REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2014 – 00630

IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

AND

IN THE MATTER OF AN APPLICATION FOR REDRESS IN ACCORDANCE WITH SECTION 14 OF THE CONSTITUTION BY COLLINS EMILY A CITIZEN OF TRINIDAD AND TOBAGO ALLEGING THAT CERTAIN PARTS OF THE SAID CONSTITUTION HAVE BEEN AND WILL BE CONTRAVENED IN RELATION TO HIM BY REASON OF THE ACTION AND/OR CONDUCT OF THE STATE

BETWEEN

COLLINS EMILY

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr. Wayne Sturge and Mr. Criston J. Williams instructed by Ms. Alexia Romero for the Claimant

Mr. Randall Hector and Ms. Cherisse Nixon instructed by Ms. Shanna Lutchmansingh and Ms. Kadine Matthews for the Defendant

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JUDGMENT

I. Introduction

[1] This decision is in respect of declarations and compensation sought by the Claimant against the Attorney General of Trinidad and Tobago. The Claimant sought constitutional relief for alleged breach of his rights provided for by **sections 4(a) and (b) and 5(2)(h) of the Constitution Chap. 1:01 ('the Constitution')**. By his claim, he alleged that the State (or more specifically its organs, servants and/or agents) failed to forward to the Court of Appeal reasons and notes of evidence in relation to the Claimant's conviction and sentence, so as to enable the timely hearing of an appeal made by the Claimant, before the expiration of the period for which the Claimant was sentenced. The Claimant alleged that this failure caused him to spend more time incarcerated than absolutely necessary.

[2] To that end, on 20 February 2014 the Claimant filed a Fixed Date Claim supported by the Claimant's affidavit seeking:

(a) A declaration that the continuing failure by the State, to date, to list the Claimant's appeal dated 4 November 2011, in the circumstances of this case is unconstitutional and illegal and in breach of **sections 4(a) and (b) and 5(2)(h) of the Constitution**;

(b) A Declaration that the failure of the State, its organs and/or servants and/or agents in particular His Worship Brian Dabideen acting in the capacity of Magistrate presiding over the 4B Magistrates' Court, who had the apparent, ostensible, and/or expressed authority to act on behalf of the State to prepare the reasons for conviction and sentence pursuant to **section 130(1) of the Summary Courts Act Chap 4:20**, and the Clerk of the Peace at the Port of Spain Magistrates' Court to prepare the notes of evidence and forward same together with the reasons pursuant to **section 135(1)** of same Act, have been in breach of the Claimant's fundamental rights under **section 4(a) and (b) and 5(2)(h) of the Constitution**;

(c) A declaration that the detention of the Claimant whilst remanded awaiting his appeal since 4 November 2013 to date (being the date on which the

Claimant would have been entitled to be released as the earliest possible date of release, to date, is unconstitutional being in breach of the Claimant's fundamental rights under **section 4(a) and (b) and section 5(2)(h)**;

(d) An Order that **section 285 of the Prison Rules** should be taken into consideration as it relates to the Claimant's conviction and sentence for possession of a firearm contrary to the **Firearms Act Chap. 16:01, as amended;**

(e) An Order that the Commissioner of Prisons provide the Court with all records relative to the Claimant's conduct, progress and development whilst he has been imprisoned, pursuant to his conviction and sentence for possession of firearm contrary to the **Firearms Act**;

(f) An order directing the Commissioner of Prisons to make such arrangements as may become necessary to give effect to any order made by this Honourable Court;

(g) An order that monetary compensation including aggravated damages and vindicatory damages be paid to the Claimant as a result of the above unconstitutional action for the damage and loss suffered by the Claimant;

(h) Costs;

(i) Interest; and

(j) Any such further or other relief as the Honourable Court deems fit.

[3] On 2 April 2014, the first hearing of the Fixed Date Claim was held, it being treated as the first case management conference. At that hearing, this Court gave the Claimant permission to amend his Fixed Date Claim. Permission was also given to the Defendant to file an affidavit in response to the Claimant's affidavit.

[4] On 2 May 2014 the Claimant filed his Amended Fixed Date Claim and supplemental affidavit, which was substantially the same as his original Fixed Date Claim, save for now specifying in the Amended Fixed Date Claim, the Act from which a particular section was quoted and specifying in the supplemental affidavit brief facts in

relation to unsuccessful applications which the Claimant had made for bail, after conviction but pending his appeal.

[5] On 6 June 2015, the Defendant sought a stay of the proceedings in the instant claim pending final determination of the Claimant's appeal in **Criminal Appeal No. 38 of 2014 Collins Emily v Wayne Charles PC #12397.** The application for a stay was premised on the ground that on 28 May 2014, the Defendant's Attorney's were informed that the matter of **Collins Emily v Wayne Charles PC #12397 Criminal Appeal No. 38 of 2014** had been listed for hearing on 22 July 2014, and the decision of the Appeal Court in that matter would inevitably mandate the Claimant to reconsider the conduct of the instant claim. By an order dated 8 July 2014, this Court granted the stay of the instant proceedings pending the decision in the Court of Appeal in **Criminal Appeal No. 38 of 2014.**

[6] Following the decision of the Court of Appeal in **Criminal Appeal No. 38 of 2014**, the instant matter proceeded.

[7] On 18 September 2015, the Defendant, by permission of this Court, filed the affidavit of former Magistrate Brian Dabideen (now a Judge of the Industrial Court) in response to the Claimant's affidavit and claim.

[8] At the Case Management Conference held on 28 October 2015, Attorneys-at-law for both sides agreed that there was no need for cross-examination in this matter and that the Court should decide this case on the law for which written submissions with authorities would be filed on behalf of both parties. Consequently, this Court ordered the parties to file and exchange their written submissions with authorities by specified dates. Notice of Application was thereafter made by consent of the parties and subsequently ordered by the Court, to extend the time for both parties to file their written submissions.

[9] It followed that on 25 and 26 January 2016 the Defendant filed its written submissions and its bundle of authorities in support of same. On 4 February 2016 the Claimant filed its submissions. Further, on 22 February 2016 the Defendant filed its submissions in reply.

[10] On 24 February 2016 the Claimant filed another supplemental affidavit followed by a "Notice" filed on 8 March 2016 attaching an exhibit that he inadvertently failed to exhibit to the 24 February supplemental affidavit. These two documents were, however, struck out from the record on the basis that no permission was sought or granted to the Claimant to file the said supplemental affidavit or "notice".

[11] This Court has considered the submissions and authorities presented by both parties. Having regard to the law and the facts at hand, this Court finds that the Claimant's claim for constitutional relief is unsustainable.

[12] Despite the fact that the Claimant's claim has failed, in the interest of justice, this Court cannot condone the failure of the Magistrate to satisfy or observe the conditions and procedures required by law for the writing of reasons in support of a judicial decision. No reasons were provided by the Magistrate for the appeal hearing, even after this matter was initiated. As such, as it relates to the question of costs in the instant matter, it is the view of this Court that each party should bear its own legal costs.

[13] I have hereinafter detailed the reasons for my decision.

II. Facts Relevant to the Instant Claim

[14] The factual evidence relevant to the instant claim was adduced from the affidavit evidence of the Claimant filed on 20 February 2014, his supplemental affidavit filed on 2 May 2014, and the affidavit evidence of former Magistrate (now judge of the Industrial Court) His Worship Brian Dabideen (hereinafter called 'Magistrate Dabideen') filed on behalf of the Defendant on 18 September 2015.

[15] According to the Claimant, on or about 25 December 2005, he was charged with possession of a firearm contrary to the **Firearms Act, as amended**. The matter was heard summarily before Magistrate Dabideen at the Port of Spain Magistrates' Court and was determined on 4 November 2011, on which date the Claimant was found guilty and

sentenced to three (3) years hard labour. He appealed the decision of the Magistrate on 4 November 2011 by way of a Notice of Appeal filed at Port of Spain Magistrates' Court.

[16] The Claimant appealed the decision of the Magistrate on the ground that he was not guilty and the decision of the Magistrate was unreasonable or could not be supported having regard to the evidence.

[17] In his affidavit, the Claimant emphasised that after his conviction the Claimant made three applications for bail pending his appeal. One of the applications was withdrawn and he was denied bail on the other two. The only evidence which the Claimant exhibited in support of this was a letter dated 5 November 2013 addressed to the Registrar of the High Court on the issue of bail.

[18] The Claimant further emphasised that while he was incarcerated he became familiar with some of the prison rules, one of which was the rule in relation to remission. He stated that he came to understand that there are two possible dates of release, that is:

(i) The earliest possible date, which refers to the date which you can be released, if the remission rules are applied to calculate the duration of sentence. By virtue of **rule 285 of the Prison Rules**, a sentence is reduced by one third if the prisoner is of good behaviour; and

(ii) The furthest possible date of release which is the date of release without applying any remissions to the calculation of the duration of sentence.

[19] Thus, since his sentence was for three years, his furthest date of release would be 4 November 2014 and his earliest date of release with remission under **rule 285 of the Prison Rules**, would have been 4 November 2013.

[20] The Claimant further emphasised that he was advised by his attorneys, that **section 130B of the Summary Courts Act** mandates that the Magistrate is under a duty to draw up and sign a statement of his reasons for his decision within sixty (60) days of the filing of the Notice of Appeal. He stated he was also advised that **section 135 of the Summary Courts Act** provides that the Registrar of the High Court can only list the

appeal for hearing before the Court of Appeal, when the following documents are received:

(a) Three copies of the record of the proceedings;

(b) The Notes of Evidence;

(c) The Magistrate's Reasons; and

(d) All writings or articles exhibited by witnesses.

[21] Bearing that in mind, the Claimant stated that approximately fifteen months after his conviction, he had his attorney-at-law make inquiries at the Port of Spain Magistrates' Court to ascertain whether the Notes of Evidence and the Reasons were ready. The Claimant was informed by his then Attorney that, having checked on a number of occasions, the documents were not ready.

[22] The Claimant deposed that despite the legal obligation to do so, the Magistrate failed to produce a statement of reasons for conviction and sentence up to the time of the instant claim thus preventing the listing of his appeal for hearing before the Court of Appeal. Moreover, the Claimant averred that he was entitled to an appeal as well as to the benefit of the procedural provisions at **ss. 128, 130 and 135 of the Summary Courts Act**, which facilitate timely hearing of an appeal. However, according to the Claimant, by the time his appeal was to be finally listed, he would have effectively served his sentence either by the earliest possible date of release (with remission) or even the furthest possible date (without remission).

[23] In those circumstances, the Claimant maintained that in breach of his constitutional rights under **section 4(a) and (b) and section 5(2)(h) of the Constitution**, that he was being deprived of the benefit of his appeal as well as being deprived of the opportunity to secure his freedom through the appellate process.

[24] The Claimant added that he is diabetic and suffered from distress, anxiety and inconvenience. He also added that he allegedly suffered loss by virtue of a contravention of his right to prosecute his appeal. He commented that he felt particularly aggrieved because he knew that he always had a good case and felt that the system was failing him.

[25] Furthermore, due to the failure to list his appeal within a reasonable time, he complained that he was subjected to the horrible and squalid prison conditions for the extended period of time which he spent in prison while his appeal was pending.

[26] Moreover, he deposed that his health deteriorated as he was not given proper medication and was not on a proper diet. He commented on the tea at the prison being too sweet and receiving what was called white rice on a daily basis and the terrible food. The Claimant also complained of the bathroom facilities consisting of twelve showers which are out in the open; each shower being used by two to three men simultaneously therefore disabling privacy.

[27] The Claimant further complained of the dirty, filthy and smelly cells with a slop bucket in which to defecate; the walls plastered with newspaper to cover faeces on the wall; the floor which he often slept on for lack of a bed; and the constant stench in the corridors at night as some of the prisoners would urinate in bottles and cups and throw same in the corridors. Additionally, the Claimant stated that the cells were overcrowded and approximately eight by eight feet in size with eight to nine occupants in the cell. He mentioned that there was also no ventilation in the cells and besides the aforementioned stench, it was generally hot during the day.

[28] Also, the Claimant deposed that he lived in fear as the other prisoners with whom he shared a cell, often had contraband items like phones, cigarettes and marijuana. Therefore he consistently prayed that the prison officers would not raid the cells and beat everyone within.

[29] To this, he added, that in August 2013, his mother passed away and he could not attend her funeral. As such, the whole ordeal, he stated, had a psychological effect on him and he was always depressed.

[30] According to the Claimant, by reason of all the aforementioned matters, he is entitled to relief under **section 14(2) of the Constitution** including declarations and damages.

[31] Much of the Claimant's version of events was not challenged in the affidavit of Magistrate Dabideen (for the Defendant). Rather, in his affidavit, Magistrate Dabideen, merely described the circumstances that resulted in his failure to provide reasons for the purpose of the Claimant's appeal.

[32] According to Magistrate Dabideen, after the Claimant was convicted, his lawyer indicated that he intended to appeal the decision. However, according to the Magistrate, the Claimant's actual Notice of Appeal was never received by him, nor was he informed that his decision was actually appealed. Magistrate Dabideen further stated that he was unaware that an appeal had been lodged against his decision. Further, he deposed that he only became aware that the Claimant had filed an appeal against his decision after he read the Claimant's Fixed Date Claim Form and affidavit in the instant claim. He averred that had he been informed that the Claimant had in fact filed an appeal, he would have written his reasons, pursuant to **section 130 of the Summary Courts Act**.

[33] Magistrate Dabideen added that the Notes of Evidence dated 7 October 2011 and 4 November 2011 were only prepared on 16 January 2012 by the Court Transcriptionist, while the Notes of Evidence dated 28 January 2011 were prepared on 18 January 2012. Although the Notes of Evidence were prepared on 16 and 18 January 2012, the Magistrate deposed that by the time he left the Magistracy in April 2012, he had not received the Notes of Evidence in the Claimant's criminal proceedings.

[34] That notwithstanding, Magistrate Dabideen contended, that although reasons for his decision had not been provided, an established practice existed which allowed for the Claimant's appeal to still be listed and heard. He stated that, in circumstances where reasons for an appeal decision have not been provided, for example, where magistrates have resigned or left the Magistracy, the record of proceedings is compiled and forwarded to the Court of Appeal for a determination. This, he contended, has been done in numerous other cases. Accordingly, he asserted that the Claimant's attorney could have indicated to the Clerk of the Peace that an appeal had been filed, no reasons for the decision were available and the Magistrate who adjudicated on the matter had since left the Magistracy.

[35] Magistrate Dabideen also emphasised that the Claimant was entitled to apply for bail pending appeal. He explained that one of the exceptional circumstances in which bail pending appeal is granted is where it is very likely that the Claimant would serve his sentence before his appeal was heard.

[36] Magistrate Dabideen further noted that the Claimant's matter was listed for hearing by the Court of Appeal on 22 July 2014, and that on that occasion the Claimant's appeal was dismissed and his conviction and sentence were therefore affirmed.

III. Issue(s) for determination by this Court

[37] From a review of the submissions of both parties, in essence, three issues arise for determination by this Court. They are:

(i) **whether the State, represented by the Attorney General of Trinidad and Tobago, can be held liable for a failure of the Magistrate and Clerk of the Peace to carry out their respective judicial functions;**

(ii) **whether the Claimant's constitutional rights were contravened as a result of the (a) failure of the Magistrate to provide reasons within the specified time; and (b) failure of the Clerk of the Peace to prepare the notes of evidence, thereby delaying the listing of the Claimant's appeal; and**

(iii) **If the first two issues are answered in the affirmative, whether compensation ought to be awarded to the Claimant by this Court for the breach of the Claimant's constitutional rights.**

Claimant's Submissions

[38] The Claimant submitted that his rights not to be deprived of his liberty otherwise than by due process, equality before the law and the protection of the law, were contravened. He submitted that the contravention occurred as a result of the failure of the Magistrate to provide reasons for his decision in accordance with the law, and the delay of the Clerk of the Peace in providing the Notes of Evidence, both documents being

required before his appeal could be listed. He submitted that it was unconstitutional to have caused him to spend the greater part of his three years sentence waiting for his appeal to be listed. The Claimant further submitted, having regard to the date on which his appeal had eventually been fixed for hearing, the failure of the Magistrate and Justice of the Peace caused his appeal to be heard a mere four months before he would have served out his full sentence.

[39] The Claimant also asserts that he had a right to be protected by the law from deprivation of his liberty pursuant to **section 4 (a) and (b) of the Constitution**. To this end, the Claimant stated that had his appeal been dealt with earlier in time, the Claimant would have been released on 4 November 2013 (being the earliest possible date) and this would be the case even if the appeal was dismissed and the conviction and sentence of the Claimant affirmed. The Claimant maintained that he was entitled to one-third of a remission of his sentence and stated that the fact that he was imprisoned beyond 4 November 2013 was unconstitutional and a further deprivation of his fundamental rights. As such, it is submitted on the Claimant's behalf that he was unlawfully incarcerated for 365 days and was unjustly and unfairly denied his liberty.

[40] The Claimant also asserts that it is a grave miscarriage of justice when access to justice is so slow that it breathes futility. Reliance was placed by the Claimant on the decision of the High Court in **Anneson Stanisclaus v. The Attorney General of Trinidad and Tobago HCA No. 1785 of 2000** and **Roger Stout v The Attorney General of Trinidad and Tobago H.C.A. No. Cv2008-01121**. The Claimant submitted that the protection of the law therefore includes access to the appellate process at the earliest date possible. To this end, the Claimant relied on a decision from the United States Courts in **Frank v Mangum (1915) 237 U.S. 309 at 347**.

[41] In those premises, the Claimant submitted that compensation including aggravated and vindicatory damages ought to be awarded to him by the Court.

Defendants' Submissions

[42] The Defendant contended, the Claimant's appeal was listed and heard on 22 July 2014 in the Court of Appeal. The Honourable Court of Appeal dismissed the Claimant's appeal and affirmed his sentence. As such, the Defendant contended, that the Claimant can no longer complain of his rights being infringed in that regard.

[43] Regarding the failure to provide reasons and notes of evidence, the Defendant contended, that it must be noted that though reasons were not provided within the statutory period, this did not preclude the Claimant's appeal from being heard as it had become an established practice to list appeals without the reasons of the judicial officer, if counsel indicated a willingness to proceed with the appeal.

[44] Further, the Defendant submitted that the Claimant had several other avenues for legal redress by which he could have sought his freedom, such as by seeking bail pending appeal, an application for judicial review or even possibly a writ of habeas corpus.

[45] Additionally, relying on **Cedeno v Logan (2001) 4 LRC 213**, for the principle that failure of a magistrate to give reasons is not fatal to an appeal, the Defendant contended that the fact that the Claimant's appeal was heard and determined 22 July 2014, clearly indicated that his appeal was not precluded by the absence of the statutory reasons. Therefore, the Claimant can no longer maintain the argument that his due process rights have been infringed.

[46] Regarding the Claimant's detention, the Defendant contended that the Claimant always had available to him the option of making an application for bail pending the hearing of his appeal, in the same manner that he obtained bail during the pendency of the criminal proceedings in the Magistrates' Court. However, according to the Defendant, there was no cogent evidence before this Court that the Claimant made any concerted effort to obtain bail. While the Claimant asserts that he made three applications for bail, he exhibits only one letter addressed to the Registrar which addresses the issue of bail. In any event if the Claimant had been refused bail there was no evidence of the outcome of any of the three applications, nor was there any evidence of the appeal of any such

decision. The Defendant noted that there is no evidence of any application for bail other than the letter dated almost two years after the Claimant's conviction. As such the Defendant contended that the Claimant failed to make any serious efforts to obtain bail in his own behalf and should not now seek to contend that his detention pending appeal was unconstitutional.

[47] It was the Defendant's contention that even if the Claimant was denied bail, his detention would not be unconstitutional, as the Claimant, as a convicted person, is no longer automatically entitled to bail.

[48] Additionally, the Defendant contended that in so far as the Claimant complained that his earliest date of release would have been 4 November 2013, that the Prison Rules create no entitlement to early release. The Commissioner of Prisons is not mandated to grant a remission of the sentence. He exercises discretion pursuant to the Prison Rules, and therefore a prisoner has a prospect and hope of remission but not a right.

[49] Finally, with respect to the failure of the Magistrate and Clerks of the Peace to perform their duties within the time stated in law, the Defendant contended that insofar as the Magistrates and the Clerk of the Peace are performing judicial functions, the State cannot be held liable for any action done in that regard.

[50] In those premises the Defendant contended that the Claimant, was at all material times afforded access to a system of justice which was fair and his constitutional rights to due process and the protection of the law have not been infringed. The Defendant therefore maintained that the Claimant is not entitled to the reliefs sought and his motion ought to be dismissed.

IV. The Law and its application to the issues

Issue 1: Whether the State, represented by the Attorney General of Trinidad and Tobago, can be held liable for a failure of the Magistrate and Clerk of the Peace to carry out their respective judicial functions?

[51] I disagree with the Defendant's submission that a claim cannot be brought against the State in respect of alleged breaches by a servant of the State who is performing a judicial function.

[52] The Defendant based its submission on **section 4(6) of the State Liability and Proceedings Act, Chapter 8:02** which provides:

> *"No proceedings shall lie against the State **by virtue of this section** in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process."*

[53] A closer examination of the whole of **section 4 of the State Liability and Proceedings Act** shows that Section 4 was truly intended to make the state liable for certain private civil actions, particularly actions in *tort.* For example, **section 4(1)** explicitly provides that:

> *4. Subject to this Act, the State shall be subject **to all those liabilities in tort** to which, if it were a private person of full age and capacity, it would be subject—*
>
> *(a) in respect of torts committed by its servants or agents;*
>
> *(b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer;*
>
> *(c) in respect of any breach of the duties attaching at common law to the* ownership, occupation, possession or control of property.

[54] **Section 4(6)**, on which the Defendant relies, merely provides an exception to the general rule provided by the rest of **section 4**. The general rule is that the State is liable for certain private civil actions, particularly tort, committed by its servants or agents. However, by virtue **section 4(6)**, if the State's servant or agent was exercising a judicial function or responsibility in connection with a judicial function no claim may lie against the State in tort.

[55] **Section 4(6)** cannot, however, be used to preclude the State's liability for constitutional claims, if such can be established. This was explicitly decided by the Privy Council in **Maharaj v The Attorney General of Trinidad and Tobago (No.2) (1978) 30 WIR 310**. In that case, the appellant who was a barrister-at-law engaged in a case in the High Court, was committed to prison for contempt of Court by the Honourable Justice Sonny Maharaj. The order for committal was quashed because the Honourable Justice Maharaj did not inform the barrister-at-law of the nature of the contempt with which he was charged. The appellant applied to the High Court for monetary compensation under **section 6 (now section 14) of the Constitution** claiming a contravention of his right, protected by **section 1(a) of the former Constitution (now section 4(a)),** not to be deprived of his liberty save by due process of law.

[56] One of the issues before the Privy Council was whether the High Court had jurisdiction under **section 6 of the former Constitution (now section 14 of the Constitution)** to grant the appellant redress for an alleged contravention of his constitutional rights resulting from something done by a judge when acting in his judicial capacity.

[57] Lord Diplock accepted that by virtue of **section 4(6) of the State Liability and Proceedings Act**, the State was not vicariously liable **in tort** for anything done by the Honourable Justice Maharaj while discharging or purporting to discharge any responsibilities of a judicial nature vested in him (at pg. 315, h). However, Lord Diplock held that the constitutional claim was not a claim in tort, and stated as follows (at pg 316, c):

> *It was argued for the Attorney-General that even if the High Court had jurisdiction, he is not a proper respondent to the motion. In their Lordships' view the Court of Appeal were right to reject this argument. The redress claimed by the appellant under section 6 was redress from the Crown (now the State) for a contravention of the appellant's constitutional rights by the judicial arm of the State. By **section 19 (2)** of the **Crown Liability and Proceedings Act 1966**, it is provided that proceedings against the Crown (now the State) should be instituted against the Attorney-General, and this is not confined to proceedings for tort.*

[58] Based on the above discussion, this Court rejects the Defendant's submission that the State cannot be held liable in constitutional claims for breaches by a servant of the State who is performing a judicial function.

[59] However, it is important to note that although there is no absolute bar to bringing of Constitutional proceedings against the State in respect of the performance of judicial functions, the High Court would not entertain such applications if there are other more appropriate ways for the Claimant to assert his rights: see **Maharaj (supra) at 321a** and **Ferney Bohorquez v The Attorney General of Trinidad and Tobago CV2013-04600 (from paragraph 66 to 70)**

[60] To this end, I note and agree with the Defendant's submissions that the Claimant had access to his attorney-at-law and thus was always the recipient of legal advice. This thus enabled the Claimant several other avenues for legal redress by which he could have sought his freedom such as by seeking (i) bail pending appeal before the Court of Appeal even if his High Court applications had been denied; (ii) an application for judicial review against the Magistrate compelling him to comply with the procedural provisions of the Summary Courts Act; (iii) requesting that the appeal be expedited; or (iv) even possibly a writ of habeas corpus. This was indeed similar to the issue that arose in the matter of **Rishi Gunness v The Attorney General H.C.A. No. CV2013-00746.**

[61] In **Rishi Gunness (supra)** the Claimant filed a motion after he spent extra time in prison due to an administration error made in the recording of his bail on the Court's sheet. The claim was dismissed as the Court found that inter alia that checks and balances such as obtaining legal representation, and habeas corpus were not denied to the Claimant and thus his due process rights were not infringed.

[62] Additionally, I take judicial notice of the well-established practice whereby appeals are heard and determined even without the reasons for decision of judges and magistrates. That option was open to the Claimant who was represented by competent counsel.

[63] To my mind, therefore, although a constitutional claim can be brought against the State for breaches of its servants while performing judicial functions, the existence of alternative methods of redress in the instant matter, precludes such constitutional claim from being brought.

[64] That notwithstanding, in the hope of doing substantive justice to the Claimant, who has been terribly aggrieved by the turn of events, I have still addressed the second issue, in respect of whether the Claimant's constitutional rights were indeed breached.

Issue 2: Whether the Claimant's constitutional rights were contravened as a result of (a) the failure of the Magistrate to provide reasons within the specified time; and (b) the failure of the Clerk of the Peace to prepare the notes of evidence, thereby delaying the listing of the Claimant's appeal?

[65] The Claimant premises the instant action on his constitutional rights at **sections 4(a) and (b) and 5(2)(h) of the Constitution.**

[66] **Section 4(a) and (b) of the Constitution** provide that -

> *"4. It is hereby recognized and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:*
>
> *(a)* ***the right of the individual to*** *life,* ***liberty,*** *security of the person and enjoyment of property* ***and the right not to be deprived thereof except by due process of law;***
>
> *(b) the right of the individual to equality before the law and the protection of the law;"*

[67] **Section 5(2) (h) of the Constitution** provides that -

> *"5(2) Without prejudice to subsection (1) but subject to this Chapter and to section 54, Parliament may not –*
>
> *(h) deprive a person of the right to such procedural provisions as are necessary for purpose of giving*

> *effect and protection to the aforesaid rights and freedoms."*

[68] Bearing this in mind, the Claimant referred to the procedural provisions of the Summary Courts Act that concern the process that is to take place upon filing of a Notice of Appeal. The relevant sections for the purpose of this claim are **sections 130B and 135 of the Summary Courts Act,** which provide

> *"130B. (1) Where notice of appeal has been given in accordance with section 130**, the Magistrate or Justice shall within sixty days of the giving of such notice draw up and sign a statement of the reasons for his decision**."*
>
> *"135. (1) Upon notice of appeal being given and such recognisance as mentioned above being entered into, the Magistrate or Justice before whom the recognisance is entered into shall release the appellant, and the Clerk shall, **with all convenient dispatch**, transmit to the Registrar of the Supreme Court—*
>
> *(a) three copies of the record of the proceedings, the notes of evidence and the statement of the reasons for the decision of the Magistrate or Justice duly certified under his hand; and*
>
> *(b) all writings and other articles exhibited by the witnesses or any of them inventoried and labelled, or otherwise marked so that the same may be identified on the hearing of the appeal.*
>
> *(2) **On receipt thereof the Registrar shall cause the appeal to be entered for the next convenient sittings of the Court of Appeal and shall notify the Clerk and the Clerks of Appeals thereof."*** [Emphasis added]

[69] The Claimant's complaint is in respect of the breach by the Magistrate to provide the reasons within sixty days of the filing of the Notice of Appeal, and also the lack of speedy dispatch in respect of the Notes of Evidence that were to be provided to the Registrar. Certainly, however, with respect to the Notes of Evidence, the affidavit evidence was that the Notes of Evidence in the matter were prepared by 18 January 2012 (approximately a mere two months after the filing of the Claimant's Notice of Appeal).

However, no evidence was given as to when those Notes of Evidence were received by the Registrar.

[70] Thus, while it is clear that there was certainly a failure by the Magistrate to provide reasons, it is not certain from the evidence whether there was a great delay or failure of the Clerk of the Peace to provide the Notes of Evidence to the Registrar. Nonetheless, **section 135(2) of the Summary Courts Act** provides that it is on receipt by the Registrar of both the reasons and the Notes of Evidence that an appeal shall be listed for ***"the next convenient sittings of the Court of Appeal."***

[71] The issue which arises is, more so, whether the clear evidence of the Magistrate's failure to provide reasons for his decision, can of itself amount to a breach of the Claimant's constitutional right to liberty and protection of the law, in the instant circumstances where the Claimant's appeal had not been listed until 22 July 2014, approximately two and a half years after his appeal was filed.

[72] From the outset, it must be noted that there is a lack of evidence showing any actual connection between (i) the failure to provide reasons and alleged delay in providing the Notes of Evidence to the Registrar; and (ii) the date on which the appeal was eventually listed. This lack of evidence connecting the two events, creates uncertainty of the true cause of the late hearing of the appeal, as the effect of **section 135 of the Summary Courts Act** was not that on receipt of the reasons and Notes of Evidence the Registrar would be obligated to list the appeal for hearing on the earliest possible date. Rather, the effect of **section 135 of the Summary Courts Act** was expressly that on receipt of the documents the Registrar was mandated to list the appeal "for the next convenient sitting of the Court of Appeal."

[73] Thus, the section itself does not provide for the speedy hearing of an appeal, rather, the date to be listed for an appeal is dependent upon the next convenient date on which it is possible for the Court of Appeal to hear the matter. This could of course be affected by a number of things, including the case load of the Appeal Courts and/or the availability of dates on which the Court of Appeal could hear the matter. Without

evidence that directly connects the failings or delays of the Magistrate and Clerk of the Peace, to the date on which the matter was eventually heard, this Court would be caused to speculate that the appeal was listed for 22 July 2014 only because of the failings or delays of the Magistrate and the Clerk of Appeal, respectively.

[74] That notwithstanding, even if there was evidence that directly showed a connection between the failings or delays of the judicial officers and that of the date eventually set for the Claimant's appeal hearing, the issue remains as to whether such failings or delay by the judicial officers amounted to a breach of the Claimant's constitutional rights as claimed. The decision of the Privy Council in **Maharaj v The Attorney General of Trinidad and Tobago 1984 1 WLR 522** is, once more, useful in resolving this issue. In that case, Lord Diplock explained that -

> *"No human right or fundamental freedom recognized by Chapter 1 of the Constitution 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 has resulted in a person's serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. Where there is no higher court to appeal to then none can say that there was an error.* ***The fundamental human right is not to a legal system that is infallible but to one that is fair. It is only errors of procedure that are capable of constitution infringement 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 of the fundamental rules of natural justice. Their Lordships do not believe that this can be anything but a rare event."*** **[**Emphasis mine**]**

[75] In addition to the guidance provided by the Privy Council in **Maharaj (supra)**, this Court also considered the decision of the Privy Council in **Cedeno v Logan (2001) 4 LRC 213**, wherein the Privy Council held that the failure of a Magistrate to give reasons is not fatal to an appeal, neither does it vitiate a trial which has already taken place. To this, I add, that the Defendant is correct in its submissions insofar as it was stated that it has become established in this jurisdiction that appeals can still be listed in the absence of

the reasons of the trial judge or magistrate once Counsel for the appellant makes known the desire of the Appellant to proceed with the hearing of the matter. In fact, the Claimant's appeal had been listed to be heard on 22 July 2014, despite the absence of the Magistrate's reasons.

[76] In the case of the Claimant, where his appeal was made on the ground that he was innocent and that the decision of the Magistrate was unreasonable and could not be supported in light of the evidence, it was open to the Claimant's attorneys in the appeal to apply to the Court of Appeal for further directions in the absence of the Magistrate's reasons and to request an expedited hearing of the appeal in the circumstances. At the hearing of the appeal, if reasons were still not provided Counsel for the Claimant in the appeal could in submissions show how the evidence which was provided to the Magistrate could not support the elements of the charge for which the Claimant was convicted.

[77] Further, I am reminded by the decision of the Privy Council in **Independent Publishing Co. Limited v The Attorney General of Trinidad and Tobago (2004) 65 WIR 338** that -

> *"In deciding whether someone's section 4(a) 'right not to be deprived [of liberty] except by due process of law' has been violated,* ***it is the legal system as a whole which must be looked at, not merely one part of it****. The fundamental human right, as Lord Diplock said, is to a 'legal system that is fair'"*

[78] When the legal system is looked at as a whole, and consideration is given to the legal remedies that would have been available to the Claimant, so as to enable him relief in these circumstances in which he thought his liberty to have been contravened, this Court agrees with the submissions of counsel for the Defendant. The fact is that even though reasons were not provided within the statutory period this did not preclude the Claimant's appeal from being heard as there is established practice in this jurisdiction whereby an appeal can be listed for hearing if counsel indicates to the Court a willingness to proceed with the matter in the absence of reasons. Further, there existed the option of applying for an expedited hearing of the matter in the circumstances.

[79] Additionally, as previously mentioned in discussion of this first issue, the Claimant had access to his attorney and thus was always the recipient of legal advice. This thus enabled the Claimant several other avenues for legal redress by which he could have sought his freedom such as by seeking bail pending appeal from the Court of Appeal even if he was denied same before the High Court; an application for judicial review against the Magistrate compelling him to comply with the procedural provisions of the Summary Courts Act; or even possibly a writ of *habeas corpus*.

[80] Thus, while I agree with the Claimant, relying on **Lezama and Maryshaw v Commissioner of Prisons and anor HCA No.2098 of 2002** and **Thomas Baptiste P.C App. No. 60 of 1998**, that the concept of due process also includes the right to be allowed to initiate the appellate process, it cannot be said that the Claimant was at all deprived of that right in the absence of the Magistrate's reasons.

[81] As for the Claimant's contention that he was deprived of his opportunity to be released by the earliest possible date, it has been by now well established that the grant of an early release on remission is not an entitlement but rather a matter of administrative discretion: see **Anthony Maguire and anor v R (1956) 40 Cr. App. Rep. 92 at 94**; **Romeo Da Costa Hall v The Queen (2011) CCJ 6**; and **Ferney Bohorquez v The Attorney General H.C.A. No. CV2013-04600.** Thus, consistent with **s.285 of the Prison Rules,** the Claimant's eligibility to be released on the earliest possible date was dependent not on the listing of his appeal, rather it depended on the administrative discretion of the Commissioner of Prisons, having regard to the good conduct and industry of the Claimant.

[82] In the premises, it is the view of this Court that the Claimant's constitutional rights were not contravened as claimed and the Claimant's claim for constitutional relief is therefore unsustainable.

V. The Question of Costs

[83] Regarding the question of entitlement to costs, the general rule is that if the Court decides to make an order for costs of any proceedings it must order the unsuccessful party to pay the costs of the successful party as provided for by **CPR Part 66.6(1)**. The Court, however, has the power to order a successful party to pay the costs of the unsuccessful party in appropriate circumstances: **CPR Part 66.6(2)**. In deciding who should be liable to pay costs the ***Court must have regard to all the circumstances of the case***: **CPR Part 66.6(4)**, in particular, those provided for in **CPR Part 66.6(5) and (6)**.

[84] It is clear from all standpoints that the Defendant was the successful party having won on all major issues in the case and in normal circumstances the general rule as stated in **CPR Part 66.6(1)** should apply. However, having considered all of the circumstances of the case, including the factors mentioned in **CPR Part 66.6(5) and (6)**, I have come to the conclusion that it was reasonable for the Claimant to pursue the allegation and issues raised in the said claim: **rule 66.6(5)(c)**.

[85] Despite the failure of the Claimant's claim, it would not have been initiated had there been observance of the time-frame required by the law for the provision of reasons by the Magistrate. To this end, the Court ought not to, and cannot, condone the failure of the Magistrate to satisfy or observe the conditions and procedures required by law for the writing of reasons in support of a judicial decision. The fact is that no reasons were provided by the Magistrate for the appeal hearing, even after this claim was initiated.

[86] Consequently, taking into account the circumstances of this case, as they relate to the question of costs in the instant matter, it is the view of this Court that each party should bear its own legal costs.

VI. Disposition

[87] In the premises, the **order** of this Court is as follows:

ORDER:

I. **The Claimant's Fixed Date Claim for constitutional redress is hereby dismissed.**

II. **Each party shall bear its own costs of the proceedings.**

Dated this 8th day of December, 2016

_____
Robin N. Mohammed
Judge