REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civ. App. No. P 182 of 2014
Claim No. CV2012-00129

BETWEEN

Indar Jagroo

Appellant/Defendant

AND

Anisha Mason

Respondent/Claimant

****

Panel:

A. Yorke-Soo Hon J.A.

R. Narine J.A.

M. Mohammed J.A.

Appearances:

Mr. S. Jairam SC, Mr. R. Persad, Mr. C. Rodriguez instructed by Ms. S. Matthews for the appellant

Mr. A. Moses for the respondent

DATE DELIVERED: 30th July, 2018

I have read the judgment of Narine J.A. and agree with it.

A. Yorke-Soo Hon,
Justice of Appeal.

I too, agree.

M. Mohammed,
Justice of Appeal.

JUDGMENT

Delivered by R. Narine J.A.

BACKGROUND

1. The appellant (the Magistrate) in this appeal, seeks an order to set aside the decision of the trial judge who awarded the respondent damages for false imprisonment.

2. The respondent's claim for damages for false imprisonment was for the period 11th February 2011 to 27th May 2011 during which she was repeatedly remanded to the Women's Prison at Golden Grove, Arouca. The trial judge in finding that the respondent was entitled to damages held inter alia, that the Magistrate had no jurisdiction to commit the respondent to prison, that he had been grossly negligent in doing so and he was not immune from suit.

3. The appeal raises an important issue of law affecting the liability of Magistrates for false imprisonment at common law.

THE FACTS

4. The basic facts of this case are not in dispute. On 11th February 2011, the Magistrate committed the respondent, Anisha Mason, then 17 years old, to the Women's Prison at Golden Grove, Arouca. What was before the Magistrate was an application by one Simon Rodriguez to be deemed a fit and proper person to have custody of the child who was born on 30th September 1998. Mr. Rodriguez's wife appeared before the Magistrate, and informed him that she did not want the child at her home, since the child's conduct was disruptive and was damaging her marriage to Mr. Rodriguez. The Magistrate was aware that a "beyond control" application had been made in respect of the child. The Magistrate concluded that the child could no longer stay at the home of Mr. Rodriguez. He made inquiries with respect to safe houses and children's homes including St Jude's Home, and other relatives of the child. These inquiries proved to be unfruitful. On this basis, he adjourned the matter to 21st February 2011 and remanded the child to the Women's Prison. He did so on subsequent adjournments, until the High Court granted an application for habeas corpus on 27th May 2011.

5. It is not in dispute that the child was never charged with any offence, and that the Magistrate had no jurisdiction on the application before him to order the detention of the child to the Women's Prison. Nor, is it in dispute that the Magistrate acted without malice and what he thought was in the best interest of the child.

THE APPEAL

6. The Magistrate in this case is claiming that the judge erred in law when he found that the respondent's detention was the direct result of express orders made by him (the

Magistrate) and that section 6 of the **Magistrates' Protection Act Chapter 6:03** (the Act) could not exonerate him from liability for committing the respondent to prison.

7. The objective of the Act is to provide protection to Magistrates from actions being brought against them for things done in the course of carrying out their judicial duties. The rationale is that without immunity from suit, these judicial officers would be less able to perform their functions independently and without fear or favour. Section 4 provides:

> *"**4.** The endorsement of the writ of summons in every such action shall allege either that the act was done maliciously and without reasonable and probable cause, or that it was done in a matter not within the jurisdiction of the Magistrate, otherwise the writ shall be set aside on summons; and if the plaintiff fails at the trial to prove the allegation, a verdict shall be given for the defendant."*

8. Clearly, section 4 contemplates that an action lies against the Magistrate in cases where he acts maliciously, or without reasonable and probable cause, or without jurisdiction. However, in such a case the endorsement on the writ of summons (now claim form under the Civil Proceedings Rules (CPR)) should set out one or more of these allegations and the plaintiff (now claimant under the CPR) must prove such allegation(s). If he does not, the claim will be dismissed.

9. It is well settled that a Magistrate is a creature of statute. He is not permitted to act outside of the powers and jurisdiction conferred on him by the legislature. If he does, he opens himself up to litigation by any person who is adversely impacted by his actions even if he acts without malice and with reasonable and probable cause. This is made plain by section 5 of the Act which provides:

> *"**5.** (1) Any person injured by any act done by a Magistrate in a matter not within his jurisdiction, or in excess of his jurisdiction, or by any act done in any such matter under any conviction or order made or warrant issued by him, may maintain an action against the Magistrate without*

alleging that the act complained of was done maliciously and without any reasonable and probable cause.

(2) No such action shall be brought for anything done under the conviction or order, or for anything done under any warrant issued by the Magistrate to procure the appearance of such party and followed by a conviction or order in the same matter, until after the conviction or order has been quashed by the High Court."

10. Section 6 of the Act also provides a measure of protection to a Magistrate in certain limited circumstances, where the Magistrate acts under a warrant that has not been followed by a conviction or order, or when a person fails to appear in obedience to a summons. Section 6 provides:

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

APPELLANT'S SUBMISSIONS

11. Although counsel for the Magistrate in this case has conceded that the order for commitment should not have been made in the circumstances, he has sought to put a strained interpretation on section 6 by interpreting "warrant" to be the warrant of commitment prepared by the Justice of the Peace to be served on the prison authorities authorising them to receive the prisoner after she had been committed to prison pursuant to an order of the Magistrate.

12. Counsel for the Magistrate submitted that the order of commitment made by the Magistrate was insufficient to cause the detention of the respondent at the

Women's Prison and that the detention was pursuant to and was the direct result of the warrant of commitment prepared and issued by the Justice of the Peace at the Arima Magistrates Court. It was submitted further that section 6 of the Act provides a bar to proceedings against the Magistrate since the respondent's false imprisonment claim was the direct result of the warrant of commitment which was not followed by a conviction or final order. Learned counsel relied on the case of **Attorney General of Trinidad & Tobago & Mrs. Lisa Ramsumair-Hinds v. Russell David** Civ. App. No. P028 of 2015 in support of this submission.

RESPONDENT'S SUBMISSIONS

13. In response, counsel for the respondent submitted that Section 6 of the Act is inapplicable because the section does not include and/or extend to warrants of commitment. It was also contended that the section is incapable of providing the Magistrate with immunity. Additionally, Section 6 cannot be amplified to offer protection to a Magistrate who purports to assume jurisdiction in a matter over which he had no jurisdiction and commits someone not properly before him to prison. Counsel submitted that the provisions of the Act were based on the Justice Protection Act 1848. In particular, he stated that in Section 2 of the Justice Protection Act "warrant" to which reference is made and in respect of which no conviction or order follows, was a warrant to procure the attendance of a party. He referred the court to **Halsbury's Statutes of England (3rd Ed), volume 21, pages 31 to 35**. Counsel for the respondent also relied on similar legislation protecting Magistrates in New Zealand and Guyana.

LAW & ANALYSIS

14. This appeal involves the determination of two issues:

    (i) Did the Magistrate have the jurisdiction to remand the respondent to the Women's Prison?

(ii) Does section 6 of the Act protect the Magistrate from liability for false imprisonment in this case?

The first issue – Jurisdiction

15. As noted earlier, the respondent was 17 years old at the time. She was not charged with any offence. She was the subject of a custody application which was before the Magistrate. According to the Magistrate on 11th February 2011, he "became aware" of a "beyond control" application which was pending before the court. However, this application was not before him. In any event, section 45 of the Children Act Chapter 46:01, under which such applications are brought, applies to children "apparently of the age of fourteen or fifteen years". The respondent was 17 years old at the time, a fact which was clearly set out in the Probation Officer's Report dated 13th November 2010, which the Magistrate had before him.

16. The Probation Officer's Report recommended that the respondent should be placed in the care of Mr. Rodriguez for a probationary period of two years. Having regard to Mrs. Rodriguez's emotional outburst in court on 3rd February 2011, in which she claimed that the respondent was disruptive and was damaging her marriage, the Magistrate felt that he could not follow the Probation Officer's recommendation. He felt obliged at that time to find accommodation for the respondent while the application was being considered. He eventually decided to commit the respondent to the Arouca Women's Prison until further information could be obtained, and adjourned the matter to 21st February 2011. The matter came up before the Magistrate on subsequent occasions, on which the respondent was committed each time to the same prison, until she was eventually released on 27th May 2011 by an order of habeas corpus granted by the High Court.

17. It is not in dispute that the Magistrate in this case acted in good faith at all times in what he considered to be the best interests of the respondent. However, it is quite

clear on the facts that the Magistrate had no jurisdiction to commit the respondent to prison in the circumstances of this case. She was never charged with a criminal offence. She was simply before the court because an application had been made by Mr. Rodriguez to have custody of her.

18. Since the Magistrate had no jurisdiction to remand the respondent to the prison, it follows that by virtue of section 5(1) of the Act an action lies against him for false imprisonment.

19. To his credit, Mr. Jairam SC essentially conceded to this court at the hearing of this appeal that the Magistrate had no jurisdiction to do as he did. However, he sought to rely on section 6 of the Act, as providing a total bar to proceedings against the Magistrate.

20. Section 6(1) of the Act provides that no action shall lie against the Magistrate:

    (i) for anything done under any warrant,

    (ii) which has not been followed by a conviction or order, or

    (iii) being a warrant upon an information for an alleged indicatable offence, a summons was issued previously thereto, and served upon such person personally ….and he has not appeared in obedience thereto.

    (I have disaggregated the wording of the section for ease of exposition.)

21. Clearly, part (iii) above of section 6, applies to a case where a summons has been served in indictable proceedings upon a person who does not appear. In such a case, a Magistrate who then issues a warrant for such a person to appear in court is immune from suit.

22. Mr. Jairam SC, has however fashioned a submission based on parts (i) and (ii) of section 6. The argument is that the detention of the respondent was something done under a warrant (i.e. a warrant of commitment) which has not been followed by a conviction or order. It is submitted that it is immaterial that the warrant in this case was not issued by the Magistrate directly from the bench, but by a Justice of the Peace acting in a clerical/ministerial capacity.

23. With the greatest of respect to Senior Counsel, the submission does not bear scrutiny. In the first place this case was not brought against the Magistrate for anything done pursuant to a warrant. There was no warrant in place pursuant to which the Magistrate remanded the respondent to prison. In fact, it was after the Magistrate made an order that the respondent be remanded to prison, that a warrant of commitment came into existence. In other words the warrant of commitment was done "under" the order of the Magistrate. Not vice-versa. In addition, as recognised by the appellant's submissions, the warrant of commitment was issued by the Justice of the Peace, (not the Magistrate) acting in a clerical/ministerial capacity, after the order was made by the Magistrate. The warrant simply authorised the prison to receive and keep the respondent pending the adjournment. It cannot be seriously argued that the Magistrate did anything pursuant to the warrant of commitment, which is protected by section 6. On the undisputed facts of this case, section 6 simply has no application.

24. In the case of **Attorney General of Trinidad & Tobago & Mrs. Lisa Ramsumair-Hinds v. Russell David** (supra), the appellants appealed on the basis, inter alia, that no constitutional right was infringed because the Magistrate acted within her jurisdiction in first issuing a summons to compel the attendance of the respondent when he failed to appear before the court on the date specified in the fixed penalty notice/ticket and only then issuing a warrant for the arrest of the respondent when, the summons having been served upon him, he failed to appear on the date fixed for the return of that summons. It was held that the Magistrate (second named appellant) was not a proper party to the constitutional motion. The appropriate party was the first named appellant, the Attorney General. The Magistrate had issued a warrant which was not followed by any conviction or order. Accordingly, section 6 of the Act applied and no action could have been properly laid against her. While the Magistrate was insulated from personal liability by the Act, the circumstances that gave rise ultimately to the arrest and detention of the respondent, arose as a result of actions of the State through its agents in failing to ensure that the respondent, having paid the fine, was protected from further consequence and liability. The circumstances in that case were capable of giving

rise to a claim directly against the State for constitutional relief. Clearly this case was decided on its peculiar facts, on which section 6 of the Act provided the Magistrate with immunity from suit.

25. Counsel for the Magistrate has also referred us to the case of **Myrtle Crevelle v. The Attorney General of Trinidad & Tobago** Civ. App. No. 45 of 2007, a decision of this court. In **Crevelle**, during the course of Magistrate's Court proceedings, the appellant made certain outbursts directed to the Magistrate and thereafter left the court. The Magistrate having unsuccessfully ordered the appellant to be brought back before him, issued a warrant for the appellant's arrest. The appellant was charged with a breach of section 24 of the Summary Courts Act, Chap. 4:20. The appellant commenced judicial review proceedings challenging the legality of the charge which resulted in an order of the High Court quashing the charge. The appellant thereafter commenced constitutional proceedings seeking declarations for breach of his constitutional right to liberty and monetary compensation. In delivering the judgment, Bereaux JA noted that the Court of Appeal had no doubt that, having regard to the findings of Best J. in the judicial review proceedings, the Magistrate acted without jurisdiction or in excess of jurisdiction within the meaning of section 5 of the Act. Further, that by charging the appellant for contempt of court, the Magistrate exceeded his powers under the Act and his jurisdiction. Bereaux JA also indicated that the Magistrate's warrant was not followed by a conviction or order and therefore no action could have been brought against the Magistrate as section 6 of the Act applied.

26. The facts of **Crevelle** are different from this case. In **Crevelle** the Magistrate had issued a warrant which was not followed by a conviction or order, and so section 6 applied to protect the Magistrate from legal proceedings. This case does not assist the appellant.

27. In **Crevelle** Bereaux JA observed that although the Magistrate was protected by section 6 of the Act, the action against the Attorney General was capable of separate existence as a constitutional motion as the appellant's detention was a contravention by the State, in the exercise of the judicial power of the State, of her

right to liberty. The liability of the State in such circumstances was recognised by Lord Diplock in **Maharaj (No 2) v. AG of Trinidad and Tobago** [1978] 30 WIR 310 at p. 321 where he said:

> *"In the second place, no change is involved in the rule that a judge cannot be made personally liable for what he has done when acting or purporting to act in a judicial capacity. The claim for redress under s 6(1) for what has been done by a judge is a claim against the State for what has been done in the exercise of the judicial power of the State. This is not vicarious liability; it is a liability of the State itself. It is not a liability in tort at all; it is a liability in the public law of the State, not of the judge himself, which has been newly created by s 6(1) and (2) of the Constitution."*

28. It follows that we have found no merit in this appeal. However, we must express our concern for the position in which a Magistrate is held personally liable for his actions while presiding on the bench, in a situation where he has acted without or in excess of jurisdiction but without malice of any kind. The injustice that may arise in such a case, and the need for legislative intervention was recognised by the House of Lords in **Mc C v. Mullan** [1984] 3 All ER 908, in which an action was brought against a resident Magistrate and two lay justices ("the magistrates") claiming for false imprisonment. At the hearing of the appeal before the House a question arose as to the extent to which Magistrates were liable to an action for damages if they did not have jurisdiction or exceeded their jurisdiction, such a cause of action being expressly recognised by section 15 of the **Magistrates' Court Act (Northern Ireland), 1964**. In that case Lord Templeman opined at page 929 –

> *"This appeal demonstrates that the time is ripe for the legislature to reconsider the liability of a magistrate and the rights of a defendant if an unlawful sentence results in imprisonment. There is no liability on a judge of the High Court acting as such and no right for a defendant to damages for an unlawful sentence imposed by a High Court judge; harm may be prevented or cut short by bail and an appeal procedure which results in the sentence being quashed... **On the***

other hand a magistrate is personally liable where an innocent error of law or fact results in an unlawful sentence or imprisonment imposed without jurisdiction*. A magistrate is not personally liable for an innocent error of law or fact which results in an unlawful sentence or imprisonment within jurisdiction."* (emphasis added)

DISPOSITION:

29. The appeal is dismissed. We will hear the parties on costs.

Dated the 30th July, 2018

R. Narine
Justice of Appeal