

**THE REPUBLIC OF TRINIDAD & TOBAGO  
IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. CV2020-04248**

**BETWEEN**

**RALPH RAJARAM**

Claimant

**And**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Defendant

**Before the Honourable Mr. Justice Frank Seepersad**

Date: March 10, 2021.

Appearances:

1. Mr. Dane L. Halls, Attorney-at-law for the Claimant.
2. Ms. Tiffany Kissoon and Ms. Sasha Sukhram, Attorneys-at-law for the Defendant.

**DECISION**

1. By way of Amended Fixed Date Claim Form filed on the 9 December 2020 the Claimant sought the following relief:
  - a) A Declaration that the Defendant breached the rights of the Claimant guaranteed under Sections 4 (a) of Constitution of the Republic of Trinidad and Tobago when he was arrested on December 7, 2016 on a Warrant which was issued for the non-payment of a fine which he had paid;

- b) A Declaration that the Claimant was deprived of his constitutional right to communicate and/or retain and instruct a Legal Adviser of his while in custody in breach of Section 5 (2) (c) (ii) of Constitution of the Republic of Trinidad and Tobago following his arrest on December 7, 2016.
  - c) Damages for breach of the Claimant's constitutional rights and/or wrongful arrest and/or false imprisonment.
  - d) Aggravated and/or exemplary damages for breach of the Claimant's constitutional rights, trespass to the person, wrongful arrest, and false Imprisonment.
  - e) Special Damages in the sum of twenty-five hundred dollars for legal fees.
  - f) Interest at such rate and for such period as to the Court may deem just.
  - g) Costs.
  - h) Such further or other relief as the Court may think just.
2. In support of his claim the Claimant filed an affidavit and deposed that on the evening of December 7, 2016 the police entered his home and executed a warrant upon him for the non-payment of a fine in the sum of Three Thousand Five Hundred Dollars which was imposed for possession of cocaine.
3. He contends that he was denied an opportunity to produce a receipt which indicated his payment of a fine for the very offence to which the warrant related.
4. He was arrested by the police officers around 11:00 p.m. to 11:30 p.m. on the night of the 7 December 2016 and further deposed that he remained in custody until 10:30 a.m. on December 8, 2016 when the sum of \$3500.00 allegedly owed was paid. He subsequently enquired if the Court Clerk

Office had verified his previous payment and it was thereafter verified that the fine had been paid on 1 April, 2016 and the additional sum of \$3500.00 was refunded.

5. A pre action protocol letter was issued on June 16, 2017 but no response was received, a follow up reminder letter was also sent and on December 7, 2020 the instant matter was instituted.
6. Before the Court for its determination is the Defendant's Notice of Application filed January 14, 2021. The Defendant contends that the instant proceedings amount to an abuse of the Court's process as the Claim was filed four years after the alleged breach and arrest occurred.
7. In its determination as to whether the Claimant's claim should be struck out, the Court considered the law as outlined in **CV2014-00155 Paul Chotalal v. The Attorney General of Trinidad and Tobago**, **CV2015-03886 Sheldon David v. The Attorney General of Trinidad and Tobago**, **CA No. 176 of 2013 Matthew Kenrick James v. The Attorney General of Trinidad & Tobago**, **Webster & Ors v. The Attorney General of Trinidad & Tobago [2015] UKPC 10**, **CV2013-04647 Kadir Mohammed v. The Attorney General of Trinidad and Tobago**, **The Attorney General v Ramanoop [2005] 2 WLR 1324**, **CV 2020-00146 Patrick Awong v. The Attorney General of Trinidad and Tobago** and **Thakur Persad Jaroo v The Attorney General of Trinidad and Tobago [2002] UKPC 5**.
8. In their wisdom the framers of the Constitution ensured that relief pursuant to Section 14 of the Constitution was not curtailed by any expressed limitation period. The Court in the discharge of its mandate as guardian of the Constitution has interpreted the law and recognizes that claims which seek vindication for the alleged breach of constitutional rights should be

pursued with alacrity and that delay should not be inordinate and unexplained.

9. The Claimant asserts that the alleged breach occurred in 2016 and save for the letters dated September 4, 2017 and October 4, 2017, no further action was pursued until December 2020 when the claim was filed.

**10. Curiously the law has developed so as to accept that constitutional relief should be viewed as an exceptional remedy.**

**11. This Court has difficulty with the aforesaid position as it holds the view that in a constitutional democracy, the written constitution is supreme and sacrosanct. Consequently, the Court should forcefully and fearlessly defend same, uphold the rule of law and condemn constitutional violations whenever they occur.**

**12. The Court is however bound by what it views as the possible unintended restriction on constitutional claims stemming from the application of the binding decision of the Board of the Privy Council in Jaroo (supra).**

**13. The facts as outlined by the Claimant seem to suggest that his arrest by warrant may have been occasioned as a result of an administrative error by the Judiciary i.e. the failure to record the fine payment so as to ensure that no non-payment warrant was issued. If it is ultimately established that an administrative error led to the infringement of a citizen's constitutional rights then such a circumstance cannot be countenanced.**

**14. This Court indicated in Patrick Awong (supra) that the need for accurate recording with respect to the payment of fines is critical**

especially given the legislative reforms which have occurred in relation to the traffic laws and the implementation of a Demerit Points System for specified traffic violations.

15. This Court therefore holds the view that the outlined factual matrix does in fact demonstrate that the issues raised are of significant constitutional and public importance.

16. The critical issue to be determined is whether the instant action should be allowed or whether the delay in the institution of this claim has been unexplained and inordinate so as to amount to an abuse of the Court's process.

17. This determination rests with an exercise of discretion and each case has to be viewed contextually. In arriving at a resolution the Court should consider, *inter alia*, the supremacy of the Constitution, the importance of vindication for infringed rights and the recognition that rights can only be curtailed when the rule of law has been fully engaged, the infringement is clothed with reasonable justification and is warranted in a democratic society where the rule of law and due process is revered and respected. The need for certainty and consistency is also important and it is against this backdrop that the need for conscientious and prompt attempts at vindication against constitutional violations is required. In its assessment as to whether in a particular case, delay should be deemed as an abuse of process, it may therefore be important to consider the nature of the alleged infringement, the reason for the delay, the possibility of prejudice to the State and whether the facts suggest that the alleged violation may possibly have a reverberating impact beyond the insular interest of the litigant and affect the wider public interest. If the latter circumstance

is operative then the delay may be viewed with greater laxity so as to not shut out a deserving application.

18. On the affidavit evidence at this stage, this Court does not hold the view that the delay has been inordinate especially given the fact that the State failed to respond to the pre-action protocol letter and the reminder letter. Of course the institution of the instant proceedings should have occurred within months of the State's unacceptable and deafening inaction and silence but even after the length of time which has elapsed since the alleged breach, no ascertainable prejudice to the State can be identified. If a constitutional breach is established at the trial, then the public interest would best be served by the injection of the required fiscal resources and the implementation of digitized processes so as to ensure that paid fines are promptly and accurately recorded thereby mitigating against the likelihood that another citizen who has paid his fine is not subsequently arrested and detained by means of a non-payment warrant.

19. Consequently, and for the reasons outlined, the Defendant's notice of application is dismissed and the Defendant shall pay to the Claimant costs to be assessed by this Court in default of agreement.

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**FRANK SEEPERSAD**  
**JUDGE**