

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 1381 of 2004

IN THE MATTER OF JUDICIAL REVIEW ACT NO. 60 OF 2000

AND

**IN THE MATTER AN APPLICATION BY ASHFORD RAMDHAN FOR LEAVE
TO APPLY FOR JUDICIAL REVIEW OF**

- (1) THE DECISION OF HER WORSHIP SENIOR MAGISTRATE MRS. LUCINDA CARDENAS RAGOONANAN MADE ON THE 29TH DAY OF APRIL 2004 IN RESPECT OF INFORMATION NO. 5112 OF 2002 WHICH DECISION IS CONTAINED IN THE LAST ENDORSEMENT AT THE BACK OF THE INFORMATION NO. 5112 OF 2002 AND WHICH WAS READ OUT BY THE LEARNED MAGISTRATE ON THE 29TH DAY OF APRIL 2004 IN THE SIPARIA FIRST MAGISTRATES COURT WHEREBY THE LEARNED MAGISTRATE FOUND THAT A PRIMA FACIE CASE HAD BEEN MADE OUT AGAINST THE APPLICANT IN RESPECT OF THE CHARGE CONTAINED IN THE SAID INFORMATION AND WHEREBY THE LEARNED MAGISTRATE OVERRULED THE NO CASE SUBMISSION MADE ON BEHALF OF THE APPLICANT BY HIS ATTORNEY-AT-LAW IN RESPECT OF THE SAID CHARGE.**
- (2) THE DECISION OF HER WORSHIP SENIOR MAGISTRATE MRS. LUCINDA CARDENAS RAGOONANAN MADE ON THE 29TH DAY OF APRIL 2004 COMMITTING THE APPLICANT TO STAND TRIAL AT THE NEXT SITTING OF THE ASSIZES AS CHARGED IN THE SAID INFORMATION**

BETWEEN

ASHFORD RAMDHAN

Applicant

AND

**HER WORSHIP
SENIOR MAGISTRATE MRS. LUCINDA CARDENAS RAGOONANAN
Respondent**

Before the Honourable Mr. Justice G. Smith

Appearances:

Mr. S. Gosine for the Applicant

Mr. D. Byam for the Respondent

REASONS

1. The Applicant was committed to stand trial for murder after a Preliminary Inquiry by a Magistrate. The Applicant brings this application for judicial review of his committal to stand trial.

I grant an order of certiorari quashing his committal but I award no damages to the Applicant.

History

2. After committal proceedings before a Magistrate, the Applicant and three other persons were committed to stand trial for the murder of one Kelvin Ragbir. The order for committal was made on the 29th April 2004.

The Applicant brings this application for judicial review of the decision to commit him. This application was filed on the 23rd June 2004. The essence of the application is that the evidence before the Magistrate was insufficient to commit the Applicant for the offence of murder.

On the 8th August 2005 the Director of Public Prosecutions entered a nolle prosequi in favour of the Applicant. The Applicant was released from prison the 8th August 2005.

Having been released from prison, this application for judicial review would seem academic. However, this application continued since firstly, the Applicant wanted damages for his detention after the committal by the Magistrate. The period of this detention was one year three months and one week. Secondly, the Attorneys for the Respondent did not concede that the committal was wrong nor that the Applicant was entitled to damages.

I will now set out my reasons for (A) granting the order of certiorari to quash the committal of the Applicant and (B) refusing to award any damages to the Applicant.

A. QUASHING THE MAGISTRATE'S DECISION TO COMMIT TO APPLICANT:

3. Committal proceedings can only rarely be challenged by judicial review. It is only in the case of a really substantial error leading to demonstrable injustice that a court should allow a decision in committal proceedings to be successfully challenged. (See

Neil v North Antrim Magistrates' Court (1992) 1 WLR 1220(H.L.) and R v Bedwellty Justices Ex P. Williams (1996) 3 WLR 361 (H.L.)).

4. In the present matter, the only evidence against the Applicant at the preliminary inquiry before the Magistrate, was contained in the testimony of one Clint Chaitan. When I examined his testimony (see pages 89-95 of the record of the Preliminary Inquiry), I found it was extremely unreliable. Mr. Chaitan had to be treated as a hostile witness and he plainly contradicted himself in several material particulars. In any event, he failed to identify the Applicant as one of the persons involved in the murder. These facts are also mentioned in the nolle prosequi as the reasons for the Director of Public Prosecution's conclusion that there was no prima facie evidence against this Applicant.

That being the case, I find that the decision of the Magistrate to commit the Applicant to stand trial for the murder of Kelvin Ragbir is a really substantial error. It would be a demonstrable injustice to have the Applicant kept in jail and later on to face a trial for this murder when there was no evidence and/or no reliable evidence which linked him to the crime.

I therefore grant an order quashing the decision of the Magistrate to commit the Applicant to stand trial for the murder of Kelvin Ragbir.

B. THE APPLICANT IS NOT ENTITLED TO DAMAGES:

5. There are three conditions for the award of damages in Judicial Review proceedings, they are, firstly there must be a claim for damages in the application for judicial review. Secondly, the claim for damages must arise from the same matter that forms the basis for the application for judicial review. Thirdly, if the Applicant had brought an action for damages at the time when he made his application for judicial review, he could have been awarded damages. (See Josephine Millette v Sherman Mc Nicolls CA Civ. No. 155 of 1999 at pages 7 and 8 and see the Judicial Review Act Ch. 7:08 section 8(4)).

In this present application for judicial review the Applicant has satisfied the first two conditions. Firstly, he has included a claim for damages in his application. Secondly, the claim for damages arises out of his detention after the Magistrate committed him to stand trial for murder; the committal is the same subject matter that forms the basis of this application for judicial review.

The Applicant cannot satisfy the third condition. If he had brought an action for damages at the time when he made his application for judicial review he could not have been awarded damages.

6. The Applicant has claimed damages for (1) a breach of his constitutional rights and (2) the civil unlawful action of the Magistrate (see paragraph 17 et seq of the Applicant's written submissions). He would not have been awarded damages in either of these actions.

(1) *There has been no breach of the Applicant's constitutional rights*

7. The Applicant contends that he was wrongly imprisoned as a result of the flawed order for his committal to stand trial for murder. He goes on to contend that this unlawful imprisonment was an unconstitutional deprivation of his liberty contrary to sections 4 a, b and d of the Constitution. Further, the Applicant contends that he was not given a fair hearing and that his resultant imprisonment was a deprivation of his constitutional rights pursuant to section 5 (2) e, f and h of the Constitution.

The pith and gravamen of the Applicant's case is that he was deprived of his liberty without due process of law. The Magistrate's wrongful committal order was made without due process of the law being observed. All the other breaches of the Constitution either stem from or are based upon this breach of due process by the Magistrate. It would serve no useful purpose to examine each section of the Constitution which the Applicant alleges was infringed. This would merely be repeating my findings over and again.

8. The case Independent Publishing Co. Ltd. V The Attorney General of Trinidad and Tobago (2004) 3 WLR 611 (PC) has refined the principles applicable to constitutional law claims when an Applicant has been wrongfully imprisoned by an order of a Court of law.

Prior to the Independent Publishing Co. Ltd. Case it was only fundamental errors of procedure by a judge which could infringe constitutional rights. Errors of substantive law that resulted in a wrongful imprisonment which was later set aside did not give rise to an action under the Constitution. The quote of Lord Diplock in the case Ramesh Maharaj v The Attorney General (No.2) [1978] 30 W.I.A. at page 321 is often cited in support of this earlier principle namely:

“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. Where 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 Independent Publishing Co. Case (op cit) the Privy Council refined this principle by stating that “it is the legal system as a whole which must be looked at and not merely one part of it. The fundamental right, as Lord Diplock said, is to “a legal system that is fair.” (Emphasis added and see pages 638 and 639 paragraph 88). At paragraph 90 the Privy Council ratified the decision in Forbes v The Attorney General (2002) U.K.P.C. 21 where in a constitutional motion for wrongful detention pursuant to a conviction that was set aside Lord Millett stated:

“[The authorities] establish that it is only in rare cases where there has been a fundamental subversion of the rule of law that resort to constitutional redress is likely to be appropriate. However, the exceptional case is formulated it is clear that the constitutional rights to due process and the protection of the law do not guarantee that the judicial process will be free from error. This is the reason for the appellate process. In the present case the appellant was deprived of his liberty after a fair and proper trial before the magistrate, that is to say by due process of law. The appellant was able to challenge his conviction by way of appeal to the Court of Appeal and, when the Court of Appeal wrongly failed to quash his conviction, by way of further appeal to the Board. The appeals were conducted fairly and without procedural error, let alone any subversion of the judicial process. The appellant thus enjoyed the full protection of the law and its internal mechanisms for correcting errors in the judicial

process. His constitutional rights have not been infringed...” (Emphasis added)

Finally at paragraph 93 of the Independent Publishing Co. case the Privy Council stated that there were “little reason to maintain the original distinctions made in Maharaj No. 2 between fundamental breaches of natural justice, mere procedural irregularities and errors of law – distinctions which in any event were never very satisfactory....”

9. Unfortunately, the Applicant tried to squeeze his case into the old confines of fundamental procedural error. He argued in essence that the decision to commit him for trial when the evidence was lacking was a decision that was made without jurisdiction or in excess of jurisdiction. As such it was a fundamental procedural error that denied him due process. By framing his case in this manner, the Applicant overlooked the main planks of due process, namely, fairness in the system as a whole and the subversion of the rule of law.

In the present matter, the Applicant was committed to stand trial for murder after a preliminary inquiry was properly held. It was the decision of the Magistrate that was wrong. The system by which he was committed did not deny him due process. A judicial officer can make a wrong decision without subverting the system by which the party before him is judged. The system is not perfect but it is fair.

In any event the Applicant enjoyed the full protection of the law and its internal mechanism for correcting the “error” in the judicial process. The

Director or Public Prosecutions entered a nolle prosequi against him. Had he not done so, the Applicant would still have had the opportunity to correct the “error” by this application for judicial review. There was no subversion of the rule of law.

10. The Applicant has suffered no breach of any constitutional rights. He would not have been entitled to any damages in a Constitutional Law Claim.

(2) *No damages in a civil suit against the Magistrate:*

11. The Applicant’s civil claim against the magistrate is based upon section 5(1) of the Magistrates Protection Act Ch.6:03 which provides that “Any person injured by any act done by a Magistrate in a matter not within his jurisdiction, or in excess of his jurisdiction.... may maintain an action against the Magistrate without alleging that the act complained of was done maliciously and without reasonable and probable cause.” (Emphasis added)

12. In this civil action the concepts of want of jurisdiction and excess of jurisdiction are relevant. These can be elusive concepts and they are difficult to define.

The Applicant relied on two local cases in support of his contention but these cases are of little assistance in this matter. Firstly, there is the Court of Appeal decision in Josephine Millett v Sherman Mc Nicolls C.A. 155 of 1995. In

that case the Applicant was wrongly convicted and fined on summonses to show cause why the bail she had posted should not be forfeited. She brought an application for judicial review where a consent order was entered. De la Bastide C.J. decided at page 9 of the judgment that by consenting to judgment for damages to be assessed, the respondent conceded that the Appellant would and could have recovered damages against the Magistrate in a civil action brought when she had applied for judicial review. In the present matter there has been no consent to judgment for damages to be assessed. The Respondent in this matter has contested both the substantive application for judicial review and the award of damages.

In Ricky Sagram v Magistrate Ayers-Caesar H.C.A. No. 299 of 1997 a magistrate wrongfully remanded a witness in custody for failing to appear at court. However, the remand was clearly out of or in excess of the Magistrate's jurisdiction since (a) she failed to inform the witness of his right to apply to a judge for bail and (b) she purported to find the witness had committed an offence under a provision which did not create any offence. In the present matter the magistrate did not act in contravention to a statute.

In the present matter the Magistrate made a wrong decision in committing the Applicant upon faulty and inadequate evidence. This was an error within jurisdiction.

The leading English case on this subject is instructive because of certain dicta. In Re Mc C (a minor) [1985] 1 A.C. 528 (H.L.) Lord Templeman stated at page 558 D-14:

“In my opinion the authorities disclose that a magistrate is not liable in damages for the consequences of an unlawful sentence passed by him in his judicial capacity in a properly constituted and convened court if he has power to try the offence and the offender. If the magistrate fails to convict the offender of the offence or if he imposes a sentence which he has no power to impose on the offender for the offence he acts without jurisdiction and if the sentence results in imprisonment, is liable to the accused in a civil action for damages for false imprisonment.

If in the course of a trial which a magistrate is empowered to undertake, the magistrate misbehaves or does not accord the accused a fair trial, or is guilty of some other breach of the principles of natural justice or reaches a result which is vitiated by any error of fact or law, the decision may be quashed but the magistrate acting as such acts within jurisdiction. Similarly if the magistrate after a lawful trial imposes a sentence which he is authorized to impose on the defendant for the offence, but follows a procedure which is irregular, the sentence may be quashed but the magistrate acts within jurisdiction.” (Emphasis added)

In the present matter the magistrate had the power to hear the committal proceedings and to commit the Applicant to stand trial for murder. The hearing and the committal were within her jurisdiction and even though the decision to commit was wrong, it did not exceed her powers.

There was no want of jurisdiction or excess of jurisdiction in the committal of the Applicant. The Magistrate would not have been liable to the Applicant in a civil action. The Applicant would not have recovered damages against her and so cannot recover damages in this application for judicial review based on any civil suit against the Magistrate.

13. Alternatively, there is another bar to the Applicant recovering damages in a civil action against the Magistrate. This bar to damages arises out of the

combined provisions of section 5(2) of the Magistrates' Protection Act and section 8(4) (b) of the Judicial Review Act.

Section 5(2) of the Magistrates Protection Act provides that “No action shall be brought for anything done under the conviction or order (of the Magistrate)... until after the conviction or order has been quashed by the High Court.”

Section 8(4) (b) of the Judicial Review Act allows the Court to award damages to an Applicant for judicial review if “the Court is satisfied that if the claim has been made in an action begun by the Applicant at the time of making the application, the Applicant could have been awarded damages.”

14. By section 5(2) the Magistrates Protection Act, the committal of the Applicant would have had to be quashed before the Applicant could have a civil claim against the Magistrate. Therefore, at the time he made the application for judicial review, the Applicant would not have had a properly constituted action against the Magistrate. By virtue of section 8(4)(b) of the Judicial Review Act the Applicant could not have been awarded damages in a civil suit at the time of his application for judicial review and so he could not be awarded damages in this application.

15. The Applicant would not have recovered damages in a civil suit against the Magistrate because (a) the Magistrate's decision to commit the Applicant was within her jurisdiction and (b) the combined provisions of section 5(2) of the

Magistrate Protection Act and section 8(4)(b) of the Judicial Review Act precluded a civil suit at the time of this application. Therefore, the Applicant cannot recover damages in this application for Judicial Review.

CONCLUSION:

16. I grant an order of certiorari quashing the decision of the Magistrate to commit the Applicant to stand trial for murder.

However, since at the time when he made his application for judicial review, the Applicant could not have been awarded damages in a constitutional law claim or in a civil suit against the Magistrate, he cannot be awarded any damages.

The Respondent consented to the Attorney General being joined as a party to this action for the purposes of costs. Since the Applicant has succeeded in getting the relief of certiorari, I order the Attorney General to pay the costs of this action to be taxed in default of agreement.

Dated this 11th day of May 2009

Mr. Justice G. Smith
JUDGE