

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV2018-00988

BETWEEN

ANTHONY RICHARDSON

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Appearances

1. Mr. E. Roopnarine instructed by Ms. Balgobin for the Claimant
2. Ms. S. Sukhram and Ms. A. Ramsook for the Defendant

Date of Delivery: 26th September, 2018.

Oral judgment reduced into writing

1. Before the Court for its determination is the Claimant's Fixed Date Claim Form filed on the 22nd March, 2018 by virtue of which the Claimant sought declaratory relief in relation to an infringement of his fundamental rights as enshrined under section 4(a) of the Constitution and particularised under sections 5(2)(a), 5(2)(b), 5(2)(c), 5(2)(f) and 5(2)(h). He contends that his rights were violated by reason of his continued imprisonment from the 15th March, 2017 to 4th May, 2017. He has also asked the court for damages inclusive of aggravated and/or exemplary damages.
2. The Claimant was arrested and charged for the offence of possession of cocaine for the purpose of trafficking on 21st September, 2015 and was sentenced to 18 months hard labour. On the 22nd September, 2015, he appealed the said order. At the time of the appeal, no application for bail pending appeal was filed. On the 12th April, 2017, the Claimant proceeded to apply for bail, having served some 18 months in custody. The bail application came up before the Hon. Madame Justice Windsor and at that hearing the Court was informed of the length of the Claimant's incarceration and the Court granted him his own bail in the sum of \$10,000.00. Subsequently, on the 10th June, 2017, the Claimant's hearing came up before the Court of Appeal and the Court dismissed the appeal and ordered that the time spent in custody be time served. The Claimant contends that his incarceration exceeded the maximum time for which his original sentence of 18 months was set to run and as a result, his constitutional rights were breached.

Issue

3. The primary issue that the Court has to consider at this stage is whether or not the Claimant's claim for constitutional redress ought not to be allowed and whether same amounts to an abuse of the court's process.

Law and Analysis

4. The law as it relates to abuse of process in constitutional matters and the approach that ought to be taken by the Court is pellucid and there are a series of Privy Council decision starting from **Harrikissoon v Attorney General of Trinidad and Tobago [1980] AC 265**

to **Jaroo v Attorney General of Trinidad and Tobago [2001] UKPC 5** and **Attorney General of Trinidad and Tobago v Ramanoop [2005] UKPC 15** which guide the approach which should be followed. These cases consistently adopted the position that an abuse of the Court's process will be occasioned where a constitutional motion has been filed in circumstances where alternative remedies were available to the litigant. In *Harrikissoon* (Supra) the Board stated that:

“The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under section 6 (1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom.”

5. In *Jaroo* (Supra) at paragraph 29 the Board emphasised that:

“29 Nevertheless, it has been made clear more than once by their Lordships' Board that the right to apply to the High Court which section 14(1) of the Constitution provides should be exercised only in exceptional circumstances where there is a parallel remedy.”

6. This point was re-emphasised in *Ramanoop* (Supra) at paragraph 25:

“[25] In other words, where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must

be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process.[...]"

7. Guided by the aforesaid decisions, this Court addressed its mind to the particular circumstances of this case. The Court noted that the Claimant exercised his right to appeal the sentence of the Magistrate before whom he had appeared. Having done so, it was open to the Claimant to consider filing an application for bail pending appeal. That decision was his and the State had no control or the power to file a bail application on behalf of a prisoner who appealed his sentence. The Claimant failed to exercise that option.
8. It is of no moment that there would be a relative degree of uncertainty as to whether any attempt for bail would have been successful. In the circumstances of this case, the Claimant was a convict, having been sentenced to 18 months imprisonment. In the submissions filed in support of the claim and in response to the State's arguments that the instant action amounts to an abuse of process, the Claimant relied on the case of **Gloria Benn and Jason Benn v The State CR P038/2016, CR86/2012, Terrence Calix v Attorney General of Trinidad and Tobago [2003] UKPC 15** and **Real Time Systems Limited v Renraw, CCAM and Company Limited and Austin Jack Warner [2014] UKPC 6**. This Court is of the view that none of the aforesaid decisions are applicable or relate to the factual matrix with which this Court is confronted.
9. The reality is, in addition to the filing of an application for bail pending appeal, there may have been other remedies available to the Claimant. He could have considered the filing of an application for an expedited appeal hearing and even after his release from custody, it was also open to him to institute an action for false imprisonment.
10. In this republic, our Republican Constitution ought to be viewed as supreme and the social contract that is established must and will always be jealously guarded by the Court. A violation of the constitution strikes at the heart of the democracy and any violation has to be condemned. In this particular matter, the State is not guilty of any constitutional violation. The Claimant elected to appeal his sentence and it was his unilateral obligation to apply for bail pending appeal. Unfortunately, he failed to engage that remedy and although the Court empathises with his unfortunate circumstance, he is not entitled to pursue relief under the Constitution. Accordingly, this Court is of the view that the instant

matter before amounts to an abuse of its process and the motion filed by the Claimant is hereby dismissed.

Costs

11. The Claimant shall bear the legal costs assessed in the sum of \$9,300 and there shall be a stay of 42 days on the payment of costs.

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FRANK SEEPERSAD

JUDGE