

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2016-02471**

BETWEEN

**IN THE MATTER OF AN APPLICATION BY ANTARES KHAN AND KENDELLE KHAN FOR AN
ADMINISTRATIVE ORDER UNDER PART 56 OF THE CIVIL PROCEEDINGS RULES 1998**

AND

**IN THE MATTER OF SECTION 4 AND 5 OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND
TOBAGO ACT NO. 4 OF 1976**

AND

**IN THE MATTER OF AN APPLICATION FOR REDRESS IN ACCORDANCE WITH SECTION 14 OF THE
CONSTITUTION BY ANTARES KHAN AND KENDELLE KHAN CITIZENS OF THE REPUBLIC OF TRINIDAD
AND TOBAGO ALLEGING THAT CERTAIN PROVISIONS OF THE SAID CONSTITUTION HAVE BEEN
CONTRAVENED**

BETWEEN

ANTARES KHAN

First Claimant

KENDELLE KHAN

Second Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Hon. Madam Justice C. Gobin

Date of Delivery: April 5, 2019

Appearances:

Mr. A. Ramlogan S.C., Mr. G. Ramdeen, Mr. A. Pariagsingh, Mr. G. Saroop, Ms. C. Stewart, instructed by
Ms. A. Rambaran for the Claimants

Mr. F. Hosein S.C., Mr. R. Ramcharitar instructed by Mr. V. Jardine for the Defendant

REASONS

Background

1. By Fixed Date Claim Form filed on the 21st July 2016, the Claimants, brothers Antares Khan and Kendelle Khan sought inter alia a declaration that their detention from the 17th day of February 2012 to the 28th day of May 2015 at the Remand Prison Golden Grove, Arouca breached their constitutional rights guaranteed under Section 5 (2) (b) of the Constitution of the Republic of Trinidad and Tobago namely the right not to be subjected to cruel and unusual treatment or punishment.

2. On the 27th April 2018, a Notice of Application and an affidavit was filed by the Claimants for inter alia
 - i. leave to amend the claim of the second claimant to include relief on the basis of the present deplorable conditions of his incarceration at the Golden Grove Prison, Arouca;
 - ii. leave to adduce fresh evidence in support of the claim in terms of the affidavit filed in support of the application;
 - iii. leave to file a further affidavit in support of his amended claim to inter alia adduce photographs and video footage of the prison conditions at the Golden Grove Prison; and
 - iv. that a site visit be made to the prison.

3. On the 30th January 2019, I made an order in the following terms:
 1. Hard copy of the reports forwarded by reference to websites to be filed by the defendant on or before the 22nd February 2019.
 2. Permission is granted to the Claimant to issue witness summons for Mr. Daniel Khan, former inspector to produce any record and/or finding on prison conditions at the remand yard, Golden Grove during the period of the applicant's incarceration.
 3. Claimant's application filed 27th April 2019 is refused with no orders as to costs.

4. Permission to withdraw claim one of the Claimants, Antares Khan with no order as to costs.

Reasons

Leave to withdraw claim of Antares Khan

4. The withdrawal of the claim by one of the two brothers had the effect of reducing judicial time and resources that would have been required had his claim continued. A withdrawal of proceedings has a positive effect on a Court's docket, for that reason.
5. I exercised my discretion and made no order as to costs instead of the usual order. This was a claim under the Constitution. While the State would no doubt have expended some time and effort in meeting peculiar allegations in this Antares' claim, because they both raised the same the core issue the withdrawal did not have any serious impact on the remainder or the case. The constitutional issue is still being pursued by one of the original Claimants. An order for costs would have only served to effectively penalise Antares Khan while Kendall continues to prosecute what is essentially the same claim with the same defence. I did not consider the filing of the discontinued claim by Antares an abuse of process.

Order – for copies of Parliamentary Committee reports to be admitted: -

6. These Parliamentary reports contain material that is extremely relevant to the core issue in the case. They are sufficiently contemporaneous. I admitted the reports not as evidence as to the truth of the matters stated there. I indicated I would be prepared to consider the observations and findings and to attach such weight as I considered appropriate. The contents relate to matters of public interest and have been made accessible to the public.
7. In these proceedings I am called upon to make a value judgment as to prison conditions and whether they breach constitutional standards in relation to the remand yard Golden Grove. I conducted the same enquiry in **Colin Edghill and Carlo McHoney v. The Attorney General of Trinidad and Tobago, Claim No. 3178 of 2004** in the year 2008.

8. In **Edghill**, I had to consider the conditions at the Remand Yard, Port of Spain. I relied on several matters in addition to the direct evidence which was fairly limited. I dealt with similar objections in those proceedings as to the admissibility of certain statements and documents. I rely on the approach and the entirety of my written reasons dated 19th January 2007 for overruling similar objections. I hereby incorporate them.
9. In arriving at the value judgment that I had to make in **Edghill** I relied upon previous and uncontroverted judicial comment and took judicial notice of notorious appalling prison conditions. I also considered a report of Commissioner O V Garrat dated 29th February 1960 on Prison Organisation and Expansion as well as an Interim Report of the Commission appointed to Enquire into Existing Conditions of Prisons in 1972. These documents were relied upon by the Claimant's Counsel. **Edghill** was being decided in 2008 long after those reports. The Parliamentary Committee reports in this case, are far more contemporaneous.
10. The states objections seem somewhat inconsistent with its approach and duty in these matters. It is not unusual for the State to seek to rely on such reports in constitutional proceedings. In CV3475 of 2015 Danielle St. Omer v. The Attorney General of Trinidad and Tobago, in which the constitutionality of the Bail Amendment Act was considered, the State produced and relied upon the following documents to establish the gravity of the crime situation and to explain government policy:-
- (i) The 2011 paper by the Council on Hemisphere Affairs entitled Illicit Drug Trafficking;
 - (ii) The 2013 Report by the Committee on Young Males and Crime in Trinidad and Tobago – (They Ryan Report) which was commissioned by the Government;
 - (iii) The Scott Drug Report;
 - (iv) The Coup Commission Report;
 - (v) Gangs, Guns and Governance – by Dorn Townsend of the Small Arms Survey, General a 2009 report on the challenges posed governance by guns and gangs in Trinidad.

Against this background the inconsistency of the position adopted to the admissibility of the parliamentary reports in the instant proceedings is somewhat disappointing.

Witness Summons -Former Inspector of Prisons for Mr. Daniel Khan

11. Senior Counsel for the Claimant made an application for a site visit by the Court, the purpose of which is obviously to invite the Court observe the conditions first hand. It occurred to me that Mr. Daniel Khan, the former Inspector of Prisons may by virtue of the position he held during the period under consideration may have been able to assist the Court, and avoid the Court expending time and state resources for a site visit. In **Edghill**, monthly reports of the then Inspector of Prisons were admitted into evidence and I considered them to be of assistance in my determination of the central issue.

12. I am aware that Mr. Khan had in fact laid a report in Parliament. His evidence would be relevant and more contemporaneous than such as might be gathered on a site visit in 2019. On my suggestion, the parties approached Mr. Khan, who indicated he would be prepared to attend as a witness of the Court.

13. In the circumstances, of Mr. Khan's willingness to attend, the availability of his more contemporaneous records I exercised my power under Part 29.1 to direct that his viva voce evidence be received and granted leave to Claimant is issue a witness summons.

Carol Gobin

Judge