

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA No. CV2014-03235

BETWEEN

INDIRA BEHARRY

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr. Ted Roopnarine for the Claimant

Ms. Ronnelle Hinds instructed by Ms. Avaria Niles for the Defendant

JUDGMENT

A. Introduction

[1] A previous decision was given by this Court in this matter on 30th November 2015 which determined in part the issue of liability of the Defendant by finding in favour of the Claimant that a Magistrate had acted without jurisdiction and ultra vires in issuing a warrant for the Claimant's arrest. Consequently, this decision is concerned with three main issues:

- (i) whether the State is protected from liability in the instant claim by virtue of the **State Liability and Proceedings Act Chap. 8:02** and/or by virtue of a magistrate's protection under the **Magistrates Protection Act Chap. 6:03**;
- (ii) whether the Claimant's alleged constitutional right to liberty of the person and "to freedom from cruel and unusual punishment" has been breached; and, if the issues raised in (i) and (ii) are resolved in favour of the Claimant, then
- (iii) what is the appropriate relief, be it declaratory relief or monetary compensation (if any), to which the Claimant is entitled?

[2] On 2nd September 2014, the Claimant initiated a claim against the Defendant, by virtue of a Fixed Date Claim supported by her affidavit, seeking the following relief:

- (a) A declaration that the order of His Worship Magistrate H. Charles (and signed by His Worship S. Ramsaran) to issue a warrant of apprehension for the arrest of the Claimant for failing to appear for a custody hearing was made without, or in excess of jurisdiction, and was ultra vires, unconstitutional and illegal;
- (b) Further and/or alternatively, a common law declaration that the aforesaid order and warrant was unlawful and illegal;
- (c) A declaration that the arrest and/or detention and/or imprisonment of the Claimant on the 23rd November, 2010 by the Police as servants and/or agents of the State acting under the purported warrant of arrest was illegal and unconstitutional and attracts aggravated and/or exemplary damages;
- (d) Further and/or alternatively, a common law order that the arrest, detention and imprisonment of the Claimant constituted false arrest and imprisonment;
- (e) A declaration that the entire criminal processing of the Claimant including her arrest, body search and fingerprinting was unconstitutional and illegal and

- amounted to a trespass to the person and was an infringement of her rights and liberties guaranteed to all citizens under the Constitution of the Republic of Trinidad and Tobago;
- (f) A declaration that the handcuffing of the Claimant was unnecessary, unlawful, illegal and unconstitutional in the circumstances of this case;
 - (g) Further and/or alternatively, an order that such handcuffing amounted to common law assault and battery;
 - (h) A declaration that the imprisonment of the Claimant in a cell for a non-violent matter, namely a custody hearing, was unconstitutional and illegal and amounted to cruel and unusual treatment pursuant to the provisions of the Constitution of Trinidad and Tobago;
 - (i) Further and/or alternatively, that such imprisonment was false arrest and imprisonment and attracts aggravated and/or exemplary damages;
 - (j) A declaration that the imprisonment of the Claimant, a female, in a cell immediately next to a number of male prisoners was unnecessary and amounted to cruel and unusual treatment of the Claimant and was callous and oppressive and attracts aggravated and/or exemplary damages;
 - (k) A declaration that the entire Magistrates Court proceedings against the Claimant for custody were ultra vires and unlawful;
 - (l) An order that the Defendant pays to the Claimant damages and/or monetary compensation including aggravated and/or exemplary damages and/or punitive damages for her false arrest and imprisonment, and her unnecessary and ultra vires case and attendance at Magistrate's Court;
 - (m) An order that the Defendant pays to the Claimant costs of this action as determined by the Court;
 - (n) An order that the Defendant do pay to the Claimant interests from such time as the Court may consider just in the circumstances; and
 - (o) Such further and/or other relief as this Honourable Court may think just in the circumstances.

[3] On 1st October 2014, the Defendant entered an appearance to the claim, giving notice of its intention to defend the whole of the claim.

[4] The first case management conference in the matter was held on 30th October 2014 before the Honourable Madam Justice Jones (as she then was), at which hearing directions were given to the Defendant to file and serve an affidavit in opposition on or before 4th December 2014. Upon an application being made to the Court by the Defendant, the time for filing said affidavit was later extended to 9th February 2015 and thereafter again extended to 27th February 2015.

[5] On 27th February 2015, the Defendant filed the three affidavits in opposition to the Claimant's claim, namely: (i) the affidavit of Michelle Codrington-Charles (Woman Police Constable); (ii) the affidavit of Larry Singh (Police Constable); and (iii) the affidavit of Herbert Charles (Former Magistrate).

[6] Thereafter, the second case management conference was heard on 12th March 2015 before the Honourable Madam Justice Jones (as she then was). At that hearing, both parties agreed that a preliminary issue arose in respect of - whether a Magistrate had the jurisdiction to issue a warrant for the arrest of the Claimant in the circumstances pleaded in this particular case. To this end, the Court directed both parties to file and exchange written submissions on this preliminary issue.

[7] It followed that the Claimant filed her written submissions on the preliminary issue supported by her bundle of authorities on 29th April 2015 and the Defendant filed its written submissions on the preliminary issue supported by authorities on 30th April 2015.

[8] Following the elevation of the Honourable Madam Justice Judith Jones to the Court of Appeal, the instant matter was re-assigned to this Court.

[9] The third case management conference was therefore heard by this Court on 28th September 2015, after which, time was taken for the decision of the Court on the preliminary issue.

[10] On 30th November 2015, this Court gave its decision on the preliminary issue. The Court held that the then Magistrate His Worship Mr. Herbert Charles did not have

the jurisdiction to issue a warrant for the Claimant's arrest. In its decision the Court explained that the custody complaint before the Magistrate was dated 15th November 2006, at which time a Petition and Statement of Arrangements concerning the same child of the family were filed in the High Court since 26th June 2006.

[11] From the dates, it was patently clear that the issue of the custody of the child of the family would have been engaging the High Court at the time that the complaint before the Magistrate's Court was made. That being the case, **section 44 of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act Chap 46:08 (FLA)**, would have applied to oust the jurisdiction of the Magistrate's Court. Having no jurisdiction to entertain the custody complaint but nonetheless proceeding to do so by first, issuing a summons and subsequently, a warrant for the arrest of the Claimant for failure to appear, it was this Court's view that the Magistrate acted ultra vires.

[12] It being determined that the Magistrate had no jurisdiction to issue a warrant for the Claimant's arrest due to the applicability of **section 44(2) of the FLA**, there was no need for this Court to proceed to consider whether the Magistrate had no authority to issue the warrant of arrest on the basis that the application before him was civil and not criminal in nature. Nonetheless, this Court went on to address that issue and explained that custody proceedings are not classed as constituting a summary offence and further that the Magistrate would have acted ultra vires in issuing a warrant of arrest based on a summons issued in a matter not contemplated by the provisions of **section 42(1) of the Summary Courts Act**.

[13] Having given its decision on the preliminary issue, the Court thereafter invited counsel for the Claimant and Defendant to file submissions on the question of the Claimant's entitlement to damages and/or monetary compensation in respect of the instant claim. On 8th March 2016, written submissions were filed on behalf of the Claimant. Thereafter on 10th June 2016 written submissions were filed on behalf of the Defendant. The Claimant also filed a reply to the Defendant's written submissions on 27th

June 2016. Additionally, on 15th July 2016, the Court heard further oral submissions of counsel for the Claimant and the Defendant.

[14] Having considered the written and oral submissions made by both sides, this Court is of the view that in the instant case **section 6 of the Magistrates Protection Act Chap. 6:03** protects Magistrate Charles from personal civil liability in tort for his actions which led to the wrongful arrest and false imprisonment of the Claimant. However, in accordance with the provisions of the **State Liability and Proceedings Act Chap. 8:02**, the State can nonetheless be held publicly liable *in a constitutional claim* for a breach of the Claimant's constitutional right, by Magistrate Charles in the performance of his judicial function.

[15] Further, the Court has concluded that the Claimant's right to liberty and the right not to be deprived thereof except by due process of law, was breached when she was arrested pursuant to the unlawful warrant issued by the Magistrate, which resulted in her arrest, detention and imprisonment for approximately three (3) hours in a cell at the Point Fortin Police Station. Consequently, the Court finds that the Claimant is entitled to certain declarations and appropriate monetary compensation to vindicate the infringement of her constitutional right.

[16] I have hereinafter detailed the reason for the Court's decision in the instant matter.

B. Factual Background

[17] The facts in this matter are largely undisputed. The Claimant and Ricky Beharry were married in July 1994. They had one boy-child together, whom I shall refer to as "B". On 26th June 2006 the Claimant signed a **petition for divorce No.SM353 of 2006** in the High Court of Justice **inclusive of an application for custody of the child of the family**. By affidavit dated and filed 25th August 2006 in the High Court, the Claimant swore that Ricky Beharry was served with the divorce petition (which contained the incidental application for custody of the child of the family).

[18] On 15th November 2006, Ricky Beharry made an application at the Cedros Magistrate's Court for custody of child of the family, which application included a complaint that the Claimant failed to provide reasonable maintenance or to make proper contribution towards reasonable maintenance for the child of the family. The application was set for hearing on 9th January 2007 before the Cedros Magistrate's Court. The Claimant stated that the fact that that application was made by Ricky Beharry, was at the material time unknown to her. The Claimant further stated that she was not served a summons to attend the Magistrate's Court for that custody application.

[19] That notwithstanding, on 9th January 2007, the custody matter came up for hearing at the Cedros Magistrate's Court before His Worship Magistrate Herbert Charles (as he then was). At this time the same custody matter was still pending before the High Court of Justice. However, in his affidavit Magistrate Herbert Charles (as he then was) stated that he never enquired whether the issue of custody was before the High Court of Justice because he was not informed of same.

[20] Magistrate Charles further deposed that when the matter was first heard, the Claimant did not appear and that he was provided with affidavit evidence that the Claimant was served with the summons (though he could not recall the name of the Police Officer who deposed to the said affidavit, nor did he have a copy of it in his possession). Magistrate Charles explained that he was labouring under the impression that the said summons was issued stating that the Claimant was to answer the complaint of neglecting the child of the family. He stated that he only subsequently learned that the summons in fact only mentioned the custody application.

[21] Nonetheless, at that first hearing, Magistrate Charles adjourned the hearing of the application to 23rd January 2007. The Claimant stated that she was not served a summons to attend the Magistrate's Court for that date either.

[22] Accordingly, on 23rd January 2007 the custody matter came up for the second hearing. The Claimant was not present, and according to Magistrate Charles he was satisfied with the affidavit of service of the summons of Police Sergeant No. 11391

Rohan Paradise that Indira Beharry was served with the said summons on 9th January 2007 at 10:00am which was more than forty hours before she was to appear on 23rd January 2007.

[23] Magistrate Charles further deposed that at the hearing on 23rd January 2007, information was then sworn to by Ricky Beharry, which in his opinion substantiated the matter of the complaint to the satisfaction of the Court. The information was to the effect that at the date that the complaint was laid, the Claimant and Ricky Beharry were husband and wife and the mother and father of “B”. The magistrate further deposed that Ricky Beharry gave sworn evidence that the Claimant had neglected to maintain “B” though she was able to so maintain him, and that said neglect occurred within the Point Fortin District.

[24] Magistrate Charles stated that it was based on that information and evidence, and the fact that it had appeared that the Claimant had disobeyed the Court’s summons to appear, that he (Magistrate Charles) then caused Warrant of Apprehension No. 2083/06 to be issued for the Claimant on 26th January 2007.

[25] On 26th February 2007, the High Court of Justice issued a **decree absolute** in respect of the petition for divorce filed on 26th June 2006.

[26] According to the Claimant, approximately four (4) years later, on 22nd November 2010, she was at a public place in Cedros with several of her neighbours and other members of her community, when she was approached by a police officer (whose name she could not recall). The Claimant deposed that the police officer told her that there was an outstanding warrant for her arrest and advised her to go to the Point Fortin Police Station.

[27] The Claimant further deposed that immediately on the next day, 23rd November 2010, she together with her common law husband, Madan Gunness, and their fourteen-month old baby, rushed to the Point Fortin Police Station at about 8:30am to find out about the alleged warrant for the Claimant’s arrest. The Claimant explained that upon

making enquiries at the Police Station, she was informed that a warrant was issued for her arrest by a Magistrate nearly four (4) years ago.

[28] In his affidavit Police Constable Larry Singh, Regimental No. 16200, stated that he was the officer who spoke with the Claimant at the Point Fortin Police Station. He stated that he executed the Warrant on the Claimant by reading it to her and she was then arrested. He further stated that having arrested the Claimant she was soon after escorted to the Point Fortin Magistrates' Court by Woman Police Constable Michelle Codrington-Charles, Regimental No. 13028, and Woman Police Constable Catherine Williams, Regimental No. 6773. The Point Fortin Magistrates' Court was the building next door to the Police Station.

[29] The Claimant deposed that she was escorted by the Police into a full court room where several persons from her district were present. She appeared before His Worship Magistrate Rae Roopchan. According to the Claimant, at around 10:30am her name was called loudly in the packed Court. She deposed that when her matter was called, she gave her explanation to the Court, after which the Magistrate placed her on \$1,000.00 own bond to be signed before the Clerk of the Peace and adjourned the matter to 17th January 2011.

[30] The Claimant further deposed that she was thereafter handcuffed by the police in the Court in the presence and view of the full court room, and escorted by WPC Hospedales down the steps in the prisoner's cage in the presence of several of her villagers. She stated that she was not immediately taken to the Clerk of the Peace to sign the bond; rather she deposed that she was instead imprisoned in a cell at the Point Fortin Police Station.

[31] The Point Fortin Station diary extract No. 57 dated 23rd November 2010 (and annexed to the affidavit of WPC Codrington-Charles) established that the Claimant returned to the station at 10:40am.

[32] According to the Claimant, she was imprisoned in a cell at the Police Station, with male prisoners in the cells immediately next to hers. She described that whilst in the cell, she was constantly cursed and subjected to all sorts of sexually explicit gestures by the male prisoners in the next cell, including threats of being raped when they see her outside. She added that the prisoners were also throwing faeces and urine-soaked newspapers at her, which on several occasions got onto her skin and clothes. All this she described as humiliating and terrifying.

[33] The Claimant further explained that around lunchtime two police officers came with lunch for the prisoners. A few moments after, the male prisoners began throwing food with urine and faeces across the entire cell area. She described the smell of the food, urine and faeces as disgusting and explained that it made it impossible to eat. The Claimant further complained that prior to her arrest, she had a hysterectomy and that while in the cell she was unable to have her medication, thus causing her a lot of physical pain in addition to the terror, humiliation and shame which she stated she felt as a result of her arrest, imprisonment and the harassment and threats by the male prisoners.

[34] The Claimant added that after lunch she asked a female officer why she was locked up but the officer never answered. According to the Claimant, throughout this entire period she was also concerned for her 14-month old baby who was still nursing.

[35] The Claimant stated that it was only around 2:15pm that the police allowed Attorney-at-law Mr. Mickey Dindial to speak with her at the cell. A short time later police officers finally took the Claimant to sign her own bond before the Clerk of the Peace. However, Station Diary Extract No. 81 and 82 establish that at 1:35pm the Claimant was searched at her cell by WPC Codrington and WPC Roopnarine and then re-celled. Further, that at 1:40pm, WPC Codrington took the Claimant back to the Point Fortin Magistrates' Court to be granted bail. Given that the Claimant may have been approximating the possible time, and in light of the closeness in the time stated by the Claimant and that written in the Station Diary Extract, I am of the view that the Station Diary Extract might be a more accurate reflection of the exact time that the Claimant was finally taken from the cell and carried before a Clerk of the Peace to sign her own bond.

[36] This, the process of signing her own bond before the Clerk of the Peace, the Claimant stated, took less than two minutes and then she was released.

[37] The Claimant maintained that following her arrest and release on bond, the matter continued for a period of approximately six (6) months to be called and adjourned at the Point Fortin Magistrates' Court on 17th January 2011, 22nd February 2011, 25th May 2011 and 5th July 2011. The matter was then dismissed. She added that altogether she paid \$5,000.00 in legal fees for legal representation in the Magistrates' Court. The Claimant commented that the experience was stressful and aggravated her distrust for the legal system and Police; she stated that she felt like a "nobody" and in a shoddily and shameful way.

[38] In her affidavit, Woman Police Constable Michelle Codrington-Charles, took issue as to whether the Claimant was indeed ever handcuffed or celled. However, it is difficult to rely on the witness statement of WPC Michelle Codrington-Charles, as she also admitted multiple times, at various parts of her affidavit, that she could not recall much of what might have actually taken place in relation to the Claimant on the material day of her arrest and appearance before Magistrate Roopchan at the Point Fortin Magistrates' Court.

[39] Attempts to settle the matter at the pre-action stage proved futile. In all fairness, however, no mention was made by the Claimant in her pre-action letters to the Defendant, of the material fact that at the time of the magisterial custody proceedings, a custody application was also pending before the High Court.

C. The Claimant's and Defendant's Submissions

(i) The Claimant's Submissions

[40] The Claimant submitted that on the facts and law the State is morally and legally liable for its illegal arrest and imprisonment to compensate the Claimant. The Claimant maintained that the Supreme Court is empowered to compensate the Claimant for what has been judicially determined and accepted by both sides to have been an arrest and

detention that flowed from a magisterial order made without, and/or in excess of, jurisdiction.

[41] Counsel for the Claimant submitted that the Magistrate's order and the consequences flowing therefrom amount to an infringement of the Claimant's fundamental constitutional rights to, inter alia, liberty of the person and freedom from cruel and unusual punishment. To this end, the Claimant submitted that the Defendant is liable for damages and monetary compensation on the following grounds:

- (i) The Defendant has failed to set out any proper defence in its affidavit;
- (ii) The Magistrates Protection Act does not operate to vicariously shield the State from the illegal action of the magistrate or any other judicial officer which results in the unlawful imprisonment of a citizen where such challenge is by constitutional motion against the State: **Crevelle v AG Civ. App. No. 45 of 2007**; and **Demerieux v AG (1982) 17 Barb. L.R 14**; and
- (iii) Under both international human rights law and the common law a citizen has a fundamental right to a remedy: **Maharaj v AG (No. 2) WIR (1978) Vol 30**; and **Crawford Adjustors and ors v Sagicor (Cayman) Ltd and anor (2013) UKPC 17**.

[42] To this end, Counsel for the Claimant submitted that in **Crevelle v AG (supra)**, *"the Court of Appeal of Trinidad and Tobago reversed the High Court and held that a Magistrate was not protected by the Magistrates Protection Act from unlawful issue of a warrant leading to imprisonment"*. Counsel stated that in that case the Court of Appeal held that as the Applicant's first action for judicial review did not provide a remedy in damages, a second action brought by constitutional motion seeking a remedy in damages was not barred by the provisions of the **Magistrates Protection Act**. Counsel further submitted that the Court of Appeal applied the dicta of the Privy Council in **Maharaj v AG (No.2) (supra)**, in holding that what was being challenged was the State's exercise of the judicial power and not a challenge against the individual judicial officer.

[43] Counsel for the Claimant further submitted that in **Haroon Hosein v AG, Civ. App. No. 35 of 2006** the applicant was remanded to the psychiatric ward at St. Ann's Mental Hospital by a magistrate. The applicant filed two actions, a common law action for false imprisonment and a constitutional motion for constitutional relief. The Court of Appeal unanimously reversed the trial judge who had dismissed both cases. The State in that case did plead and argue the **Magistrates Protection Act** in the common law action and tried to do the same during the arguments in the Court of Appeal on the constitutional motion. The State's entire case failed. The Court of Appeal held that the magistrate's actions were clearly unconstitutional and ordered the State to pay compensation to the applicant.

[44] Counsel for the Claimant emphasised that consistent with **section 20 of the Supreme Court of Judicature Act Chap. 4:01**, the Court was empowered, and has a duty, to grant a claimant such relief as is just and appropriate and to which a claimant is entitled.

(ii) The Defendant's Submissions

[45] The Defendant, however, contended that in accordance with the **Constitution of the Republic of Trinidad and Tobago Chap.1:01** and the **State Liability and Proceedings Act** (supra), the Defendant cannot be held liable for the actions of a judicial officer. The Defendant contended that insofar as the magistrate was performing judicial functions, then such magistrate cannot be considered to be acting as an organ, agent, and/or servant of the State. It was the Defendant's view that if the magistrate exercised a judicial function, the State cannot be held liable for any action done in that regard.

[46] That notwithstanding, the Defendant further contended that insofar as the Claimant has claimed that her arrest and detention, pursuant to the magistrate's warrant, amounted to an infringement of her constitutional right to liberty of the person and freedom from cruel and unusual punishment, that **sections 4(a) and 5(2)(b) of the Constitution** are relevant. The Defendant contends that the Claimant has a right to liberty and the right not to be deprived thereof except by due process of the law under **section**

4(a), but that under **section 5(2)(b) of the Constitution** it is stated that Parliament may not impose or authorize the imposition of cruel and unusual treatment or punishment.

[47] Thus, The Defendant's contention was that the notion of a person's right from cruel and unusual punishment as put forward by the Claimant is one which has to be considered by Parliament during the legislative process and not in the facts of the instant case. The Defendant, therefore, dismissed the Claimant's allegation of a breach of her "constitutional right to freedom from cruel and unusual punishment" and focused solely on her alleged claim of infringement of her right to liberty and not to be deprived thereof except by due process of the law.

[48] To this end, the Defendant emphasised that the Privy Council in **Maharaj v. AG (No.2)** (supra) at 399 paragraphs D & E, 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 constitutional 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.**"*

[49] Counsel for the Defendant emphasized that the reasoning of the Board in **Maharaj v AG (No.2)** (supra) was later accepted and adopted in the cases of **Chokolingo v Attorney General of Trinidad and Tobago (1981) 1 W.L.R 106;** **Forbes v The Attorney General of Trinidad and Tobago (2002) UKPC 21;** and **Curtis Wright v The Attorney General of Trinidad and Tobago CA 154 of 2000.**

[50] Counsel for the Defendant contended that it is therefore established that not every error of the State is capable of an infringement of rights protected by **section 4(a) of the**

Constitution. Counsel submitted that the case authorities establish that if the State commits an error of fact, substantive law or a mere irregularity which falls short of a failure of natural justice (which is the right to due process), same does not in every case give rise to a claim for damages for breach of constitutional rights.

[51] Accordingly, the Defendant maintained that the question which therefore arises for determination before the Court is **whether the legal system as a whole deprived the Claimant of her due process rights.** The Defendant contends that even though the issuing of the warrant for the Claimant by the magistrate did not give the Claimant any right of appeal, the checks and balances and internal mechanisms of the judicial process was at all times available to the Claimant to remedy the issuing of a warrant and maintained the Claimant's right to natural justice.

[52] Further the Defendant contended that the Claimant stated that she was released by the magistrate on \$1,000.00 own bond to be signed before the Clerk of the Peace after being given the opportunity to address the Court and put forward her case. According to Counsel for the Defendant, the ability to obtain bail was a material fact considered by the Privy Council in **Independent Publishing Co Ltd v AG (2004) 65 WIR 338** in determining whether the legal system as a whole operated fairly.

[53] Additionally, the Defendant contended that despite the facts being silent on whether the Claimant had legal representation when brought before the Magistrate, notice should be had to the statements made by the Claimant in her affidavit that her Attorney-at-law visited her at the police station to secure her bail. The Defendant contended that a strong inference can be made in favour of the Claimant being informed of her right to legal representation by the magistrate, and the Defendant further contended that the Claimant was also the recipient of competent legal advice at the subsequent magisterial hearings.

[54] The Defendant concluded that the availability of these mechanisms provided procedural safeguards aimed at ensuring the liberty of the Claimant. It was the

Defendant's view that in these circumstances, the Claimant's claim for breach of her constitutional right to liberty cannot be maintained.

D. Issues to be Determined by this Court

[55] Based on the affidavit evidence and submissions proffered by counsel for the Claimant and the Defendant before this Court, I have deduced that there are three main issues to be determined by this Court. These issues are:

- (i) **whether the State is protected from liability in the instant claim by virtue of the State Liability and Proceedings Act and/or by virtue of a magistrate protection under the Magistrates Protection Act;**
- (ii) **whether the Claimant's alleged constitutional right to liberty of the person and "to freedom from cruel and unusual punishment" has been breached; and if these first two issues in (i) and (ii) are resolved in favour of the Claimant, then**
- (iii) **what is the appropriate relief, be it declaratory relief or monetary compensation (if any), to which the Claimant is entitled?**

[56] If all of the above issues are determined in favour of the Claimant, both parties had reserved their position to address the Court on the issue of the quantum of damages that may be appropriate in the circumstances of the instant claim.

E. The Law and its application to the issues

Issue 1: Whether the State is protected from liability in the instant claim by virtue of the State Liability and Proceedings Act and/or the Magistrates Protection Act

[57] As afore-stated, this Court has, in its decision on the preliminary issue in this matter, already determined that the Magistrate had indeed acted ultra vires when he issued the warrant for the Claimant's arrest in light of the fact that he had no jurisdiction, consequent to section 44 of the FLA to entertain the custody application made by Ricky Beharry, as the matter was still pending before the High Court. Further, that custody proceedings are not classed as constituting a summary offence and that the magistrate

would have acted ultra vires in issuing a warrant for arrest based on a summons issued in a matter not contemplated by the provisions of **section 42(1) of the Summary Courts Act**.

[58] That said, it was established by the Court of Appeal in its decision in **Crevelle v AG (supra)**, that although an individual in the position of the Claimant would have ordinarily been entitled to pursue her common law remedies in or for false imprisonment, the effect of the **Magistrates Protection Act** which governs the liability of magistrates in the exercise of their judicial function, is to prohibit a Claimant (in the circumstances of this instant matter) from taking any civil action personally against the magistrate.

[59] This is the effect of **section 6 of the Magistrates Protection Act**, which provides that-

*“6. No action shall in any case be brought against any Magistrate for anything done under any warrant **which has not been followed by a conviction or order**, or if, being a warrant upon an information for an alleged indictable offence, a summons was issued previously thereto, and served upon such person personally, or by its being left for him with some person at his usual or last known place of abode, and he has not appeared in obedience thereto.”* [Emphasis added]

[60] **“Order” in section 6 of the Magistrates Protection Act** *“refers to a final order made after a substantive hearing of the charge or matter before the magistrate”*: see **Crevelle v AG (supra)** at para 32 of that judgment.

[61] In the instant case, the undisputed fact is that following the Claimant’s arrest pursuant to the unlawful warrant, the matter concerning her arrest was merely called and adjourned to different dates for a period of six (6) months until it was ultimately dismissed. There was no substantive hearing of the matter and no conviction or order was made against the Claimant. Thus, in those premises **section 6 of the Magistrates Protection Act** shall apply, enabling Magistrate Herbert Charles (as he then was) protection from civil liability in respect of the Claimant’s claim.

[62] However, whilst the magistrate cannot be held personally liable by consequence of **section 6 of the Magistrates Protection Act**, as explained by the Privy Council in **Maharaj v AG (No.2) (supra)**, the State may still be held publicly liable. Lord Diplock of the Privy Council explained this at **page 321 paragraph d** of that judgment, wherein he stated that-

*“.....no change is involved in the rule that a judge cannot be made personally liable for what he has done when acting or purporting to act in a judicial capacity. **The claim for redress under s. 6(1) [which is now section 14(1) of the Constitution] for what has been done by a judge is a claim against the State for what had been done in the exercise of the judicial power of the State. This is not vicarious liability; it is a liability of the State itself. It is not a liability in tort at all; it is a liability in public law of the State, not of the judge himself.....**”*
[Emphasis added]

[63] Indeed, the State’s blanket contention in this instant matter that if the Magistrate exercised a judicial function, then the State cannot be held liable for any action done in that regard, is certainly not novel. The contention is one perhaps too often submitted by the State in circumstances not appropriate for the application of **section 4(6) of the State Liability and Proceedings Act**. The Court’s response to the contention has by now been well-established in the High Court, Court of Appeal and Privy Council.

[64] Nonetheless, for the sake of completeness this Court, repeats its explanation of the boundaries of **section 4(6) of the State Liability and Proceedings Act**, as noted in its recent decision in **Collins Emily v The Attorney General CV2014-00630**. In that decision, at paragraphs 52 to 58, this Court explained -

*“[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 of 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."* [Emphasis added]

[65] This Court's explanation, as quoted above, in the matter of **Collins Emily v AG** (*supra*) is equally applicable in the instant matter.

[66] Thus, in respect of this first issue, I find in favour of the Claimant. Whilst, in the instant matter, Magistrate Charles is personally protected from civil liability by consequence of **section 6 of the Magistrates Protection Act**, in accordance with the

provisions of the **State Liability and Proceedings Act**, the State can nonetheless be held publicly liable in the instant *constitutional claim* for breaches by a servant of the State (in this case Magistrate Charles) who was performing a judicial function.

Issue 2: Whether the Claimant’s alleged Constitutional right to liberty of the person and “to freedom from cruel and unusual punishment” has been breached

[67] **Section 14(1) and section 14(3) of the Constitution** provide that-

“14. (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.

*....
(3) The State Liability and Proceedings Act shall have effect for the purpose of any proceedings under this section.”*

[68] The Claimant has alleged that her “constitutional right to liberty of the person and freedom from cruel and unusual punishment had been infringed”.

[69] **Sections 4(1) and 5(2) of the Constitution** provide:

“4. It is hereby recognised 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...liberty...and the right not to be deprived thereof except by due process of law.

5. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.

*(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, **Parliament may not.... (b)***

impose or authorise the imposition of cruel and unusual treatment or punishment” [Emphasis added]

[70] I agree with Counsel for the Defendant that the Claimant’s allegation of breach of her right “to freedom from cruel and unusual punishment” is termed somewhat loosely and the actual constitutional prohibition that Parliament may not impose or authorize the imposition of cruel and unusual treatment or punishment does not arise in the facts or circumstances of this matter.

[71] Therefore, as it pertains to the issue of whether the Claimant has suffered a constitutional breach, the focus is whether in the circumstances of the instant matter there has been a breach of the Claimant’s right to liberty and the right not to be deprived thereof except by due process of law.

[72] Not only am I bound by the Privy Council’s decision in the case of **Maharaj v AG (No. 2)** (supra) and the case of **Independent Publishing Co. Ltd and ors v AG** (supra), as well as the Court of Appeal decision in **Crevelle v AG** (supra), but I also agree with them, and find the Court’s guidance in these decisions to be quite useful and instructive in determining whether there has been a breach of a claimant’s right to liberty and right not to be deprived thereof except by due process.

[73] The Privy Council (Lord Diplock delivering the judgment of the Board) in the case of **Maharaj v AG (No.2)** (supra) explained at page 321 paras a, b and f that-

“In the first place, 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. 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 s. 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.

....

In the third place, even a failure by a judge to observe one of the fundamental rules of natural justice does not bring the case within s 6 unless it has resulted, is resulting or is likely to result, in a person being deprived of life, liberty, security of the person or enjoyment of property. It is only in the case of imprisonment or corporal punishment undergone before an appeal can be heard that the consequences of the judgment or order cannot be put right on an appeal to an appellate court."

[74] In **Independent Publishing Co. Ltd and ors v AG** (*supra*), the Privy Council added further clarity to its decision as delivered by Lord Diplock in **Maharaj v AG** (**No.2**) (*supra*). At paragraphs 87 to 89 the Board stated:

"Lord Diplock's judgment has been widely understood to allow for constitutional redress, including the payment of compensation, to anyone whose conviction (a) resulted from a procedural error amounting to a failure to observe one of the fundamental rules of natural justice, and (b) resulted in his losing his liberty before an appeal could be heard. That, however, is not their Lordships' view of the effect of the decision. Of critical importance to its true understanding is that Mr. Maharaj had no right of appeal to the Court of Appeal against his committal and equally, therefore, no right to apply for bail pending such an appeal.

88. In deciding whether someone's section 4(a) "right not to be deprived [of their 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". Where, as in Mr. Maharaj's case, there was no avenue of redress (save only an appeal by special leave direct to the Privy Council) from a manifestly unfair committal to prison, then, despite Lord Hailsham's misgivings on the point, one can understand why the legal system should be characterised as unfair. Where, however, as in the present case, Mr. Ali was able to secure his release on bail within 4 days of his committal - indeed, within only one day of his appeal to the Court of

Appeal - their Lordships would hold the legal system as a whole to be a fair one.

89. Once someone committed to prison for contempt of court could appeal in Trinidad and Tobago to the Court of Appeal, and meantime apply for release on bail, his position became essentially no different from that of a person convicted of any other offence. Convicted persons cannot in the ordinary way, even if ultimately successful on appeal, seek constitutional relief in respect of their time in prison. The authorities are clear on the point."

[75] Importantly, in **Crevelle v AG** (*supra*) the Court of Appeal *distinguished* the Privy Council cases of **Maharaj v AG (No. 2)** (*supra*) and **Independent Publishing Co. Ltd and ors v AG** (*supra*) from cases such as the instant claim where no order or conviction was made following the Claimant's unlawful arrest upon warrant.

[76] The facts in **Crevelle v AG** bear some resemblance to the facts of the instant matter. In **Crevelle v AG** during the course of magistrate's court proceedings, the appellant made certain outbursts directed to the magistrate and thereafter left the court. The magistrate having unsuccessfully ordered the appellant be brought back before him, issued a warrant for the appellant's arrest. The appellant was arrested at 10am, fingerprinted and kept in custody at the basement of the court until 11:45am, when he was briefly brought before the magistrate. After he was informed of the charge, the matter was stood down until 1:30pm. The appellant was again confined to a small room in the Court's basement. At 1:30pm the charge was adjourned to 6th October 1999 and the appellant placed on his own bail in the sum of \$1,000.00 which he secured at 4pm on the same day. On 5th October 1999 the appellant commenced judicial review proceedings challenging the legality of the charge which culminated in an order of the High Court on 7th January 2000 quashing the charge. The appellant thereafter commenced constitutional proceedings on 23rd April 2003 seeking declarations for breach of his constitutional right to liberty and monetary compensation.

[77] The Court of Appeal in **Crevelle v AG** reasoned as follows, at paragraphs 18 to 19, 31 and 34 of their judgment:

“[18] The facts of this case are distinguishable from those of Maharaj No. 2 and Independent Publishing. In this case, the appellant was never convicted of an offence. As such, the analogy drawn by Lord Diplock and Lord Brown, in respect of a convicted person who is vindicated on appeal but who loses his liberty through a fair but fallible process, cannot strictly be made here. The matter never proceeded to conviction. The appellant’s imprisonment was consequent upon the issue of a warrant of arrest by the Magistrate.

[19] Mr. Byam’s submission was to the effect that the legal system was fair to the appellant in that it provided the remedy of certiorari to quash the charge by way of judicial review proceedings. He contended that this brought the appellant within the ratio decidendi in Maharaj and Independent Publishing. In my judgment the submission is misconceived. The decision of Best J effectively meant that the charge initiated by the magistrate was illegal, as was the warrant issued for the appellant’s arrest. Since both were illegal, the appellant’s imprisonment was also illegal. The appellant’s position was thus no different from that of a person who was falsely imprisoned or maliciously prosecuted as a result of a wrongful arrest and false charge and was thus entitled (unless barred by statute or common law) to an award of damages.

In response to the issue as to whether the appellant’s constitution claim was an abuse of process in light of other possible alternative remedies, it is also important to note that at the end of paragraph 31 and at paragraph 34 of the Court of Appeal’s decision in Crevelle v AG the Court further noted:

“[31]Because there was no conviction or order which resulted from the charge, the magistrate is protected from civil liability by section 6 [of the Magistrates Protection Act]

....

[34] Section 8(4) of the Judicial Review Act Chap. 7:08 provides for the award of damages in judicial review proceedings if the court is satisfied that a claimant could have been awarded damages in a private action at the time of the bringing of the judicial review proceedings. The appellant could not have sought damages in light of the provisions of section 6. The result is that no award of damages could have been made by Best J even if the appellant had sought such

relief. The appellant could not have pursued damages at common law for wrongful arrest or false imprisonment.

[35] In the result the trial judge was wrong to find that the motion was an abuse of process...” [Emphasis added]

[78] Thus applying the law as established by the Court of Appeal in Crevelle v AG, this Court is of the view that the reasoning of the Court of Appeal in that matter is equally applicable to the instant matter.

[79] This Court finds that the instant claim is also distinguishable from those of Maharaj v AG (No.2) and Independent Publishing Co Ltd and ors v AG. In the instant matter, the Claimant was never convicted of any offence nor was any order made against her. The uncontested evidence is that her matter was dismissed after numerous adjournments without any substantive hearing. As such, as in the matter of Crevelle v AG the analogy drawn by Lord Diplock and Lord Brown, in respect of a convicted person who is vindicated on appeal but who loses his liberty through a fair but fallible process, cannot strictly be made in the instant claim, as the instant claim never proceeded to conviction. The Claimant’s imprisonment at the Point Fortin Police Station was consequent upon the issue of a warrant of arrest by the Magistrate Charles.

[80] This Court held that the Magistrate acted ultra vires when he issued the warrant for the Claimant’s arrest, as he had no jurisdiction to do so. The decision of this Court in that regard means that the arrest, detention and imprisonment of the Claimant at a cell at the Point Fortin Police Station for approximately three (3) hours was unlawful, as was the warrant issued for the Claimant’s arrest. The Claimant’s position was thus no different from that of a person who was falsely imprisoned as a result of a wrongful arrest and false imprisonment and was thus entitled (unless barred by statute or common law) to an award of damages, *save for the fact* that section 6 of the Magistrates Protection Act prevented the Claimant from instituting a civil claim for false imprisonment directly against Magistrate Charles.

[81] That, notwithstanding, consistent with **section 14(3) of the Constitution** and with the provisions of the **State Liability and Proceedings Act**, the Claimant could as found by the Court in relation to Issue 1, rightfully seek constitutional redress against the State for the acts of the magistrate which led to the wrongful deprivation of her liberty. As in **Crevelle v AG**, the Claimant in the instant matter had no adequate alternative remedy available to her, as she could neither pursue damages at common law for wrongful arrest or false imprisonment, nor would the remedy of damages been available to her had she judicially reviewed the decision of the magistrate, given the boundaries of **section 8(4) of the Judicial Review Act**.

[82] For the afore-mentioned reasons, this Court is therefore of the opinion that the Claimant's right to liberty and the right not to be deprived thereof except by due process of law, was breached when she was arrested pursuant to the unlawful warrant issued by the magistrate, which resulted in her arrest, detention and imprisonment for approximately three (3) hours in a cell at the Point Fortin Police Station.

Issue 3: What is the appropriate relief, be it declaratory relief or monetary compensation (if any), to which the Claimant is entitled?

[83] In light of the Court findings, this Court must now determine the appropriate relief to which the Claimant is entitled. In her claim, the Claimant has submitted that she is entitled to a number of declarations and to compensation including exemplary damages together with the award of interest.

[84] Having considered all the circumstances of this case, and the aforementioned principles of law, I am of the view that the Claimant is entitled to the following declarations:

- (a) A declaration that His Worship Magistrate H. Charles had no jurisdiction to proceed with the custody application made by Ricky Beharry on 15th November 2006 in light of the pending custody matter concerning the same child of the family that was pending before the High Court of Justice;

- (b) A declaration that the order of His Worship Magistrate H. Charles (and signed by His Worship S. Ramsaran) to issue a warrant of apprehension for the arrest of the Claimant for failing to appear for a custody hearing was made without jurisdiction, and was ultra vires, unconstitutional and illegal;
- (c) A declaration that the subsequent arrest of the Claimant approximately four years later pursuant to the purported warrant of arrest was illegal;
- (d) A declaration that the Claimant's said arrest and subsequent detention and imprisonment in the cell at the Point Fortin Police Station on the 23rd November, 2010, by the Police as servants and/or agents of the State acting under the purported warrant of arrest, was illegal and in breach of the Claimant's constitutional right to liberty and the right not to be deprived thereof except by due process of law.

[85] Regarding the award of monetary compensation, I am mindful of the Privy Council's guidance in the locus classicus case of **The Attorney General v Siewchand Ramanooop Privy Council Appeal No. 13 of 2004**, which stated at paragraphs 18 and 19 that -

"When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and

deter further breaches. All these elements have a place in this additional award. “Redress” in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions “punitive damages” or “exemplary damages” are better avoided as descriptions of this type of additional award.”
[Emphasis added]

[86] Applying the principle of law as established in **Siewchand Ramanoop**, I am of the view that the circumstances of this matter justify the award of some amount of monetary compensation to vindicate the infringement of the Claimant’s constitutional right to liberty. As agreed by the parties at the last hearing of this matter, I shall therefore hear the parties in respect of the appropriate quantum in the instant matter, in the event that the parties are unable to settle on an amount.

[87] In approaching the issue in respect of quantum, I however suggest that the parties be mindful of certain findings of this Court (which are based upon the affidavit evidence filed in the instant matter).

[88] Firstly, based on the Claimant’s evidence and that of the Station Diary Extracts which were attached to affidavit evidence filed by the witnesses for the Defendant, this Court finds that the Claimant was unlawfully detained and imprisoned in the cell at the Point Fortin Police Station for a period of approximately three (3) hours extending from around 10:40 am to around 1:40pm. Further, it is the view of this Court that due regard ought to be given to the fact that at the material time the Claimant was a relatively young female in her early forties (having been born 1 September 1968); that she had gone to Point Fortin Police Station voluntarily; that at the material time she had a 14-month old baby who was still nursing and for whom she worried; that she had recently had surgery for a hysterectomy which without her medication added to her physical pain in addition to the distress and humiliation caused by the unlawful arrest and detention; and also that the unchallenged evidence was that she had never before been convicted or arrested for

any offence and regarded herself to be a law abiding citizen. This is all amidst the harassment that she faced from the male prisoners in the cell next to hers.

[89] That said, this Court, however, also finds that some regard should be given to the fact that in issuance of the warrant the magistrate had not acted with any malice. The evidence is that the magistrate was never aware of the High Court custody application because he was never informed of same. To some extent the complainant Ricky Beharry or his Attorney-at-law (if he had one) would have also had the duty and responsibility of informing the magistrate of same; in fact the complainant would have been best placed to do so. Therefore the magistrate should not be held solely responsible for the fact that he had not been aware of the High Court custody application.

[90] Further, the magistrate offered evidence that before ordering the warrant on the 23rd January 2007 he was satisfied with the affidavit of service of summons of Police Sergeant No. 11391 Rohan Paradise that Indira Beharry was served with the said summons on 9th January 2007 at 10:00am which was more than forty hours before she was due to appear on 23rd January 2007; and that he had also taken sworn evidence from Ricky Beharry in respect of his complaint against the Claimant. Thus, the magistrate was truly acting under a belief that he had jurisdiction in the matter and that he was also empowered, under his interpretation of the Summary Courts Act, to issue the said warrant.

[91] In those circumstances, while this Court acknowledges that the Claimant is entitled to appropriate monetary compensation, this Court is of the view that this is not an appropriate case for the award of what the Claimant has termed “*exemplary damages*”. I use the term guardedly in light of the caution given by the Privy Council in the case of Siewchand Ramanooop to avoid such description of any additional award of damages in constitutional matters.

F. Disposition

[92] In the premises, the Court makes the following declarations:

- (i) A declaration that His Worship Magistrate H. Charles had no jurisdiction to proceed with the custody application made by Ricky Beharry on 15 November 2006 in light of the pending custody matter concerning the same child of the family that was pending before the High Court of Justice;
- (ii) A declaration that the order of His Worship Magistrate H. Charles (and signed by His Worship S. Ramsaran) to issue a warrant of apprehension for the arrest of the Claimant for failing to appear for a custody hearing was made without jurisdiction, and was ultra vires, unconstitutional and illegal;
- (iii) A declaration that the subsequent arrest of the Claimant approximately four years later pursuant to the purported warrant of arrest was illegal;
- (iv) A declaration that the Claimant's said arrest and subsequent detention and imprisonment in the cell at the Point Fortin Police Station on the 23rd November, 2010, by the Police as servants and/or agents of the State acting under the purported warrant of arrest, was illegal and in breach of the Claimant's constitutional right to liberty and the right not to be deprived thereof except by due process of law.

[93] The Court shall hear the parties on the issue of costs and on the way forward in respect to the issue of the quantum of damages that should be awarded to the Claimant.

Dated this 9th day of June, 2017

Robin N. Mohammed
Judge