THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CA No. S 256/2017

Between

ROY FELIX

Claimant

And

DAVID BROOKS
Also called "MAVADO"

Defendant

PANEL: BEREAUX J.A.
NARINE J.A.
RAJKUMAR J.A.

APPEARANCES:

Mr. Michael Rooplal for the Appellant

No appearance for the Respondent

DATE OF DELIVERY: March 13th 2018

I have read the judgement of Rajkumar JA and I agree.

N. Bereaux

Justice of Appeal

I have read the judgement of Rajkumar JA and I also agree.

R. Narine

Justice of Appeal

JUDGMENT

Delivered by P. Rajkumar J.A.

1. On July 31st 2017 the appellant /claimant applied ex parte for a fugae warrant pursuant to the Absconding Debtors Act Chap: 8.08 (the Act). His application was refused by the Honourable Justice J. Wilson on the basis that the applicant had not satisfied the requirements provided for in the Act for the issue of the warrant.

Issues

2.

i. Whether, once the claimant deposed on affidavit to his **belief** that there was **no defence** to the action, the trial judge had any discretion:-

(a) to consider whether she was satisfied that all the requirements and statutory preconditions of the Act for the issue of such a warrant had been established; or,

(b) to **examine** the matters deposed to in support of the assertion that there was no defence to the action and satisfy herself that there was **in fact** no defence to the action.

ii. Whether, if such a discretion in fact existed, the trial judge properly exercised that discretion in her application of the law to the facts.

Conclusion

3. The trial judge had a discretion, conferred by the Act itself,

i. to ascertain whether the requirements and statutory preconditions to the exercise of the discretion had been satisfied,

ii. to examine the material in support of the application, and

iii. to satisfy herself that the affidavit of the appellant /claimant, deposing to his **belief** that there was no defence to the action, did in fact support that alleged belief.

4. The trial judge could not reasonably be said to have exercised that discretion in a manner that was plainly wrong. In fact her critical analysis of both the facts and law was sound, and she was entitled, after the examination of both that she conducted, to conclude that the draconian discretion to issue a fugae warrant in the circumstances before her should **not** be exercised. In the circumstances the challenge to the exercise of the trial court's discretion not to issue the fugae warrant is without foundation.

Order

5. The appeal is dismissed.

Factual context

6. The appellant / claimant had instituted proceedings against the defendant Mavado, a performer, alleging that the defendant had breached an oral agreement concluded with him in a telephone conversation in the middle of June 2017, to repay on or before July 28th **2017** the sum of US $67,000.00. That sum had originally been advanced to him pursuant to an earlier written agreement on May 5th **2011** for a concert on July 30th 2011 at which he had been unable to perform.

7. It was alleged that on August 1st 2011 a second agreement was entered into between the appellant and the defendant under which the defendant would perform at a concert. This agreement was oral, although it was allegedly acknowledged on several subsequent occasions up to as recently as November 2016.

8. Subsequently, the claimant alleged that during a telephone conversation in the middle of June 2017 the defendant orally agreed to repay to the appellant the sum of US $67,000.00, "*the consideration paid to him by the claimant under the first agreement*"[1], by sending US $20,000.00 by wire transfer prior to July 1st 2017. It was further agreed that the Defendant would repay the balance of US$47,000.00 **prior** to his arrival into Trinidad and Tobago for a subsequent concert on **July 29, 2017**.

9. In fact the defendant's agent sent the sum of US $10,000.00 by wire transfer on June 28th 2017, and on June 29th 2017, when he arrived in Trinidad for the concert, paid US $7000.00 in cash to the appellant/ claimant's agent. However he failed to pay the sum of US $50,000.00 that allegedly remained owing under the oral agreement made in the middle of June 2017, "*within the agreed time frame*", that is, prior to his arrival in Trinidad on July 29th 2017.

The statutory context

10. The Act provides as follows: (all emphasis added)

> ***2.*** *A Judge of the High Court* ***may****, by warrant under his hand, authorise the Marshal to arrest and bring before him or some other Judge of the said Court any person alleged to be indebted and to be about to quit Trinidad and Tobago on the conditions and subject to the procedure set out below. Save as provided in this Act no person shall be arrested for debt on mesne process.*
>
> ***3.*** *Such warrant shall not issue against an infant, nor in respect of* ***any debt less than two hundred and fifty dollars****, nor in respect of* ***any debt that has been due and owing for more than two years previously*** *to the application for such warrant, nor until an action shall have been commenced by the alleged creditor against the debtor for the recovery of such debt by writ specially endorsed as provided by the Rules of the Supreme Court.*

[1] paragraph 11 of the statement of case

> ***4.*** *Such application shall be made only in respect of a debt or liquidated demand for a sum of two hundred and fifty dollars or upwards, and shall be founded on affidavit made by some person who can swear positively thereto, verifying the cause of action* ***and the amount and the date when the amount accrued due****, and* ***stating that in his belief there is no defence to the action,*** *in the same manner in every respect as the facts are stated in an application for judgment in an action for a debt or liquidated demand in which the defendant has appeared to a writ of summons specially endorsed.*
>
> ***5.*** *The intention of the defendant to quit Trinidad and Tobago shall in like manner appear on the same or another affidavit, showing satisfactorily the ground on which the deponent believes, and the date on which, and place for which, the debtor proposes to leave, as far as the same is known to the deponent.*

11. The statute expressly provides that a judge **may** authorise the arrest of the alleged debtor**.** There is no basis therefore for the contention that the trial judge has no discretion to critically examine whether conditions specified in the statute for the exercise of the discretion have been satisfied.

12. The contention by the appellant would result in a trial judge in effect rubber stamping an application for such a warrant simply on the basis of an affidavit verifying the cause of action, the amount and the date that the amount accrued due, together with the self-serving assertion by the claimant that **in his belief** there is no defence to the action.

13. The fact that a discretion is vested in the trial judge by section 2 to issue such a warrant, on the conditions and subject to the procedure "*set out below"*, necessarily means that the trial judge must ascertain compliance with, and satisfaction of, the conditions in the Act, including those in section 4.

14. The contention that there is no statutory discretion vested in the trial judge to issue a fugae warrant finds no support whatever in the language of the statute. In fact, the language of the statute requires the trial judge to critically examine the affidavit evidence to ascertain compliance with the preconditions to the exercise of the discretion that the statute confers. There is nothing novel about this, as in fact it is the same process that a court is expected to follow in relation to the exercise of any statutory discretion.

The reasoning of the trial judge

15. The trial judge held that the following, (in italics), were necessary preconditions to the issue of a warrant.

a. *that the defendant owes a debt to the Claimant;*

   This is reflected in section 2 and section 4 of the Act, save that the debt must be in excess of $250.00.

b. *That proceedings have been instituted for the recovery of the debt* - (This is reflected in section 3 of the Act) *and there is no defence to the action;* - *(*section 4 in fact provides that the creditor claimant must swear positively to **his belief** that there is **no defence** to the action).

c. *The defendant is about to leave the jurisdiction;*

   This is reflected in section 2 and section 5 of the Act.

d. *The failure to arrest the defendant would materially prejudice the claimant's prospects of recovering the debt or enforcing judgement against the defendant;* (this is reflected in section 12 of the Act as a matter that would permit the Judge at a subsequent inter partes hearing to discharge the defendant unconditionally, and even award damages and costs in such a case, if not satisfied that the defendant's absence from Trinidad and

Tobago would materially prejudice the claimant in respect of the recovery of the alleged debt).

e. *The prohibitions of section 3 do not apply.*

These include prohibition against such a warrant being issued for an infant, a debt less than $250.00, a debt with respect to which no claim has been filed, and, importantly, in respect of any debt that has been due and owing for **more than two years** previously to the application for such warrant.

16. The judge's synopsis of the requirements that she considered necessary for a warrant are thus supported by the analysis of the Act. While this would not affect the accuracy of her analysis, or its application to the facts of this matter, some minor qualifications, and clarifications may be added to those conditions as set out and underlined hereinafter.

a. *that the defendant owes a debt to the Claimant* <u>*which*</u> <u>debt must be in excess of $250.00</u>

b. *That proceedings have been instituted for the recovery of the debt ;*

c. <u>That the creditor claimant has sworn positively to his belief that there is no defence to the action, and that the affidavit and other material adduced, (for example the exhibits to the affidavit, the claim form and the statement of case), are sufficient to satisfy the trial court, before the exercise of its judicial discretion, that that belief is supported thereby</u>.

d. *The defendant is about to leave the jurisdiction;*

e. *The failure to arrest the defendant would materially prejudice the claimant's prospects of recovering the debt or enforcing judgement against the defendant ;*

f. *The prohibitions of section 3 do not apply,* <u>including prohibition against such a warrant being issued for an infant, for a debt less than $250.00, for a debt with respect to which</u>

no claim has been filed, or in respect of any debt that has been due and owing for **more than two years** previously to the application for such warrant.

17. The appellant however contends that[2] based on sections 3 - 5 of the Act, in order to obtain the warrant an applicant's application must satisfy the following conditions:-

a. The debt must be for a sum in excess of $250.00;
b. the debt must not be due and owing for more than two years;
c. The applicant must have commenced proceedings against the debtor in respect of the said debt;
d. The application must be founded on an affidavit i. setting out the cause of action, ii. verifying the debt, iii. stating that there is no defence to the action, and iv. stating the basis upon which the deponent believes that the debtor is about to quit the jurisdiction.

18. As to appellant's claimed condition (c) there is no dispute that it has been satisfied.

19. As to condition (b) he avers that the debt owed to the appellant only accrued on July 28th 2017 when the respondent refused to abide by the terms of the third, oral, agreement.

20. As to condition d. he contends that once he has sworn to such an affidavit he has satisfied all the conditions set out in the Act for the grant of a fugae warrant[3]. This amounts in effect to an assertion that the trial judge has no discretion to critically examine the affidavit of the applicant and in particular, to analyse the basis for the alleged belief that there is no defence to the action, (a position mirrored at paragraph 17 e of his written submissions).

[2] paragraph 20 of submissions
[3] Para 25 of the submissions

21. The appellant contends that the trial judge erred in considering whether or not there was a defence to the proceedings as a basis for her decision to refuse the application[4]. He contends that:

> "*the provisions of the Act simply require an **allegation** of indebtedness (section 2) and affidavit evidence whereby the deponent states that in his belief there is no defence to the action (section 4)"*[5]

22. Also in support of this he contends that, as section 8 of the Act gives the court a discretion to allow the alleged debtor to file affidavits in defence to the claim, "*accordingly, the issue of the merits of a defence to the proceedings does not arise at the application stage and ought only to be considered upon the arrest of the debtor*".

23. The appellant contends that "*any query as to the terms of the agreement ought only to be considered if there is a defence to the claim. The act only requires an applicant to verify the cause of action and the amount and date upon which the debt accrued."* (Paragraph 30)

24. Acceptance of these submissions would have startling implications. Anyone who simply **alleged** that a foreign based person, or even a locally based person who was about to travel, owed him money, would run the risk of being arrested at the airport or prior to travel, and incarcerated until he could be brought before a judge, simply on the basis of an affidavit in the appropriate form by a person who **alleges** a debt to him. The trial court would be

[4] paragraph 28 of submissions
[5] ground of appeal e, and paragraph 28 of the appellant's written submissions

compelled to issue the warrant. It would have no discretion to analyse the affidavit placed before it.

Consequences of the issue of a fugae warrant

25. The Act provides by section 6 that if the Judge grants the application for the warrant of arrest the Marshall to whom it is delivered *shall immediately proceed to arrest the person against whom such warrant is granted.*

26. Further, by section 8, the Marshall is empowered to detain the arrested person and convey him in custody to the Judge in Chambers if he is then sitting, *and if not,* shall detain the defendant and on the next day that a Judge so sits bring him before the Judge.

27. The real possibility exists therefore of a defendant being incarcerated overnight, or even longer, on the basis of an ex parte application, based simply on the affidavit of the claimant. It is therefore all the more necessary that a judge analyse critically what the claimant is purporting to depose to on affidavit.

28. Section 8 suggests that the defendant who provides no security for the alleged debt may be committed to prison in default of providing such security, and the Court may adjourn the matter to "*a convenient date*" for, inter alia, the filing of affidavits. If the contentions of the appellant were to be accepted there would be no discretion by the trial court to look beyond the affidavit of the claimant deposing to his belief that there is no defence to the alleged debt. Any such discretion to analyse the basis of that belief would only arise later when his affidavit in response can be considered, and his opportunity to have his side of the case presented. It would

necessarily mean that an alleged debtor, arrested on the ex parte application of the claimant, could remain incarcerated until the adjourned "convenient date".

29. It matters little that in the event of the debt not having been admitted or confessed, the maximum term of imprisonment in default of providing security shall not exceed 3 months at the Port of Spain Prison (section 14 of the Act). It in fact confirms the real possibility of a debtor arrested pursuant to such a warrant on the ex parte application of a claimant, being forced to remain incarcerated at the Port of Spain Prison until trial.

30. To therefore contend that the Judge has no discretion to ascertain, on the material before the court at the ex parte stage, whether the threshold has been attained, means that the Judge has no choice but to subject an alleged debtor, who would have had no opportunity to be heard, to the possibility of such a consequence.

31. The trial Judge was plainly correct to reject such an interpretation of the Act, and such a fetter on her discretion to interpret such draconian legislation. Further, it should be emphatically recorded that if, as suggested, this is an interpretation that has been advanced before and applied by trial courts in the past, then it is erroneous and extreme.

32. Section 12 of the Act clearly permits the Judge to discharge the defendant when he appears before him, (a) if he is satisfied that the defendant is not about to quit Trinidad and Tobago, or (b) if he is satisfied that his absence from Trinidad and Tobago will not materially prejudice the plaintiff in respect of the recovery of the debt, or (c) if not satisfied that the defendant owes the plaintiff a sum of $250.00 or over.

33. The fact that the Judge must be satisfied as to these matters suggests that the judge makes an inquiry into those matters at that stage. This cannot mean however that the Judge may not, even at the ex parte stage, on the material before the court at that stage, critically examine the material adduced, to ascertain whether the threshold requirements, which are preconditions to the exercise of the discretion to issue the warrant, exist. For example, if it is clear from the ex parte affidavit itself that:

i. the defendant has substantial assets, in excess of the alleged debt, within the jurisdiction, such that his absence from the jurisdiction will not materially prejudice the claimant in respect of the recovery of the alleged debt, or,

ii. that the defendant, though departing the jurisdiction, is likely to return shortly, or

iii. that there is a real dispute as to whether the quantum of the alleged debt even exceeds $250.00; or

iv. there is a real dispute even as to the existence of the alleged debt,

then the discretion to yet arrest would need to be justified. This list is not intended to be exhaustive.

34. The appellant's contentions can therefore be disposed of briefly:-

a. The Act clearly confers on the trial judge a **discretion** as to whether to grant such a warrant. The trial court may do so. Equally it may not.

b. The discretion is to be exercised **judicially**.

35. The court is most certainly not required to rubber stamp an application. Merely because an applicant alleging that he is a creditor, deposes to an affidavit that ticks the boxes in section 4, and states that in **his belief** there is no defence to the action, does not require the court to accept that statement without more.

36. Neither is a court required to defer all consideration of the possibility of a defence to a later stage when the defendant has an opportunity to file affidavits. The court in exercising this discretion is entitled to analyse and consider the evidence, and consider whether the material adduced in support has attained the **threshold** of satisfying the **conditions** for the grant of such warrant.

37. At an ex parte stage the court must be particularly aware that the defendant is not being heard, that the applicant's belief that there is no defence to the claim may be subjective, or self-serving, or misguided, or even misleading, unintentionally or otherwise.

38. In the exercise of such a discretion, which carries attendant serious consequences, including imprisonment without a hearing pending a hearing before a Judge, and cancellation of the defendant's travel plans with attendant inconvenience, delay and expense, the exercise of a **judicial discretion would require a careful examination of the material adduced**. It certainly would not be sufficient to accept at face value the affidavit of the applicant as being the only necessary and sufficient condition for the grant of the warrant.

39. Rather it would be a minimum condition and would not absolve a trial court from further examination of the material to ascertain whether a sufficient threshold of relevant evidence and material has been supplied to it to justify the exercise of the discretion.

40. It is clear that the trial judge appreciated this in her careful and critical examination of the material set out hereunder.

41. As far as the construction of the Act was concerned the appellant contends that the trial judge erred in law in considering whether or not there was a defence to the proceedings as a basis for her decision to refuse the application. This precondition would more accurately have been stated as "That the creditor claimant has sworn positively to his **belief that there is no defence** to the action, and that that the affidavit and other material adduced, (for example the exhibits to the affidavit, the claim form and the statement of case), are sufficient to **satisfy** the trial judge that that **belief is supported** thereby". However, examination of the written reasons confirms that this is exactly the analysis that was in fact conducted by the trial judge.

42. The appellant further contends that on a proper construction of the Act he was entitled to the issue of a warrant, and that the trial judge erred in **misapplying the facts** before her to the conditions that she had decided must be satisfied. The appellant contends that, in particular, the judge made contradictory findings of fact in that she found that there was evidence of an agreement between the appellant and the respondent, which had been partly performed by the respondent, yet she held that she was unable to conclude that the terms and conditions of the agreement in so far as they related to either a. **the amount due**, or b. **the date for payment**, were as alleged by the claimant / appellant.

43. The analysis of the trial judge in this regard is impeccable. The reasons why the judge found that she had not been satisfied on the evidence as to the **amount** due or the **date for payment** are clearly set out in her written reasons which are set out hereinafter. It was necessary to satisfy the trial judge of the existence of an amount due in excess of $250.00 and a debt which accrued no more than 2 years before the application, as these were fundamental to even the existence of a jurisdiction to issue a warrant under the Act. The judge was entitled to accept the evidence of an agreement evidenced by the payments, but to conclude that she

was not satisfied as to other essential terms of the alleged third and oral agreement, especially given that the alleged subject of repayment on the alleged third agreement was the same as the consideration that had been allegedly advanced since **2011**.

44. The matters that she considered in determining whether to exercise her discretion to issue a warrant were clearly set out in the written reasons. The weight to be accorded to each was also entirely a matter for the judge's discretion. The judge's analysis of the evidence is to be found at pages 4-5 of her judgement (all emphasis added).

> *In order for the Claimant's application to succeed it must first be established that the third agreement gave rise to a binding obligation on the Defendant to pay the sum of USD 67,000.00 to the Claimant on or before 28 July 2017, that* ***there is no reasonable defence*** *to the proceedings that have been instituted by the Claimant for recovery of same and that the Defendant's scheduled departure from the jurisdiction on 1 August 2017 would materially prejudice the Claimant's ability to recover the outstanding sum of USD50,000.00.*
> *While it is reasonable to infer that the payment by the Defendant of the sums of USD 10,000.00 and USD 7,000.00 on 28 and 29 June 2017 respectively were made* ***pursuant to an agreement*** *between the parties,* ***I am unable to conclude that the terms and conditions of the agreement in so far as they relate to the amount due*** *and* ***the date for payment*** *are* ***as alleged by the Claiman****t. That is to say,* ***I am unable to hold that there is no defence to the proceedings****. I am inclined to this position having regard to* ***all of the circumstances of this case****, including* ***the length of time that has elapsed since the sum of USD 67,000 was paid*** *by the Claimant to the Defendant* ***under the first agreement****,* ***the repayment of which forms the basis of the third agreement****,* ***the Defendant's stated exoneration from liability under the first agreement for repayment of the said sum of USD 67,000.00*** *on the basis of force majeure,* ***the Claimant's forbearance in making binding arrangements for a subsequent performance by the Defendant under the second agreem****ent and* ***the informal nature of the arrangements in general under the third agreement****.*
>
> *In addition, while it is clear from the Claimant's evidence that the Defendant is scheduled to depart from the jurisdiction on 1 August 2017 after a performance on 29 July 2017, the Claimant has not established that the failure to arrest the Defendant would* ***materially prejudice his prospects of recovering the debt*** *that allegedly exists. On the contrary, the Claimant's evidence is that the sum of USD 10,000.00 was paid by wire transfer on 28 June 2017, when the Defendant was outside the jurisdiction, and a further sum of USD 7,000 was paid in cash the following day, when the Defendant was within the jurisdiction.*

> *Further, the Claimant's evidence is that the Defendant has visited the jurisdiction on three occasions between November 2016 and July 2017 for scheduled performances. The relative frequency of such visits over the last few months together with the recent payment of sums by the Defendant both from within and outside the jurisdiction contradict the assertion that the Defendant's absence from the jurisdiction would materially prejudice the Claimant's ability to recover any debt that may be outstanding.*
> *In the circumstances, the Claimant has not satisfied the requirements for the issue of a warrant under section 2 of the Act and the application is dismissed.*

45. The appellant expressly contends (all emphasis added) that "*the provisions of the Act simply require an* ***allegation*** *of indebtedness (section 2) and affidavit evidence whereby the deponent states that* ***in his belief*** *there is no defence to the action (section 4*)"[6].

46. This Act confers draconian powers upon a court, exercisable on an ex parte application. Issue of a warrant results in the arrest of a defendant. At the very least the defendant will be prevented from travelling, with all the attendant inconvenience and delay that would entail. Even if he were to be brought before a court at the earliest opportunity the possibility of deprivation of liberty at some stage of the process is a real one. In fact incarceration at the Port of Spain Prison, pending attendance before a Judge in Chambers, is expressly provided for in the Act. Given the practical consequences of such an order it is all the more critical therefore that a court must exercise caution, and subject the application to rigid scrutiny, as the trial judge expressly recognised.

47. The court's statement that it needed to be satisfied *that there was no reasonable defence to the proceedings* imposed too high an onus as to what had to be demonstrated in the affidavit in support of the application. However it is quite clear that the trial judge was in effect considering whether she was satisfied as to:-

[6] ground of appeal e, and para 28 written submissions

(i) Whether the amount due and the date for payment were as alleged by the appellant,

(ii) the terms and conditions of this alleged third agreement given:-

(a) her scepticism, informed by her analysis of the facts deposed to on the appellant's own affidavit that on the claimant's case there had been forbearance for several years with respect to the repayment of the US $67,000.00 sum. Curiously, after that prolonged period of forbearance the new third agreement which had been allegedly substituted conveniently rendered the debt less than two years old, and not therefore subject to the prohibition in section 3. The trial judge implicitly recognised this in referring to the length of time which had elapsed since the sum of US $67,000.00 had initially been paid under the first agreement.

(b) that the alleged third agreement was informal in nature.

48. Her conclusion in those circumstances in effect was that the **mere allegation** of breach of the unwritten terms of that alleged third agreement, replacing two alleged prior agreements and arrangements, was less than satisfactory. It was insufficient to persuade her to exercise her undoubted judicial discretion, circumscribed by statute, to issue the warrant requested.

49. The trial judge was entitled to conclude as she did that she was not satisfied that the amounts that had been paid were in respect of the alleged oral agreement in 2017, or, despite it allegedly requiring repayment of sums advanced in 2011, that this was a new, non-statute barred agreement.

50. She was entitled to conclude that she was not satisfied this alleged third agreement, admittedly oral, was in the precise terms that the claimant alleged that it was, either as to the amount allegedly accepted as remaining due, or as to the date when it was required to be repaid.

51. She was entitled to decline to exercise the jurisdiction to issue a fugae warrant for the arrest of the alleged debtor in respect of a sum which had been owing since 2011, and decline to accept i. the claimant's bare allegation that time for repayment had now been made of the essence, or ii. that the defendant was allegedly in default in respect of that alleged recently agreed deadline.

52. The appellant further contends that the trial judge erred in law in considering whether the failure to arrest the defendant would materially prejudice the prospects of recovering the debt as a basis for her decision to refuse the application. However examination of the Act confirms that this is a legitimate consideration in considering whether to exercise the discretion to issue a fugae warrant.

53. The trial judge was entitled to conclude that there was evidence of an attempt at repayment of the alleged debt, whatever the amount might be, and that the drastic step of issuing a fugae warrant for the arrest of the defendant may not have been warranted in the circumstances. That is a matter that could properly have been taken into account by the trial judge in the exercise of the discretion clearly conferred on her by statute to consider whether to issue such a warrant. It was relevant and did not, as contended by the appellant, need to be spelled out in terms in the statute. The grant of a warrant must be "on the conditions and subject to the procedure set out" further on in the Act. However the discretion conferred in section 2 of the Act **not** to grant such a warrant may properly take into account whether the failure to arrest the defendant would materially prejudice the claimant's prospects of recovering the debt that allegedly existed, as this is also a material consideration at the inter partes hearing.

54. Accordingly the trial judge carefully considered at the ex parte stage, as she was entitled to prior to the exercise of her discretion, the defendant's voluntary payments, (whether toward or in full or in partial satisfaction of the alleged debt), his history of income earning trips to this jurisdiction, and his payments even when he was not within the jurisdiction. These were all matters that the trial judge was entitled to take into consideration in the exercise of her discretion and to afford appropriate weight.

55. It is well established that the Court of Appeal would not usually reverse the exercise of a discretion by the trial judge unless that exercise was shown to be plainly wrong – (this has been expressed in a multitude of decisions, one example being **Civil Appeal No. P 277 of 2012 Christianne Kelsick (An Infant Suing By Her Father And Next Of Kin, Rawle Kelsick v Dr. Ajit Kuruvilla, North West Regional Health Authority, Attorney General of Trinidad And Tobago.**[7] A court of appeal would not interfere with the balancing exercise inherent in the exercise of a trial judge's discretion where, as here, those factors are relevant ones within the appropriate statutory context, and the result of the balancing exercise is not plainly wrong.

[7] *The role of an appellate court in reviewing the exercise of a trial judge's discretion is well known. The decision of the trial judge must be shown to be plainly wrong. A decision is plainly wrong, not only if a judge is shown to have erred in principle, by disregarding relevant considerations or taking in consideration irrelevant ones, or because the decision is against the weight of or cannot be supported by the evidence; but also when a judge is required to balance multiple considerations and the approach to and/or result of this balancing exercise is plainly wrong.*

Conclusion

56. The trial judge had a clear discretion, conferred by the Act itself, to ascertain whether the statutory preconditions to the exercise of the discretion had been satisfied, and if necessary, to analyse the material in support of the application.

57. The trial judge could not reasonably be said to have exercised that discretion in a manner that was plainly wrong. In fact her critical analysis of both the facts and law was sound, and she was entitled after the examination of both, to conclude that the draconian discretion to issue a fugae warrant in the circumstances before her should not be exercised. In the circumstances the challenge to the exercise of the trial court's discretion **not** to issue the fugae warrant is without foundation.

Order

58. The appeal is dismissed.

Peter A. Rajkumar

Justice of Appeal