

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2022-02521

**IN THE MATTER OF AN APPLICATION FOR CONSTITUTIONAL REDRESS
PURSUANT TO SECTION 14 OF THE CONSTITUTION OF THE REPUBLIC OF
TRINIDAD AND TOBAGO**

BETWEEN

ANAND RAMLOGAN S.C.

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

THE DIRECTOR OF PUBLIC PROSECUTIONS

Interested Party

**Before the Honourable Justice Nadia Kangaloo
Dated the 5th day of July, 2024**

Appearances:

Peter Carter KC, leading Jodie Ellen Blackstock, Jayanti Lutchmedial, Kent Samlal, instructed by Natasha Bisram and Ganesh Saroop **for the Claimant**

Rishi Dass SC, leading Raphael Ajodhia, instructed by Kendra Mark-Gordon **for the Defendant**

Mr Ian Benjamin SC, leading Tekiyah Jorsling instructed by Nalini Jagnarine **for the Interested Party**

REASONS

INTRODUCTION

1. The Claimant is an Attorney at Law in Trinidad and Tobago and formerly served as the Attorney General of the Republic of Trinidad and Tobago for the period between 26 May 2010 to 2 February 2015.
2. The Defendant is the Attorney General of the Republic of Trinidad and Tobago.
3. The Interested Party is the Director of Public Prosecutions, joined in these proceedings pursuant to an order of the Court of Appeal dated 08 September 2023.
4. The Claimant commenced these proceedings by Fixed Date Claim Form (“the FDCF”) supported by the the Affidavit of Anand Ramlogan (“the Ramlogan Affidavit”) both filed on 26 October 2022.
5. Two Affidavits in Opposition to the Claim were filed. The Affidavit of David West (“the West Affidavit”) filed on 30 June 2023 and the Affidavit of Roger Gaspard SC (“the Gaspard Affidavit”) filed on 13 July 2023.
6. The instant claim is set against the backdrop of two Magistrates’ Court Proceedings (“the Criminal Proceedings”) cited as Information Nos. 35278/2017 and 35279/2017 in which the Claimant is the Accused. The Claimant was arrested on 29 August 2017 and charged on 30 August 2017 with:
 - a) with reference to **Information No. 35278/2017**, the offence of being in and performing the duties of an Office in which the public has an interest, namely, the office of the Attorney General of Trinidad and Tobago, misbehaved himself while acting in such office, by improperly endeavouring to persuade David West not to be a witness in **Civil High Court Action CV2012-02948 Anand Ramlogan v Dr. Keith Rowley**, without reasonable excuse or justification.
 - b) with reference to **Information No. 35279/2017**, the offence of knowing or reasonably believing that David West was a potential witness in judicial

proceedings, to wit, **Civil High Court Action CV2012-02948 Anand Ramlogan v Dr. Keith Rowley**, used threats bribery or other means to dissuade the said David West from giving evidence in that matter contrary to **Section 11 (2) of the Criminal Offences Act Chap. 11:01** as amended.

7. Following these charges, the then Deputy Commissioner of Police (Ag.) 10818 Harold Phillip (“DCP Phillip”) acting under **Section 8** of the **Interception of Communications Act Ch. 15:08** (“the IOCA”) applied *ex parte* to the High Court on eight (8) separate occasions for interception orders (“the IOCA Orders”), all of which were granted:
 - a) 14 May 2015 – 5 applications granted by The Honourable Justice Gillian Lucky (as then was), (“Lucky J.”)
 - b) 29 July 2016 – 1 application granted by The Honourable Mr. Justice David Harris
 - c) 2 February 2017 – 1 application granted by The Honourable Mr. Justice Hayden St. Clair-Douglas
 - d) 4 May 2017 – 1 application granted by the Honourable Mr. Justice Malcolm Holdip (as he then was)
8. The IOCA Orders related to communications data contained in the call data record for all the telephone communications between the Claimant, David West and/or the then Minister of National Security, Gary Griffith for the period between 30 September 2014 to 1 March 2015. The IOCA Orders did not extend to the collection of a transcript or audio recording of the phone calls, they authorised only the collection of the date, time, source, destination and status of the phone calls, in relation to the telephone numbers as specified in the IOCA Orders.
9. Though the IOCA Orders were granted without notice, they were disclosed by the Prosecution to the Claimant on 16 November 2018 during the Criminal Proceedings. The Claimant (as the accused) filed evidential objections on 31 May 2019 to challenge

the evidence obtained by the IOCA Orders. The evidential objections have not been ruled on to date, pending the delivery of this decision.

10. Following the evidential objections to the evidence obtained pursuant to the IOCA orders, the Prosecution sought the issue of a search warrant under **Section 5** of the **Indictable Offences (Preliminary Enquiry) Act Ch. 12:01** (“IOPEA”). The Prosecution applied without notice on 27 June 2019 and 2 July 2019 to the Deputy Chief Magistrate (Ag.) under the IOPEA and the warrants were granted (“the IOPEA Warrants”). The IOPEA Warrants were disclosed to the Claimant on 15 July 2019 and 2 August 2019. The Claimant filed evidential objections to same on 27 June 2019 and 02 July 2019 on which there has been no ruling to date, pending the delivery of this decision.
11. The Prosecution disclosed to the Claimant all the affidavits and materials in support of the IOCA Orders on 16 January 2020.
12. On 15 January 2021, the Interception of Communications (Amendment) Act 2020 (the IOCA Amendment”) was proclaimed. By this amendment, the scope of **Section 8 of IOCA** was expanded to include “stored data” and “stored communication”, and it applied to past call data record evidence.
13. Pursuant to an application filed on 10 July 2022 by Mr. Ramlogan, on 11 July 2022, the Chief Magistrate made a Constitutional Reference pursuant to **Section 14(4) of the Constitution** for consideration by the High Court.

THE CONSTITUTIONAL REFERENCE

14. The Constitutional Reference referred the following questions to the High Court:
 - i. Whether the issuance of the interception orders dated 14 May 2015; 29 July 2016; 2 February 2017; and 4 May 2017, which were made under Section 8 of the Interception of Communications Act Chap 15:08 and issued by the Honourable Madam Justice Lucky (as her Ladyship then was), the Honourable Mr. Justice St.

Clair Douglas, the Honourable Mr. Justice Harris and the Honourable Mr. Justice Holdip (as his Lordship then was), contravened the Accused's constitutional rights:

- a. To equality before the law and the protection of the law under **section 4 (b) of the Constitution;**
 - b. To respect for his private and family life under **section 4 (c) of the Constitution;**
 - c. To a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations under **section 5 (2) (e) of the Constitution;** and
 - d. Not to be deprived of such procedural provisions as are necessary for the purpose of giving effect and protection to his fundamental rights and freedoms under **section 5 (2) (h) of the Constitution.**
- ii. Whether the interception orders made by the Honourable Madam Justice Lucky on 14 May 2015, were vitiated by apparent bias and thus contravened the Accused's constitutional rights:
- a. To a fair hearing by an independent and impartial tribunal under **section 5 (2) (f) (ii) of the Constitution;**
 - b. To due process;
 - c. To a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations under **section 5 (2) (e) of the Constitution;**
 - d. To equality before the law and the protection of the law under **section 4 (b) of the Constitution;** and
 - e. To respect for his private and family life under **section 4 (c).**

- iii. Whether the issuance of the warrants dated 27 June 2019 and 2 July 2019, which were made under section 5 of the Indictable Offences (Preliminary Enquiry) Act Chap 12:01 (IOPEA) and issued by the Acting Deputy Chief Magistrate contravened the Accused's constitutional rights:
- a. To equality before the law and the protection of the law under **section 4 (b) of the Constitution;**
 - b. To respect for his private and family life under **section 4 (c) of the Constitution;**
 - c. To a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations under **section 5 (2) (e) of the Constitution;** and
 - d. Not to be deprived of such procedural provisions as are necessary for the purpose of giving effect and protection to his fundamental rights and freedoms under **section 5 (2) (h) of the Constitution.**
- iv. Whether the State's conduct in applying for and obtaining the section 5 IOPEA warrants was an abuse of the Honourable Court's process and contravened the Accused's constitutional rights:
- a. To equality before the law and the protection of the law under **section 4 (b) of the Constitution;**
 - b. To respect for his private and family life under **section 4 (c) of the Constitution;**
 - c. To a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations under **section 5 (2) (e) of the Constitution;** and

- d. Not to be deprived of such procedural provisions as are necessary for the purpose of giving effect and protection to his fundamental rights and freedoms under **section 5 (2) (h) of the Constitution**.

THE CLAIM AND RELIEF SOUGHT

15. The Claimant contends that the IOCA Orders granted by Lucky J were tainted by the appearance of bias and as such her adjudication was in contravention of his constitutional rights. The Claimant also contends that the State's conduct in relation to the retrieval of past communication data amounts to a gross abuse of process in breach of his Constitutional rights.
16. The Claimant claims that the following rights have been contravened:
 - a) He has been denied his right to a fair and public hearing by an independent and impartial tribunal contrary to **section 5(2) (e) and/or (f)(ii) of the Constitution**,
 - b) He has been denied his right of the individual to equality before the law and the protection of the law contrary to **section 4(b) of the Constitution**; and
 - c) He has been denied his right to respect for his private and family life contrary to **section 4(c)** of the Constitution.
17. The Claimant seeks the following declaratory and vindicatory relief:
 - a) A declaration that the Interception Orders granted by Lucky J were incurably contaminated by the appearance of bias and as such her adjudication was in contravention of the Claimant's constitutional right to a fair hearing in accordance with the principles of fundamental justice for the determinations of his rights and obligations and/or the protection of the law by an independent and impartial tribunal under **Sections 4 (b) and 5 (2) (e)(f) (ii) of the Constitution of the Republic of Trinidad and Tobago** and as such null and void and of no legal effect;

- b) A declaration that the retrieval of communications data relating to the Claimant by the police pursuant to certain interception orders granted under the Interception of Communications Act 2010, Chap 15:08 obtained by the State in Information Nos. 35278/2017 and 35279/2017 No. 12770 Inspector Arlet Groome v Anand Ramlogan contravened the Claimant's constitutional rights to equality before the law and the protection of the law and his right to respect for his private and family life as guaranteed under **Sections 4 (b) and 4 (c) of the Constitution of the Republic of Trinidad and Tobago;**
- c) A declaration that the retrieval of communications data relating to the Claimant by the police pursuant to certain search warrants granted under the Indictable Offences (Preliminary Enquiry) Act, Chap 12:01 obtained by the State in Information Nos. 35278/2017 and 35279/2017 No. 12770 Inspector Arlet Groome v Anand Ramlogan contravened the Claimant's constitutional rights to equality before the law and the protection of the law, his right to a fair and public hearing and his right to respect for his private and family life as guaranteed under **Sections 4(b), 4 (c) and 5(2)(e) and 5(2)(f)(ii) of the Constitution of the Republic of Trinidad and Tobago;**
- d) A declaration that the Interception Orders granted under the Interception of Communications Act 2010, Chap 15:08 and the Search Warrants granted under the Indictable Offences (Preliminary Enquiry) Act, Chap 12:01 were in contravention of the Claimant's constitutional rights to equality before the law and the protection of the law, and his right to respect for his private and family life, as guaranteed under **Sections 4(b) and 4 (c) of the Constitution of the Republic of Trinidad and Tobago;**
- e) A declaration that the State's conduct in seeking *ex parte* orders under the Interception of Communications Act 2010, Chap 15:08 and under section 5 of the Indictable Offences (Preliminary Enquiry) Act, Chap 12:01, in the circumstances of this case, was a gross abuse of process in contravention of the Claimant's constitutional rights guaranteed under **Sections 5(2) (e) and (f)(ii)**

of the Constitution of the Republic of Trinidad and Tobago namely the right to a fair and public hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

- f) An order that monetary compensation including vindicatory damages be paid to the Claimant by the Defendant for the aforesaid breaches of his constitutional rights;
- g) Costs to be assessed;
- h) Such further and/or other relief as this Honourable Court might think just and appropriate.

ISSUES

18. The issues to be determined by the Court are as follows:

- a) Issue 1: whether the IOCA Orders issued by Lucky J were tainted by the appearance of bias to the extent that there was a violation of the Claimant's constitutional rights to a fair trial, equality before the law and protection of the law and right to privacy and family life.
- b) Issue 2: whether the State's without notice application for the IOCA Orders were made without full and frank disclosure and/or exceeded the ambit of the enabling legislation to the extent that there was a violation of the Claimant's constitutional rights to a fair trial, equality before the law and protection of the law and right to privacy and family life.
- c) Issue 3: whether the State's without notice applications for the IOEPA Warrants were made without full and frank disclosure and/or were unlawful and/or constituted an abuse of process to the extent that there was a violation of the Claimant's constitutional rights to a fair trial, equality before the law and protection of the law and right to privacy and family life.

- d) Issue 4: whether the Claimant is entitled to vindicatory damages and costs in the matter.

ISSUE 1: THE APPEARANCE OF BIAS BY LUCKY J.

The Law

19. The settled test on bias is “whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased?” (dictum of Lord Phillips in *Re Medicaments and Related Classes of Goods (No. 2)*, adopted by Lord Hope in *Porter v Magill [2001] UKHL 67*). On a point of scepticism about the “fair-minded and well-informed observer”, Lord Rogers in a lecture on Bias and Conflicts of Interests – Challenges for Today’s Decision Makers in the 24th Sultan Azlan Shah Law Lecture (2010) posited:

“The whole point of inventing this fictional character is that he or she does not share the viewpoint of a judge. Yet, in the end, it is a judge or judges who decide what the observer would think about any given situation. Moreover, the informed observer is supposed to know quite a lot about judges - about their training, about their professional experience, about their social interaction with other members of the legal profession, about the judicial oath and its significance for them, etc. Endowing the informed observer with these pieces of knowledge is designed to ensure that any supposed appearance of bias is assessed on the basis of a proper appreciation of how judges and tribunals actually operate. The risk is that, if the judge will be holding up a mirror to himself. To put the matter another way, the same process will tend to distance the notional observer from the ordinary man in the street who does not know these things. And yet the whole point of the exercise is to ensure that judges do not sit if to do so would risk bringing the legal system into disrepute with ordinary members of the public.”

20. **Halsbury's Laws of England (Magistrates) (Volume 71 (2020))** states:

“The test applicable in all cases of apparent bias is whether, having regard to the relevant circumstances, a fair-minded and informed observer would conclude that there is a real possibility of bias on the part of the justice in the sense that he might unfairly regard with favour, or disfavour, the case of a party to the issue under consideration by him. In considering this question all the circumstances which have a bearing on the suggestion that the justice is biased must be considered: the question is whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the justice was biased. Cases may occur where all the justices may be affected by an appearance of bias, as, for instance, where a fellow justice or the justices' clerk is charged with an offence. Where a justice has, as a member of a local authority, an interest not expressly sanctioned by statute, the test is whether, in the circumstances of the particular case, there is any real possibility of bias. Accordingly, a justice is disqualified if he belongs to a privileged class, to protect whose interests the proceedings are brought.”

21. It is because the court in the majority of cases does not inquire whether actual bias exists that the maxim that “justice must not only be done, but be seen to be done” is applied, and the court gives effect to the maxim by examining all of the material available and concluding whether there is a real possibility of bias.
22. The Judicial Committee of the Privy Council in **Renraw Investments Limited and others v Real Time Systems Limited [2023] UKPC 39** accepted the **Porter v Magill** test as trite law and also accepted the two-step test set out by the Court of Appeal in **Civil Appeal No. P018 of 2014 Attorney General of Trinidad and Tobago v Dr Wayne Kublalsingh**. In **Kublalsingh**, the Court of Appeal determined that that one must firstly examine the relevant facts which have a bearing on the suggestion that the decision-maker has the appearance of bias, and, secondly, one must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the decision-maker is biased.

The Relevant Facts

23. Of the eight (8) IOCA Orders granted, Lucky J granted five (5), all dated 14 May 2015. The Claimant claims that the granting of these five (5) orders was tainted by apparent bias. The Claimant's supports this argument by allegations contained in the Ramlogan Affidavit and in the Claimant's Written Submissions filed on 26 October 2023.
24. The Claimant's principal reason for alleging bias on the part of Lucky J is that at the time that the five (5) IOCA orders were made Lucky J was the Director of the Police Complaints Authority ("the PCA") and made public critical commentary about the Government during the time that the Claimant was the Attorney. The Claimant avers that he and Lucky J were engaged in what is described as a public disagreement which played out in the print media regarding the leaking to the Opposition of a confidential PCA Report about the alleged return to existence of the "Flying Squad" (an elite secret group within the Trinidad and Tobago Police Service aimed at addressing increasing crime in Trinidad and Tobago).
25. At the time of the media exchanges between Lucky J and the Claimant, Lucky J was and is now, a public figure in Trinidad and Tobago and at the material time, was the author of a weekly newspaper column and host of a television show called "Just Gill".
26. Upon this Court's thorough review of the evidence, the Claimant has included material for the period March 2013 to April 2014, which pre-dates Lucky J's appointment as a Puisne Judge of the High Court of Justice. It is this Court's opinion that such evidence ought to be disregarded on the basis that it can have no bearing on Lucky J's decision-making process **at the time that the IOCA Orders were granted in May 2015.**
27. The Claimant's second reason for alleging apparent bias of Lucky J relies heavily on what the Claimant refers to as a "recommendation of David West" to be Lucky J's successor as Director of the PCA. In opposition to this allegation, the West Affidavit deposes that:

- a) West knew Lucky J in what is commonly known in Trinidad and Tobago as “in passing” throughout their respective professional careers over the course of several decades;
- b) Due to the local circumstances of Trinidad and Tobago’s relatively small legal profession, West knew Lucky J;
- c) Around October 2014, West became aware that Lucky J had put his name forward for consideration as Lucky J.’s successor as Director of the PCA and met with Lucky J. on one occasion on 31 July 2014 to discuss the potential appointment;
- d) West did not consider himself and Lucky J to be friends in the usual meaning of the term, but more as professional colleagues.

28. This Court also critically notes that only one (1) of the five (5) IOCA Orders made by Lucky J on 14 May 2015 was aimed at the Claimant. The other four (4) IOCA Orders were directed to El Dorado Chambers, Gary Griffith (in respect of 2 IOCA orders) and David West. The Court has asked itself, has the Claimant proven that the alleged public disagreement between the Claimant and Lucky J tainted these four (4) IOCA orders by way of bias on the part of Lucky J? This Court finds that the allegations of bias cannot be sustained since these four (4) IOCA Orders were not directed to the Claimant exclusively or at all.

29. Nonetheless, this Court then considers the two bases for the allegation of bias on the part of Lucky J. i.e., the media exchanges between the Claimant and Lucky J, and the recommendation of David West, and now addresses its mind to the crux of the test for apparent bias. Would a fair-minded and informed observer, having considered the relevant facts, conclude that there was a real possibility that Lucky J. was biased when granting the five (5) IOCA Orders? The Claimant’s evidence hinges on the “real possibility” aspect of the bias test, submitting that if one considered the facts, they would conclude that the Judge was “*possibly*” infected by bias since in these

circumstances, Lucky J knew the parties and witnesses in the Criminal Proceedings. The Claimants ultimately submits that the Judge ought to have recused themselves.

30. The Defendant's position is that the facts do not support that the conduct of the judicial officer in question gave rise to the appearance of bias. The Defendant submits that the conduct of other involved parties is not within the control of the judge. Thus, the conduct of these other parties cannot be seen as having a marked effect on a judge's impartiality and independence in the course of decision-making. To call for a recusal in these circumstances would go largely against the interest of public policy, as there is the potential for the opening of the floodgates for the systematic disqualification of judges.
31. The Defendant supports these submissions by reference to the cases that establish the well-known principles of law regarded the recusal of judges.
32. In **Stubbs, Davis and Evans (Appellants) v The Queen (Respondent) (Bahamas) [2018] UKPC 30, at paragraph 34** the Court opined,

“[The Board wholeheartedly agrees with the Court of Appeal that] ... a judge should not recuse himself unless there is a sound reason for recusal, lest unmeritorious applications for recusal become the norm and result in damage to the administration of justice. In particular, it is necessary to stand firm against illegitimate attempts to influence which judge shall sit in a particular case.”

33. In **Trinidad Cement Limited v Dr. Rollin Clifton Bertrand Claim No. CV2017-00316, Dr. Rollin Clifton Bertrand v Trinidad Cement Limited and ors Claim No. CV2017-01902 at paragraph 16**, the Court noted,

*“The general rule is that a Judge must recuse himself, that is, disqualify himself for hearing a cause or matter if he has a personal interest in the outcome of an issue he has to decide, or if the parties or the public might have a reasonable apprehension that he might not bring an impartial or an unbiased mind to the adjudication of such cause or matter: **Locabail (U.K.) Ltd v Bayfield***

Properties Ltd [2000] QB 451, 472 . The purpose of recusal is to preserve the impartiality of the judicial process and preserve confidence in the integrity of the administration of justice.”

34. An examination by the Court of the Claimant’s evidence in support the allegation of bias of Lucky J reveals a missing link, as the media articles and other exchanges relied upon are not directed solely and/or specifically at the Claimant. The Court finds that the Claimant is asking this Court to be unduly suspicious in the circumstances. The Claimant relies on media articles and exchanges to allege that Lucky J was in “very public, acrimonious disagreement” with him. This Court finds that this allegation is no more than an expression of the Claimant’s personal opinion and/or feelings about these media articles exchanges. This Court also finds on the evidence presented no indication of a personal and/or targeted campaign and/or vendetta against the Claimant by Lucky J. Rather, the evidence relied upon is supportive of a healthy discourse in a forum which permitted latitude for the inclusion of banter and local parlance in the course of general, social and political commentary. This type of exchange should not be alien to the Claimant. The Court can take judicial notice of the Claimant’s spirited participation in political campaigns, in Parliamentary exchanges and as an Attorney at Law with an active practice to date. The arguments put forth by the Claimant to support a finding of bias indicate a degree of sensitivity that cannot be found in the factual matrix. This Court notes also that the Claimant has not alleged bias on the part of any of the other Judges who issued similar IOCA Orders in 2016 and 2017.

35. In the Court’s view, it is pellucid that there is nothing on the facts to suggest that Lucky J granted the five (5) IOCA Orders in question in a manner that was actuated by bias. The Claimant’s own lack of promptitude in alleging bias, some four (4) years after the date of the granting of the IOCA Orders, coupled with the Claimant’s continued and active participation in the Criminal Proceedings over these years, also demonstrates a disconnect that does not support the Claimant’s allegations of bias. The fair-minded and informed observer would indubitably raise the question of why the Claimant delayed in mounting a claim for breach of his Constitutional rights, *inter alia*, on the basis of Lucky J’s bias.

36. On the balance of probabilities, the Court concludes that there is no finding that the granting of the five (5) IOCA orders by Lucky J was tainted with apparent bias. The fair-minded and informed observer would not presume that the judge, at the time of the decision, was acting in a way that would compromise the administration of justice, the judicial oath, training, knowledge and discretion of which the judge was cognisant and bound when granting the IOCA Orders.
37. The Court having applied its mind to this question of the alleged bias of Lucky J, determines that there is no finding of bias by Lucky J and that, consequently, the Claimant's constitutional rights to a fair hearing in accordance with the principles of fundamental justice for the determinations of his rights and obligations and/or the protection of the law by an independent and impartial tribunal could not be said to have been incurably contaminated by the appearance of bias on the part of Lucky J.

ISSUE 2: THE IOCA ORDERS

CONSTITUTIONAL PRINCIPLES AND RELEVANT SECTIONS OF THE IOCA AND IOCA (AMENDMENT)

38. The IOCA is aimed at the interception of communications, the acquisition and disclosure of data relating to communications, the acquisition of the means by which electronic data protected by encryption or passwords may be decrypted or accessed and other related matters. The IOCA was passed in accordance with **Section 13 of the Constitution** since its effect can potentially limit one's constitutional rights.
39. It is accepted that the enshrined rights contained in our Constitution are not absolute rights enjoyed by the rights holder. Where there is constitutionality, there too is proportionality. The question that pervades the substratum of the relief sought by the Claimant concerns the test for proportionality. A reading of **Re Huang v Secretary of State for the Home Department [2007] 2 AC 167**, at paragraph 19 per Lord Bingham of Cornhill, and **Bank Mellat v HM Treasury (No 2) [2013] UKSC 39, [2014] AC 700**, at paragraph 20 per Lord Sumption and paragraphs 73-74 per Lord Reed, thusly distil the modern test which,

“involves asking in relation to a measure (i) whether its objective is sufficiently important to justify the limitation of a fundamental right; (ii) whether it is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community”.

40. An express reference to the relevant sections of the IOCA is merited.

41. **Section 5 of IOCA** defines “*intercept*” as being “*in relation to a communication, means listening to, monitoring, viewing, reading or recording, by any means, such a communication in its passage over a telecommunications network without the knowledge of the person making or receiving the communication*”.

42. **Section 8 of IOCA** reads:

8. (1) Subject to this section, an authorised officer may apply *ex parte* to a Judge for a warrant authorising the person named in the warrant—

(a) to intercept, in the course of their transmission by means of a public or private telecommunications network, such communications as are described in the warrant; and

(b) to disclose the intercepted communication to such persons and in such manner as may be specified in the warrant.

(2) A Judge shall not issue a warrant under this section unless he is satisfied that—

(a) the warrant is necessary—

(i) in the interests of national security; or

- (ii) for the prevention or detection of any offence where there are reasonable grounds for believing that such an offence has been, is being or is about to be committed;
 - (b) information obtained from the interception is likely to assist in investigations concerning any matter mentioned in paragraph (a);
 - (c) other investigative procedures—
 - (i) have not been or are unlikely to be successful in obtaining the information sought to be acquired by means of the warrant;
 - (ii) are too dangerous to adopt in the circumstances; or
 - (iii) having regard to the urgency of the case, are impracticable;
 - (d) it would be in the best interest of the administration of justice to issue the warrant; and
 - (e) the interception of communications to be authorised by the warrant is proportionate to what is sought to be achieved by such interception.
- (3) An application for a warrant under this section shall, subject to section 11, be in the form set out in Schedule 1 and be accompanied by—
- a) a declaration in the form set out in Schedule 2 deposing to the following matters:
 - (i) the name of the authorised officer and the entity on behalf of which the application is made;
 - (ii) the facts or allegations giving rise to the application;

- (iii) sufficient information for a Judge to issue a warrant on the terms set out in section 9;
- (iv) the period for which the warrant is requested;
- (v) the grounds relied on for the issue of a warrant under subsection (2); and
- (vi) if the applicant will be seeking the assistance of any person or entity in implementing the warrant, sufficient information for a Judge so to direct in accordance with section 9(3); and

(b) a statement signed by the Minister where the warrant is applied for on the ground of national security, authorising the application on that ground.

(4) A declaration under subsection (3)(a) is deemed to be a statutory declaration under the Statutory Declarations Act.

(5) The records relating to every application for a warrant or the renewal or modification of a warrant shall be sealed, until otherwise ordered by the Court.

(6) A person who discloses the existence of a warrant or an application for a warrant, other than to a person to whom such disclosure is authorised for the purpose of this Act, commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for three years.

43. Section 9 of IOCA reads:

9. (1) In this section, “address” includes a location, e-mail address, telephone number or other number or designation used for the purpose of identifying telecommunications networks or apparatus.

(2) A warrant shall authorise the interception of—

(a) communication transmitted by means of a public or private telecommunications network to or from one or more addresses specified in the warrant, being an address or addresses likely to be used for the transmission of communications to or from—

(i) one particular person specified or described in the warrant; or (ii) one particular set of premises so specified or described; and

(b) such other communications, if any, as is necessary to intercept in order to intercept communications falling within paragraph (a).

(3) A warrant shall specify—

(a) the identity, if known, of the person whose communications are to be intercepted;

(b) the nature and address of the telecommunications equipment in respect of which interception is authorised;

(c) a description of the type of communications sought to be intercepted, and, where applicable, a statement of the particular offence to which it relates;

(d) the identity of the agency authorised to intercept the communication and the person making the application; and

(e) the period for which it is valid.

(4) Where the applicant intends to seek the assistance of any person or entity in implementing the warrant, the Judge may, on the applicant's request, direct appropriate persons or entities to furnish information, facilities, or technical assistance necessary to accomplish the interception.

(5) A warrant may contain such ancillary provisions as are necessary to secure its implementation in accordance with this Act.

44. The Court also considered the provisions of **Sections 4, 6, 11, 14 and 18 of IOCA**.

45. The amendments to IOCA in 2020 by the IOCA Amendment effected changes that touched on the above-stated sections. The definition of “*intercept*” under **Section 5 of the IOCA** was amended to include “*stored communication*” which widened the scope to include “*any communication or communications data which has been transmitted by a telecommunications network and is stored on any facility capable of retaining such communication or communications data*” and to also include “*stored data*” which refers to “*any data of whatever description stored on a device*”. **Section 8 of the IOCA** was amended to confer additional powers to authorize the person named in the warrant to obtain stored communication from a telecommunications service provider and obtain stored data. **Section 11** widened the admissibility in criminal proceedings to include “*stored data*”.

46. The IOCA Amendment also adds entirely new sections, such as **Section 4A** which provides that “*unless a trial has commenced and is in progress on the coming into force of this Act*”, retroactive applications may be made pursuant to any amendment to the Act. **Section 4A (3)** goes on to state that “*all communications data obtained prior to the coming into force of this Act and lawfully obtained pursuant to ... Section 5 of the IOEPA shall continue to be admissible into evidence.*” **Section 18A** was also added and confirms that the power by search warrant to obtain communications data does not preclude applications for warrants to obtain communications data or stored data under any other written law.

47. The Claimant submits that the conduct of the State in obtaining the IOCA Orders amounts to an abuse of process as it was not aligned with the thresholds set out at **Section 8 of IOCA** and could not relate to the data contemplated under **Section 18**.

48. **Section 8(1) of the IOCA** states that, “an authorised officer may apply *ex parte* to a Judge for a warrant”. The plain and ordinary meaning of these words is that an

application for a precipitating warrant can reasonably be made without notice. This is in line with the mischief that the lawmakers addressed by this legislation, *inter alia*, to provide for the interception, acquisition and disclosure of intercepted communications. The Court takes no issue with the application being made without notice.

49. The Claimant also challenges the State's obtaining of the IOPEA Orders without notice and further complains that the State did not make full and frank disclosure when seeking the *ex parte* applications.

50. The Court asks itself whether the *ex parte* applications met the threshold requirements under **Section 8(2) of IOCA**? For a number of reasons which will be dealt with below, the Claimant contends that they did not. What the Claimant has omitted in this reasoning, however, is a reference to **Section 8(2)(a)(i)** which provides that the Judge may issue the warrant if satisfied that the warrant is necessary "*in the interests of national security*". When plainly read, **Section 8 (2) of IOCA** imposes a high threshold requirement with five (5) qualifying criteria (found at **Section 8(2)(a) – (e)**), in respect of all of which the issuing Judge must be satisfied. This high threshold to be overcome for the securing of a warrant is understandable, given that the potential effect of the issue of the warrant is the limiting of the subject person's constitutional rights.

51. **Section 8(2)(d)**, states that the Judge shall not issue a warrant unless satisfied that "*it would be in the best interest of the administration of justice to issue the warrant*". In this Court's opinion, this means that a Judge is not precluded from exercising discretion arising from an inherent jurisdiction, to capture the breadth of circumstances sought to be addressed by the issue of a warrant and on the basis that there are reasonable grounds to believe that the warrant will obtain communications about an offence.

52. The Claimant further submits that the applications for the warrants "made no legal sense". This argument focuses on **Section 8(2) of IOCA** exclusively and emphasizes that the wording of the IOCA Orders specified "*there are reasonable grounds to believe that the offence Tending to Pervert the Course of Justice **may** have been committed by Anand Ramlogan*". The Claimant argues that the word "may" in the IOCA Orders contradicts the word "shall" in **Section 8(2) of IOCA**, and should be interpreted to

mean “must”. The Court does not find this to be a strained interpretation. The Claimant nonetheless remains firm in his position that the IOCA Orders relate only to an offence that “may have been committed” and not one that “has been committed”. However, the **Section 8** umbrella cannot be read in isolation. **Section 8(2)(a)(ii) of IOCA** reads “*A Judge shall not issue a warrant under this section unless he is satisfied - that the warrant is necessary ... for the prevention or detection of any offence **where there are reasonable grounds for believing** that such an offence has been, is being or is about to be committed.*” [Emphasis this Court’s].

53. Therefore, the Judge must be satisfied that “*where there are reasonable grounds for believing*” on the part of the person making the application, such as a Police Officer, that “*an offence has been, is being or is about to be committed*”, that such grounds are in line with the usual criminal law principles that relate to “a reasonable suspicion” and accordingly support the essence of what the word “may” as contained in the IOCA Orders could mean in those circumstances.
54. The Claimant goes on to submit that the use of word “may” in the IOCA Orders supports his allegation that they were granted as a “*fishing expedition to search for evidence that might incriminate him*”. The Claimant also submits that the State was in possession of the communications data from the phones of David West and Gary Griffith since around February 2015 therefore, the Court could not satisfy the tests under **Section 8(2)(b) and (c)** which are conjunctive. He further submits that the fact that the information was already obtained and that the application for the IOCA Orders deliberately failed to mention that in the grounds of the applications was an attempt to mislead each of the Judges that were considering the Orders. The Claimant posits that the State misapplied and misused the IOCA and did not provide the Court with all the relevant information at that material stage.
55. This line of argument proffered by the Claimant has further revealed a contradiction in his case, such that a significant aspect of his substantive relief is essentially rendered otiose by the Claimant’s own reasoning. The Claimant’s case relies heavily on the allegation that the IOCA Orders that were issued by Lucky J were tainted by apparent

bias and the Claimant provided extensive reasons towards proving bias. However, the Claimant's arguments later turn to state that the applications for IOCA Orders withheld relevant information deliberately, to knowingly mislead "each" of the judges considering the orders. This break in the Claimant's overall argument strengthens this Court's finding that there was no inkling of bias by Lucky J. As the fair-minded and informed observer may now, on this basis, conclude that the Claimant was seeking to justify his own perceived suspicions that bias played a part in the issuance of the IOCA Orders.

56. As to the admissibility of the evidence secured pursuant to the IOCA Orders, it is not for this Court to determine whether the IOCA Orders were properly obtained or drafted. This remains a live issue in the Criminal Proceedings and this Constitutional Reference has in fact stayed the ruling on the evidential objections to which the IOCA Orders are subject. The fact that the admissibility of the evidence secured by the IOCA Orders has not been determined in the Criminal Proceedings and the lack of any evidence to prove such, demonstrates to this Court that the Claimant has suffered prejudice as a result of the communications data having been obtained.
57. This Court is focussed on whether the Claimant's rights have been violated. The Claimant claims that his rights to a fair trial and equality and protection before the law have been violated. In so doing, the Claimant relies exclusively on the admissibility of the communication data evidence obtained pursuant to the IOCA Orders. In this Court's opinion, the Claimant is attempting to by-pass the rules of evidence by asserting the position that if there was an error that potentially contravened a provision of law that it actuates an automatic breach of a human right or fundamental freedom. In **Harrikissoon v Attorney General of Trinidad and Tobago [1980] AC 265**, the Court adeptly described such an argument as "fallacious".
58. It bears repeating that in the Criminal Proceedings, in the face of evidential objections, the admissibility of the evidence has not yet been determined. The Court views this leap to claim constitutional infringement as "jumping the gun", since the Claimant has failed to provide any evidence to demonstrate that the Claimant sought to challenge the

issue of the warrant by way Judicial Review as a first step, but instead chose to go the way of this Constitutional Reference.

59. As such, the Court finds that the Claimant retains the full ambit of his rights to a fair trial and equality and protection before the law under the Constitution and in his right to apply for leave to appeal the ruling on the evidential objections in the Criminal Proceedings should he wish to do so at the material time. For this reason, the Court need not touch on the issue of whether it was proportionate to the interfere with or limit a right for the pursuance of a legitimate aim per **Dominic Suraj and Others v AG Trinidad and Tobago [2022] UKPC 26**.
60. The Claimant further claims that the IOCA Orders infringe his right to privacy and family life by virtue of the same argument that the IOCA Orders were unlawfully obtained and should be rendered invalid. The IOCA Orders authorised the intercept of all communications data for a period of 6-months. The Claimant's reasons for alleging this breach are that he was the then Attorney General and was responsible for matters of serious importance concerning national security, the judiciary and the administration of justice. As a result, his conversations dealt with confidential matters that concerned legal professional privilege and political, judicial and security related matters about the State. The Claimant, in raising this argument, has failed to consider the confidentiality of intercepted communication provided for under **Section 14 of IOCA**.
61. The Defendant found that if the Claimant's issue with the scope of the IOCA Order was that it was too widely crafted in what it captured, then that was not as a result of the conduct of the State and the more appropriate remedy would have been by way Judicial Review to quash the warrant.
62. Considering that the Claimant held a public office as the Attorney General at the time of the IOCA Orders, the question is whether the Claimant's right to privacy can outweigh the greater public interest should the outcome ultimately reveal that the Claimant as the then Attorney General was perverting the course of justice? The answer is clear that in the first instance, the IOCA has the effect of limiting rights and secondly, the Rule of Law requires that every citizen of this country be equally subject to the law.

On the principle of proportionality, the Court says that the Claimant cannot succeed on any application that his right to privacy and family life was violated.

THE IOCA AMENDMENT

63. The amendments to the IOCA affect Section 8(2) by re-wording Section 8(2)(a) to read as:

(2) A Judge shall not issue a warrant under this section unless he is satisfied that—

(a) the warrant is necessary—

- (i) in the interests of national security; ~~or~~
- (ii) for the prevention or detection of any offence where there are reasonable grounds for believing that such an offence has been, is being or is about to be committed;
and
- (iii) **for the purpose of rendering assistance under the Mutual Assistance in Criminal Matters Act or giving effect to the provisions of any international mutual assistance agreement;”**; **and**

64. The effect of amendment to Section 8, as indicated earlier, was to include stored communications data. The Claimant posits that this is to attempt to mitigate the breaches highlighted in his evidential objections and were targeted to him personally. The Defendant states that the amendment sought to tighten the law and could not be said to solely designed to target Claimant only.

65. A cursory examination of the amendment in the circumstances of this case could lead one to believe that the amendment was an *ex post facto* exercise to address the lacunas in the law. However, upon review it was clear that the amendment to **Section 8(2)(a)**

of IOCA did not substantively change the threshold for granting the warrant since the amended **Section 8(2)(a)(iii)** was originally captured by **Section 6 of the IOCA**.

66. The Court asks itself, if it were to find that the issuance of the IOCA warrant was unlawful, would that automatically amount to a breach of the Claimant's rights? The Claimant's case is that the very fact that the warrant was wrongly issued means that a breach occurred. However, the Claimant has proffered no evidence to this Court to show that he has suffered any personal loss or consequence as a result of the alleged breach. The mere fact that the ruling on the evidential objections in the Criminal Proceedings had not yet occurred and so it is not yet known, what, if any of the evidence collected would be admissible means that a material breach of rights did not occur. It is too remote to say that because the data is in the Defendant's possession that a breach is on-going since on the balance of proportionality, the Claimant's rights to family life and privacy would not outweigh the purpose for which the warrant was ultimately issued.
67. In the alternative, if the Courts find that the IOCA warrant was lawful, the next step would be to simply follow the procedure and attend the hearing of the evidential objections. After the hearing occurs, if a breach has been actuated then the Claimant may return to the High Court with the requisite evidence to prove that his rights have in fact been violated.
68. Finally, the Claimant alleges that the IOCA Amendment was specifically targeted at the Defendant's case against him. The Claimant would like this Court to believe that the fact that IOCA was amended while his case was ongoing is proof that the State is targeting him by "fixing" any flaws in the law to make the issuance of the IOCA warrant legal without doubt. This Court finds that the IOCA Amendment did not glaringly address any issue that was so specific to the Claimant's case such that the ultimate effect of the amendment changed the outcome of whether the warrant was lawful or unlawful. The Court further finds that for the Claimant to allege that essentially all the agents of the State were conspiring against him to the highest level to change a law to

ensure a case against him is successful is unreasonable and again speaks to a heightened sensitivity on the part of the Claimant.

ISSUE 3: THE IOPEA ORDERS

69. The IOPEA warrants were sought after the IOCA Orders became the subject of evidential objections. The evidence bears out that the DPP essentially rushed to secure evidence under the IOPEA in the event that the Magistrate ruled as inadmissible the evidence obtained pursuant to the IOCA Orders. The Claimant posits that there was no disclosure that the IOCA Orders were being challenged, when the application for the warrant under the IOPEA was being made and that this fact strengthens his argument that agents of the State were working to build a strong case against him. However, the Claimant has not proven that the Trinidad and Tobago Police Service (“TTPS”) did not disclose that information. Rather, the evidence bears out and the Court accepts that it reveals no malicious intent as the DPP was unaware that the TTPS had already applied for the IOPEA warrants.

70. In any event, in terms of a duty to make full and frank disclosure in support of the *ex parte* applications, this Court finds that the Claimant has provided no evidence to demonstrate how this has impacted his ability to defend himself in the Criminal Proceedings.

71. The IOPEA warrant under **Section 5** authorizes the seizure of any such “building, ship, vessel, carriage, box, receptacle, or place for any such thing” in this case, the cellular phones. Unlike the IOCA warrant, this warrant seizes the object containing the information, not necessarily the information itself. The Court does not find that the Claimant has demonstrated how any of the claimed breaches of his constitutional rights has occurred upon the mere seizure of the phones.

72. There is nothing in law that precludes the TTPS from pursuing the IOPEA warrants in the manner in which they did. It is not for this Court to assess the investigative methods undertaken by the TTPS. However, for the purposes of clarity, by virtue of obtaining this IOPEA warrant, the Court poses to itself the question, is the Claimant’s case that

the IOCA warrant was unlawful on the basis that the information could have been otherwise obtained substantiated? The Court is of the opinion that the warrants have entirely different effects and that the IOPEA warrant only secures in this case the receptacle that may contain data, and not the actual data itself as pursuant to the IOCA warrant.

73. For the reasons above stated as to whether there was a breach of the Claimant's constitutional rights, the Court cannot find that the IOPEA Orders are tantamount to a such a violation.

ISSUE 4: THE VINDICATORY DAMAGES

74. The High Court of Trinidad and Tobago in **Oswald Alleyne v The Attorney General CV2018-00447** at paragraph 94 states:

“94...The latter [vindicatory damages] serves a purpose of compensation for another element of the wrong and was akin to such additional award as exemplary damages but was not to be confused with the object of that award of punishment which serves no place in constitutional damages. In my view, the notion of compensation encompass two streams of loss: the first, any direct provable loss or pecuniary loss and the second, any other intangible loss such as mental distress, inconvenience or aggravating circumstances which ought to be the subject of compensation. I have loosely referred to this as pecuniary and nonpecuniary loss in this judgment. The second stream is not to be confused with a purely vindicatory award which is an additional award necessary to give effect to vindicate the constitutional right. To that extent the Court must ensure it is necessary to do so and is not subject to an aspect of double counting, if not punishment by making an oppressive and disproportionate award.”

75. In **Colin Simmons v The Attorney General CV2018-00006**, The Hon Mme Justice Mohammed awarded vindicatory damages in the case because there was sufficient evidence provided by the Claimant to show that a compensatory award alone will not vindicate the breach of the rights.

76. The precursor to such an award is a finding of breach which in this case, the Claimant has failed to establish. Therefore, the Court does not find that damages to be a suitable remedy in this case.

THE CONSTITUTIONAL REFERENCE

77. **Section 14(4)** of the Constitution states as follows:

“Where in any proceedings in any Court other than the High Court or the Court of Appeal any question arises as to the contravention of any of the provisions of this Chapter the person presiding in that Court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless in his opinion the raising of the question is merely frivolous or vexatious.”

78. This Court applies its mind what has to be considered when in Magisterial Proceedings, a constitutional question is raised. Is the threshold that the presiding officer must determine whether “in his opinion the raising of the question is merely frivolous or vexatious”? What steps must the presiding officer take before proffering the opinion that the raising of the question is merely frivolous or vexatious? In the instant case, the fact that the presiding officer referred questions to the High Court can be said to beg the question of whether a Constitutional Reference is open to being used a delay tactic to stay criminal proceedings.

79. In any event, this Court has determined that the questions concerning alleged breaches of the Claimant’s Constitutional rights reveal at the most the potential for or an anticipation that breaches may occur and so are prematurely referred to this Court.

DISPOSITION

80. The Court concludes that there was no appearance of bias in the issuance of the IOCA Orders by Justice Lucky. The State acted within legal boundaries in obtaining the IOCA interception orders and the IOPEA search warrants, and as such, there was no violation of the Claimant’s constitutional rights.

81. The Claimant’s claim is accordingly dismissed.

82. The Claimant is to pay to the Defendant costs fit for one Senior Counsel and one Junior Counsel to be assessed by a Registrar on a date to be fixed, in default of agreement.

83. No order as to costs in respect of the Interested Party.

84. And the Court so finds.

Nadia Kangaloo
Judge
05 July 2024