

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Port of Spain (Virtual)**

Claim No. CV2020-02848

BETWEEN

**Jesus Ignacio Russo Lucue**

*First Applicant*

**Victor Luis Huasasquiche Llamocca**

*Second Applicant*

**David Rodrigo Castillo Hernandez**

*Third Applicant*

**Jose Gustavo Arauz Atencio**

*Fourth Applicant*

**Pedro Luis Reyes Rojas**

*Fifth Applicant*

**Edgar Ivan Mirones Corrales**

*Sixth Applicant*

**Carlos Antonio Crocama Beckford**

*Seventh Applicant*

**Wilmar Chavez Rojas**

*Eighth Applicant*

**Oscar Omar Castillo Hodgson**

*Ninth Applicant*

**Arelis Alberto Vega Perez**

*Tenth Applicant*

**Ernesto Javier Moreno Ramos**

*Eleventh Applicant*

**Jose Valerio**

*Twelfth Applicant*

**Christian Felix Garbero Farias**

*Thirteenth Applicant*

**Eliecer Manuel Lobo Angel**

*Fourteenth Applicant*

**Javier Abdiel Saldaña Salazar**

*Fifteenth Applicant*

**Yamal Yanen Perez Beleño**

*Sixteenth Applicant*

**Jose Perez**

*Seventeenth Applicant*

AND

**The Attorney General of Trinidad and Tobago**

*First Respondent*

**The Commissioner of Police of Trinidad and Tobago**

*Second Respondent*

**Police Constable Gerard Crichlow (Regimental No. 14025)**

*Third Respondent*

**Before the Honourable Madam Justice Eleanor Joye Donaldson-Honeywell**

Delivered on: 17 September, 2020

**Appearances:**

Ms. Sophia Chote SC, Mr. Peter Carter, Mr. Asif Hosein-Shah and Ms. Nyree Alfonso,  
Attorneys-at-law for the Applicants

Mr. Justin Phelps and Ms. Michelle Benjamin, Attorneys-at-law for the 1<sup>st</sup> Respondent

Mr. Justin Phelps, Mr. Christian Chandler and Ms. Michelle Benjamin, Attorneys-at-law for  
the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents

## ORAL RULING

### **A. Introduction**

1. The present ruling is in relation to the Without Notice application for Interim Injunctions filed on Sunday 13 September, 2020. The injunctive relief claimed was in relation to a search by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents of the Motor Tanker “Star Balboa” IMO No. 9186730 of the Port of Panama, Panama (“the vessel”) occupied by the Applicants as crew members. The search was ongoing since 3 September, 2020 and electronic devices owned by the Applicants were seized during the search. The Applicants sought *inter alia* to end this process, which they said infringed their constitutional rights.
  
2. The Court, upon reading the application, determined that the matter was not appropriate for *ex parte* determination and requested that the Respondents be served with the application. An *inter partes* hearing was set for 14 September, 2020. The matter came up for hearing and Counsel, Mr. Chandler appeared for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents while Ms. Carol Hernandez, Solicitor General and Ms. Natoya Moore appeared on behalf of the Respondents. The Respondents indicated that they had not been effectively served with the application and, as such, did not have sufficient notice to properly respond. The matter was therefore set to be heard the following day 15 September, 2020.
  
3. On 15 September, the matter again came up for hearing and on this date Counsel for the Respondents made an objection to the application being heard without the filing or formulation of any claim by the Applicants. The Applicants indicated that the failure to file a claim was as a result of the difficulties experienced in accessing their clients on board the vessel that is the subject of the search and this application. The Court therefore adjourned the hearing to 17 September, 2020 in order to allow time for the Applicants to file their fixed date claim and for the Respondents to file their responses to the application for injunctions thereafter.

4. These directions were complied with and the matter was fully ventilated with consideration of affidavit evidence and oral submissions on both sides on 17 September, 2020.

**B. Analysis and Findings**

5. In making this decision, consideration has been given to the principles of equity governing the grant of interim relief. The approach applied was established in **American Cyanamid Co v Ethicon Ltd [1975]1 all ER 504 at 510-511**. That approach, with refinements specific to constitutional cases, was referred to in the **RJR-MacDonald Inc v Canada (Attorney General) [F] 1 S.C.R. 311** case cited by Counsel for the Respondents and approved by the Privy Council as the applicable tri-partite test in the case of **Seepersad v Ayers-Caesar [2019] UKPC 7** at paragraph 15, cited by counsel for the Applicants. The tri-partite factors to be considered will be addressed separately.

*Serious issue to be tried*

6. The first factor is whether there is a serious issue to be tried. What is required is not a *prima facie* case but just that the issue raised in the claim is not frivolous or vexatious. Usually, there is no need to embark on an examination of the merits or strength of the evidence and points of law to determine whether there is a serious case at this stage. Counsel for the Respondents argued, citing the **RJR case** at pg. 337, that in a case such as this, where the grant of the injunction will effect a final determination of the matter, a review of the merits is required. I agree and, as such, arguments were heard on both sides as to the merits of the respective cases. This hearing was not as comprehensive as would be more appropriate for the trial of the substantive claim but issues of relative strengths of the case were addressed in submissions.
7. The notice of application filed by the Applicants raises a number of issues throughout the filed document and supporting affidavit. The issues, in summary, concern the following:

- The search warrant issued on 2 September, 2020 pursuant to **Section 23(2) of the Dangerous Drugs Act 11:25** and executed on the vessel occupied by the Applicants on 3 September, 2020 was *ultra vires* as it only authorizes search of a dwelling house. The warrant was served on only one of the Applicants though all were treated as suspects. Accordingly, the ongoing search is unconstitutional.
- The failure of the Respondents to provide a search warrant authorizing search of devices such as cell phones and laptops from the Applicants before they were seized was unlawful. The Applicants also contend that the items are being detained unreasonably for a longer time than is necessary. Their right to privacy and enjoyment of property is infringed. The seizure of these devices deprived the Applicants of the facility to communicate with their diplomatic representatives, the vessel's agent, legal representatives and relatives.
- The Applicants were arrested, detained and denied access to legal representatives during the period of the search that has been ongoing since 3 September, 2020.
- Daily searches over a continuing period were unconstitutional. This was so by virtue *inter alia* of the extended duration; the fact that nothing illegal has been found so that further searching amounts to a fishing expedition; the unreasonable treatment of the Applicants on board during the search; the exposure of the Applicants to health/safety risks by the manner of the search; and the potential damage to the vessel.

8. However, Counsel for the Respondents has underscored in submissions that the question as to whether there is a serious issue to be tried must be tied to the injunctive relief sought. He further points out that the relief sought in the application for injunctive relief is primarily seeking that the first Respondent to undertake that the Second Respondent concludes the search within 24 hours. The Applicants also seek the return forthwith of the devices that have been detained. Thus, in relation to that

aspect of the claim as well, a conclusion of the search is sought. Counsel pointed out that there is no claim for injunctive relief to protect the Applicants from continued detention, denial of access to attorneys and so on. This is correct but I have, for completeness, looked at all issues raised throughout the Applicants' filings to determine whether each one raises a serious issue to be tried. My findings as to serious issues to be tried are now addressed regarding each issue separately.

9. In the relief claimed at (ii) of the application there is the request that the First Respondent, the Attorney General ("AG"), be directed to undertake that the Second Respondent, the Commissioner of Police ("COP"), concludes the search. There is merit to the argument by Counsel for the Respondents that the fact that the Constitution provides at **Section 123 A** for the complete power of the COP to manage the police service renders this aspect of the relief sought less than arguable.
10. Counsel for the Respondents raises further the fact that, although the search warrant was issued under **Section 23(2) of the Dangerous Drugs Act, Chap. 11:25**, there is provision at **Section 23(1)** that authorizes the search of a vessel without the need for a warrant and this includes the power to bring devices seized before a magistrate. There is no constitutional right not to be subjected to a search. Counsel cited sections 19 and 48 of the **Interpretation Act, Chap. 3:01** and argued that an irregularity in the wording of a search warrant that was not required cannot render the search of the vessel unconstitutional.
11. On the other hand, Counsel for the Applicants contends that these are issues of interpretation of law applicable to the search warrant which ought not to be determined at this stage to deny the interim relief sought. My finding is that there is a serious issue to be tried as to the validity of the authority used to initiate the search. However, the injunctive relief sought against the AG in relation to that issue is not arguable.
12. Part (iii) of the relief claimed is tied to a serious issue to be tried as it is directed not only to the AG but also to the Police. However, this aspect of the Claim suffers from

uncertainty as submitted by counsel for the Respondents at paragraph 6 of his speaking note. The relief sought is that there be no further searches of areas previously searched by the Respondents, but those areas are not defined. An injunction seeking relief that is uncertain cannot be granted – pages 386 to 387 of **Spry on Equitable Remedies, 9<sup>th</sup> Edition**.

13. In the relief claimed at part (iv) of the application, the Applicants seek return of their devices. Having considered the arguments on both sides, my finding is that there is a serious issue to be tried as to the authority to seize the devices without first showing a warrant and as to whether the ongoing duration of the detention is reasonable. The cases of **Ghani v Jones [1970] 1 QB 693**; **Central Broadcasting Services Ltd. v Commissioner of Police CV 2019-02135** and **Titan International Securities Inc v Attorney General of Belize and another [2018] CCJ 28 (AJ)** cited by Counsel for the Applicants, were considered in relation to this finding.
14. As indicated earlier in this Ruling, I am also considering the issues raised in the application but not tied to any relief claimed. As to those issues, my finding is that there was no evidence within the affidavits of the Applicants to support that they have been arrested and are being detained up to this time.
15. Of several paragraphs highlighted for the Court's attention from the affidavit of Nyree Alfonso in support of the application, only paragraphs 29 and 41 speak to possible detention. These are instances of the Applicants being kept within a specific location on board the vessel for a period of a certain day. It is clear from paragraph 31 of the Fixed Date Claim that since the attorneys intervened, the Applicants have not been detained. Hence, there is no serious issue as to a need at this time to protect them from unlawful detention. There is no evidence that the Applicants sought to leave the vessel, or asked to do so themselves or through their attorneys. The un-contradicted evidence of the Respondents is that the Applicants reside on the vessel and are free to move about. They have no place of abode in this jurisdiction but if they did, they would be free to go there. Likewise, there is no serious case as to ongoing denial of access to legal representation.

*Irreparable Harm*

16. Having made findings as to serious issues to be tried in relation to the search and detention of the devices, it is necessary to consider if the Applicants were to succeed in establishing the claim at trial, whether they would have suffered irreparable harm from the refusal of the injunction. I must also consider whether the Respondents would suffer irreparable harm if the injunction is granted at this time; the Applicants abscond without pursuing the claim to trial or the matter proceeds; and/or the Respondents are successful in proving that their actions were constitutional.

17. Counsel for the Respondents cited pages 342 to 347 of the **RJR-Macdonald** case, where the balance of inconvenience and public interest considerations are addressed at length. In particular it was explained in that case that

*“Interlocutory injunctions involving a challenge to the .....authority of a law enforcement agency stand on a different footing than ordinary cases involving claims for relief as between private litigants. The interests of the public, which the agency is created to protect, must be taken into account and weighed in the balance, along with the interests of the private litigants. ... In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant.”*

18. In this case, my finding is that the Applicants have not established that the harm that they may suffer will be irreparable if the injunction sought to have the search of the vessel and their devices stopped is not granted. The irreparable harm identified by counsel in submissions was:

- Firstly, the fact of a constitutional infringement of their rights is in itself irreparable,
- Secondly, that the searches within oil tanks would endanger the lives of the Applicants and
- Thirdly, as it relates to the devices being searched, the Applicants would be denied the ability to communicate with attorneys and with family members and providing for relatives by wire transfer.



19. There was no evidence put forward by the Applicants to substantiate, even arguably, the dangers referred to and there was no evidence that the Applicants were denied the freedom to use or purchase other devices to assist with communications.
20. On the other hand, the Respondents' affidavits provided evidence that there would be grave reputational risk to the State and, by extension, the public if the injunction is granted to stop the searches of the vessel and the devices, as these searches are a result of transnational co-operation obligations of the State in combatting organized crime and the narcotics trade. The forced conclusion of the search would prevent the Respondents from engaging in an aspect of their service to the public namely, crime detection. The Respondents have set out in detail the ongoing steps being taken to conduct the searches properly, including seeking multi-agency assistance for matters such as safety. The Applicants have given no undertaking as to damages and they are all foreign nationals with no ties to Trinidad and Tobago. If the injunctions are granted, they will have achieved the full substantive relief sought except for damages and there may be no recourse for the State to damages if they abscond or fail to prove the case at trial.

*Which party will suffer greater harm?*

21. The third consideration is the weighing of the balance of injustice as to which party is more likely to suffer harm if this Ruling goes against them. In all the circumstances, my finding is that the Respondents will suffer more irreparable harm if the injunction is granted than the Applicants will suffer if it is not granted. The harm that may be suffered by the Applicants can be compensated for in damages. The Respondents have filed an Affidavit confirming the ability to pay more than \$100,000 in damages on claims of this nature.

**C. Decision**

22. The application is dismissed with costs to be paid by the Applicants to the Respondents in an amount to be assessed if not agreed.

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Eleanor Joye Donaldson-Honeywell

Judge