

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. CV2018-00027

Between

Nigel James

Claimant

And

The Attorney General of Trinidad and Tobago

Defendant

Before the Honourable Madam Justice Donaldson-Honeywell

Delivered on 6th May, 2019

Appearances

Mr. Lemuel Murphy, Attorney-at-Law for the Claimant

Ms. Sasha Sukhram and Ms. Amrita Ramsook, Attorneys-at-Law for the Defendant

Ruling

A. Background

1. The history of this claim is outlined as follows:

- i. On 4th January, 2018 the Fixed Date Claim was filed.
- ii. The matter first came up for hearing on 20 April, 2018. The attorneys informed the court that discussions were taking place. The matter was adjourned to 21 June, 2018.
- iii. On 21 June, 2018 the Defendant filed a Notice of Application to strike out the Claimant's claim on the ground that there has been excessive and undue delay in filing the constitutional claim [almost 6 years from the alleged breach].

- iv. The matter was adjourned on a number of occasions to allow the parties to continue discussions.
- v. On 7th December, 2018 counsel for the Claimant indicated that his instructions were to continue with the claim. On the said date the Court fixed a hearing of the Defendant's Notice of Application.
- vi. On 24th January, 2019 the Court heard oral submissions from both sides on the Defendant's Notice of Application. It was then indicated that the Defendant's Notice of Application would be granted and the sum of \$5,000.00 awarded in costs to the Defendant. However, due to the suggestion from the Attorney-at-Law for the Claimant that the Claimant was absent due to illness and the said Attorneys citation of the Court of Appeal decision in **Michael Dindayal v AG CA 257 of 2008** where a period of 5 years was not considered inordinate delay; the Claimant was allowed to file a supplemental affidavit by the following day. That affidavit was to give a cogent explanation for the delay in bringing the constitutional claim before the order would be finalised.
- vii. The Claimant filed the said supplemental affidavit on 25th January, 2019.

B. Issue

- 2. The issue to be determined is whether the Defendant's Notice of Application should be granted in light of the reasons for delay set out in the Claimant's supplemental affidavit.

C. Law and Analysis

- 3. The Claimant failed to file submissions in accordance with directions given. The Defendant has filed a very comprehensive submission on law in relation to the further evidence submitted.
- 4. The Claimant's affidavit outlines the reasons for delay as follows:

"3. Subsequent to being released from prison in June 2012 I had to get my life back in order as the time I spent in custody had a deleterious effect on my living..."

4. *I had to find a way to get back on my feet financially...I did not have the financial wherewithal to retain an attorney at law...I made attempts on my own to enquire as to what was my position with respect to the maintenance order...I visited the Magistrate's Court on a number of occasions but was unsuccessful in getting any meaningful assistance.*

5. *...in 2013 I visited his office...I did not have the finance to retain Mr. Murphy however he agreed to assist me without charge.*

6. *Mr. Murphy wrote on my behalf letter sometime in April 2013...He explained to me that the matter was not open and shut.*

7. *...I had a history of mental illness as I am an outpatient of the St. Ann's mental hospital...I went into a state of chronic depression...I did not feel like doing anything...my situation was exacerbated by the fact that I was not employed.*

8. *...Later towards the end of the year I visited Mr Murphy's office again and he explained to me that not every judicial error will result in me getting redress. He told me about the decisions of Curtis Wright v The Attorney General of Trinidad and Tobago and Rishi Gunness v AG.*

9. *Sometime in late 2017 I cannot recall the exact month I received a call from Mr. Murphy who indicated that he believed that there was a recent decision from the Court of Appeal that he think could assist me in filing a constitutional claim. The name of the said case I understand from Mr. Murphy is Civil Appeal No. P028 of 2015 The Attorney General of Trinidad and Tobago v Mrs Lisa Ramsumair-Hinds and Russell David...".*

5. The Defendant cites the decision of **Sheldon David v AG CV2015-03886** as a case in which a four-year delay was considered inordinate where the applicant cited financial constraints and ignorance of the law surrounding limitation periods. The court considered in that that case that the applicant did not exhaust avenues such as the Legal Aid and Advisory Authority to assist him with his matter and that the reasons for delay outlined "accord with the reality that faces many citizens in this Republic."
6. Similarly, in the present case, the Claimant's financial difficulties are not a sufficient reason for not pursuing the matter. The Claimant has not in his affidavit set out any documentary proof of his impecuniosity. Furthermore, he admits that his Attorney-at-

Law offered him *pro bono* representation. As pointed out by the Defendant, he had the benefit of legal advice as early as a year after his release and would have been made aware of the delay that could bar a constitutional claim.

7. Additionally, the Claimant's citing of mental illness in his affidavit is unsupported by any medical evidence. In order to justify a delay of over five years, the Claimant should have provided the court with much more cogent evidence of such illness.
8. Finally, in relation to the Claimant's averments that he was discouraged from prosecuting his case due to the cases shown to him by his Attorney-at-Law, this has not been shown to be a sufficient explanation for the delay. It appears the Claimant made an informed decision about the likelihood of success of his claim as many potential litigants do. This means that it was still open to him to bring his claim in the same way the Claimant in the **Ramsumair-Hinds** decision did. The Defendant also highlights some other possible recourses in law that could have been pursued, particularly, malicious procurement of a warrant and negligence.
9. The authorities are clear that where there is a lack of cogent explanation for excessive delay in bringing a constitutional claim, the Court may conclude that the motion is a misuse of the Court's constitutional jurisdiction – **Felix Durity v AG (2003) 1 AC 405**; **Webster & Ors v AG [2015] UKPC 10**.

D. Conclusion

10. The delay of nearly six years is excessive and the Claimant has not put forward a sufficiently cogent explanation for such delay. As a result, the Defendant's Notice of Application to strike out the claim is granted. The claim is dismissed. Costs are to be paid to the Defendant by the Claimant in an amount to be assessed by the Registrar if not agreed.

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Eleanor Joye Donaldson-Honeywell

Judge.

Assisted by: Christie Borely JRC 1