THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Mag. App. No. S 046 of 2017

BETWEEN

ANDERSON CORNEAL PC NO. 15629

Appellant

AND

BALRAJ BHAGWANDEEN

Respondent

Panel:

A. Yorke-Soo Hon, J.A.

M. Mohammed, J.A.

Appearances:

Mrs. A. Teelucksingh-Ramoutar and Mr. N. Pilgrim appeared on behalf of the Appellant

Mr. S. Teekasingh appeared on behalf of the Respondent.

Date of Delivery: November 27, 2018.

JUDGMENT

Delivered by M. Mohammed, J.A.

INTRODUCTION

[1] On May 27, 2013, a complaint was laid by the appellant, PC Corneal, against the respondent, Balraj Bhagwandeen. The complaint alleged that on November 25, 2012, at the intersection of Union Road and Church Street in Marabella, in the county of Victoria, the appellant drove motor vehicle registration number PCL 9793 without due care and attention, contrary to **section 72 of the Motor Vehicles and Road Traffic (Amendment) Act Chapter 48:50**.

[2] At the first hearing of the matter, an objection to the proceedings was taken by counsel for the respondent, who contended that the complaint was a nullity, it having been laid out of time. Counsel for the respondent placed heavy reliance on the decision in **Kamal Samdath Ramsarran v Romiel Rush P.C. No. 7826 and the Attorney General of Trinidad and Tobago**[1]**.** After hearing submissions on both sides, the magistrate upheld the objection and dismissed the complaint.

[3] The appellant has appealed the decision of the magistrate pursuant to **section 132(h) of the Summary Courts Act Chapter 4:20** on the ground that her decision was erroneous in point of law.

THE DECISION IN KAMAL SAMDATH RAMSARRAN V ROMIEL RUSH P.C. NO. 7826 AND THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

[4] In the decision in **Kamal Samdath Ramsarran v Romiel Rush P.C. No. 7826 and the Attorney General of Trinidad and Tobago**, one of the major issues left to be decided by Moosai J. (as he then was), was whether the complaints against the plaintiff were made within the statutory period. The plaintiff was charged with the following offences arising out of a single incident: (i) obstructing an employee of Trinidad and Tobago Electricity Commission [T&TEC] in the execution

[1] H.C.A. No. S-1597/86.

of works authorized by the T&TEC Act Chapter 54:70; (ii) willfully damaging one hot stick valued at $99.17; and having in his possession a weapon, namely a cutlass, intended for the purpose of committing an indictable offence, namely, to wound. The incident was alleged to have occurred on June 15, 1985 and the complaints were laid summarily on December 16, 1985. Moosai J., after considering the relevant legislation, submissions, and case law, found that the six month period within which the charge was to be laid expired on Sunday December 15, 1985. The defendants contended that section 25(4) of the Interpretation Act applied, since the expiration of the period fell on a Sunday. They argued that the complaint could have properly been made on Monday December 16, 1985.

[5] Moosai J. found that the intention of Parliament was to restrict the complaint for a summary offence being made outside of the six month period. He considered **section 2(1) of the Interpretation Act** which provides:

> *2(1) Every provision of this Act extends and applies to every written law passes or made before or after the commencement of this Act, unless a contrary intention appears in this Act of the written law.*

[6] At page 20, Moosai J. said:

> *"There is a contrary intention in the written law as the written law namely, the Interpretation Act, clearly provides that the complaints must be made within six months from the time when the matter of the complaint arose, and not after. In those circumstances the Defendants cannot rely on section 25(4) of the said Act to extend the time from Sunday 15th to Monday 16th. And the evidence is clear, and I take judicial notice of the fact that the complaint could have been made before a Magistrate or a Justice of the Peace on the Sunday i.e. Sunday 15th December, 1985. Again this is a provision which interferes with the liberty of the subject and ought to be construed strictly. I am therefore of the view that there was no basis in law for the making of the complaints on Monday 16th December, 1985 and everything that flowed therefrom was a nullity. It would therefore follow that the Plaintiff had been unlawfully imprisoned from the moment of his arrest and the Defendants would be liable for false imprisonment."*

[7] Moosai J. went on to say at page 10:

> *"… I propose to take judicial notice of the fact that the services of Magistrates and Justices of the Peace are available to police officers on any day of the week, inclusive of Saturdays, Sundays and public holidays."*

THE MAGISTRATE'S REASONS

[8] After hearing submissions on both sides, the magistrate agreed with counsel for the defendant and found that the complaint was laid out of time and was therefore null and void. The magistrate, in her written reasons at pages 136-139 of the Record of Appeal, said:

> *"If the six month period expired on the 25th May, 2013 which was a Saturday, then the question the Court has to consider is whether the statutory six month period should be extended in accordance with Section 25(4) of the Interpretation Act.*
>
> *I agree with the Honourable Justice Moosai's reasoning in the above mentioned case [Kamal Samdath Ramsarran v P.C. No. 7826 Romiel Rush and the Attorney General of Trinidad and Tobago H.C.A. No. S-1597/86], particularly with the finding that the services of a Magistrate and Justice of the Peace are available to Police Officers any day of the week, inclusive of Saturdays, Sundays and public holidays. The Summary Courts Act envisions under section 33(1) "that every proceeding …shall be instituted by a complaint made before a Magistrate of Justice." The Police Officer does not have to wait until the Court House is open if the time for filing expires on a weekend.*
>
> *I also agree with Justice Moosai that Section 33(2) of the Summary Courts Act is specific and a complaint shall not be made after six months and that section 25(4) of the Interpretation [Act] does not apply.*
>
> *Counsel for the State sought to make a distinction between a Court appointed Justice of the Peace and a private Justice of the Peace and suggests that what is required to be done in laying the complaint in this particular matter has to be done by a Court appointed Justice of the Peace. I find that argument to have no merit. Ms. Kanhai for the State submitted that, 'It's not just that the complaint has to be signed by a JP, it has to be laid. It has to be given a number.' That in itself is an absurdity. It is settled practice that matters are laid on weekends and brought to Court on the following working day to be booked into Court. There is a distinction between the ability of a*

Police Officer to attend before a private JP on a weekend to lay a complaint, and that complaint being subsequently booked into the Court. One act is not dependent on the other."

THE APPEAL

GROUND OF APPEAL AND SUBMISSIONS MADE ON BEHALF OF THE APPELLANT

The decision of the Learned Magistrate was erroneous in point of law in that the complaint was validly laid within time.

[9] Counsel for the appellant, Mr. Pilgrim, submitted that under **sections 39(1) and (3) of the Summary Courts Act**, a complaint for a summary offence is laid by making an oral or written allegation before the Clerk of the Peace of the relevant court. The decision in **R v Manchester Stipendiary Magistrate ex parte Hill**[2] was relied on in support of this submission.

[10] Mr. Pilgrim also submitted that although **section 33(1)** speaks generally about civil and criminal matters being instituted by a complaint before a magistrate or justice, that is the last stage of the laying of the complaint, as noted in **ex parte Hill**. The first stage is receipt of the complaint by the Clerk of the Peace or someone he delegates.

[11] Mr. Pilgrim contended that by virtue of section **33(2) of the Summary Courts Act**, the appellant had a substantive right to raise his complaint within six months of its occurrence. Under the computation provided by **section 25 of the Interpretation Act Chapter 3:01**, the deadline arose on Sunday May 26, 2013, a non-working day of the court. Mr. Pilgrim submitted that as a result of this, the appellant was entitled to rely on **section 25(4) of the Interpretation Act** which provides that where the time limit by any law for the doing of anything expires or falls on a Saturday, Sunday or a public holiday, the things may be done on the first following day.

[2] [1983] 1 A.C. 328.

[12] On the question of whether the use of the words "and not after" in **section 33(1) of the Summary Courts Act** excludes the operation of the **Interpretation Act**, Mr. Pilgrim submitted that it did not. In support of this submission, he relied on the decision in **Pritam Kaur v S Russell and Sons Ltd.**[3] and **Nottingham City Council v Calverton Parish Council**[4]. Although those cases concerned civil actions, Mr. Pilgrim submitted that there was no distinction of the operation of the principles in those cases between civil and criminal cases. Mr. Pilgrim also relied on the decision in **Mucelli v Government of the Republic of Albania; Moulai v Deputy Public Prosecutor in Cretril, France**[5], which applied **Pritam Kaur**.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT

[13] Counsel for the respondent, Mr. Teekasingh, submitted that the time specified for the laying of the complaint in the present matter must be six months and not thereafter **as per section 33(2) of the Summary Courts Act**. He submitted that the complaint in question was null and void, it having been laid out of time. In support of this submission, he placed reliance on the decision in **Kamal Samdath Ramsarran v Romiel Rush P.C. No. 7826 and the Attorney General of Trinidad and Tobago**[6].

[14] Mr. Teekasingh relied on the decision in **Gelmini v Moriggia and Another**[7] for the proposition that the calculation of the six month period must start on the day of the alleged occurrence of the offence, which in this case, would have been Sunday, November 25, 2012. Mr. Teekasingh submitted that using that calculation, the limitation period would have ended on Friday May 24, 2013. On that day, the court would have been operational and therefore the complaints could have then been properly laid.

[3] [1973] 1 All ER 617.
[4] [2015] EWHC 503 (Admin).
[5] [2009] 3 All ER 2035.
[6] **Kamal Samdath Ramsarran** (n. 1).
[7] [1913] 1 KB 549.

THE LAW, ANALYSIS AND REASONING

[15] This sole issue for the Court's consideration in this appeal is whether the complaint in question, which concerns a summary offence by virtue of **section 91(4) of the Motor Vehicle and Road Traffic Act**, was validly laid within the requisite statutory time frame.

[16] It is necessary to first set out the relevant governing legislation.

[17] **Section 33 of the Summary Courts Act** sets out the mode for instituting proceedings and the limitation period for the making of a complaint. It provides that:

> ***33.*** *(1) Every proceeding in the Court for the obtaining of an order against any person in respect of a summary offence or for the recovery of a sum by this Act or by any other written law recoverable summarily as a civil debt shall be instituted by a complaint made before a Magistrate or Justice.*
>
> *(2)* ***In every case where no time is specially limited for making a complaint for a summary offence in the Act relating to such offence, the complaint shall be made within six months from the time when the matter of the complaint arose, and not after.*** [emphasis added]

[18] **Section 39 of the Summary Courts Act** sets out form and requisites of the complaint, which are as follows:

> ***39.*** *(1)* ***It shall not be necessary that any complaint shall be in writing, unless it is required to be so by the written law on which it is founded, or by some other written law. However, if a complaint is not made in writing, the Clerk shall reduce it to writing.***
> *(2) Subject to section 45, every complaint may, unless some written law otherwise requires, be made without any oath being made of the truth thereof.*
>
> ***(3) Every such complaint may be made by the complainant in person, or by his Attorney-at-law or by any person authorised in writing in that behalf.***

(4) Every such complaint shall be for one offence only, but such complaint shall not be avoided by describing the offence or any material fact relating thereto in alternative words according to the language of the written law constituting such offence.

(5) The description of any offence in the words of the written law creating the offence, or in similar words, with a specification, so far as may be practicable, of the time and place when and where the offence was committed, shall be sufficient in law. [emphasis added]

[19] **Section 2 of the Summary Courts Act** provides that:

2. *In this Act—*
…
"Clerk" means Clerk of the Peace;
…
"complaint" includes any information or charge relating to a summary offence.

[emphasis added]

[20] In the decision in **Manchester Stipendiary Magistrate ex parte Hill**[8], Lord Roskill at pages 342-343 said:

*"**The information is thus laid before the magistrates' court at the latest when the charge is read in open court, and in practice, often earlier when, no doubt, the clerk to the justices, or his or her subordinate, is informed by the police of the charge which it is proposed to bring against the defendant later that morning.** A complaint under section 51 may legitimately be made unaccompanied by the issue of a summons. It was common ground, as it was in the Divisional Court, that a complaint need not be in writing. It can be and sometimes still is made orally as for example when an aggrieved wife arrives in the office of the clerk to the justices and complains, perhaps vehemently, that her arrears of maintenance have not been paid and that she requires action to be taken to secure payment. This may or may not require a summons in order to secure the attendance of the allegedly defaulting husband.*

[8] **Ex parte Hill** (n. 2).

> *…**The laying of an information before or the making of a complaint to a justice of the peace or the clerk to the justices to my mind means, in reference to a written information or complaint, procuring the delivery of the document to a person authorised to receive it on behalf of the justice of the peace and the clerk to the justices.** The acts of delivery and receipt are ministerial, and I see no reason why the justices of the peace or the clerks to the justices should not delegate to an appropriate subordinate authority to receive the information which the prosecutor desires to deliver. It can sensibly be inferred that any member of the staff in the office of the clerk to the justices authorised to handle incoming post has such authority.*
>
> ***Accordingly, once the information has been received at the office of the clerk to the justices, which today in most cases is likely to be at the magistrates' court house, the information will, in my view, have been laid.** No more is required of the prosecutor to launch the intended criminal proceedings. Similarly with a complaint - once the complaint is received at the office of the clerk to the justices no more is required of the complainant."* [emphasis added]

[21] From the foregoing authority, we observe that a complaint for a summary offence is laid by making an oral or written allegation before the Clerk of the Peace of the relevant court. Where a matter, whether criminal or civil, is instituted in the form of a complaint before a magistrate or justice, that is the last stage of the laying of the complaint, the first being receipt of the complaint by the Clerk of the Peace, as set out in the decision in **ex parte Hill**[9]. In this jurisdiction, the Clerk of the Peace is attached to each of the courts in the thirteen magisterial districts.

[22] **Section 33(2) of the Summary Courts Act** gives a complainant the right to raise his complaint within six months of its occurrence. **Section 25 of the Interpretation Act Chapter 3:01** provides:

> ***25. (1) Where in a written law a period of time is expressed to be reckoned from a particular day or a particular event, that day or the day of event shall not be included in the period.***
>
> *…*

[9] **Ex parte Hill** (n. 2).

(3) Where a period of time is expressed in a written law to end on, or to be reckoned to, a particular event, the whole of the day on which the period is reckoned to begin shall be deemed to be part of the period.

(4) Where the time limit by any law for the doing of anything expires or falls upon a Saturday, Sunday or a public holiday, the time extends to and the things may be done on the first following day that is not a Saturday, Sunday or a public holiday.

…

…

(7) In a written law—

…

…

(c) a reference to a month shall be construed as a reference to a calendar month.

[emphasis added]

[23] Taking into consideration section **25(1) of the Interpretation Act**, the offence in question having alleged to have been committed on November 25, 2012 and that day being excised from the computation of the time period, the deadline for the bringing of the complaint would have been Sunday May 26, 2013. The Court Office clearly being closed on Saturdays and Sundays, the complainant would have been unable to take his complaint to the Clerk of the Peace or his agents. In this regard, we disagree with the submission of Mr. Teekasingh that the calculation of the six month period must start on the day of the alleged occurrence of the offence.

[24] Counsel for the appellant, relying on **section 25(4) of the Interpretation Act** cited above, submitted that as a result of the limitation period expiring on Sunday May 26, 2013, the appellant laid the complaint on the next available day, Monday May 27, 2013.

[25] Flowing from the main issue to be determined in this appeal is whether the wording of **section 33(1) of the Summary Courts Act**, which provides, "*In every case where no time is specially limited for making a complaint for a summary offence in the Act relating to such offence, the complaint shall be made within six months from the time when the matter of the complaint arose, **and not after***", excludes the operation of the **Interpretation Act**.

[26] **Section 2 (1) of the Interpretation Act** provides:

> *"Every provision of this Act extends and applies to every written law passed or made before or after the commencement of this Act, unless a contrary intention appears in this Act or the written law."*

[27] To aid in our determination of the issue, Mr. Pilgrim has very helpfully referred the Court to the decision in **Pritam Kaur v S Russell and Sons Ltd.**[10] That case involved a claim for damages for personal injury based on allegations of negligence and breach of statutory duty. The claim had been brought by the widow of a foundry worker, who had been killed while working for the defendant on the September 5, 1967. The effect of section 2(1) of the Limitation Act 1939 was that the period for bringing proceedings expired at the end of three years from the date on which the cause of action accrued, that is, the September 5, 1970. That day was a Saturday, which meant that the court offices were closed, as they were also on the following day, a Sunday. The claimant's solicitors took the writ to the court office on Monday September 7, 1970. The issue for the determination of the court was whether, in circumstances in which the three-year limitation period stipulated in the Act expired on a date on which the court was closed, the Limitation Act 1939 should be construed so as to extend the period to the first day thereafter on which the court was open. In deciding on this issue, Lord Denning MR at pages 619-620 of the judgment said:

> *"We are asked to decide this preliminary point of law. Was the action commenced within the period of three years allowed by the statute of limitations? or is it statute barred?* ***The Limitation Act 1939, s 2(1), as amended by the Law Reform (Limitation of Actions, etc) Act 1954, says that the action 'shall not be brought after the expiration of three years from the date on which the cause of action accrued'.*** *The Fatal Accidents Act 1846, s 3, as amended by the 1954 Act, says that it 'shall be commenced within three years after the death'. Nothing turns on the difference in wording…*
>
> *…*
>
> *…*

[10] **Pritam Kaur** (n. 3).

The arguments on each side are evenly balanced. The defendants can say: 'The plaintiff has three years in which to bring his action. If the last day is a Saturday or Sunday, or other dies non, he ought not to leave it until the last day. He ought to make sure and issue it the day before when the offices are open.' The defendants can rely [1973] 1 All ER 617 at 620 for this view on the reasoning of Russell LJ in Hodgson v Armstrong ([1967] 1 All ER at 320, [1967] 2 QB at 323, 324) and the cases to which he refers.

The plaintiff can say: 'The statute gives me three years in which I can bring my action. If I go in to the offices on the last day, and find them closed, I ought not to be defeated on that account. I should be allowed to go next day when the offices are open. Otherwise, I should be deprived of the three years which the statute allows me.' *The plaintiff can rely for their view on the reasoning of Sellers LJ in Hodgson v Armstrong ([1967] 1 All ER at 311, 312, [1967] 2 QB at 309, 310), and the cases to which he refers.*

Those arguments are so evenly balanced that we can come down either way. The important thing is to lay down a rule for the future so that people can know how they stand. In laying down a rule, we can look to parallel fields of law to see the rule there. The nearest parallel is the case where a time is prescribed by the rules of court for doing any act. ***The rule prescribed both in the county court and the High Court is this: if the time expires on a Sunday or any other day on which the court office is closed, the act is done in time if it is done on the next day on which the court office is open. I think we should apply a similar rule when the time is prescribed by statute. By so doing, we make the law consistent in itself; and we avoid confusion to practitioners. So I am prepared to hold that, when a time is prescribed by statute for doing any act, and that act can only be done if the court office is open on the day when the time expires, then, if it turns out in any particular case that the day is a Sunday or other dies non, the time is extended until the next day on which the court office is open."*** [emphasis added]

[28] At pages 620-621, Karminski L.J. opined:

*"…**the legislature here gives the widow three years to bring her action from the date of the death of the deceased husband. Through the last two days of the three years happening on days when the court offices were closed, the writ could not be issued. It was in fact issued on the next day when the court offices were opened.***

I do not know why it was left to the very last day of the three years to issue the writ, and I want to say nothing to encourage parties or their solicitors to leave the issue of the writ to the very last day. In the result I agree that the writ was issued in time, and that this appeal should be allowed." [emphasis added]

[29] We are also mindful of what Megarry J. stated at page 623 of the judgment:

"All these difficulties are avoided if there is a general principle such as has been suggested. ***Whether the statute is imperative in form ('shall be commenced within ...') or negative ('shall not be brought after ...'), what Parliament must be contemplating is that the plaintiff shall not be shut out until the statutory period has run.*** *Parliament must also be taken to contemplate that there will be days and short periods during which it will not be possible to issue a writ because under the rules of court the offices of the court will be closed.* ***If, then, the period expires when the offices are closed, is the period in effect to be curtailed by the days of closing, or is it to be extended? The operation of the Statutes of Limitation has sometimes been called an act of peace, in that the statutes prevent long dormant claims being stirred up. An arbitrary period has to be fixed in order to make the Act certain and workable; but in applying that period to cases where the courts are shut on the last day, the policy of the statute seems better effectuated by allowing an extra day or two than by subtracting a day or two.*** *The difference between three years and three years and a day cannot normally make much difference to a defendant; it may be disastrous to a plaintiff…"* [emphasis added]

[30] The decision in **Pritam Kaur**[11] was subsequently applied in the decision in **Mucelli v Government of the Republic of Albania; Moulai v Deputy Public Prosecutor in Cretril, France**[12]. In that case, two appeals were heard together concerning the time limits for notices of appeal under sections 26(4)and 103(9) of the Extradition Act 2003.

[31] In the first appeal, in 1998, the appellant Mucelli, in his absence, was tried and convicted of murder in Albania. He was arrested in the United Kingdom in February, 2007. In June, 2007, after

[11] **Pritam Kaur** (n. 3).
[12] **Mucelli** (n. 5).

his hearing, the district judge sent the case to the Secretary of State for a decision whether Mucelli should be extradited. On July 18, 2007, the Secretary of State ordered his extradition. Notice of appeal was filed at the High Court on July 31, 2007, within the 14 day period prescribed by s 103(9) of the Extradition Act 2003. However, it was not served until August 13, 2007, which was outside the prescribed period. The Divisional Court held that the notice of appeal had to be served, as well as filed, within the fourteen day period, that the court could not extend time for service, and that, although the court had power to dispense with service, it would not do so. Accordingly, the court dismissed his appeal. Mucelli appealed to the House of Lords.

[32] In the second appeal, in October, 2007, the prosecutor in Creteil, France issued a European Arrest Warrant for the arrest and extradition of the respondent Moulai. On March 14, 2008, the district judge ordered his extradition. He appealed to the High Court against the decision and filed a notice of appeal at the High Court at 3.45 p.m. on March 20, 2008. On the same day, the notice was served by fax. The fax transmission was completed a few minutes after 4:00 p.m. The prosecutor contended that service of the notice of appeal was out of time. The Divisional Court determined the point as a preliminary issue and held that s 26(4) of the Act required the notice of appeal to be filed but not served within seven days. If service was required within seven days, then, due to the deemed service provisions of CPR 6.7, the notice had been served a day late but time for service would be extended under CPR 3.1. The prosecutor appealed to the House of Lords.

[33] In **Mucelli**[13], three principal issues arose on the appeals, one of which was, *"what happened if the office of the recipient was closed before the last moment for service."* On this issue, Lord Neuberger of Abbotsbury said at paragraphs 83-84:

> *"[83] Another point which arises is what happens if it is impossible to give notice on, or during the final part of, the last day. For instance, in relation to filing, the Court Office may be closed on the last day because it is Christmas Day or another Bank*

[13] Ibid.

Holiday, and the court office will be closed at some point in the late afternoon on the last day. Equally, the Respondent's office may be closed for the same reasons.
[84] ***Where the requisite recipient's office is closed during the whole of the last day, I consider that the notice will be validly filed or served if it is given at any time during the first succeeding day on which the office is open (ie the next business day). So if the final day for giving a notice of appeal would otherwise be Christmas Day, filing or service can validly be effected on 27 December (unless it is a weekend, in which case it would be the following Monday). This conclusion accords with that reached in Pritam Kaur v S Russell & Sons Ltd [1973] QB 336, [1973] 1 All ER 617, [1973] 2 WLR 147****. As Lord Denning MR said at 349E, "when a time is prescribed by statute for doing any act, and that act can only be done if the court office is open on the day when time expires, then, if it turns out . . . that the day is a Sunday or other dies non, the time is extended until the next day on which the court office is open". I agree, and I can see no reason not to apply the same principle to service on a Respondent in relation to the Respondent's office. The fact that fax transmission can be effected at any time does not cause me to reconsider that conclusion."* [emphasis added]

[34] Upon a review of the foregoing authorities and legislation, in our view, the wording of **section 33(1) of the Summary Courts Act** does not exclude the operation of the **Interpretation Act**. We are mindful that **section 33(1) of the Summary Courts Act** is in negative form. However, as noted by Megarry J. in **Pritam Kaur**[14], Parliament would have intended that a complainant not be precluded from exercising his right to make a complaint until the period prescribed by statue has expired, he having filed the complaint on the next available day that the court would have been operational. Further, the fact that the statute in question is a penal one makes no difference to the application of the principles in **Pritam Kaur**.

[35] We approve of the approach of the UK Court of Appeal in the decision in **Pritam Kaur**, as well as the approach of the UK House of Lords in **Mucelli**[15]. The rationale in those decisions is that, as a matter of construction, a statute which requires something to be done on a day in which the court is shut for business is to be read as if the act were to be done on the first day on which the court office is open after that day. Although **Pritam Kaur** related to civil proceedings, we are of

[14] **Pritam Kaur** (n. 3).
[15] **Mucelli** (n. 5).

the view that there is no distinction in the operation of the principles in that case as between civil and criminal cases.

[36] Moosai J. in **Kamal Samdath Ramsarran v Romiel Rush P.C. No. 7826 and the Attorney General of Trinidad and Tobago**[16] did not have the benefit of the very helpful authorities as we have had in this case. We must respectfully disagree with and disapprove of that decision where Moosai J. found that in relation to **section 33(1) of the Summary Courts Act**, the intention of Parliament was to restrict the complaint for a summary offence being made outside of the six month period and therefore there was no basis in law for the making of the complaints on the next available day that the Court was operational, a Monday, where the limitation period expired on the day before, a Sunday.

DISPOSITION

[37] We have found merit in the sole ground of appeal advanced by the appellant. For the reasons explained above, the appeal is allowed and the order of dismissal of the magistrate is set aside.

RETRIAL

[38] We now turn to the guiding principles on the issue of ordering a retrial.

[39] In the decision of **Reid v R**[17], the Privy Council noted factors which should be considered in deciding whether to retry a case, namely:

(i) The seriousness and prevalence of the offence;
(ii) The expense and length of time involved in a fresh hearing;
(iii) The ordeal suffered by an accused person on trial;
(iv) The length of time that would have elapsed between the offence and the new trial; and
(v) The strength of the case presented by the prosecution.

[16] **Kamal Samdath Ramsarran** (n. 1).
[17] (1978) 27 WIR 254.

[40] It was noted that this list is not exhaustive. It was otherwise held that it is in the interest of justice and the interest of the public that those persons who are guilty of serious crimes should be brought to justice and not escape it merely because of some technical blunder by a judicial officer in the conduct of the case.

[41] On the issue of a retrial, we consider the following:

(a) The offence is not particularly old, having arisen in November, 2012;

(b) The offence is of a relatively serious nature; and

(c) The offence is a prevalent one.

[42] Upon weighing up all of these factors, the balance comes down decisively in favour of ordering a retrial.

[43] A retrial is accordingly ordered before another magistrate.

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A. Yorke-Soo Hon, J.A.

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M. Mohammed, J.A.