REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2013-04279

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO ACT 4 OF 1976 BEING THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF AN APPLICATION BY RICARDO WELCH FOR REDRESS PURSUANT TO SECTION 14 OF THE CONSTITUTION PROTECTING HIS GUARANTEED FUNDAMENTAL HUMAN RIGHTS AND FREEDOM UNDER SECTION 4 (a) (b) (h) (i) AND SECTION 5 (1) (2) (e) (h) THEREOF TO CONDUCT LITIGATION AND/OR ADVOCATE FOR AND ON HIS OWN BEHALF BEFORE ANY COURT OF LAW AS A LITIGANT IN PERSON HAS RESULTED, IS RESULTING OR IS LIKELY TO RESULT IN HIS FUNDAMENTAL HUMAN RIGHTS AND FREEDOM DISREGARDED AND/OR INFRINGED AND/OR VIOLATED AND/OR CONTRAVENED

AND

IN THE MATTER INVOLVING THE CIVIL PROCEEDINGS RULES 1998 AS AMENDED (CPR) AND IN PARTICULAR PART 1, PART 10, PART 12 ENTITLING RICARDO WELCH A JUDGMENT IN DEFAULT OF DEFENCE GUARANTEED BY HIS FUNDAMENTAL HUMAN RIGHTS AND FREEDOM AND TO NOT TO BE DEPRIVED OF THE SAID JUDGMENT EXCEPT BY DUE PROCESS OF LAW AND/OR IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4 (a) (b) (h) (i) AND SECTION 5 (1) (2) (e) (h) OF THE CONSTITUTION AND/OR UNDER CPR PART 13 HAS RESULTED, IS RESULTING OR IS LIKELY TO RESULT IN HIS FUNDAMENTAL HUMAN RIGHTS AND FREEDOM DISREGARDED AND/OR INFRINGED AND/OR VIOLATED AND/OR CONTRAVENED

AND

IN THE MATTER OF A DISCRETION AND/OR DECISION OF THE COURT OF APPEAL AND OF THE HIGH COURT AND OF THE GUARANTEED FUNDAMENTAL HUMAN RIGHTS AND FREEDOM OF RICARDO WELCH OF A JUST AND FAIR HEARING AND/OR AN OPPORTUNITY TO BE HEARD IN ACCORDANCE TO THE FUNDAMENTAL RULES OF NATURAL JUSTICE AND/OR TO CONDUCT LITIGATION AND/OR ADVOCATE FOR AND ON HIS OWN BEHALF AS A LITIGANT IN PERSON TO CHALLENGE AN ORDER SETTING ASIDE THE SAID JUDGMENT UNDER CPR PART 2.9 AND PART 11.13 HAS RESULTED, IS RESULTING OR IS LIKELY TO RESULT IN HIS FUNDAMENTAL HUMAN RIGHTS

AND FREEDOM UNDER SECTION 4 (a) (b) (h) (i) AND SECTION 5 (1) (2) (e) (h) BEING DISREGARDED AND/OR INFRINGED AND/OR VIOLATED AND/OR CONTRAVENED

AND

IN THE MATTER OF THE RULES COMMITTEE OF THE SUPREME COURT OF THE REPUBLIC OF TRINIDAD AND TOBAGO PURSUANT TO THE PROVISIONS OF SECTION 77 AND 78 OF THE SUPREME COURT OF JUDICATURE ACT CHAP. 4:01

AND

IN THE MATTER OF THE REGISTRAR OF THE SUPREME COURT PURSUANT TO THE PROVISIONS OF SECTION 66 OF THE SUPREME COURT OF JUDICATURE ACT CHAP. 4:01

BETWEEN

RICARDO WELCH

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
THE RULES COMMITTEE OF THE SUPREME COURT
THE REGISTRAR OF THE SUPREME COURT

Defendants

Before the Honourable Mr. Justice V. Kokaram
Appearances:
Date of Delivery: 19th March 2014
Claimant in person
Mr. Randall Hector and Ms. Kelisha Bello instructed by Ms. Stephenie Sobrian and Ms. Nisa Simmons for the Defendant

JUDGMENT

1. Mr. Ricardo Welch also known as the "Gladiator" (the Claimant) obtained a judgment in default of Defence on 30th August 2013 in High Court proceedings CV2013-2935 which he brought against Daniel Solomon, Nalini Balwant, and Daniel Solomon and Associates, a firm. That judgment was set aside by the order of Justice Charles made on 19th September 2013 after hearing an application filed by the Defendants in those proceedings to set aside

that judgment ("the order to set aside judgment"). The Defendant's Application was supported by an affidavit by one Shelly Clarke sworn and filed on 17th September 2013. On the order to set aside judgment, it recites: "Upon hearing Attorneys-at-Law for the Claimant and Attorney-at-Law for the Defendants". However from the evidence before me neither Mr. Welch nor his attorney was present nor heard on the application and it would appear that the application itself may have been dealt with in chambers without a hearing pursuant to Rule 11.13 of the Civil Proceeding Rules. Mr. Welch filed an appeal against that decision which was eventually dismissed on 21st October 2013.

2. This is what in essence has given rise to Mr. Welch's claim for constitutional relief which is now before this Court. In this claim Mr. Welch appears in person and is seeking a wide array of declaratory reliefs arising out of the order made in the previous proceedings to set aside the judgment to dismiss his appeal. He claims that those orders are a breach of his constitutional rights and seeks: (a) A declaration that his fundamental human rights and freedoms to equality and protection of the law and/or not to be discriminated against by reason of his status as a litigant in person and/or to be deprived of a regular judgment except by due process of the law under sections 4(a)(b)(h)(i) and sections 5(1)(2)(e)(h) of the Constitution is likely to result in his fundamental human rights being disregarded. (b) A declaration that sections 4(a)(b)(h)(i) and sections 5(1)(2)(e)(h) of the Constitution protecting his fundamental rights to procedural fairness or natural justice or to conduct civil litigation or advocate for and on his own behalf under the status of a litigant in person has resulted in human rights violations, and amounts to un-judicial conduct. (c) A declaration that the applicant is entitled as a litigant in person to be treated fairly before the law and/or equality and protection of the law and to a fair and just hearing. (d) That part 2.9(1) and part 11.13 of the Civil Proceeding Rules flagrantly contravened and/or violated the applicant's guaranteed fundamental human rights and freedoms under sections 4 and 5 of the Constitution. (e) A declaration that the fundamental human rights and freedoms of the applicant to be given an opportunity to be heard and/or a reasonable and a fair chance of being heard under sections 4 and 5 have been violated by both the High Court and the Court of Appeal. A declaration that the discretion exercised by the High Court in setting aside a default judgment is unconstitutional and amounted to un-judicial conduct. (f) A declaration that the applicant's interest or his legitimate expectations as a litigant to equality of treatment, protection of the

law in accordance with the overriding objective of Part 1 has resulted in human rights violations. (g) A declaration that the order setting aside the judgment was contrary to due process, equality and protection of the law and natural justice. (h) A declaration that the order setting aside a regular judgment and/or the procedural decision of the High Court of the 19th September and the Court of Appeal on 21st October are unconstitutional, un-enforceable, null, void and contrary to the law. (i) A declaration that the applicant was not afforded an opportunity to be heard nor a just and free opportunity to properly conduct his litigation. (j) A declaration that the applicant's fundamental rights and freedoms was contravened being deprived of his default judgment in violation of sections 4 and 5 of the Constitution. (k) A declaration that Defendants in that claim knowingly waived their rights by not acting in compliance with the practice directions and rules of the CPR in failing to file their defence. A declaration that the judgments of the Court of Appeal and the High Court setting aside the judgment was done without due process of law. (l) A declaration that the judgment in default of defence obtained on the 16th August 2013 be restored with damages to be assessed.

3. This claim for constitutional relief has been met by an application filed by the Respondents to strike out Mr. Welch's claim on the grounds that the claim amounts to an abuse of process and/or does not disclose any ground for bringing the claim.

4. In support of and in answer to that application are extensive written submissions and authorities filed by both parties. Mr. Welch claims quite forcefully that his right to a fair hearing was breached in circumstances where the order to set aside judgment was made in his absence. So strongly does Mr. Welch feel about the alleged "injustice", he describes the order as "coming like a thief in the night" and "a trial by ambush". It is further compounded by the fact from his perspective that when he filed a procedural appeal against that decision he complains that at the very beginning of the appeal in the Court of Appeal the quorum had given its decision, had made up its mind on the matter without hearing him and hastily dismissed the appeal. Of course Mr. Welch must accept that the Court of Appeal would have read his written submissions and skeleton arguments filed in support and in answer to his appeal in advance of the hearing of the appeal. However he contends the Court of Appeal at the hearing fell into gross error in ignoring him, making a predetermination on the merits, failing to grasp the essence of his appeal or, of the importance of due process rights,

strangled or obstructed his thoughts by interrupting him and hastily made him complete his arguments; he complains that the entire appeal lasted about five minutes.

5. Again he feels that the hearing afforded to him in the Court of Appeal was at the very least unprofessional and on its highest a breach of his due process rights. The following exchange from the transcript between Mr. Welch and the quorum in the Court of Appeal was relied on extensively:

> "Court: Mr. Welch in this matter your appeal is based on the fact that you are of the opinion that no defence was put in on time and therefore you are entitled to take up judgment and you've counted the twenty-eight days. What happened however is that part of this period fell within the court vacation and during that period from the 31st July until court re-opens in effect the Registry is shut down for that purpose so that those days are not counted. So that you stop counting on the 31st July and you begin counting again when court opens on 16th September and therefore as a matter of law really you are not entitled to the judgment in default because the time is still running. So you counted the time but in law it can't be counted so in those circumstances that is why the Judge set it aside it's a pure matter of law that is beyond all argument."

6. Further on in the transcript Mr. Welch says:

> "yes you're (sic) Ladyship before you proceed in this procedural appeal I want to raise before your Ladyship that I'm not being afforded a fair hearing in the sense of presenting my arguments that I've took time to prepare in that this matter raises constitutional matters or areas bordering on constitutional law of great public interest. It has merits in it in that that the arguments presented in the Court of Appeal dealing with **Benjamin** does not address the arguments of great national public interest in this procedural appeal. Even the interpretation given in 2.9 more specifically 2.9(1) does not address the fundamental issue that I have raised in the skeleton argument that I have also raised in application for procedural appeal. I want to draw to your attention if I may to present to you an authority which gives me as a litigant the right to present my argument." And he is interrupted by the Court: "Mr. Welch, Mr. Welch people have a right to present their arguments when their positions are arguable but the law is clear and there is no room for argument that

does not mean that the person must be given time so that what I have said to you this has boiled down to a simple matter we're not talking about this matter below. The situation is this you've brought this procedural appeal on the basis that time ran out on the respondents to file their defence that is the basis you have in other words but that is the basis."

7. For Mr. Welch there are three matters of fundamental importance which he advances based on that exchange and which is articulated before me. (1) There is no hearing of the application in the true sense of the word before Justice Charles as he was simply not heard. (2) Had he attended the hearing before Justice Charles he would have been able to (a) demonstrate to the Judge why his judgment should not be set aside (b) if it should be set aside he may have given submissions on how long a period of time should be granted to the Defendant to file a defence, and (c) to address the Court on the question of costs. (3) The Court of Appeal did not give him a chance to articulate this view.

8. For the record the Defendant's application of 17th September 2013 was for judgment to be set aside as well as to obtain an extension of time for the filing of a defence. I have since examined it on the court's records. I have also noticed that the application itself says on its face "Notice of Application without a hearing" so even though Mr. Welch was served I gather that it was a matter that was heard in chambers without a hearing pursuant to CPR Rule 11.13. For these reasons Mr. Welch complains that the Judge's discretion was void of procedural fairness in ignoring and disregarding CPR rule 13.3 in direct violation of his fundamental rights as a litigant in person. He claims he was deprived of and not given an opportunity to be heard to challenge the application of the Defendant's application to set aside the judgment. He contends that the Judge at the High Court should have enquired into the validity of the Defendant's application and ought to have granted him an opportunity in accordance with part 1 of the CPR to a just, fair, unprejudiced and objective hearing before exercising her discretion. He claims he had a legitimate expectation to be heard to challenge the validity of the Defendant's application and to point out that the applicable rule would have been rule 13.2(2) to set aside a regular judgment.

9. We have many valuable judgments in this jurisdiction on the hallmarks of natural justice and the importance of the right to be heard. The Claimant himself relies on several authorities such as **Maharaj and the Attorney General of Trinidad and Tobago**[1] and **R v. Secretary of the State for the Home Department ex parte Doody**[2]. I tried myself to summarize those principles in **Dion Samuel v The Attorney General of Trinidad and Tobago**[3] when I said that with the definition of fairness: "there is no exact definition as the demands of fairness is contextual and varies with the circumstances and the nature of the hearing. The common denominator of what fairness demands is determined on a case by case basis along broadly intuitive lines of responsible action that serves the ends of justice and fair play." I had endorsed the observation of Justice Jones in **Nizam Mohammed v The Attorney General of Trinidad and Tobago**[4] which captured the essence of the procedural demands of fair play in action when she said:

> "I agree with Lord Mustill when he says that a determination of what is fair is an intuitive judgment a Court is required to look objectively at all the circumstances and answer the question has the claimant been fairly treated at the end of the day is this an example of fair play in action the fact that it may very well be that the same decision would have been arrived at even if the claimant would have been given a fair opportunity to answer the case made out against him is irrelevant the fact is that the decision arrived at without compliance to the rules of natural justice or procedural fairness is no decision at all and must be declared as such."

10. Mr. Welch has done quite well as a litigant acting in person in familiarizing himself with the Civil Proceeding Rules. Those rules sought to transform the civil landscape and Mr. Welch himself in referring to the judgments of Justice of Appeal Jamadar in **Khanhai v Prison Officer Darryl Cyrus and the Attorney General of Trinidad and Tobago**[5] alluded to the new litigation culture and the elimination of the "laissez faire" approach of litigants. What Mr. Welch must also appreciate is the extensive case management powers of the judge under the Civil Proceeding Rules, such powers which include dealing with applications without a

[1] [1978] 2 All ER 411
[2] [1993] 1 All ER 151
[3] CV 2012-03170
[4] CV 2011 -04918
[5] CA Civ 158 of 2009

hearing under rule 11, making quick and expeditious decisions to move matters along, exercising case management powers under CPR rules 25 and 26 and investing in the court a discretion which is to be exercised to give effect to the overriding objective set out in Part 1 of the rules which, if I may summarize, reflects the three principles of equality, proportionality and economy.

11. In this system robust decisions can be made, oral hearings are truncated and the rules themselves can shut the door on a litigant abruptly in the presentation of its case. This is the due process effected by the rules. Ultimately however the fact that Mr. Welch may feel aggrieved of the decisions of the High Court and the Court of Appeal does not on its own give rise to a claim for constitutional relief. Nothing I have read nor heard from the Claimant (even if he is right in his interpretation or application of rule 13) raises the complaint beyond a mere error of law committed by the High Court and Court of Appeal. Taking the arguments at its highest, it is that the Court misinterpreted the rules to set aside a default judgment and applying the rules in a manner which is not consistent with a fair hearing in this case by (a) not giving him the opportunity before Justice Charles to be heard and (b) at the Court of Appeal not giving him more time to properly present his case to persuade the Court of Appeal to allow his appeal. But these do not amount to a breach of any constitutional right.

12. What Mr. Welch cannot do and would not be allowed to do in this case is to use the Constitution as a pincer to grab hold of a default judgment which was set aside by following the due processes as prescribed by the Civil Proceeding Rules. For the reasons which I now shall briefly explain I agree with the Respondents that the reliefs claimed are unsustainable and the Defendant's application to strike out the claim will succeed.

13. First, the second and third respondents i.e. the Rules Committee and the Registrar of the Supreme Court are not proper parties to these proceedings. There is only one relief which could remotely interest the Rules Committee that is relief (d) that rules 2.9(1) and 11.1(3) fragrantly violates the applicant's constitutional rights however, no relief is being sought to strike down those rules as being unconstitutional.

14. The allegations against the Registrar bear no reference for any need for her to be joined as a party in these proceedings. In the affidavits filed by the Claimant the following serious

allegations have been made against the Registrar. Starting at paragraph 43 Mr. Welch says that he received a call from an Assistant Registrar asking him to return the legal document. He said he was in shock and when he subsequently found out the unfortunate circumstances for the request he wondered whether the Registrar's conduct amounted to misconduct in public office.

> "I strongly resisted the Registrar's reasoning and her attempts since she was not acting independently. The Registrar was acting under the influence of the first claim defendants to wrongfully influence me to return the document. I was then told that I would have to pay the costs and the judgment would be set aside. The Registrar seemed to know with a surety what was going to happen to my regular judgment, and the allegations continue."

These allegations are nothing short of scandalous, quite apart from it being baseless in grounding any constitutional relief against the Registrar. In constitutional motions whereas there may be persons interested in an application, the person who is the proper party to these applications is the Attorney General. That has been set out authoritatively, established in **Ramesh Lawrence Maharaj (No.2)** (ibid) See also Section 19(2) of the Crown Liability and Proceedings Act which provides that proceedings against the Crown should be instituted against the Attorney General and this is not confined to proceedings in tort.

15. The complaints in these proceedings amount to the manner in which the High Court and Court of Appeal exercise their discretion or their jurisdiction. Where the judicial arm has contravened constitutional rights the proper party would be the Attorney General. See **Ramesh Maharaj (No.2)**. To say that the Registrar and the Rules Committee are public bodies misses the mark as this is not judicial review proceedings. Accordingly the second and third Defendants will be struck out from these proceedings.

16. Second, on the question of an abuse of process there is no doubt that the Court must be vigilant to protect its process from abuse and from the overzealous litigant who does not articulate genuine constitutional relief. A number of our High Court and Court of Appeal judgments have examined the concept of abuse of process in the context of constitutional remedies **Harrikissoon and the Attorney General**[6] and **Jaroo and the Attorney General**[7]

[6] [1979] 3 W.L.R. 62

referred to by the parties are some classic examples of where claims would be struck out as amounting to an abuse of the process where the claims do not give rise to genuine constitutional relief or where there is a parallel remedy in common law. Mr. Welch in his submissions points out that he is a de facto beneficiary of a valid default judgment and that his arguments on the interpretation of CPR Part 2.9(1) raises important constitutional questions of national importance as it relates to an over the counter default judgment. In essence he argues that the manner in which the court had exercised their discretion to deprive him of the default judgment violates his constitutional rights and "he suffered a double jeopardy" in that he was not afforded an opportunity to be heard and to properly present his case and to seek his best interest to restore the judgment in the Court of Appeal.

17. Mr. Welch also argues very strongly that the fundamental principle of the right of access to a court was being violated and he refers to the extract 3.4.2 of the Supreme Court Practice for the importance of the litigant's access to the court. He submits that the affidavits disclose an arguable claim and the surrounding circumstances that contravene or violate his fundamental rights. In reference to **Northern Construction Ltd and the Attorney General**[8] Justice Jamadar commented on the type of cases amounting to an abuse of process which did not involve any contravention of human rights and Mr. Welch contends that his case raises breaches of the Constitution and therefore does not amount to an abuse of process. He also refers to the case of **Attorney General and London and North Western Railway**[9] in reference to the test of whether summary judgment can be obtained.

18. The short of all this is that no issue of the Claimant being denied access to the court really can be made out on the facts of this case. He has always had access to the court within the operation of the rules under the Civil Proceeding Rules.

19. It is important therefore in appreciating whether Mr. Welch's complaint is a genuine contravention of constitutional rights, that there is an understanding of the essence of Mr. Welch's claim. I agree with Mr. Welch so long as it raises a genuine case of constitutional relief it ought not to be struck out. But the essence of Mr. Welch's claim is simply that both

[7] [2002] UKPC 5
[8] H.C.A. No. 733 of 2002
[9] [1892] 3 Ch 274

the High Court and Court of Appeal as I had said earlier erred in law and failed to properly, rationally or lawfully exercise a discretion consistent with the rules and the overriding objective. This is not a ground for constitutional relief indeed this is only a ground for further appeal to the Privy Council if necessary. If I am seduced by Mr. Welch's arguments to so find it was a breach, it will amount to a collateral attack not only on the judgments of both the High Court and the Court of Appeal in this instance but, paves the way for constitutional relief in almost every single decision made in this jurisdiction where the Court exercises its discretion under the rules.

20. The authorities referred to by Counsel for the Respondent demonstrate clearly that Mr. Welch's claim is an abuse of process. Counsel for the State referred to the *locus classicus* on this issue the Privy Council's decision in **Ramesh Lawrence Maharaj (No.2)**[10] which deserves repeating:

> "In the first case no human right or fundamental freedom recognized by Chapter 1 is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law even where the error resulted in a person serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. When there is no higher court to appeal to then none can say that there was error. The fundamental human right is not to a legal system that is infallible but to one that is fair. It is only errors in procedure that are capable of constituting infringements of the rights protected by Section 1 (a) and no mere irregularity in procedure is enough, even though it goes to jurisdiction; the error must amount to a failure to observe one of the fundamental rules of natural justice. Their Lordships do not believe that this can be anything but a very rare event."

21. Simply put therefore and in reference to the cases of **Chokolingo v the Attorney General**[11] and **Boodram Bedassie v the Attorney General**[12] one simply cannot shout breach of constitutional rights unless there is something before this court something more than a mere procedural error.

[10] [1978] UKPC 3
[11] [1980] UKPC 27
[12] H.C.A. 4442 of 1980

22. What is important is that inbuilt in CPR Part 11 which provides for an ex parte hearing is the balancing of the rights of the person who is affected by an ex parte hearing by giving and vesting unto that individual the right to set aside that decision by making an application under CPR Part 11.17. By that rule where a party who was not present when an order was made by the Court may apply to set aside the order. That application must be made within seven days after the date on which the order was served on the applicant. The application to set aside the order must be supported by evidence showing (a) a good reason for failing to attend the hearing and (b) that it is likely that had the applicant attended some other order might have been made.

23. Inbuilt therefore in the rules themselves, and this goes to the point of mere procedural irregularities, is a balancing of the rights of parties where an application may be heard in a party's absence.

24. Third, on the other limb of the Respondent's application that there is no ground for bringing the claim, again one needs to examine the essence of the claim and at the heart of it is that the Court had set aside a judgment on the basis that the judgment was premature and irregular as time had not yet elapsed for the filing and service of the defence. That was the decision made by both the High Court and the Court of Appeal and calls into question the interpretation of CPR rule 2.9 and rule 13. The distinction is being made by Mr. Welch that CPR rule 2.9 does not specifically refer to the word "filing" and simply states that a statement of case "may not be **served** during the court vacation". Whatever my view is on that interpretation the Court of Appeal has already pronounced that rule 2.9 also refers to the filing of the defence and Mr. Welch cannot under the guise of constitutional relief upset that finding in the absence of the Claimant following the due process as set out by the Rules themselves, which is to appeal to the Privy Council to reverse the Court of Appeal's interpretation of rule 2.9.

25. I agree with the submissions of the Defendant that there is no basis in law made out for constitutional relief for breaches of proprietary rights, due process rights, equality and protection of the law, freedom of conscience, thought and expression. I note the following submissions made by Counsel for the State of the due process rights as explained in **Thomas**

and anor v Ciprani Baptiste and ors[13] and **Boodram Bedassie v the Attorney General (ibid).** Importantly in the case of **R v Chaaban (Kodhr)**[14] in that case by analogy the Court stated:

> "We must also consider whether the case was rushed, a submission which gives the court the opportunity to highlight the significant recent change perhaps less heralded than it might have been that nowadays as part of his responsibility for managing the trial. The judge is expected to control the timetable and manage the available time. Time is not unlimited. No one should assume that trials can continue to take as long or use up as much time as either or both sides may wish or think or assert. The entitlement of fair hearing is not inconsistent with proper judicial control over the use of time at the risk of stating the obvious. Every trial which takes longer than it reasonably should is wasteful of limited resources."

26. I also accept the submission as I said that there is no breach of the right to equality before the law as there are no significant or true comparators used to demonstrate that he has been discriminated against. I refer to the judgments of Justice of Appeal Bereaux in **Webster and the Attorney General**[15] and also I rely on the **Maha Sabha v Minister of Finance**[16] case and **Surratt v the Attorney General**[17] in dealing with the rights of freedom of conscience, thought and expression. Again Justice Smith makes the point in **Ashford Ramdhan v Her Worship Senior Magistrate Mrs. Lucinda Cardenas Ragoonan**[18] **"**that a judicial officer can make a wrong decision without subverting the system by which the party before him is judged". The system is not perfect but it is fair and there are many cases of litigants who would have appeared before both a High Court and the Court of Appeal and would walk away feeling aggrieved by the decision. That is simply the nature of the judicial process. That does not give rise to any claim for constitutional relief. It simply brings home to a litigant of having to take stock of his case, reflect on the reasons given for a decision made against him and then take such action that is open to him under the process available to him under the Civil Proceedings Rules. For that reason the applicant will enjoy the full protection of the law

[13] [1999] UKPC 13
[14] [2003] EWCA Crim 1012
[15] CA Civ 86 of 2008
[16] H.C.A. 438 of 2004
[17] CA Civ. 64 of 2004
[18] HCA 1381 of 2004

in the mechanism for correcting the error of the judicial process which in this case would be an appeal. I also rely on **Forbes and the Attorney General**[19] and of course **Karen Tesheira and the Attorney General**[20] which similarly was a case where the litigant unsuccessfully sought to strike down the relief from sanctions provision as being unconstitutional.

27. Mr. Welch himself relies on a number of authorities which I have read but they do not advance a case for constitutional relief nor do they give me any comfort that this case rises beyond a mere error of law taking the case at its highest. His authorities of **Maharaj and the Attorney General**[21]**, Ridge and Baldwin**[22]**, Harrikissoon v the Attorney General**[23]**, Vinos v Marks and Spencer**[24]**, Holiday Inn Jamaica v Carl Barrington Brown**[25]**, Attorney General v Universal Projects Ltd**[26]**, Jaroo v the Attorney General**[27]**, Lewis and others v the Attorney General of Jamaica**[28]**, Durity v the Attorney General**[29]**, Hunter et al v Southam**[30] **Thomas v Baptiste**[31]**, Boyce and another v R**[32]**, Dyson v the Attorney General**[33]**, Tesheira v the Attorney General**[34]**, Higgs and another v Minister of National Security of Bahamas**[35]**, The Attorney General v Regis**[36]**, Three Rivers v the Governor and Company of the Bank of England**[37]**, Mr. O'Connell, Mr. Whelan and Mr. Watson** case[38] all support the Respondent's contentions. The reference to **Merchant International Company v Natsionalna Aktsionerna Kompaniia Naftogaz**[39] that the English judgment being a form of property which may have real value may be one thing but the constitutional

[19] [2002] UKPC 21
[20] CV 2011- 03941
[21] [1978] 2 All ER 411
[22] [1963] 2 All ER 66
[23] [1979] 3 W.L.R. 62
[24] [2001] 3 All ER 784
[25] CA Civ J'ca 83 of 2008
[26] [2011] UKPC 37
[27] [2002] UKPC 5
[28] [200] UKPC 35
[29] [2002] UKPC 20
[30] [1984] 2 S.C.R. 145
[31] [1999] UKPC 13
[32] [2004] UKPC 32
[33] [1911] 1 KB 410
[34] CV 2011- 03941
[35] [1999] UKPC 55
[36] CA Civ. 79 of 2011
[37] [2001] UKHL
[38] [2005] 3 W.L.R. 1191
[39] [2012] EWCA Civ. 196

rights not to be deprived of that right to property unless there is due process is another. A fundamental finding that I have made in my ruling today is that there was due process available and open to Mr. Welch in the manner in which the rules were applied and the manner in which the rules would cater for him advancing his complaint beyond the level of the Court of Appeal.

28. I particularly am partial to the authorities of **Hunter and Southam (ibid)** and Chief Justice Dickson's majority decision which is frequently used by us in taking a broad approach in the interpretation of constitutional rights. Be that as it may we cannot take such a broad approach in interpreting constitutional rights to render the rights themselves meaningless.

29. Finally in **Ramesh Maharaj (ibid)** which is a case where constitutional relief was sought against the decision being made by a trial judge. Those facts were distinguishable and quite different from this case, but I thought that the judgment of Lord Diplock was quite instructive and this is what he said quite apart from saying, as I referred to earlier, that not every error or mistake gives rise to constitutional relief. He says:

> "The order of Justice Maharaj committing the appellant to prison was made by him in the exercise of a judicial power of the State the arrest and detention of the appellant pursuant to the judge's order was effected by the executive arm. So if his detention amounted to a contravention of his rights it was a contravention by the State to which he is entitled to protection. Whether it did amount to a contravention depends upon whether the judge's order was lawful under the law enforced before the Constitution came into effect. At that time the only law governing contempt was the common law and at common law it has long been settled that no person should be punished for contempt unless the specific offence charged against him is distinctly stated and an opportunity of answering it given to him. That the order of Justice Maharaj was unlawful on this ground was already determined in the previous appeal and in their Lordships view it clearly amounted to a contravention by the State of the appellant's rights under section 1A not be deprived his liberty except by due process."

30. The decisions of both the High Court and the Court of Appeal in this case could never be described as unlawful in that sense. As I noted in several cases quoted earlier, the principle of

natural justice and the requirement of fundamental fairness is contextual and varies from case to case. In **Maharaj** there was a specific common law rule that the charge should be distinctly stated and that there was an opportunity given to answer it. If we lift that rule and apply it to our circumstances we are met with CPR Part 11 which gives litigants, both claimants and defendants, the right to make applications and to obtain orders ex parte without a hearing but also balancing that right with the person who is affected by that order to apply to set it aside and to be heard so that a different decision can be made. The rules themselves evenly balance the scale of justice to guarantee the litigant a fair hearing. There is due process provided by the rules either in the mechanism of an application under CPR part 11 or an appeal to allow for a further consideration of the merits of the litigants case.

31. For these reasons that I have advanced the claim will be dismissed and costs will be paid by the Claimant to the Defendant unless I hear submissions otherwise.

32. The State has asked for its assessed costs and Mr. Welch indicated he will leave that in my hands "because I will hope that you will order reasonable costs. Because I have no intention of appealing I will just take your ruling as educational I will be guided by it in the near future". I would like to add a further note for the benefit of Mr. Welch. Mr. Welch is a litigant in person and unfortunately may not be apprised of the developing ethos of the culture which we are trying to develop under the new Civil Proceedings Rules which is – we are moving away from encouraging tactical advantages and we are encouraging parties to get on with the substance of the matter. With what has happened in your litigation if we step back a moment and take a panoramic view one can say the court's setting aside of the judgment was really trying to get to the substance of that dispute by having a full hearing of the merits before giving a final judgment. In that case you may win. Justice I suppose will always be served when the substance and the merits of a case is given the light of day unless there is cause established in the rules to do otherwise. There are rules which allow for default judgments, to be entered for failure to file witness statements, for failing to follow orders, rules and procedures but when we come to situations such as the one at bar there is a leaning towards getting into the merits and at the end of the day after a full hearing a judge would be best placed to decide against whom or for whom judgment would be made.

33. With regard to costs I am also mindful that I have a litigant in person I know that the State is entitled to its costs being victorious on the application. Costs is in the discretion of the Court. There is nothing done by the State to debar it from its costs, nothing in the way they conducted the case, nothing in the way they pursued the issues. But in exercising my discretion under CPR part 67 I also have to take into account the question of proportionality and equality. I have a litigant in person and I have to weigh and balance the scale of justice even on the question of the incidence of costs. At best what I can do in the circumstances in applying the principle of proportionality (r1.1 (2)(a)(iv)) is order half the costs to be assessed by this Court and to be paid to the Defendant. Of course when I am assessing the costs I would certainly be taking into account the fact that it was the litigant in person who conducted the litigation.

Vasheist Kokaram

Judge