REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2015-02943

BETWEEN

PRIMNATH GEELAL

AND

DHAMRAJIE GEELAL

Claimants

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr. Anand Ramlogan S.C. and Mr. Kent Samlal instructed by Mr. Douglas C. Bayley for the Claimants

Mr. Douglas Mendes S.C., Mr. Randall Hector and Mr. Roshan Harracksingh instructed by Ms. Kadine Matthew and Ms. Amrita Ramsook for the Defendant

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JUDGMENT

I. **Background:**

[1] By order dated the 2nd September, 2015, this Court granted leave for the Claimants, Mr & Mrs Geelal, to apply for judicial review to, inter alia, quash a detention order issued by Her Worship, the Chief Magistrate on the 4th August, 2015. This detention order was made pursuant to **section 38 of the Proceeds of Crime Act, Chap 11:27 ("POCA")** in respect of cash seized from the Claimants' place of business. The Claimants claimed that the detention order was unconstitutional and/or of no legal effect and that, as a result, their cash should be returned forthwith.

[2] The cash was seized pursuant to a search warrant executed by several police officers at 'Super Wholesalers' at around 9 am on the morning of the 31st July, 2015. The warrant was issued based on a report received by an investigating officer that there had been an unauthorized use of a credit card at the said Super Wholesalers.

[3] The detained cash, which was found in a bedroom on the first floor of the premises, comprised several foreign currencies in various amounts **totaling over $1 million TTD**. The Claimants were thereafter detained at the Maraval Police Station for questioning and eventually released without charge.

[4] On the 4th August, 2015, Acting Sergeant Marvin Francis applied for a detention order by way of proceeds of crime cash detention forms A & B and gave oral evidence at the Port of Spain Magistrate's Court before obtaining a detention order for the continued detention of the cash for a period of three months.

On the Claimants' version, Mr Geelal was served with the detention order on the 4th August, 2015. However, no grounds for the detention were given in the order[1].

To the contrary, Sergeant Marvin Francis stated that Mr Geelal was served with the detention order on the 7th August, 2015[2]. The Defendant in her affidavit, however, confirmed that the detention order did not indicate her reasoning for the order as *"…**section 38 of the POCA** does not contain any such express requirement."*

[1] See para 11 of the affidavit in support of the application for leave and para 7 of the affidavit in support of the Fixed Date Claim Form.
[2] Paras 28 & 29 of the affidavit of Ag. Sgt. Marvin Francis.

[5] Notwithstanding the above, having had a significant quantity of their cash detained and, no doubt feeling aggrieved at their loss of property, the Claimants, through their attorney-at-law, issued a pre-action protocol letter on the 20th August, 2015 indicating their intention to seek legal redress in relation to the detention order. The Claimants, at all times maintained that the cash was needed to settle debts of their suppliers and creditors as well as to finance the tertiary education for their three children studying in Canada.

[6] The Fixed Date Claim was filed on the 2nd September, 2015 and supported by an affidavit of even date, which, maintained the grounds filed in the application for leave and alleged that Her Worship the Chief Magistrate, Marcia Ayers-Caesar, exceeded her jurisdiction in granting the detention order. Affidavits in response were filed by Ag. Sergeant Marvin Francis, Attorney-at-law Amrita Ramsook and Chief Magistrate Marcia Ayers-Caesar on behalf of the Defendant on the 23rd October, 2015.

[7] It was the Claimants' evidence that at the time that the detention order was granted, **Section 38 (4) POCA** had been amended by **Section 7 of the Finance Act, 2015** on **the 27th January, 2015** to include the requirement that such detention orders be issued in the **prescribed form**. However, no such prescribed forms had yet been issued by Parliament. Pursuant to the Finance Act, prescribed forms were also needed for a **Section 38 (7A) POCA** application to have the detained cash released. The result was, in the Claimants' opinion, that the detention order was void and the Claimants' right to apply to have their cash released is 'meaningless'.

[8] The Defendant's rebuttal was that, in the absence of prescribed forms, individuals who have had their cash seized in the past approached the Clerk of the Peace and made their application there. Chief Magistrate Ayers-Caesar stated in her affidavit of the 23rd October, 2015 that the Claimants never made any such application despite the fact that they continue to have the opportunity to do so.

[9] Upon receiving both parties' evidence, this Court ordered the filing of submissions with authorities and set a hearing date by Court Order dated the 23rd October, 2015. However, this Court Order was amended to extend the time for the Claimants' to file their submissions to the 11th November, 2015 and accordingly, the Defendant's

submissions in response became due on the 30th November, 2015. Submissions in reply by the Claimant were to be filed by the 2nd December, 2012.

[10] In addition to filing their submissions, the Claimants on the 11th November, 2015, filed an application seeking disclosure of the notes of evidence for the hearing held on the 4th August, 2015 before the Chief Magistrate whereby the ex parte application for the detention order was made. Further, the notes of evidence from the hearing held on the 4th November, 2015 for the application for the continued detention of the cash was also requested. This Court, upon considering the application along with the parties' oral submissions, reserved its decision on the application for disclosure and fixed a date for the trial to be heard on the 6th and 7th January, 2016.

[11] The decision with respect to the application for specific disclosure was delivered on the 21st December, 2015, in which this Court granted the application. Further, the Defendant was ordered to file its evidential objections, if any, by the 29th January, 2016. The trial dates set for the 6th and 7th January, 2016 were thereby vacated.

[12] The Court's decision of the 21st December, 2015 was appealed and heard by Mendonca, Jamadar and Jones JJA on the 25th January, 2016[3]. At the hearing, Mendes S.C submitted that in determining the application for specific disclosure, all that was required was for the Court to ask 'what are the matters in dispute and is this document directly relevant to those matters in dispute'. In his view, the notes of evidence requested were not relevant to the claim as pleaded by the Claimants. He noted that on the Claimants' fixed date claim form, there was no complaint that the notes of evidence had not been provided. Further, the Claimants' never amended the claim. The result is that the Claimants' case started and remained confined to allegations about the absence of prescribed forms and the absence of reasons from the Defendant, to which the grounds for the detention order contained in those requested notes were not relevant[4]. The panel agreed with counsel for the Appellant and allowed the appeal[5].

[3] CA. CIV. S. 324/2015.
[4] Transcript of AG v Geelal & Geelal heard on the 25th January, 2016 at page 8, lines 28- 40.
[5] Page 37, line 49 – page 38, line 21.

[13] The matter was then held in abeyance as requests were made by both parties' counsel for the dates fixed for trial to be vacated due to their involvement in another substantial matter that was of general and urgent public interest, namely the infamous election petitions. As a result, this matter did not resume until the 7th February, 2017, when the Claimant filed its submissions in reply. In these reply submissions, the Claimant attempted to introduce further deficiencies in the detention order by way of **Additional Grounds contained at paragraphs 5 (a) – (g) thereof**.

[14] The matter proceeded to a trial of the substantive issues on the 13th February, 2017 where oral submissions were presented by the parties in support of their written submissions. Counsel for the Defendant, Mr Mendes S.C. took this opportunity to voice his objections to the additional grounds contained in the Claimants' submissions in reply on the basis that they did not form part of the Claimants' pleaded case. He submitted that, as a result, the Defendant had opted not to file any written submissions in response to the Additional Grounds.

[15] The Court took time to deliberate and eventually gave its decision by way of a Court Order on the 31st March, 2017, where it upheld the Defendant's objections to the admissibility of the Additional Grounds at paragraph 5 (a) – (g) of the Claimants' submissions in reply and accordingly, ordered that these Additional grounds and all submissions that relate thereto be struck out and that they be not taken into account on the final determination of the substantive claim. It was further ordered that reasons for this ruling would be included in the final judgment on the trial of the substantive claim.

[16] It therefore follows that this Court must now give its written decision with respect to two matters: (i) the Additional Grounds of challenge to the Defendant's Detention Order at paragraph 5 (a) – (g) raised the Claimants' submissions in reply and (ii) the substantive judicial review claim seeking to quash the Detention Order issued by the Defendant which also seeks constitutional redress.

The Additional Grounds at paragraphs 5 (a) – (g):

[17] At the hearing of the 13th February, 2017, counsel for the Defendant, Mr Mendes S.C submitted that the only point for this Court to decide is whether the Additional Grounds

arise from the Claimant's pleadings. In his view, they did not and considering that no application was ever made to amend their pleadings, the Defendant would be prejudiced as it has not been afforded the opportunity to respond.

[18] Mr Ramlogan S.C's rebuttal was twofold: he submitted that (i) he did not agree that the Additional Grounds were new points that were not pleaded[6]; and (ii) that this matter was an extremely important constitutional case, which concerns the fundamental rights of the citizen and, in such cases, there have been instances where the Court has entertained points for the first time at the appellate level even though they had not been pleaded[7]. However, Mr. Ramlogan failed to produce any authority to support this latter submission despite his undertaking to do so.

[19] With respect to the first rebuttal, a reading of the **Civil Proceedings Rules 1998 (the "CPR")** does not convince me of its merit.

Part 29.10 of the CPR allows a witness to amplify his witness statement at trial or to give evidence of new matters not contained in his witness statement in certain conditions. It states:

> *"A witness giving oral evidence may with the permission of the Court—*
>
> *i. Amplify the evidence as set out in his witness statement if that statement has **disclosed the substance of the evidence** which he is asked to amplify; or*
>
> *ii. Give evidence in relation **to new matters which have arisen since the witness statement was served on the other parties and** which could not reasonably have been contained in a supplemental witness statement."*

[20] **Part 29.10** is identical to **Part 32.5(3) of the White Book (2012),** further guidance on which is given at **Practice Direction 32.5.2**:

> *"obvious circumstances in which a witness may wish to amplify their witness statement and give evidence as to new matters are where **events occur, or matters are discovered, after their statement was served,** or where a response to matters*

[6] NOE Page 5, lines 18- 22.
[7] NOE 13th February, 2017, Page 3, Lines 40- 47.

are discovered, after their statement was served, or where a response to matters dealt with in a witness statement of another party's witness is required."

The **Practice Direction** goes on to say that amplification of a witness statement should not be too strictly limited or it will result in statements becoming over elaborate, thereby increasing the costs of preparation. Conversely, they should not be too readily allowed as it will run the risk of statements failing to deal with important issues.

[21] A witness statement is in many respects similar to an affidavit which provides the evidence sought to be relied upon and so the rules of procedure and learning mentioned above can be said to be applicable to the affidavit in support of the claim. It followed that, for the Claimants' submission to have merit, it must be shown that the affidavit in support of the Judicial Review Claim disclosed the substance of the Additional Grounds which it intends to amplify in its submissions.

The filed affidavit only challenged the detention Order on three grounds: (i) that the Detention Order did not state the grounds for detention thereby preventing the Claimants from applying to have the cash released; (ii) that Parliament had not yet issued the prescribed forms required under **section 38 (4) (c) Proceeds of Crime Act Chapter 11:27 ("POCA")** pursuant to which the Chief Magistrate was empowered to make the Detention Order; and (iii) that in the absence of the required prescribed forms, the Magistrate had no jurisdiction to make the Detention Order.

[22] The Additional Grounds introduced in the reply submissions were as follows:

1) That the Detention Order did not state the specified scheduled offence under **section 38 (1A) POCA**;

2) That the part of the Detention Order entitled *"Amount to which reasonable grounds for suspicion applies"* was left blank;

3) That the Detention Order did not disclose who gave evidence in support of the application for detention;

4) That the Detention Order failed to inform the Claimants of their right to make an application for the release of their cash;

5) That the Detention Order failed to state that the Magistrate was satisfied that the statutory conditions required in **section 38 (2) POCA** were met;

6) That the Detention Order failed to advise the Claimants on the procedure for having it discharged.

[23] On a comparison, it is clear that the Additional Grounds departed materially from the initial Claim. Further, the Claim was filed on the 2nd September, 2015 by which time Mr Geelal would have already received the Detention Order a month earlier either on the 4th or 7th August, 2015. It follows that at the time that the claim was filed, the Claimants ought to have known of all the grounds with which they wish to challenge the Detention Order.

[24] I therefore found that the Additional grounds were neither an amplification of the Claimants' affidavit evidence nor were they to be considered new matters that would have arisen after the Judicial Review Claim.

[25] In light of the above, the Court was left with three options:[8]

i. Allow the Claimant to elaborate on the invalidity of the Detention Order by way of these Additional Grounds:

This option did not comply with **Part 29.10 (a) & (b) CPR**;

ii. Adjourn the matter to give the Claimant an opportunity to amend and serve a supplemental affidavit containing the Additional Grounds:

This solution encountered several obstacles. For one, this matter was at an advanced stage where written submissions had been received and oral submissions heard. It would have resulted in a significant waste of the Court's resources to revert to the pre-trial stage and allow the Claimant to amend its Claim and as a consequence, provide additional time for the Defendant to respond.

[8] Mander v Evans (2001) 1 WLR

Secondly, the Claimants would have incurred significant additional costs in getting their factual case off the ground while running the risk that the point of law i.e. whether the detention order was made correctly, may be decided against them[9].

Thirdly, by allowing the Claimants to have a "second bite of the cherry" by supplementing their affidavit with the Additional Grounds, which they should have included at the outset, would no doubt, amount to an abuse of process[10].

iii. In the alternative, counsel for the Claimants suggested that the Court take the Additional Grounds *de bene esse*:

The principle of taking evidence *de bene esse* is not a common occurrence. It is used in circumstances where there is some uncertainty as to whether certain evidence will be relevant at a later stage in proceedings, but where it will be impossible, or at least very seriously inconvenient for that evidence to be taken at that later stage. If the evidence subsequently becomes relevant, it is already to hand; but if it does not become relevant, it can simply be discarded[11].

[26] **Blackstone's Criminal Practice 2017**[12] describes the principle of *de bene esse* as follows:

> *"The relevance of a particular item of evidence may become apparent only if considered together with other evidence. However, because evidence is given in order and by one witness at a time, it often happens that the other evidence can only be adduced at a later stage.* ***Prima facie, therefore, the first item of evidence is irrelevant, and for that reason inadmissible. In these circumstances, upon an undertaking by counsel to demonstrate the relevance of the first item by introducing the further evidence, the court may allow the first item of evidence to be admitted conditionally or de bene esse****. If, notwithstanding the introduction of the further evidence, the first item remains irrelevant, the judge will direct the jury to disregard it."*

[9] Para 9 Mander *supra*
[10] Somerwell LJ in Greenhalgh v Mallard (1947) 2 All ER 255 & Johnson v Gore Wood (2004) EWCA Civ. 14
[11] https://www.lexisnexis.com/uk/legal/search/homesubmitForm.do
[12] Section F1.29

[27] It is also defined in **Black's Law Dictionary**:

> *"Conditionally; provisionally; in anticipation of future need. A phrase applied to proceedings which are taken ex parte or provisionally, and are allowed to stand as well done for the present, but which may be subject to future exception or challenge, and must then stand or fall according to their intrinsic merit and regularity.* ***Thus, "in certain cases, the courts will allow evidence to be taken out of the regular course, in order to prevent the evidence being lost by the death or the absence of the witness****. This is called 'taking evidence de bene esse.' and is looked upon as* ***a temporary and conditional examination, to be used only in case the witness cannot afterwards be examined in the suit in the regular way.****"*

[28] The learning therefore suggests that there must be a valid reason for taking evidence *de bene esse* and deciding on its relevance later on, such as, the fact that the evidence may not be later available or may only become relevant when considered along with other evidence to be adduced subsequently.

[29] Mr. Ramlogan S.C. was asking this Court to admit the Additional Grounds *de bene esse* pending this Court's ruling on the substantive/primary issue, which is, whether the Chief Magistrate had the inherent jurisdiction to make the Detention Order in the absence of the prescribed forms. In his view, if the Court rules in his favour, then the Additional Grounds become irrelevant. In the alternative, the Claimant would be able to challenge the Detention Order on two fronts.

[30] This submission was not persuasive for three reasons. For one, the Claimant was attempting to profit from his error in failing to plead these grounds and thereby denying the Defendant time to properly respond. It amounted to an affront to the principles of full disclosure.

[31] This led to the second, albeit more important rebuttal, that Mr Ramlogan S.C's submission simply missed the crux of opposing counsel's argument. The central challenge to the admissibility of the Additional Grounds was not its relevance to the proceedings, which, on the face of it was palpable, but rather, **its admissibility under**

the rules of procedure, in particular, Part 29.10 and the attendant principles of full disclosure. Therefore, unless counsel for the Claimants could have produced some learning which suggests that the principle of *de bene esse* can surmount the rules of court procedure with respect to the admissibility of evidence, their submissions remained unconvincing.

[32] Thirdly, unlike the examples given above in the learning, there was nothing to suggest that the Additional Grounds would not be available at a later stage if not taken *de bene esse* or that its relevance would only be gleaned from the consideration of other evidence. The circumstances of this case therefore do not fit into the principle and uses of *de bene esse* evidence provided by the common law.

[33] Additionally, as a means of comparison, the rules of procedure in the U.K do not provide for the late introduction of additional grounds in a Judicial Review claim. Part 54 of the **White Book (2012)** deals specifically with Judicial and Statutory Review matters, and states that the Court's permission is required if the Claimants wish to rely on additional grounds not contained in the original application for judicial review. The attendant **Practice Direction 11.1**, requires that notice of the additional grounds must be served seven clear days before the hearing[13].

Part 54.15 states:

> ***"The court's permission is required if a claimant seeks to rely on grounds other than those for which he has been given permission to proceed."***

Part 54.15.1 continues:

> ***"The power to permit additional grounds to be argued is particularly appropriate in respect of new grounds which did not form part of the original claim for judicial review."***

[13] Part 54.15.1. The White Book 2012.

[34] While there is no equivalent provision under our CPR, these provisions are nonetheless persuasive in this jurisdiction. They are drafted in an effort to prevent the ambush that would be occasioned on the defendant in the proceedings.

[35] **Accordingly, having considered the objection raised by Mr Mendes SC in light of the written and oral submissions by both parties, the Court found that the Additional Grounds contained at paragraphs 5 (a) – (g) of the Claimants' submissions in reply filed into Court on the 7th February, 2017 were inadmissible and same were ordered to be struck out**.

The Substantive Judicial Review Claim:

II. Submissions:

[35] Mr Ramlogan S.C's submissions can be summarized into three primary arguments:

(i) That *ex parte* applications for detention orders, which involve the deprivation of personal property are: **(1) unfair**; **(2) in breach the principles of natural justice**; and **(3) in breach of the Claimant's constitutional right to property guaranteed by section 4 (a) of the Constitution**;

(ii) That Magistrates are creatures of statute which means their jurisdiction is strictly confined by the provisions in the Act. Further, they do not possess the inherent jurisdiction or discretion as that of a Judge. Therefore, the fact that **section 38 (4C) POCA** expressly stated that detention orders ***shall be made in the prescribed forms*** means that the absence of prescribed forms removes the Magistrate's jurisdiction to grant the detention order; and

(iii) That the Magistrate's Detention Order did not contain any grounds and thus the Claimant is thereby precluded from applying for the release of his cash.

[36] In response, counsel for the Defendant, Mr Mendes S.C. submitted that prior to the amendment brought by the **Finance Act 2015**, detention orders were made in the forms available and there was never any suggestion that a Magistrate did not possess the necessary jurisdiction.

Reliance was placed on the case of **Peters and Chaitan v the A.G and Another**[14] to support the submission that the failure to prescribe what is to be prescribed does not deprive a court of jurisdiction. Rather, as the case suggests, the absence of prescribed forms can deprive a court of jurisdiction: (i) if the prescribed forms are needed to complete the definition of the court's jurisdiction or (ii) if Parliament intended that the prescribed forms be a condition precedent to the exercise of the court's jurisdiction.

Applying this test, Mr Mendes S.C. submitted:

a. That the only preconditions for making a detention order are contained in subsections 2 and 3, which require both reasonable grounds for the suspicion and specified periods of detention. It therefore followed that the requirement for prescribed forms contained in **subsection 4C** is not a precondition but rather, merely a means of regulating the order; and

b. That pursuant to ***Peters and Chaitan*** *supra* it would be unusual to presume that Parliament intended that no detention orders be given until the prescribed forms were issued.

[37] The same arguments and authorities were used in the rebuttal of the Claimants' submission in respect of the lack of prescribed forms with which to make a **section 38 (7A)** application to have their cash released.

[38] In response to the Claimants' third submission, it was submitted that there are no statutory requirements for the Defendant to state the grounds for the Detention Order. In any event, the grounds were not necessary for an application for the release of cash. The Claimants knew of the facts surrounding the receipt of their cash which would suffice to show that there are no longer any grounds for the detention.

[39] Mr Ramlogan S.C., reiterated the argument that the power conferred on the Magistrate in the instant case was contained in **section 38 of POCA** and the procedure therein sets out the scope of the Magistrate's jurisdiction. It was his opinion that the prescribed form was a condition precedent to the exercise of the jurisdiction**.**

[14] 2003 3 LRC 32.

For ease of reference, a sample of the **prescribed Form C** to be used in granting of the detention order is set out as follows:

"FORM C

[Section 38(4C)]

REPUBLIC OF TRINIDAD AND TOBAGO

COUNTY OF .....

..... MAGISTRATES' COURT

(District)

IN THE COURT OF SUMMARY JURISDICTION

DETENTION ORDER (*EX PARTE*) PURSUANT TO SECTION 38(2) OF THE PROCEEDS OF CRIME ACT, CHAP. 11:27

A.B.–Applicant

v.

C.D.–Interested Party

WHEREAS an application was made before me, the undersigned Magistrate of the District of ....., for the seizure by the applicant ..... of cash in the sum of

(Name and Rank/Grade)

..... (hereinafter referred to as "the said sum of cash") pursuant to section 38(1)

(Amount and Description)

of the Proceeds of Crime Act, Chap. 11:27 (not withstanding any other written law), from..... at ..... on the ..... day of ..... 20.....

(Interested Party) (Place of Seizure)

And whereas an application for a detention order was made ex parte pursuant to section 38(2) of the Proceeds of Crime Act, Chap. 11:27 in respect of the said sum referred to above.

And whereas the undersigned Magistrate upon hearing the applicant is satisfied that the conditions specified in section 38(2)(a) and (b) of the Act are fulfilled.

Now, therefore, the undersigned Magistrate authorizes the detention of the said sum of cash, for a period not exceeding three (3) months, that is to say, until .....

(Date)

(Signed) .....

Magistrate/Justice

Dated this ..... day of ....., 20 .....

The Court finds that the contents of prescribed Form C are not indicative of a substantive pre-condition to the operation of the power conferred by section 38 but rather, it is a mere procedural postscript to the Magistrate's decision.

[40] Notwithstanding this finding, the Court considered some of the other more persuasive submissions by Mr Ramlogan SC:

(i) That the purpose behind the prescribed forms was to bring a degree of uniformity to the issue of Detention Orders and thereby counterbalance the draconian nature of the *ex parte* applications. Therefore, to disregard them, while applying the other provisions of **section 38**, the Magistrate disrupts the balance that Parliament intended to maintain in the provision;

(ii) That **section 56 of the POCA** vested power in the Finance Minister to make regulations for the purpose of giving effect to the Act. Accordingly, it was wrong for the Magistrate to arrogate onto herself the right to devise a form in the face of this clear provision; and

(iii) That the cases of ***Peters and Chaitan*** *supra* and ***Jamaat Al Muslimeen v Bernard and Others (No. 3)***[15] spoke of the inherent jurisdiction of the High Court, which does not apply to a Magistrate, as it is well known that a Magistrate is a creature of statute.

III. Law & Analysis:

The *Ex Parte* Order:

[41] Mr Ramlogan S.C. seemed to possess an intent to challenge the fact that the application made by Acting Sergeant Francis for the continued detention of the cash was made *ex parte*. He submitted that it breached the principles of due process and fairness. In the same paragraph, he however, rightfully conceded that such *ex parte* applications are permitted by **section 38 (4A) POCA** and therefore, its legitimacy cannot be

[15] 1994 46 WIR 429.

challenged[16]. Nevertheless, he drew the Court's attention to the similar provision in England, which does not provide for an *ex parte* application, to support a submission that the *ex parte* nature of the application was unfair.

[42] If it is indeed the case that Mr Ramlogan seeks to challenge the provision contained in **Section 38 (4A)** on these grounds, then this Court states at the outset that the proper arena to effect such change is through Parliament— for the Act itself vests the power solely with Parliament by way of **sections 56 & 56B** to determine the proper procedure for the exercise of the powers conveyed by the provisions of the Act. This submission is therefore misplaced.

[43] In any event, as counsel advanced consistently throughout his submissions, Magistrates are 'creatures of statute' and are accordingly, strictly confined by the provisions of the applicable statute. It is therefore contradictory for Mr Ramlogan S.C. to argue on the one hand that the provisions in **subsections (4C) and (7A)**, which use the words *"...**shall** be made in the prescribed form"* and which he argues amount to a mandate, are to be interpreted differently from the instant **subsection (4A)**, which similarly states that the application for a detention order *"...**shall** be made ex parte."*

[44] Further, it must be remembered that the purpose of Judicial Review proceedings is not to review the decision of the impugned authority but rather, to review its decision making process[17]. This Court is therefore only required to consider whether the Magistrate failed to consider relevant considerations or, in the alternative, took into account irrelevant considerations in her decision to hear the application for the detention order *ex parte*. Sharma JA stated as much in the Court of Appeal:

> *"Thus it will interfere if it can see that the judge has given no weight (or no sufficient weight) to those considerations which ought to have weighed with him…conversely it will interfere if it can see that he has been influenced by considerations which ought not to have been weighed with him, or not weighed so much with him."*

[16] See para 19 of the Claimants' submissions.
[17] Per Lord Brightman in **Chief Constable of The North Wales Police v Evans [1982] 3 All ER 141 at 154**

[45] A relevant consideration is one which the legislation explicitly or implicitly requires the Magistrate to have regard[18]. In this light, the only provisions before the Defendant relative to detention orders were those in **Section 38**, which required that such applications be made *ex parte*. Whether or not this procedure breaches the principles of natural justice and/or due process cannot be considered a relevant consideration because there is simply no statutory provision that required the Defendant to import such principles into its exercise of **Section 38 (4A)**.

On this basis alone, no fault can be found in the Magistrate's decision to hear the application for the detention order *ex parte*.

[46] Merit can also be found in the argument that the reason for the *ex parte* nature of **subsection (4A)** is to allow for expediency and urgency in such matters, no doubt due in part to the public interest in expeditious crime detection, but also because of the transitory and disposable nature of currency.

By allowing the officer to seize and detain the cash without notice, the State is afforded the advantage of speed and surprise and the suspect is prevented from disposing of the cash or engaging in its continued use in any criminal activity. As a counterbalance to this draconian procedure, a procedural safeguard is contained in **subsection (7A),** which permits an application from the suspect for the release of the cash once he can show that the grounds for its detention no longer exist. In the interim, the officers are afforded time to conduct investigations.

Further, without notice applications are not novel procedures in the civil arena nor are they unique to detention orders. In fact, one need not look any further than the instant case to see an example, where the Claimant was required to first apply for leave before filing its substantive judicial review claim. Such applications are in effect *ex part*e as they are made without notice to the opposing side. I do not think that the Claimant would wish to argue that this procedure is erroneous for want of natural justice. If so, he would face an avalanche of authority in opposition.

[18] **Jonathan Auburn et al. Oxford University Press (2013).** Judicial Review Principles and Procedure. Para. 14.10

As Nelson JA stated in ***Peters and Chaitan*** *supra*:

> ***"The policy and intention of the architects of the Constitution were to exclude the rules of natural justice at the leave stage…there was nothing contrary to fundamental justice in allowing the application for leave to be made ex parte but permitting a party a full opportunity to be heard by a panel of three judges."***[19]

[47] This Court therefore finds no fault in the Defendant's decision to hear and receive Sergeant Marvin Francis's application for the detention of the cash ex parte.

The Defendant's Jurisdiction as a Magistrate:

[48] The procedure for the detention of cash has been sufficiently set out by both parties in their submissions. **Section 38 (1) & (1A)** authorizes police officers of the rank of sergeant or higher to detain cash which they have reason to believe represents the proceeds of a specified offence. **Subsection 2** permits an initial detention period of no more than **96 hours** unless the Magistrate is satisfied that there are reasonable grounds of suspicion that the detained cash represents the proceeds of a specified offence and the continued detention is needed to allow for further investigations.

Thereafter, **subsection 3** allows for its continued detention for periods of up to **3 months** at a time and stipulates that the total detention period for the cash **cannot exceed 2 years**.

Subsections (4) & (4A) are material to these proceedings and state that the application for detention ***"…shall be made in prescribed form before a Magistrate…"*** **Subsection (4C)** further requires that the detention order issued by the Magistrate be made in the prescribed form.

The other material sections under consideration are **subsections (7) & (7A)**, which state that the person from whom the cash was seized may apply to have the cash released provided that he/she can satisfy the Magistrate that *"…there are no, or are no longer*

[19] Peters and Another v Attorney General and Another 2002 3 LRC 32 at 35.

any grounds for detention as mentioned in subsection 2". **7A** similarly requires that the application for the release of cash ***"…shall be made in the prescribed form".***

[49] For ease of reference the relevant provisions of **section 38 of the POCA** are set out as follows:

> *"(1) A Customs and Excise Officer of the rank of Grade III or higher, or a Police Officer of the rank of sergeant or higher, may seize from any person and in accordance with this section, detain any cash in accordance with this section if its amount is more than the prescribed sum.*
>
> *(1A) A Customs and Excise Officer or Police Officer referred to in subsection (1), may seize and detain cash only, where he has reason to believe that the cash directly or indirectly represents any person's proceeds of a specified offence, or is intended by any person for use in the commission of such an offence.*
>
> *(2) Cash seized by virtue of this section shall not be detained for more than ninety-six hours unless its continued detention is detention authorised by an order made by a Magistrate, and no such order shall be made unless the Magistrate is satisfied—*
>
> *a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and*
>
> *b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution, whether in Trinidad and Tobago or elsewhere, of criminal proceedings against any person for an offence with which the cash is connected.*
>
> *(3) Any order under subsection (2) shall authorise the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order as may be specified in the order, and a Magistrate, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorise the further detention of the cash but so that—*

a) *no period of detention specified in such an order shall exceed three months beginning with the date of the order; and*

b) *the total period of detention shall not exceed two years from the date of the order under subsection (2).*

(4) Any application for an order under subsection (2) or (3) shall be made in the prescribed form before a Magistrate by the Customs and Excise Officer or a Police Officer of the grade or rank referred to in subsection (1).

(4A) An application for an order under subsection (2) shall be made ex parte.

(4B) Where an order has been granted under subsection (2) or (3), the order shall be served as soon as reasonably practicable on—

a) *the person by, or on whose behalf the cash was being imported or exported, if known; or*

b) *the person from whom the cash was seized.*

(4C) An order referred to in subsections (1) and (2) shall be in the prescribed form*...*

..(7) At any time while cash is detained under this section—

a) *a Magistrate may direct its release if satisfied—*

(i) *on application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer any grounds for its detention as are mentioned in subsection (2); or*

(ii) *on an application made by any other person, that detention of the cash is not for that or any other reason justified; and*

b) *the Comptroller of Accounts may, upon the written application of the applicant for the order, release the cash together with any interest that may have accrued, if satisfied that the detention is no longer justified.*

(7A) An application for the release of cash detained under subsection (7) <u>shall be made in the prescribed form</u>."

[50] It is undisputed that at the time that the Defendant granted the continued detention of the cash on the 4th August, 2015, no prescribed forms had yet been issued. In fact, it was not until the 3rd September, 2015 that, by virtue of the **<u>Proceeds of Crime (Prescribed Forms) (Amendment) Regulations 2015 (Legal Notice No 174 of 2015)</u>** that the Prescribed Forms attendant to **<u>subsections (4C) & (7A)</u>** were issued by the Minister of Finance and the Economy.

Both parties relied on our Court of Appeal decision in ***<u>Peters and Chaitan</u>*** supra, which gave a thorough analysis on the issue. It would therefore be useful to begin with an analysis of this case.

[51] In ***<u>Peters and Chaitan</u>*** supra, the appellants were elected to the House of Representatives and the respondents, the defeated candidates, challenged the election on the basis that the appellants were disqualified for election because they had dual citizenship. This challenge was made by application for leave to bring election petitions against the appellants and was granted *ex parte*.

The appellants responded by seeking declarations that, inter alia, the election petitions infringed their constitutional rights on the basis that they were brought *ex parte*, since the Rules Committee had failed to make the necessary rules relating to the bringing of election petitions. The trial judge dismissed the motions and the appellants appealed to the Court of Appeal.

De la Bastide CJ, who delivered the judgment, laid out the test for determining whether the failure of Parliament to fill in rules attendant to an Act makes it impermissible for the Court to exercise the power conferred by the Act. He stated that that will be the result only if:

(i) ***"the rules or regulations are needed in order to complete the definition of the power or jurisdiction in question; and/or***

(ii) ***an intention can be discerned from what Parliament has enacted that the making of the rules or regulations should be a condition precedent to the exercise of the power or jurisdiction."***[20]

In coming to their decision, the panel agreed (Sharma JA dissenting) that -

> ***"…Parliament did not intend that the failure of the Rules Committee to make rules specifically for election proceedings should prevent the court from exercising its jurisdiction to determine disputed elections, and that failure, having occurred, has not had that effect."***[21]

[52] Applied to the facts of that case, the reasoning and conclusions were sound. As such, the Defendant's submissions seemed, prima facie, the more attractive as it was only natural to resist the thought that Parliament would intend that no detention orders would be issued in the absence of the prescribed forms.

[53] However, these authorities are distinguishable as they all expressly refer to the inherent jurisdiction of High Court Judges to fill in the gaps left by Parliament when the test set out by de la Bastide CJ is met. The absence of an authority that spoke of the Magistrate's jurisdiction in such circumstances was notable.

[54] For instance, in **Jamaat Al Muslimeen** *supra* the question raised in the appeal was as follows:

> *"**whether the High Court**, in any pending proceedings, is empowered to make interim payments by virtue of section 4 of the Supreme Court of Judicature (Amendment) Act 1992…in the absence of the promulgation of rules by the Rule Committee specifying the circumstances in which such payments are to be made."*

It was submitted that there was a clear difference between substantive rights/jurisdiction and practice and procedure— the former was created by legislation and the latter were

[20] At page 67 of the judgment
[21] Peters and Another supra at 69. De La Bastide CJ speech.

a creature of the Rules Committee and sometimes of the inherent jurisdiction of the Court.

In response to that submission, Sharma JA stated that -

> ***"The jurisdiction of the High Court depends upon rules of court made upon the authority of statute and does not derive from statute itself, the effect of which is that jurisdiction only exists where an appropriate Order is made."***

[55] Two important distinctions immediately arise: (i) the jurisdiction of a Magistrate does not depend on any Rules of Court, but rather on the statute itself. This is clear and evidenced by the dicta of Weekes, Moosai and Mohammed JJ.A. in **D.P.P v Her Worship Mrs Marcia Murray**[22]**…**

> ***"Magistrates are creatures of statute without inherent jurisdiction and are confined by the relevant legislation. Thus any jurisdiction or authority to entertain applications…must be derived from statute."***

…and confirmed by **section 6 of the Summary Courts Act, Chap 4:20**.

It therefore follows that (ii) the Magistrate's jurisdiction is not pursuant to any Order, rather, it arises solely from and immediately upon the proclamation of the Act.

This case therefore was not beneficial to the Defendant. Rather, it reinforced the maxim on which the Claimant seeks to rely— that Magistrates are creatures of statute and do not possess the inherent jurisdiction that a High Court Judge possesses. The inescapable conclusion, therefore, is that the test set out by de la Bastide CJ is simply not applicable to the instant facts.

[56] In any event, toward the tail end of Mr Mendes S.C's oral submissions, he made a very surprising though frank concession on this issue. He accepted that *ex parte* orders are prima facie unconstitutional, precisely because they seeks to deprive citizens of their property in the absence of notice and without a charge being rendered. In those circumstances, he accepted that the requirements of the Act should be followed strictly

[22] App. No. P019 of 2013 at para 25.

and that the ***"…Magistrate has no jurisdiction to ignore the clear and express words of Parliament."***[23]

[57] Indeed, earlier in his career, the learned senior presided temporarily as a Judge of the High Court. During his tenure, Mendes J. (as he then was) delivered several judgments concerning the jurisdiction of Magistrates when exercising their powers given by statute. Of particular relevance was his ruling in the 1997 case of **Selwyn Raeburn v the Attorney General**[24].

In ***Raeburn*** *supra*, police officers carried out a search at Mr Raeburn's video club pursuant to two warrants and seized numerous video tapes which they took before the Magistrate. A summons was issued calling on Mr Raeburn to show cause as to why the seized video tapes should not be destroyed.

Mr Raeburn commenced proceedings for, inter alia, the return of all the video tapes seized and the termination of the "show cause" proceedings against him. In essence, Mr Raeburn claimed that the search warrants were issued illegally because, inter alia, *the pre-conditions to the issue of a valid search warrant were not met* and therefore, the search violated his constitutional rights.

In coming to his decision, Mendes J commented on the unconstitutional nature of the issue of search warrants, which, similar to the instant matter, are dispensed without notice.

It was his opinion that such warrant should bear on its face a statement of the various matters, including the satisfaction of the Magistrate, which establishes the jurisdiction to issue the warrant. Mendes J stated in his judgment:

> ***"In my respectful view, as a matter of policy, it ought to be a requirement that a warrant, which can only be issued by an inferior court or tribunal, if the person charged with the responsibility of issuing it is satisfied of a particular matter, should bear on its face the fact that the issuer was so satisfied. Magistrates…upon whom rests the***

[23] Notes on Oral Submissions dated the 13th February, 2017 at page 73, lines 3- 14.
[24] H.C.A. No. 1222 of 1997.

responsibility of scrutinizing requests for warrants and authorizing what would otherwise be a violation of rights, are called upon to perform a very important constitutional function. They stand between the police and the citizen, balancing the competing public interest in the detection of crime, on the one hand and the protection of the rights of the individual on the other. Because search warrants are issued in the absence of the person whose property is to be invaded, however, only one of those interests is represented at this stage. It behooves the judicial officer therefore to perform the functions vested in him conscientiously and with due regard to the interests affected…

…There is always the danger that with the ever increasing burden placed upon our justices and magistrates that they too would become less vigilant than might otherwise be desired. No doubt with these dangers in mind, there appears to be a modern tendency to stipulate in legislation authorizing the issue of warrants, that the warrants bear on their face a statement of the various matters, including the satisfaction of the judicial officer, which establishes the jurisdiction to issue the warrant."

[58] This Court finds no fault in the Judge's reasoning. In the effort to ward off the dangers of complacency that may occasion a heavily burdened magistrate, the provisions of **section 38 of POCA** authorized the issue of detention orders in prescribed forms, which, bear statements that the Magistrate is satisfied that the pre-conditions specified in **subsection 2 (a) & (b)** were met.

[59] Further, considering the draconian nature of these *ex parte* detention orders, this Court too agrees that magistrates must perform their duties conscientiously and closely stay within the parameters of the Act. However, none of these authorities envisage the scenario in which we find ourselves — where the Act, which gives power to a magistrate, specifies a procedural requirement without yet providing the necessary instrument to effect the requirement. In such a scenario, the Court must ask whether those provisions are to be interpreted literally and/or applied strictly. Application of the common law and the rules of interpretation, however, suggests otherwise.

Common Law: Court of Appeal decision in Matthews v the State[25]:

[60] ***Matthews*** concerns the jurisdiction of a magistrate and therefore was directly applicable to this case. The provision which was the subject of interpretation was **Section 18 of the Preliminary Inquiry Indictable Offences Act Chap 12:01**, which states:

> *"After the proceedings required by section 17 are completed, the* ***Magistrate shall ask the accused person if he wishes to call any witnesses****. Every witness called by the accused person who testifies to any fact relevant to the case shall be heard, and his evidence shall be taken in the same manner as the evidence of a witness for the prosecution."*

The first ground of appeal was that the appellant's trial was a nullity as he had not been lawfully committed due to the magistrate's failure to comply with **section 18**.

[61] The panel comprising de la Bastide CJ, Hamel-Smith JA and Warner JA distinguished between **mandatory** and **directory provisions** and found that to differentiate one from the other, one has to look at the consequences of the breach:

> "*It is no longer accepted that it is possible, merely by looking at the language of a legislative provision, to* ***distinguish between mandatory provisions, the penalty for breach of which is nullification, and directory provisions, for breach of which the legislation is deemed to have intended a less drastic consequence****. Most directions given by the legislature in statutes are in a mandatory form, but in order to determine what is the result of a failure to comply with something prescribed by a statute****, it is necessary to look beyond the language and consider such matters as the consequences of the breach and the implications of nullification in the circumstances of the particular case.*"

[25] [2000] 60 WIR

The Panel cited learning from **de Smith on Judicial Review of Administrative Action**[26], which further explained this principle:

> *"In assessing the importance of the provision, particular regard may be had to its significance as a protection of individual rights, the relative value that is normally attached to the rights that may be adversely affected by the decision and* ***the importance of the procedural requirement in the overall administrative scheme established by the statute****. Furthermore, much may depend upon the particular circumstances of the case in hand. Although nullification is the natural and usual consequence of disobedience,* ***breach of procedural or formal rules is likely to be treated as a mere irregularity if the departure from the terms of the Act is of a trivial nature,*** **or if no substantial prejudice has been suffered by those for whose benefit the requirements were introduced,** ***or if serious public inconvenience would be caused by holding them to be mandatory, or if the court is for any reason disinclined to interfere with the act or decision that is impugned."***

[62] This Court has already found that the **prescribed Form C**, which is the form on which the Detention Order was to be issued, is not a substantive pre-condition to the operation of the Act but rather, a procedural postscript.

Secondly, the Defendant's decision to depart from the requirement of prescribed forms does not, in this Court's opinion, incur substantial prejudice on the Claimants. The Claimants have argued that the Detention Order did not contain any grounds thereby depriving them of their ability to apply to have the cash released. However, the amendment containing the prescribed Form C similarly bears no statement of the grounds for the detention of the cash. Therefore, the Claimants have not been prejudiced by the Detention Order made by the Chief Magistrate.

Thirdly, if one were to construe **subsection (4C)** as mandatory provision, it would result in 'serious public inconvenience' as the entire operation of **section 38** would be

[26] 4th Edn. at page 142.

nullified between the 27th January and the 3rd September, 2015. The result is a 9 month period in which no detention orders could be issued. Such a construction contravenes the public interest in stemming the growth of cash-related offences that fuel organized crime and terrorism and for which section 38 was introduced.

[63] Therefore, applying ***Matthews*** and ***de Smith's***, it follows that the Chief Magistrate's alleged 'breach' of **subsection (4C)** occasioned by her decision to devise her own Detention Order in the absence of the prescribed forms should be treated, at most, as a mere irregularity rather than a fundamental breach that would result in nullification.

Rules of Statutory Interpretation:

[64] **Bennion on Statutory Interpretation**[27] states that the first rule of interpretation is to consider the **plain and literal meaning** of the Act:

> *"it is a rule of law…that where, in relation to the facts of the instant case:*
>
> *a) the enactment under inquiry is grammatically capable of one meaning only; and*
>
> *b) on an informed interpretation of that enactment the interpretative criteria raised no real doubt as to whether that grammatical meaning was the one intended by the legislator,*
>
> *the legal meaning of the enactment corresponds to that grammatical meaning and is to be applied accordingly."*

[65] **Maxwell on Statutory Interpretation**[28] said it simply:

> "*The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning, and the second is that the phrases and sentences are to be construed according to the rules of grammar."*

[27] 6th Edition at page 507- 508.
[28] At page 28.

However, it is settled that *"the paramount object in statutory interpretation is to discover what the legislator intended*."[29]

[66] Firstly, therefore, this Court must ask: what is the natural or ordinary meaning of the words ***"shall be in prescribed form"*** contained in both **subsection (4C) and (7A)**.

In **Meriam-Webster dictionary**, the word **'shall'** is defined as follows:

> *"Will have to or will be able to;*
> *2a —used to express a command or exhortation you shall go;*
> ***2b —used in laws, regulations, or directives to express what is mandatory…;***
> *3a —used to express what is inevitable or seems likely to happen in the future;*
> *3b —used to express simple futurity when shall we expect you;*
> *4—used to express determination they shall not pass."*

On a literal interpretation therefore, Parliament intended that the prescribed forms be mandatory to the exercise of the power to grant Detention Orders.

[67] Lord Reid in **Pinner v Everett**[30] however, added that this literal approach may be departed from when it contradicts Parliament's intention:

> *"In determining the meaning of any word or phrase in a statute the first question to ask always is: what is the natural or ordinary meaning of that word or phrase in its context in the statute.* ***It is only when that meaning leads to some result which cannot be reasonably supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase****."*

[68] With respect to the legislator's intention, **Bennion** informs of a rule of law which states that:

> *"…the legislator intends the interpreter of an enactment to observe the maxim* ***ut res magis valeat quam pereat*** *(it is better for a thing to have effect than to be made void);* ***so that he must construe the enactment in***

[29] Bennion on Statutory Interpretation 5th Edn. At page 512.
[30] 1969 1 WLR 1266 at 1273

such a way as to implement, rather than defeat, the legislative purpose."[31]

This maxim was described by Lord Brougham in the House of Lords case of **Auchterarder Presbytery**[32] and further by Viscount Simon L.C. in **Nokes v Doncaster Amalgamated Collieries Ltd**[33] as follows:

"if the choice is between two interpretations, the narrower of which fails to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

In accordance with these principles, a court should avoid interpretations which would leave any part of the provision to be interpreted without effect.

[69] Therefore, to hold the view that the requirement for prescribed forms contained at **subsections (4C) and (7A)** were intended to be mandatory provisions would mean that no Detention Orders could be issued between the 27th January and the 3rd September, 2015 when the prescribed forms were issued by Parliament. It is therefore apparent that such a narrow construction contradicts the manifest purpose of the legislation and reduces the Act to a futility.

[70] The law therefore clearly convinces me of the direction that I must go with this judgment. It also accords with commonsense that a literal interpretation would create more mischief than it cures. It would pay no credence to the public interest in crime detection and reduction encapsulated by **section 38**. Further, it sets a dangerous precedent should such future administrative errors occur in the implementation of statutory amendments.

[31] At page 558, section 198.
[32] (1839) Macl & R 220 at 280, HL
[33] 1940 AC 1014

[71] As a fellow judicial officer, I empathized with the predicament in which the Magistrate found herself and I find that it could not be reasonably expected that, faced with the *ex parte* application before her and having satisfied herself that all the pre-conditions would have been met, she was required by virtue of a procedural irregularity to turn a blind eye to the evidence and dismiss the application for want of prescribed forms. Inherent jurisdiction or not, to decide that way would, in my view, violate every legal instinct a reasonable judicial officer possesses.

[72] On a purposive approach, however, a more logical result occurs. Preserving the effect of **section 38** becomes paramount. On such an interpretation, the words *"…shall be in prescribed form"* cannot amount to a mandate when no prescribed forms have been issued. Parliament could not have intended it to be so interpreted because the outcome would make the provision in **section 38** ineffectual.

[73] Based on the above, I find that, on a purposive interpretation, the requirement for prescribed forms contained in **sections 38 (4C) & (7A) of the POCA** was not mandatory but rather directory, the failure of which amounted to a mere irregularity and not a nullity. The Defendant therefore did not exceed her jurisdiction in devising her own Detention Order and issuing same to the Claimants.

The Absence of Grounds:

[74] This submission was by far the weakest of those made by the Claimants. As stated by the Ayers-Caesar in her affidavit and reiterated by her counsel in submissions, the Court agrees that there is simply no provisions within **section 38** that require there to be stated on the detention order, the grounds for making same.

[75] Indeed, the prescribed Form C set out above, which is the required form on which the detention order is to be issued, does not contain any information about the reasons or grounds for making the Order. Rather, it merely states that the magistrate was satisfied that the preconditions in subsections 2 and 3 were met.

[76] In fact, the Claimants placed much weight in their submissions on the maxim that *"magistrates are creatures of statute"*. It therefore follows that if the statute does not make any express provision for the grounds to be stated in the detention order, any

attempt to do so would mean that the magistrate is venturing beyond the parameters of the legislation.

[77] Further, merit is also found in Mr Mendes S.C's submission that the Claimants are not required to know the grounds of the detention in order to make their application for release of their cash under **subsections (7) & (7A)**. It is this Court's opinion that the information deposed to by Mr Geelal in his affidavit in support, more particularly: *(i) that the local currency was earmarked to pay suppliers and creditors and to stock his business; and (ii) that the Canadian currency was earmarked to finance his children's education in Canada*[34] would be sufficient evidence to support his application that there are no grounds for the detention of the cash.

The Constitutional Arguments:

[78] Mr Ramlogan S.C submitted that the Claimants' right to property under **section 4 (a) of the Constitution** were violated as they were deprived of their property without due process. He then proceeded to list 6 grounds on which the lack of due process manifested itself.

[79] At the outset, the Court states that the grounds set out at **(a) – (e)** are all academic as they have been dealt with in the findings above.

For instance, ground (a) speaks of the *ex parte* nature of the proceedings yet Mr Ramlogan SC expressly stated in his submissions that *"Section 38 (4A) directs applicants to make the application ex parte* ***and so the Claimants' do not directly challenge the legitimacy of the application being made ex parte…"***

Grounds (d) – (e) deal with the failure of Parliament to issue the prescribed forms and the failure of the magistrate and/or State to specify the grounds for the detention order.

As found above, there was no requirement in the Act for the Magistrate to provide the grounds for the Detention Order to the Claimants. Accordingly, the grounds stated at (d) and (e) are academic.

[34] See paras 13 & 14 of the Claimants' affidavit in support

With respect to the grounds stated at (b) & (c), as stated above, the prescribed forms have since been issued by **Legal Notice 174** on the 3rd September, 2015. These grounds are also therefore academic.

Ground (f), as stated by Mr Mendes S.C, was not pleaded and therefore, does not fall for consideration before this Court.

Accordingly, the Court is not minded to award any damages for alleged breach of the Claimants' constitutional rights under ground (g) thereof.

IV. Disposition:

[80] Accordingly, having considered the affidavit evidence and the parties' written and oral submissions, the order of the Court is as follows:

ORDER:

1. **That the Claimants' Fixed Date Claim Form filed on the 2nd September, 2015 seeking judicial review and constitutional redress be and is hereby dismissed.**
2. **Both parties shall file submissions on the question of the allocation and quantification of Costs of the substantive Claim on or before 29th September, 2017.**
3. **Permission is also granted to each party to file and serve reply submissions on or before 16th October, 2017.**

Dated this 26th day of July, 2017

Robin N. Mohammed
Judge