceedings and secured a finding of guilt against me, I would have been at liberty to exercise my right under section 132 of the Constitution to lodge an appeal to the Public Service Appeal Board (the Board). This right of appeal is limited to decisions made in disciplinary proceedings and does not extend to decisions made by a Service Commission pursuant to the provisions of Act No. 43 of 2000. Having been dismissed under the provisions of Act No. 43 of 2000, I cannot exercise that right of appeal because the procedure for imposing a penalty on a police officer under that Act*

*does not constitute disciplinary proceedings. This being the case, I have been denied the protection of section 132 of the Constitution. The Commission has thereby contravened my fundamental rights to the enjoyment of property and not to be deprived thereof [except] by due process of law, as guaranteed by section 4(a), as well as my fundamental rights to protection of the law as guaranteed by section 4(b), and to a fair hearing in accordance with the principles of fundamental justice, as guaranteed by section 5(2)(e) of the Constitution.”*

29. Further, the Claimant also argued that by section 129(4) of the Constitution no penalty may be imposed on any public officer except as a result of disciplinary proceedings but, notwithstanding subsection (4), subsection (5) conferred upon the Commission the power to dismiss or otherwise punish an officer without the institution of disciplinary proceedings. He complained, therefore, that since the Amendment Act was not expressly declared to be inconsistent with sections 4 and 5 of the Constitution and was not passed with the votes of three-fifths of the members of both Houses of Parliament, the punitive provisions of the Amendment Act were unconstitutional, void and of no legal effect.
30. As already noted, on the 17<sup>th</sup> November 2010, the Privy Council in the **Omar Maraj** upheld the decision of the Court of Appeal that the Public Service Appeal Board had jurisdiction to entertain an appeal from a decision of the Teaching Service Commission to terminate the employment of Mr. Maraj under the summary procedure provided for by section 129 (5)-(7) of the Constitution.
31. Lady Hale, in delivering the judgment of the Board, stated as follows:

“21. ....Accordingly, by section 3 of the Amendment Act 2000, sections 129(5) to (7) were inserted into the Constitution to reinstate the possibility of a summary process for dealing with officers convicted of a criminal offence (or discharged as a result of one). As the Court of Appeal found, the mischief at which the amendments were aimed was undoubtedly the difficulties caused within the Service Commissions by the invalidity and repeal of reg. 113.

22. No change was made to section 132(1). But there is absolutely no reason to think that Parliament intended to deprive those who were dealt with under the new summary process of the right of appeal which all had enjoyed hitherto. If we are right in our view of the effect of reg. 116(2) of the regulations, officers convicted

*in the criminal courts had had a right to have the Commission review their penalty before 1976. After 1976 they had undoubtedly had a right of appeal because no-one could be disciplined without disciplinary proceedings. This right was enshrined in the Constitution itself. Clear words are required before citizen can be deprived of their Constitutional rights. There are no such clear words. ...”*

32. In the light of this decision, therefore, the clear legal position is that when the Claimant was dismissed in November 2004, he was entitled to exercise his right to appeal to the Public Service Appeal Board and the Amendment Act did not in any way deprive him of that right. Therefore, since his right to appeal was unaffected by the amendments, the Claimant’s submissions as to the unconstitutionality of the Amendment Act, insofar as they were based on his being deprived of his right of appeal to the Public Service Appeal Board, are untenable and without merit.
33. The Claimant also complained that since subsection (5) conferred punitive powers upon the Commission notwithstanding the express provision of section 129 (4), the Amendment Act was unconstitutional since that Act was not passed with the requisite majorities in Parliament.
34. In **Steve Ferguson and Ishwar Galbaransingh v. The Attorney General of Trinidad and Tobago**<sup>9</sup>, the Court of Appeal, in its judgment delivered on the 17<sup>th</sup> December 2010, provided guidance as to the approach to be taken in determining the constitutionality of any legislative enactment. Kangaloo J.A., with whom Weekes J.A. agreed, stated as follows:

“25. *In my view the central question in determining the constitutionality of any legislative enactment is whether the legislation is to an impermissible degree inconsistent with the Constitution. This is evident from section 2 of the Constitution which declares that the Constitution is the supreme law and any law that is inconsistent with it is void to the extent of the inconsistency. In resolving this question the court would have to examine the legislation in the round. It must determine the objectives of the legislative scheme and consider what are the means used to achieve this objective as expressed in the legislative provisions. It must ask whether these means represent an unjustifiable derogation from the fundamental rights and freedoms set out in the Constitution, bearing in mind that*

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<sup>9</sup> Civil Appeal No. 2010-185

*constitutional rights do not exist in a vacuum. As such, no constitutional rights are really absolute and unqualified.....*

26. *I am therefore firmly convinced that the fundamental rights and freedoms contained in the Constitution, whether they are expressed as qualified or unqualified rights, all fall to be considered in light of the characteristics and necessities of a modern democratic society. Where the legislation is clothed with the declaration of inconsistency and the special majority, the court's enquiry into whether it is inconsistent with the Constitution proceeds under the rubric of "reasonable justifiability". However it does not follow that a balancing exercise does not equally apply to legislation which is passed by a simple majority. In the end the analysis remains the same, what are the aims and intentions of the legislation, are these aims and intentions founded on a proper respect for the fundamental rights and freedoms granted to the citizens, does the effect of legislation go beyond what is strictly necessary to achieve its stated intentions and ultimately therefore can it be considered inconsistent with the provisions of the Constitution..."*

35. Taking this guidance into account, I will now consider the constitutionality of the Amendment Act.

36. In **Omar Maraj**, the Privy Council reviewed the legislative history to the Amendment Act and identified that, since the repeal of regulations 111 to 113 of the Public Service Commission Regulations in 1991, the Commissions had experienced delay and unnecessary duplication of effort within the Commissions. It is in that context that the Amendment Act was passed to insert into the Constitution sections 129 (5) to (7), the effect of which was to reinstate the possibility of a summary process for dealing with officers convicted of a criminal offence (or discharged as a result of one). In the words of Jamadar J.A. in the Court of Appeal decision in that case:

*"34. Clearly the intention of Parliament was to avoid the duplication of proceedings as between criminal proceedings and disciplinary proceedings as prescribed by the Regulations and to permit a consideration of the relevant criminal proceedings in order to ascertain "the conduct which led to" a conviction or order under section 71 of the Summary Courts Act. Hence section 129 (6). It is in this context and in light of section 129 (4) that the words "without the institution*

*of any disciplinary proceedings” have to be interpreted and understood. What is unequivocal is that the intention of Parliament was to avoid the institution of disciplinary proceedings as prescribed under any of the Service Commission Regulations in the circumstances provided for by section 129 (5).*

35. *What is also indisputable and accepted before this Court is that the new subsections (5), (6) and (7) of section 129 introduced a process that may lead to the dismissal or other punishment of public officers. That is, these subsections introduced an alternative disciplinary process to that prescribed by the Service Commission Regulations. That is made abundantly clear by section 129 (7) which permits an officer being considered for dismissal or lesser punishment pursuant to section 129 (5) “to show cause why he should not be dismissed from office”.*

37. In the light of these clear aims and objectives of the Amendment Act as adumbrated by the Court of Appeal and approved of by the Privy Council, the question to be answered in this matter is whether the effect of this Act goes beyond what is strictly necessary to achieve its stated intentions and is it inconsistent with the fundamental rights and freedoms granted to the Claimant.

38. In my opinion, the Amendment Act is not inconsistent with the Constitution in general and does not derogate from the fundamental rights and freedoms of the Claimant in particular. The Claimant was charged and convicted of falsification of accounts. He exercised his right of appeal and his conviction and sentence was affirmed by the Court of Appeal. The Commission then, in accordance with section 129 (7), gave him a further opportunity to submit any representations he wished to make as to the penalty to be imposed on him, which he did not take advantage of. Further, after he was dismissed, he did not even attempt to lodge an appeal against his dismissal with the Public Service Appeal Board or to challenge by way of judicial review the decision of the Commission.

39. In the circumstances, I have come to the conclusion that there is no merit in the Claimant’s argument that section 3 of the Amendment Act is unconstitutional.

**Did the Commission, by dismissing the Claimant pursuant to the provisions of the Amendment Act, contravene the Claimant's constitutional rights conferred upon him by section 4(a), 4(b) and 5 (2)(e) of the Constitution?**

40. In the light of the decision of the Privy Council in the **Omar Maraj** case, the short answer on this issue is that the Commission was entitled to exercise the powers of summary dismissal under section 129 (5) to (7) of the Constitution, based on his conviction and the dismissal of his appeal. The Commission, in compliance with section 129(7), gave to the Claimant an opportunity to make representations as to the penalty to be imposed on him but he failed to take advantage of that opportunity and so the Commission, as it was empowered to do, dismissed him.
41. The fundamental right bestowed on the Claimant is a right to a fair hearing before an impartial tribunal and not a right to be heard in disciplinary proceedings instituted in accordance with the Regulations. I am of the opinion that, when the Commission invited the Claimant to make submissions as to the penalty to be imposed upon him, the Claimant was afforded a fair hearing before the imposition of the penalty of dismissal. Regrettably, the Claimant did not take advantage of the opportunity afforded to him and it does not lie in his mouth to now complain that the Commission breached his fundamental right to a fair hearing guaranteed by the Constitution.
42. In respect of the Claimant's complaint that his right to enjoyment of property and not to be deprived thereof without due process of law has been infringed by the Commission, I agree with Justice Pemberton in **Roopnarine v. The Attorney General**, that the salary and allowances which the Claimant lost as a consequence of his dismissal are not considered 'property' and do not attract protection under the law since they are not debts due and owing to the Claimant. Further, the Claimant was tried and convicted of a criminal offence which was in clear violation of his duty not to bring the Public Service into disrepute and his dismissal and consequent loss of salary, allowances and other benefits were brought about by his own wrongdoing. Accordingly, I reject the Claimant's submissions that when the Commission dismissed him pursuant to section 129(5) and not by disciplinary proceedings, he was deprived of his right to enjoyment of property without due process of law.

43. In respect of the Claimant's complaints that his right to protection of the law as guaranteed by section 4(b) of the Constitution, it is clear that the Claimant had a right to lodge an appeal against the decision of the Commission with the Public Service Appeal Board. Further, he was given an opportunity to put forward representations to the Commission before he was dismissed. In addition, he was entitled to challenge the decision of the Commission by way of judicial review. Having failed to take any such action, the Claimant cannot argue at this time that he has been deprived of his constitutional right to protection of the law.

**Conclusion**

44. In the circumstances, bearing in mind my earlier findings, I am of the opinion that the Claimant's claim herein is without merit. Accordingly, I will grant the Defendant's application to dismiss this claim as an abuse of the process of the Court and order the Claimant to pay the costs of this action, to be assessed by the Registrar, in default of agreement.

**Dated this 27<sup>th</sup> day of July, 2011**

**André des Vignes  
Judge**