THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P028 of 2015

Between

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
MRS. LISA RAMSUMAIR-HINDS

Appellants

And

RUSSELL DAVID

Respondent

PANEL: CHIEF JUSTICE IVOR ARCHIE
NOLAN BEREAUX, J.A.
PETER A. RAJKUMAR, J.A.

APPEARANCES
Mr. N. Byam and Ms. T. Toolsie on behalf of the Appellants
Mr. S. Roopnarine instructed by Ms. H. Lochan on behalf of the Respondent

Date Delivered: April 12th 2017

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

Ivor Archie
Chief Justice

I also agree.

Nolan Bereaux
Justice of Appeal

Delivered by Peter Rajkumar J.A.

Background

1. On March 19th 2010 the Respondent was awoken at 2:30 am, and arrested on the basis of a warrant issued by the second named Appellant (the magistrate). The warrant was issued because of non-attendance in response to a summons. That summons had been previously issued by the magistrate to compel his attendance before the Magistrates' Court, for alleged non-payment of a fixed penalty on a notice (ticket) issued for illegal parking.

2. After arrest he was placed in a police vehicle, from where he was transported to the Point Fortin Police Station. He was then brought before the magistrate and eventually released from custody at around 10:30 am, after he produced evidence that he had in fact paid the fixed penalty of $150.00 stipulated on the notice/ ticket within two days of receiving it.

3. The respondent instituted proceedings against the magistrate and the Attorney General for infringement of his constitutional rights. The trial judge held that the magistrate acted without jurisdiction in the issue of the warrant and awarded him $45,000.00 in damages for his consequential detention.

4. The appellants appeal on the basis, inter alia, that no constitutional right was infringed because the magistrate acted within her jurisdiction in:-

i. First issuing a **summons** on October 12th 2009, (a fact not referred in the respondent's affidavit), 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 (the notice having taken effect as a conditional summons once the penalty had not been paid).

ii. Only then issuing a **warrant** for the arrest of the respondent on January 26th 2010 when, the **summons** having been served upon him, he failed to appear on the date fixed for the return of that summons.

Issues

5. a. Whether the magistrate should have been a proper party to this action;

b. If not, whether any claim for redress on a constitutional motion could survive;

c. whether the magistrate acted within jurisdiction in issuing the initial **summons** for the arrest of the claimant;

d. whether the magistrate acted within jurisdiction in issuing the **warrant** for the attendance of the claimant;

e. whether any constitutional right was actually infringed by the arrest and detention of the claimant pursuant to the warrant in the circumstances outlined above.

6. No party took issue with the quantum of damages awarded by the trial Judge. As to the first issue it should be noted that that issue was raised by this Court of its own motion at the hearing although the parties were asked to address on that aspect.

7. As to the third issue c. it should be noted that the appellants contended that they were prejudiced by the raising of this argument before the Trial judge, as the case as framed by the

claimant / respondent initially took issue only with the **warrant for arrest** issued by the magistrate, and made no reference to the summons which preceded it.

Conclusion

8.

a. The magistrate / second named Appellant was not a proper party to this constitutional motion. The appropriate party was the first named Appellant, the Attorney General. The magistrate in this case issued a warrant which was not followed by any conviction or order. Accordingly section 6 of the Magistrate's Protection Act applied and no action could properly lie against her.

b. This however is not the end of the matter. While the magistrate is insulated from personal liability by the Magistrates Protection Act, the circumstances giving rise ultimately to the arrest and detention of the claimant arise as a result of actions of the State through its agents in failing to ensure that the Claimant/Respondent, having paid the fine of $150.00 (specified in the notice as the only penalty for the offence of illegal parking), was protected from further consequence and liability. Notwithstanding the Magistrates Protection Act, and the protection of the magistrate from personal liability, the circumstances in this case are capable of giving rise to a claim directly against the State for constitutional relief.

c. The magistrate, though protected by the Magistrates Protection Act, did not act within jurisdiction under either the Summary Courts Act or the Motor Vehicles and Road Traffic Act (**Enforcement and Administration**) Ch. 48.52 in issuing the initial **summons** to compel the attendance of the claimant before her.

d. It is not correct that the jurisdiction for the issue of the warrant was, or could be, derived from the **summons** issued by the magistrate on October 13th 2009, as even that summons derived its basis from the underlying offence specified in the **notice** of opportunity to pay fixed penalty/ (ticket). That fixed penalty having been paid, liability for that offence was discharged, both (i) by the Motor Vehicles and Road Traffic Act (**Enforcement and Administration**) Ch. 48.52 itself, as well as (ii) by the express representation by the State on the notice / ticket itself as to the effect of payment of that ticket.

e. As the magistrate had no jurisdiction to issue a **summons** to compel the attendance of the claimant, the magistrate, although she could not reasonably be expected to know that the ticket had been paid, nevertheless, did not have jurisdiction either under the **Summary Courts Act Ch. 4:20** or under the **Motor Vehicles and Road Traffic (Enforcement and Administration) Act Ch. 48.52** to issue the **warrant** for the arrest of the claimant.

f. In this case, having paid the fixed penalty of $150.00 provided on the notice of opportunity to pay fixed penalty (ticket) the Respondent was fully entitled to consider that, as stated on the face of the ticket itself, that no proceeding will be taken and any liability to conviction for the offence will be discharged. He was also fully entitled to consider that having paid that penalty of $150.00 he would not be subjected to arrest on a warrant at his home at 2.30 am, or detention in custody until 10.30 am on any basis that could allegedly arise from the issue of this notice / ticket.

g. Therefore in this case the claimant's constitutional rights were infringed when he was arrested pursuant to a **warrant** of arrest issued without such underlying jurisdiction.

This is not a criticism of the magistrate. No one expects the magistrate to have personally checked whether or not that ticket had been paid before she issued the summons. However an agent of the State was clearly at fault for the failure of the system under section 7 of the Motor Vehicles and Road Traffic Act **(Enforcement and Administration)** Ch. 48.52 which was supposed to prevent tickets, which had already been paid, from being listed as being unpaid before a magistrate in the first place.

Disposition and Orders

9. (i) The action is struck out against the second named appellant (magistrate) with no order as to costs.

(ii) The appeal by the first named appellant is dismissed.

(iii) The first named appellant is to pay to the Respondent the costs of this appeal to be assessed by a Registrar in default of agreement as two thirds of the costs assessed in respect of the trial in the High Court.

Analysis and Reasoning

10. The facts were as follows:-

Chronology

July 29th 2009 - The notice (fixed penalty ticket) was issued.

July 31st 2009 - Date of payment of ticket.

October 13th 2009 - Date fixed on ticket to appear before Magistrate's Court if penalty not paid.

October 13th 2009 - Date of issue of summons by magistrate .The summons specifically refers to the complaint made before the Magistrate that on 29th July 2009, Motor Vehicle PBD 6654 was parked in an unauthorized zone.

January 25th 2010 (returnable date of summons) - magistrate issues warrant of arrest after being satisfied that the summons had been personally served on November 23rd 2009 and required the respondent to answer the complaint of parking in an unauthorized zone on July 29th 2009.

March 19th 2010 – respondent arrested at home at 2.30 am. Brought before magistrate and released at 10.30 am.

Issue

Whether the Magistrate should have been a party to this action

Statutory provisions

11. Section 5 and 6 of the **Magistrate's Protection Act Chap. 6:03** provide as follows: - (all emphasis added)

> 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.*

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.*

12. In **Myrtle Crevelle v The Attorney General Civ. App No. 45 of 2007 (Crevelle)** these provisions were considered and applied by the Honourable Justice of Appeal Bereaux. It is useful to set out the relevant paragraphs as it is a decision of this Court with many parallels to the instant case.

13. In that case, as in the instant case, sections 5 and 6 of the Magistrates Protection Act required consideration.

i. In that case, as in the instant case s. 5 of that Act required analysis.
ii. In that case, as in the instant case s. 6 of that Act required consideration as the warrant issued in each case was not followed by a conviction or order.
iii. In that case, as in the instant case, the effect of lack of jurisdiction, notwithstanding the application of that Act, on a further claim to Constitutional redress, also required analysis.

14. Paragraphs 20, 21, 30 - 33 inclusive are set out hereunder - (all emphasis added):-

The Magistrates Protection Act

[20] The appellant would thus ordinarily have been entitled to pursue his common law remedies in tort for the false imprisonment and malicious prosecution. However, the effect of the Magistrates Protection Act, Chap. 6:03 (the MPA) which governs the liability of magistrates in the exercise of their official function, is to prohibit the appellant from taking any action against the magistrate. The relevant provisions are sections 3, 4, 5 & 6. They provide as follows:

(3)….

(4)…

(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.

(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 know place of abode, and he has not appeared in obedience thereto."

[21] *The Act, as its name suggests, is intended to protect Magistrates and justices of the peace from actions brought against them in respect of actions done in the course of their duty. Its provisions are no doubt based on the Justices Protection Act 1848, in England said by Ormond J to have been "the culmination of a number of Acts designed to protect justices from civil litigation arising out of their functions as justices which, as Blackstone observed, was a serious detriment to recruitment", see* ***R v Manchester City Magistrate's Court, ex parte Davies*** *[1989] 1 QB 631, 648. As to the rationale for such protection, Lord Denning in* ***Sirros v Moore*** *[1976] QB 118, 136, observed that:*

"Each should be protected from liability to damages when he is acting judicially. Each should be able to do his work in complete independence and free from fear. He should not have to turn the pages of his books with trembling fingers, asking himself: If I do this, shall I be liable in damages."

(Justice Bereaux then proceeded to consider the issue of jurisdiction).

[30]……. I entertain 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 MPA****. That he had jurisdiction to charge the appellant under section 24 of the Act is without question but in exercising that jurisdiction he was required to confine himself within the parameters of section 24.* ***As a creature of statute he must act within his powers as set out in the Act****. By charging the appellant for "contempt of court", he exceeded his powers under the Act and his "jurisdiction" and* ***fell within the third category*** *as propounded by Neil L.J. in*

Manchester City Magistrates ex p. Davies, since the charge had no proper foundation in law.

[31] The Magistrate, having wrongly charged the appellant and having issued a warrant for his arrest as a result of the charge, would be liable for all the consequences which naturally flow from those acts. The fact that the appellant's detention was a consequence of the magistrate's act, would ordinarily have brought him under the first limb of section 5(1) of the Act as I have set it out in paragraph 23 above. However, ***the appellant was detained pursuant to the issue of a warrant of arrest by the Magistrate, which brings this case within section 6 of the MPA. Because there was no conviction or order which resulted from the charge, the Magistrate is protected from civil liability by section 6****.*

[32] ***Under section 6, anything done under the authority of a warrant issued by a Magistrate is not actionable against the Magistrate, if there were no resulting conviction or order. Section 6 contemplates, ordinarily, a situation in which a person appears in Court on a warrant issued by a Magistrate and the matter which is the subject of the warrant is resolved in his favour with the result that there is no "conviction or order" made against him.*** *"Order", in both sections 5 and 6 thus refers to a final order made after a substantive hearing of the charge or matter before the magistrate.*

[33] In this case the appellant ***was detained by virtue of the warrant*** *of the Magistrate but* ***there was no conviction or order*** *because the charge was quashed before a hearing*

was conducted by the Magistrate. ***The detention thus falls within section 6 as being something "done under any warrant which has not been followed by a conviction or order".*** *While this does not fit classically within the contemplation of section 6, the wording of section 6 is broad enough to bring this case within its provisions. The fact is that there has been no "conviction or order" and the effect is to protect the Magistrate from any private law action.*

Similarly in the instant case the magistrate's warrant was not followed by a conviction or order and therefore no action can be brought against the magistrate as s. 6 of the **Magistrate's Protection Act** would apply.

Whether any claim for redress on a constitutional motion could survive

15. In **Crevelle** it was further held in effect that, notwithstanding that the magistrate was protected by the **Magistrate's Protection Act** and in particular section 6, the action against the Attorney General was **capable of separate existence as a constitutional motion** as her detention was a contravention by the State, in the exercise of the judicial power of the State, of her right to liberty. This was because:-

a. the magistrate had, (as in the instant case), acted in excess of jurisdiction;

b. there could be no alternative remedy in tort against the magistrate (who was in that case, (as in the instant case), protected from an action against him because his warrant was not followed by a conviction or order).

c. there was **no alternative remedy of appeal** against imprisonment pursuant to the issue of the warrant where, (as in the instant case), the appellant was **never convicted of an offence**.

16. The reasoning of the Honourable Justice of Appeal Bereaux on this issue in **Myrtle Crevelle v The Attorney General Civ. App. No. 45 of 2007** was set out at paragraph 7 et seq. of his judgment (all emphasis added) (His further reasoning is set out in the footnote below[1]).

[1] [11] The Judge applied the decision of the Privy Council in Maharaj v The Attorney General of Trinidad & Tobago (No. 2) (1978) 30 WIR 310, as later explained by the Privy Council in Independent Publishing Co. Ltd & Others v The Attorney General of Trinidad and Tobago [2004] UKPC 26, to the effect that an error of law which can be corrected on appeal, does not entitle the person wrongly convicted by that error, to constitutional relief.

[12] The law as set out in both decisions, requires examination but ultimately, is not relevant to this appeal. In Maharaj v A.G. of T&T (No.2) the appellant, an attorney at law, had been committed to prison for seven days for contempt of Court. The order for committal was subsequently held to have been improperly made (See Maharaj v. A.G. (No.1) (1976) 29 W.I.R.318) because "in charging him with contempt, the judge did not make plain to him the particulars or the specific nature of the contempt with which he was being charged". At that date there was no right of appeal to the Trinidad and Tobago Court of Appeal against such an order but an appeal lay directly to the Privy Council by way of special leave. The appellant moved the Privy Council for special leave and succeeded in the appeal. However, by the time the appeal was heard, he had already served the sentence. He then applied for monetary compensation under section 6 of the 1962 Constitution (section 14 of the present Constitution) claiming that he had been deprived of his liberty without due process.

[13] The claim in Maharaj No. 2 was upheld by the Privy Council. Lord Diplock, delivering the judgment of the Board, held that the committal order of the Judge was made by him in the exercise of the judicial powers of the State and that the subsequent arrest and detention of the appellant in that case was effected by the executive arm of the State. As such, his detention was a contravention by the State, of his right to liberty.

[14] Lord Diplock had to consider (in light of a strong dissent by Lord Hailsham of St. Maryleborne) whether this finding could undermine the principle that a Judge cannot be made personally liable in Court proceedings for an act done in the exercise of his judicial functions. In answering that question he said at page 320:
"It has been urged on their Lordships (on behalf of the Attorney General) that so to decide would be to subvert the long - established rule of public policy that a Judge cannot be made personally liable in Court proceedings for anything done by him in the exercise (or purported exercise) of his judicial functions. It was this consideration which weighed heavily with Sir Isaac Hyatali CJ and Corbin JA in reaching their conclusion that the appellant's claim for redress should fail. Their Lordships, however, think that these fears are exaggerated. In the first place, no human right of (sic) fundamental freedom recognized by Chapter I 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. When 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 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. In the third place, even a failure by a Judge to observe one of the fundamental rules of natural justice does not bring the case within s 6 unless it has resulted, is resulting or is likely to result, in a person being deprived of life, liberty, security of the person or enjoyment of property. It is only in the case of imprisonment or corporal punishment undergone before an appeal can be heard that the consequences of the judgment or order cannot be put right on an appeal to an appellant court."

Justice of Appeal Bereaux continued:-
[15] In Independent Publishing Co Ltd and others v The AG of T&T the scope of
Maharaj No. 2 was explained. The appellants in that case included two journalists who were convicted of contempt of Court by a trial judge during a criminal trial. One was fined and the other, Mr. Ali, was immediately committed to prison for fourteen days. He appealed against his conviction some three days later and one day later was released on bail by the Court of Appeal, having spent a total of four days in jail. He sought redress under section 14(1) of the Constitution seeking redress alleging, inter alia, that he had been deprived of his liberty without due process of law.

[16] The Privy Council held that in deciding whether an individual's right to liberty had been violated, it was the legal system as a whole which must be looked at, not merely one part of it. Since Mr. Ali had been able to secure his release on bail pending his appeal against his conviction for contempt, his position was essentially no different from that of any person convicted of an offence. Since any shortcomings in the first hearing could be made good on the appeal and by the grant of bail, the system as a whole was fair and accordingly, Mr. Ali had enjoyed the benefit of due process.

[17] Lord Brown of Eaton – under – Heywood, delivering the judgment of the Privy Council, considered Lord Diplock's dictum to which I have just referred, as well as the dissenting judgment of Lord Hailsham of St. Maryleborne and said:

[7] *The trial judge upheld Mr. Byam's preliminary objection that the motion was an abuse of process. He held as follows:*

(a) The incarceration of the appellant, even if it were in breach of the law, was the result of an error of law which was liable to correction on appeal (as provided for by sections 26 and 128 of the Act).

(b) In doing so, the full protection of the law was available to the claimant for correcting such errors in the judicial process (per Maharaj v A.G (No.2) 1979 A.C. 385 at 399).

(c) 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.

(d) There were available to the claimant, quite apart from his right to challenge his incarceration on appeal, remedies at common law for wrongful arrest, false imprisonment and malicious prosecution to which he could have resorted. As a result, the appellant's constitutional motion was dismissed as being an abuse of process.

[10] Ground (d) can be discounted since the issues in this appeal are all points of law. Ground (b), even though meritorious, does not ultimately fall to be considered because,

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"Lord Diplock's judgment has been widely understood to allow for constitutional redress, including the payment of compensation, to anyone whose conviction (a) resulted from a procedural error amounting to a failure to observe one of the fundamental rules of natural justice, and (b) resulted in his losing his liberty before an appeal could be heard. That, however, is not their Lordships' view of the effect of the decision. Of critical importance to its true understanding is that Mr. Maharaj had no right of appeal to the Court of Appeal against his committal and equally, therefore, no right to apply for bail pending such an appeal. In deciding whether someone's section 4(a) "right not to be deprived (of their liberty) except by due process of law" has been violated, it is the legal system as a whole which must be looked at, not merely one part of it. The fundamental human right, as Lord Diplock said, is to "a legal system… that is fair". Where, as in Mr. Maharaj's case, there was no avenue of redress (save only an appeal by special leave direct to the Privy Council) from a manifestly unfair committal to prison, then, despite Lord Hailsham's misgivings on the point, one can understand why the legal system should be characterized as unfair. Where, however, as in the present case, Mr. Ali was able to secure his release on bail within four days of his committal – indeed, within only one day of his appeal to the Court of Appeal – their Lordships would hold the legal system as a whole to be a fair one. Once someone committed to prison for contempt of court could appeal in Trinidad and Tobago to the Court of Appeal, and meantime apply for release on bail, his position became essentially no different from that of a person convicted of any other offence. Convicted persons cannot in the ordinary way, even if ultimately successful on appeal, seek constitutional relief in respect of their time in prison. The authorities are clear on the point."

[18] The facts of this case are distinguishable from those of Maharaj No. 2 and Independent Publishing. In this case, the appellant was never convicted of an offence. As such, the analogy drawn by Lord Diplock and Lord Brown, in respect of a convicted person who is vindicated on appeal but who loses his liberty through a fair but fallible legal process, cannot strictly be made here. The matter never proceeded to conviction. The appellant's imprisonment was consequent upon the issue of a warrant of arrest by the Magistrate.

as I have found in this appeal, the appellant did not have a parallel remedy. As to ground (a), the finding of the trial judge was to the effect that the appellant had a right of appeal against his imprisonment, the imposition of which was an error of law liable to correction in a successful appeal. I consider that the Judge was wrong in his finding because the appellant was ***never convicted*** *of an offence and sentenced to a term of imprisonment from which lay a right of appeal. The appellant's imprisonment was consequent upon his* ***arrest by warrant issued by the Magistrate****. There was* ***no right of appeal from such an imprisonment****. At best, the appellant would have had a cause of action in tort. But as will be seen,* ***no such cause of action existed by virtue of the Magistrates Protection Act, Chap. 6:03 (the MPA).***

17. The Honourable Bereaux J.A. dismissed the argument that an alternative remedy existed on the basis that the Magistrates Protection Act protected the magistrate in that case from personal liability where his warrant was not followed by a conviction or order as discussed above. Therefore there was no alternative remedy such as to preclude constitutional redress.

18. It was contended that an alternative remedy in the instant case was for the applicant to attend on the returnable date of the summons and reveal that he had paid the ticket. Additionally he could have applied before the Magistrate to set aside the warrant at any time. **At paragraphs 8, 9, and 21 of submissions** of the appellant before the trial judge it was submitted that:-

"*It is irrelevant that the offence was discharged by the payment of the fixed penalty. The case of* ***Sammy-Joe v GPO Mount Pleasant Officer and Another*** ***[1966] 3 All ER 924*** *is instructive. In determining whether a magistrate who had issued a summons alleging*

arrears of maintenance was required to investigate the facts on which the complaint was based, Mr. Justice Pennycuick held at page 929D:

'All that Mr. Russell (magistrate) did was to issue the summons. That is merely a document which brings the proceedings into being. It is clearly not the duty of the magistrate who issue a summons to make any inquiry on his own into the facts on which the summons is based.' (Defendants' emphasis).

Mr. Justice Collins in ***R v Clerk to the Bradford Justices ex parte Sykes and Shoesmith (1999) Crim LR 748****, stated as follows:*

'I am wholly satisfied that there is no obligation upon a magistrate or clerk to make any such inquiries. ***The protection for an individual against whom a summons is issued is the right to apply to the justices to dismiss it or to stay it on the ground that it was an abuse of process to have it issued at all. It is quite unnecessary, in my judgment, to provide that there should be, at an earlier stage, an obligation to investigate before the summons is issued.'***

19. *In* ***ex parte Sykes and Shoesmith*** *(above), Mr. Justice Collins adopted the dicta of Lord Goddard, CJ in* ***R v Wilson ex parte Battersea Borough Council*** ***[1948] 1 KB 43*** *at 46-47 and stated:*

'A summons is the result of a judicial act. It is the outcome of a ***complaint*** *which has been made to a magistrate, on which a magistrate must bring his judicial mind to bear and decide* ***whether or not on information or complaint*** *before him he is justified in issuing a summons… The result of the service of the summons is that the party is thereby*

called on to appear before a court, and ***on his appearances be may have an order made against him and a penalty inflicted on him.****'*

20. However those arguments ignore the fact that in the instant case the Magistrate had no jurisdiction in the first place to issue the warrant, or the summons.

Jurisdiction

Whether the Magistrate acted within jurisdiction in issuing the initial summons for the arrest of the claimant

Statutory provisions

Motor Vehicles and Road Traffic Act (Enforcement and Administration) Ch. 48:52

21. The jurisdiction to issue a notice, also commonly referred to as a fixed penalty ticket, is derived from Motor Vehicles and Road Traffic (Enforcement and Administration) Act Ch. 48:52 (all emphasis added)

> **Motor Vehicles and Road Traffic (Enforcement and Administration) Act Chap. 48:52**
>
> ***3.*** *(1) Where a constable has reason to believe that an* ***offence*** *has been or is being committed, it shall be lawful for him to give to the driver a* ***notice charging*** *him with the commission of such offence, and requiring him either* ***to pay the fixed penalty*** *within the time specified in the notice* ***or*** *to appear at the Court specified in the notice on the day and at the hour stated therein to answer* ***the said offence charged****.*
>
> 3 (2) ……..

*(b) A **notice** issued under paragraph (a) shall charge the person liable or presumed to be liable with the commission of the **offence**, and shall **require** him either to **pay** the fixed penalty within the time specified in the notice, **or to appear** at the Court specified in the notice on the day and at the hour stated therein to answer the offence charged.*

3 (5) The notice given or affixed or sent under this section deemed (sic) *to be a complaint within the meaning of section 33 of the Summary Courts Act.*

*3 (7) Notwithstanding any provisions of this Act or any written law to the contrary**, a person** who **pays a fixed penalty** before the expiration of the time specified for the payment thereof, **may** in the prescribed form, **appeal** to the Magistrate in the district in which he paid the fixed penalty in respect of the offence for which he was charged.*

3 (8) Where in an action referred to in subsection (7) the Court decides in favour of the appellant, the amount representing the fixed penalty paid by the appellant shall be refunded to him.

5. (1) *Where a notice has been given under section 3, the driver or the owner of the vehicle, as the case may be, may, subject to subsection (2), pay the fixed penalty in accordance with the notice.*

5 (5) ***Where the fixed penalty is duly paid** in accordance with the notice, **no person shall then be liable to be convicted of the offence in respect of which the notice was given**.*

7. *Proceedings* *in respect of an* ***offence*** *deemed to be instituted by a* ***notice*** *under this Act* ***shall not be listed*** *for hearing in Court unless—*

(a) a period of two months has elapsed from the last day on which the penalty is payable ***and the Clerk has no record that the fixed penalty was paid*** *in accordance with section 5(3); and*

(b) in respect of a notice issued under section 3(2)(a), the Clerk has been furnished by the constable, or the Licensing Authority with such information on the owner of the vehicle as would have been furnished to the Clerk had the notice been issued under section 3(1).

8. *In any* ***proceedings****, a certificate that payment of a fixed penalty was or was not made to the Clerk by a date specified in the certificate shall, if the certificate purports to be signed by the Clerk, be sufficient evidence of the facts stated, unless the contrary is proved.*

22. Section 5(5) of the Act expressly provides that w***here the fixed penalty is duly paid*** *in accordance with the notice* the position is that there shall be no liability ***to be convicted of the offence in respect of which the notice was given,*** and the notice / ticket (in the form provided in the Schedule to that Act itself) provides *"if this amount is paid to the Clerk of the Peace within 14 days from the date of the notice no proceeding will be taken and any liability to conviction for the offence will be discharged*."

23. It was contended in effect that section 3 (7) demonstrates that the Act contemplates that the notice can continue in existence as a complaint, notwithstanding that the penalty has been

paid. Accordingly this residual continuation allegedly supports the view that the Magistrate would have had sufficient basis to treat a ticket, notwithstanding that the penalty thereon had been paid, as a complaint, allowing her jurisdiction to issue first the summons, and then the warrant. This of course ignores the fact that that section i. provides for an exception, and ii. is triggered expressly and solely at the election of the person charged.

24. The fact that there is specific provision for payment under protest does not change the general position that a ticketed person can elect to pay the penalty, and bring the summons to an end, whereupon, upon payment, its life as a conditional summons, and as a complaint, comes to an end.

25. It was also contended that section 8 could mean that the payment of the penalty did not bring the summons to an end, as it purportedly contemplated further proceedings, and that this demonstrates that a notice under the Act potentially has a life that can survive payment of the penalty.

26. This argument is incompatible with the wording of both the Act and the ticket itself which expressly provide otherwise. Further it refers to what can constitute **evidence** in any proceedings as to payment of a fixed penalty. It does **not** provide that the complaint, in respect of which a fixed penalty has been paid within 14 days survives, or that there remains any residual liability to appear and answer that charge before a court.

27. Accordingly there is **nothing that can constitute a complaint before a Magistrate** at that point. This is so regardless of any administrative error which results in the fact of payment not being recorded, and which results thereby in the continuation of the ticket as a conditional summons before the magistrate.

28. This is not the fault of the magistrate, as it is accepted that it would be administratively unworkable for a magistrate to herself determine whether a ticket which has come before her as a summons as a result of alleged non-payment, was actually unpaid. However the belief of a Magistrate that he has jurisdiction does not create such jurisdiction.

29. However a magistrate in such circumstances who issues a summons or a warrant which is not followed by a conviction or order, as in this case, is entitled to rely on the Magistrate's Protection Act for protection against personal liability.

Whether the Magistrate acted within jurisdiction in issuing the warrant for the arrest of the claimant

30. The jurisdiction that the magistrate purported to exercise was that conferred by sections **42 and 44** of the Summary Courts Act Ch.4:20 **(**all emphasis added).

> **Summary Courts Act**
>
> ***42.*** *(1) In every case where a* ***complaint*** *is made before a Magistrate or Justice that any person has committed, or is suspected to have committed, any summary offence within the district of such Magistrate or Justice, such Magistrate or Justice* ***may issue his summons*** *directed to such person, stating concisely the substance of such complaint, and*

requiring him to appear *at a certain time, being not less than forty-eight hours after service of such summons, and at a certain place, before the Court to answer the said complaint, and to be further dealt with according to law.*

44. *If the defendant does not appear before the Court at the time and place mentioned in the summons, then, after proof upon oath, to the satisfaction of the Court, that the summons was duly served or that the defendant wilfully avoids service, the Court may, in its discretion, either—*

(a) unless the written law on which the complaint is founded otherwise directs, proceed ex parte to the hearing of the complaint, and adjudicate thereon as fully and effectually as if the defendant had personally appeared before it in obedience to the summons;

(b) adjourn such hearing to some future day; or

(c) upon oath being made by or on behalf of the complainant, substantiating the matter of the complaint to the satisfaction of the Court, issue a ***warrant*** *to apprehend the person so summoned or avoiding service, and to bring him before the Court to answer the said* ***complaint****, and to be further dealt with according to law.*

31. It was argued on behalf of the State that the case that they were asked to meet before the trial Judge was in relation to the warrant, and not in relation to the issue by the magistrate of the summons.

32. It was not clarified however how the case would have been argued differently, or how prejudice was occasioned by that difference, especially given that in the case of the issue of **both**

the warrant and the summons, the **jurisdiction** of the magistrate to issue them was in issue in respect of each. It could not be an answer to the question "*what was the jurisdiction to issue the* ***warrant***" to contend that this jurisdiction emanated from the non attendance at the returnable date for the **summons**. That simply leads logically, necessarily, and inexorably to the issue of the **jurisdiction to issue that summons**.

33. It was contended that:-

a. the jurisdiction to issue that summons emanated from the **complaint** before the magistrate,

b. that that complaint was in the form of the notice (ticket), which took effect as a returnable summons if the penalty stipulated therein were not paid within 14 days, and

c. that as the magistrate could not be expected to personally determine the validity of every, or even any, complaint before her, she was fully entitled to treat the apparently unpaid ticket as a subsisting complaint, and

d. the magistrate was therefore entitled to ground her jurisdiction to treat the apparently unpaid ticket as a subsisting complaint,

    i. to issue the summons in the first instance, and

    ii. to thereafter, for non attendance thereto, to issue the warrant of arrest for its enforcement.

34. However, once the penalty stipulated in the notice has been paid within the time specified therein, there is nothing that can constitute a **complaint** before a Magistrate at that point, so as to ground jurisdiction to issue even the initial summons, far less the subsequent warrant.

Whether any constitutional right was infringed by the arrest and detention of the claimant pursuant to the warrant in the circumstances outlined above

35. In **Crevelle** as set out above a magistrate issued a warrant in respect of alleged contempt of court which was found to be without jurisdiction. It was held that:-

a. There was, (as in the instant case), no effective appeal for the reasons earlier set out therein.

b. The magistrate was protected from personal liability on any action in tort for damages for false imprisonment as section 6 of the Magistrate's Protection Act specifically precluded action against a magistrate in respect of a warrant which had not been followed by a conviction or order. That was the case there as well as in the instant case.

c. That as there were no effective alternative remedies available to the Claimant in that case his motion for constitutional relief should not have been struck out as constituting an abuse of process.

d. That notwithstanding that the claimant was entitled to a system of justice that was fair, not infallible, that did not preclude him from seeking constitutional relief as the situation fell within one of the exceptional categories of case adverted to in ***Maharaj v The Attorney General of Trinidad & Tobago (No. 2)*** *(1978) 30 WIR 310.*

e. The subsequent Privy Council case of the **Independent** was distinguishable as in that case the claimant had a **right of appeal**, and a right to apply for bail, which he exercised,

and the result of which demonstrated that he had access to a system of justice which was **fair**.

36. We note the appellant's argument that, given that the claimant could have attended on the returnable date of the summons, and that he had demonstrated no good reason for non attendance, nor did he dispute in his affidavit that he had been served with it, the system of justice was fair in relation to him, providing, as it did, the opportunity for him to correct any misapprehensions about whether the penalty on the ticket had been paid or not.

37. This argument side steps however:-

a. the fundamental issue of lack of jurisdiction to issue the summons, and then the warrant, once the penalty provided for the offence had been paid, as it indisputably was, and,

b. the fundamental fact that the claimant, as in **Crevelle** in similar circumstances, had no right of appeal against his detention under the warrant until he appeared before the magistrate.

38. The contention in effect that, in order to avoid the result in this case of being arrested and detained in respect of a paid ticket, the claimant had a duty to attend before a magistrate on a **summons**, notwithstanding:-

(i) that the **summons** was issued in respect of an offence for which **the Act itself provided there would be no liability to conviction**, and

(ii) in respect of which the notice / (ticket**) itself represented that *no proceeding will be taken and any liability to conviction for the offence will be discharged* ,**

must therefore be rejected.

39. The argument that the magistrate somehow had a separate jurisdiction by virtue of the Summary Courts Act to issue a summons in those circumstances ignores the fact that section 5(5) the Motor Vehicle and Road Traffic (**Enforcement and Administration**) Act, Ch. 48.52 specifically provides that no liability to conviction of the offence in respect of which the notice was given exists, once that person has paid the fixed penalty in accordance with the notice.

40. The magistrate could have no free standing jurisdiction, separate from jurisdiction conferred by statute, to issue a summons to someone who could not, by then, even be considered to be accused of any offence. While the notice takes effect as a summons to attend court, it ceases to have effect as such summons once the fixed penalty specified in the notice has been paid within 14 days from the date of the notice as it provides and represents that *any liability to conviction for the offence will be discharged*.

41. The language on the ticket itself, although not exactly mirroring the language in the Motor Vehicles and Road Traffic (**Enforcement and Administration**) Act Chapter 48.52 Section 5 (5), is in effect no different from that Act. It is even arguable that the language on the ticket itself is capable of constituting a representation by the State as to the lack of further consequences once the penalty was paid.

42. The ticket having been paid, any liability thereunder was discharged. There could then be no underlying offence which was capable of being the basis of any sanction that could be imposed by a Court. The claimant had satisfied any penalty that was capable of being enforced upon him as a result of his having parked illegally.

43. It was the duty of the State to ensure that such procedural mechanisms under section 7 of the Motor Vehicles and Road Traffic (Enforcement and Administration) Act were in place to prevent him from being subject to any further sanction, including arrest and detention.

44. Accordingly the magistrate could have no separate jurisdiction to compel attendance by the issue of a summons before the Court, even to ascertain whether the ticket had been paid. It necessarily follows that the magistrate could have no jurisdiction emanating from such a **summons**, to further issue a **warrant** for apprehension of the claimant for non attendance in respect of such a summons.

45. A magistrate derives jurisdiction from statute. In this case it cannot be contended that the magistrate's jurisdiction to issue the summons for the appearance of the claimant was ultimately derived from the notice / ticket. Accordingly it cannot therefore be argued that the jurisdiction to issue the warrant was derived ultimately from the claimant's non-attendance in response to the summons.

46. The authority of **Isaacs v Robertson** [1985] 1 AC 97, to the effect that an order of a Court of unlimited jurisdiction is valid and binding until set aside is of no assistance to the appellant as the Magistrate's Court is clearly not a Court of unlimited jurisdiction .

47. Similarly the authority of **Hadkinson v Hadkinson** [1952] 2 All E.R. 567, in particular at 569 C, to the effect that an order by a court of competent jurisdiction must be obeyed unless or until discharged, does not assist the appellant, as a Court **without jurisdiction**, as in this case, cannot be considered a Court of competent jurisdiction.

Conclusion

48.

a. The magistrate / second named Appellant was not a proper party to this constitutional motion. The appropriate party was the first named Appellant, the Attorney General. The magistrate in this case issued a warrant which was not followed by any conviction or order. Accordingly section 6 of the Magistrate's Protection Act applied and no action could properly lie against her.

b. This however is not the end of the matter. While the magistrate is insulated from personal liability by the Magistrates Protection Act, the circumstances giving rise ultimately to the arrest and detention of the claimant arise as a result of actions of the State through its agents in failing to ensure that the Claimant/Respondent, having paid the fine of $150.00 (specified in the notice as the only penalty for the offence of illegal parking), was protected from further consequence and liability. Notwithstanding the Magistrates Protection Act, and the protection of the magistrate from personal liability, the

circumstances in this case are capable of giving rise to a claim directly against the State for constitutional relief.

c. The magistrate, though protected by the Magistrates Protection Act, did not act within jurisdiction under either the Summary Courts Act or the Motor Vehicles and Road Traffic (**Enforcement and Administration**) Act Ch. 48.52 in issuing the initial **summons** to compel the attendance of the claimant before her.

d. It is not correct that the jurisdiction for the issue of the warrant was, or could be, derived from the **summons** issued by the magistrate on October 13th 2009, as even that summons derived its basis from the underlying offence specified in the **notice** of opportunity to pay fixed penalty/ (ticket). That fixed penalty having been paid, liability for that offence was discharged, both (i) by the Motor Vehicles and Road Traffic (**Enforcement and Administration**) Act Ch. 48.52 itself, as well as (ii) by the express representation by the State on the notice / ticket itself as to the effect of payment of that ticket.

e. As the magistrate had no jurisdiction to issue a **summons** to compel the attendance of the claimant, the magistrate, although she could not reasonably be expected to know that the ticket had been paid, nevertheless, did not have jurisdiction either under the **Summary Courts Act** Ch. 4.20 or under the Motor Vehicles and Road Traffic **(Enforcement and Administration) Act** Ch. 48.52 to issue the **warrant** for the arrest of the claimant.

f. In this case, having paid the fixed penalty of $150.00 provided on the notice of opportunity to pay fixed penalty (ticket) the Respondent was fully entitled to consider that, as stated on the face of the ticket itself, that no proceeding will be taken and any liability to conviction for the offence will be discharged. He was also fully entitled to consider that having paid that penalty of $150.00 he would not be subjected to arrest on a

warrant at his home at 2.30 am, or detention in custody until 10.30am on any basis that could allegedly arise from the issue of this notice / ticket.

g. Therefore in this case the claimant's constitutional rights were infringed when he was arrested pursuant to a **warrant** of arrest issued without such underlying jurisdiction. This is not a criticism of the magistrate. No one expects the magistrate to have personally checked whether or not that ticket had been paid before she issued the summons. However an agent of the State was clearly at fault for the failure of the system under section 7 of the Motor Vehicles and Road Traffic **(Enforcement and Administration) Act** Ch. 48.52 which was supposed to prevent tickets, which had already been paid, from being listed as being unpaid before a Magistrate in the first place.

Disposition and Orders

49. (i) The action is struck out against the second named appellant (magistrate) with no order as to costs.

(ii) The appeal by the first named appellant is dismissed.

(iii) The first named appellant is to pay to the Respondent the costs of this appeal to be assessed by a Registrar in default of agreement as two thirds of the costs assessed in respect of the trial in the High Court.

12th April 2017

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Peter A. Rajkumar

Justice of Appeal