

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. CV2022-00618

Between

**VIJAY RAMAI**

Claimant

And

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Defendant

**Before the Honourable Mr. Justice R. Rahim**

Date of Delivery: Monday June 12, 2023

Appearances:

Claimant: Mr. L. Lalla SC instructed by Ms. T. Mangroo

Defendant: Ms. N. Nabie and Ms. S. Singh instructed by Mr. V. Jardine and Ms. J. Guerra

## JUDGEMENT

1. This is a claim for constitutional relief for actions allegedly committed by the Police Service of Trinidad and Tobago against the claimant during his attempt to exercise his right to engage in a one man protest at Woodford Square Port of Spain, opposite the Parliament of the Republic on February 4, 2022. The claimant seeks declarations that the acts were committed in breach of his right to liberty and the right not to be deprived thereof except by due process of law under section **4(a)** of the Constitution, his right to protection of the law under section **4(b)** and his right to freedom of thought and expression under section **4(i)**. He also seeks a general declaration that exists in Trinidad and Tobago the right of any person unless otherwise specifically restricted by law to freely exercise his freedom of thought and expression by staging a personal protest in any public space. Finally he seeks damages.

### The facts

2. The facts (a material part of which is disputed) are as follows. The claimant is a 51 year old activist in different causes in his community and country. He is the founding member of several religious organizations and is an active businessman involved in several enterprises. The origin of his complaint was that of the safe zone policy instituted by the Government during the pandemic lockdowns. The result of the implementation of the policy was that his Water Park business known as FunSplash Waterpark was prohibited from admitting persons who were unvaccinated. This meant that the main patrons, namely children under the age of 12 years were prevented from patronizing the park, however no such restrictions applied to other water activities such as beaches. He felt the policy to be discriminatory and decided to stage a one man protest outside the parliament in the presence of the press so as to bring national attention to the issue.
3. As a consequence, on the morning of Friday February 4, 2022 he journeyed to the sidewalk opposite the Parliament (commonly referred to as the Red House) and at 9:30 a.m. stood peacefully by himself

(according to his affidavit evidence), with a placard in hand that read "SAFE ZONE Discriminates and Oppressive Fix it Now". This sidewalk is immediately next to Woodford Square with which it abuts. It is his evidence that he posed no obstruction to anyone using the sidewalk. A friend of his Antonio Telemaque was at the time standing close to him and was not engaged in protesting but was in fact recording the happenings on video. The claimant was approached by an armed Police Constable, Tim Sinanan who told him that he had no permission from the Commissioner of Police (COP) and he was to put down his placard. That he was not supposed to have a placard since that would mean that he was protesting and he was not supposed to have placards up at this time as he had not received permission of the COP. He was then advised to take down the placard.

4. The claimant told the PC that he was allowed to stage a one man protest without permission from the COP but the officer insisted that he take down the placard. While doing this another armed officer approached and stood at the side of PC Sinanan. As a consequence the claimant became fearful of arrest and believing that he had no choice but to comply, he took down the placard. The video recording made by Telemaque was put into evidence and shall be discussed later.
5. The claimant however failed to give a full picture in his written evidence of the scene on that day as there were many other persons in the general area who appeared to have been engaged in some sort of protest action. The video recording however, also part of his evidence does in fact demonstrate the presence of other persons on that day.
6. The version of PC Tim Sinanan was slightly different. On that morning he and two other officers were dispatched from the nearby Central Police Station to respond to a gathering at the said place opposite the Red House. This was as a consequence of a report from the Inspector of Parliament. When the PC arrived he observed a gathering of twelve persons on the pavement opposite the Red House, some of whom were holding placards. He formed the view that the twelve persons formed one gathering owing to their proximity to each other. He obtained advice by way of communicating on his radio with his superior officer at the station and was instructed to speak to the individuals to ascertain information in relation to their presence.
7. He set out his training experience in relation to public meetings for the purpose of protest which has been that he would be notified by the Second Division Officer in charge of the station district that the

COP has been notified of a protest involving two or more persons and he would be dispatched to attend and observe to ensure that there is no breach of the peace. No such instructions had been received on that day. According to him there is a process to engage such persons the first step being to speak with members of the group to identify if there is a leader. If there is, then he would speak with the leader to ascertain if the COP was notified. If he is informed that the COP was not notified he relays that information to the senior officer and an officer of higher rank will then arrive on the scene and he would advise the leader and the supporters to disperse. Failure to comply may then result in arrests for the commission of the offence of holding a public meeting without notifying the COP under section 109(7)(a) of the Summary Offences Act Chap. 11:02. The court is of the view that while this procedure is not underpinned by statute or subsidiary legislation it does in fact accord with the goal of ascertaining whether there is reasonable cause to suspect that a person may be engaged in a public meeting or march. In that regard it would be necessary for the officer to make such enquires that as are reasonably practicable having regard to the circumstances he has met at the scene before making a decision to caution an individual.

8. PC Sinanan interacted with the first person he approached, the claimant who was standing at the southernmost end of the gathering. One of the other officers proceeded to speak with a woman a few feet away and one stood on the pavement on the Red House side of the roadway. The claimant was armed with a pistol in his holster and a spark (commonly referred to as a tazer), also in a holster. The officer who stood on the pavement opposite to where PC Sinanan and the claimant were standing was armed with a Galil rifle slung across his body, pointed to the ground and a pistol which was holstered. After identifying himself to the claimant, PC Sinanan told the claimant to take down the placard. He also told him that he formed the view that the claimant was part of a public demonstration for which he was supposed to notify the COP. There was an exchange of words back and forth. During that exchange the claimant stated that it was his right to engage in a one man protest and that he was there by himself engaged in a one man protest. It has been his experience in the past that persons claim to be engaged in a one man protest but continued enquires usually demonstrate to the contrary. In this case the claimant was standing with a group of twelve persons on the pavement so the PC was unsure as to whether he was engaged in a one man protest or not. He therefore spoke to other persons nearby. He formed the view that most of the persons were in support of the female who was being spoken to by the other officer but that some of them were there separately for wholly different reasons. He informed the other officers of this when they came to his side of the street. They then

engaged the said female who spoke to them in relation to an issue very much unrelated to the claimant's issue at which time the claimant left. By 10:40 all of the persons had left without incident.

9. At no time did he tell the claimant to disperse or threatened to arrest him. He pointed out that it was made clear in the video transcript which was set out in the affidavit of the claimant that when asked by the claimant as to whether he had a choice to take the advice to take down the placard his answer was that he was being advised at that time.
  
10. While ordinarily cross examination is not the appropriate in constitutional claims very limited cross examination was permitted in this case. Under cross examination he stated that he could not recall that the claimant was wearing a blue blazer and appeared to have been dressed differently to the other persons present. This was so despite having reviewed the video about one week before being cross examined. He could not recall that the sign was white with red markings. When it was put to him that the other persons had blue Bristol board signs he also could not recall. While he was talking to the claimant none of the other persons in the black tee shirts approached him and the claimant. He admitted that when he approached the claimant he told him to put down his placard before making any enquires other than his name. From his perspective he was part of the line of people when he approached him. He admitted that he had no reason to believe that the claimant was also in support of the female.

#### The video

11. The video footage speaks volumes. It shows that the claimant was dressed in a white collared shirt with a blue blazer and that importantly, he was standing at a distance away from the other persons that was far greater than the distance between those persons among their own number. It is also clear that those other persons carried blue placards and wore largely black Tee shirts. Further, that the persons nearby seemed unconcerned with the interaction that was taking place between the PC and the claimant except for one person who approached and appeared to be recording with his phone. It is equally clear in the video that the PC did in fact say to the claimant on several occasions

that he did not have permission from the COP to protest. Finally it is also clear that the claimant explained to the officer that he was engaged in a one man peaceful protest.

### Findings on the facts

12. The court therefore finds that when the claimant was approached by the PC there was sufficient for him from the physical juxtaposition of the claimant and the other persons, their methods of dress and their placards for him to form the reasonable inference that the claimant was in fact engaged in a solo protest. Further, that even if the PC was unsure at that stage, he did not speak with the other persons or make any other enquiry prior to instructing the claimant to put down his sign and informing him that he required permission to engage in the activity in which he was engaging. In so finding the court also finds that the circumstances were such that the PC was not merely advising as the use of his words imply. A rose by any other name smells just as sweet. It must be underscored that this was a uniformed, armed officer in the presence of other uniformed armed officers who was stating as a fact that the claimant could not protest without permission and telling him to put down his placard. The use of the word "advice" in those circumstances rings hollow. When all of the circumstances are considered the use of the word advice seems to have been an afterthought as the discussion continued between the claimant and the PC, the PC having already in any event instructed the claimant to put down his placard and the court so finds.
  
13. Finally it is also the finding of the court that the claimant appeared on all of the evidence to have been engaged in a protest on his own against the policy. Under cross examination PC Sinanan attempted (perhaps as a last salvo) to give the impression that he formed the view that the person doing the recording was protesting with the claimant). For the avoidance of doubt the court finds that this is not the case having regard to the fact that that person was not armed with a placard and there is no nexus between he and the claimant except to say that he was his friend. Further, the evidence of this being part of the thought process of the PC has come at last minute as it were so that the court does not believe that the PC formed this view on that day.

## The law on public meetings

14. Section **107 (1)** of the Summary Offences Act Chapter 11:02 defines a meeting as any assembly or gathering of persons called together or held for the purpose of the transaction of matters of public interest or for the expression of views on such matters. Public meeting means any meeting held in any public place except meeting referred to in the Schedule. Public march means any march or procession in a public place comprising (whether wholly or partly) pedestrians, vehicles (however propelled or drawn), or bicycles (however propelled) except a march or procession:

*(a) by police officers or members of the Fire Service established by the Fire Service Act;*

*(b) by members of the Defence Force established by the Defence Act;*

*(c) which takes place as a component part of any religious ceremony, including a wedding or funeral, not being in any way connected with any political demonstration or celebration; or*

*(d) which takes place at any time during the public festival of Carnival;*

*(e) in connection with any public meeting referred to in the Schedule.*

Public place means any highway, street, public park or garden, any beach and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not; and includes any open or enclosed space to which, for the time being, the public have or are permitted to have access whether on payment or otherwise.

15. Section **109** reads as follows:

*1) A person who desires to hold or call together any public meeting shall, at least forty-eight hours but no more than fourteen days before the day on which it is proposed to hold such meeting, notify the Commissioner of Police.*

*(2) Every notification under subsection (1) shall be in writing signed by the person or persons desiring to hold or call together the meeting and shall state—*

*(a) the address of each of the persons desiring to hold or call together such meeting;*

*(b) the purpose or purposes of the meeting;*

*(c) the place at which the meeting is to be held and the approximate time at which it is to begin; and*

*(d) the name of every speaker other than a citizen of Trinidad and Tobago or a resident who intends to address the meeting.*

*(3) If the Commissioner of Police, having regard to the time at which, the circumstances in which or the purpose for which any public meeting is to be held has reasonable ground for apprehending that the holding of such meeting may occasion a breach of the peace or public disorder, he may—*

*(a) subject to subsection (4), in writing, prohibit such meeting; or*

*(b) give directions imposing upon the persons holding or calling together such meeting such conditions as appear to him necessary for the preservation of the peace and of public order,*

*and where the notification is incomplete or the Commissioner has reason to believe that any information supplied in pursuance of the requirements of this Part is false, the Commissioner may prohibit such meeting.*

Section **110 (1)** places a prohibition on public marches and demonstrations at public meetings:

*No public meeting may be conducted in such a manner so as to result in a public march that is not permitted by the Commissioner of Police under Section 114 and if a public meeting is conducted in such a manner that such a public march takes place at such a public meeting, the holder of such meeting is guilty of an offence.*

Sections **112** and **113 (1)** set out the requirements for public marches:

*112. Notwithstanding any rule of law to the contrary no person may organise, lead, or take part in any public march unless a permit has been issued in respect thereof by the Commissioner of Police.*

*113. (1) A person who desires to organise any public march shall at least forty-eight hours before, but no more than fourteen days, before the day on which such public march is to take place, apply to the Commissioner of Police for a permit.*

Section **114 (1)** reads:

*The Commissioner of Police on an application made to him under Section 113, may, in any case, grant or, if he considers it in the interest of public safety and public order to do so, refuse the application; but the Commissioner shall, where there are reasonable grounds for apprehending that the public march in respect of which the application is made may occasion a breach of the peace or serious public disorder, refuse the application.*

16. There is therefore a distinction to be drawn between a public meeting and a public march. In the case of the former, so long as the gathering will be of more than one person in a public place one must give notice. When notice is given it is up to the COP if he thinks fit to prohibit such meeting based on the statutory criteria. It follows that there is no statutory requirement that one applies for and be granted permission to hold a meeting in a public place. What is required in that case is notice to be given simpliciter. The COP may then act upon that notice. In relation to public marches however there is a clear and unambiguous prohibition against public marches and so permission must be sought and granted. It follows that even if one wishes to hold a public meeting of more than one person (which of course is implicit in the phrase itself) permission is not required. Notice can thus be given in law within the prescribed time and containing the required information and the meeting held without

formal permission of the COP. In such a case the only document in possession of the person responsible for the public meeting may be a copy of the notice or an acknowledgment of the receipt of the notice from the COP but certainly not a letter of permission from the COP as none is required the right being exercisable subject to prohibition by the COP.

17. In the present case, the bare statement of the PC that the claimant needed permission of the COP to protest was an improper statement of the law. The word “protest” features nowhere in the relevant sections. Further, he failed to make it clear whether he formed the view that the claimant was participating in a public meeting or a public march in which case the claimant would have needed permission if he was involved in the latter but not the former. It is clear that before ascertaining the facts, the PC formed the view that the onus lay with the claimant to obtain permission and he therefore had no permission to engage in a public meeting. Further the evidence does not support on any view an allegation that a march was taking place on that day whether resulting from the meeting or on its own so that the PC could not have been enquiring into permission for a march and the court so finds. In the face of all of the evidence and applicable law therefore the instruction of the PC to the claimant was unlawful and the court so finds. Further the court finds that the actions of the claimant did not offend any of the provisions set out above.

## **The constitution**

### The section 4(i) right

18. The mere fact that the instruction was unlawful does not necessarily lead to a finding of unconstitutionality. Section 4(i) reads:

*4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:*

*(i) freedom of thought and expression.*

19. The defendant has submitted that the duty of the court is to guard against true oppression and not to accord an overly vigorous and sacrosanct importance to freedom of expression with the result that a breach of the constitutional right is easily engaged by minimal or indirect intrusion. Of course the co-relation between the freedom to think and express one's view and the pillars of democracy is well established and it is often the case if not always that the exercise of the latter is fundamental to a true and meaningful existence of the former.

20. In **The Law Association of Trinidad and Tobago v The Honourable Chief Justice of Trinidad and Tobago Mr. Justice Ivor Archie ORTT** Civil Appeal No. P 075 of 2018 (upheld on appeal to the Privy Council in [2018] UKPC 23). Their Lordships of the Court of Appeal considered whether the appellant could investigate alleged misconduct on the part of the respondent. The Court of Appeal rejected the respondent's argument that the LATT could not conduct a pre-complaint investigation as *inter alia* such a prohibition could stifle freedom of thought and expression. In so ruling His Lordship Jamadar JA stated as follows:

*"117. There is no doubt that courts have always recognised, long before there were written constitutions in the Caribbean with human rights provisions, that freedom to think and freedom to express what one thinks and feels are "the lifeblood of a democracy." Little wonder that the Constitution expressly links the democratic way of life (as something that the People of Trinidad and Tobago believe in), to active participation in public affairs (clause (c) of the Preamble to the Constitution). In fact the Constitution recognises that such active participation is vital to "develop and maintain due respect for lawfully constituted authority" (clause (c) of the Preamble to the Constitution).*

*118. Lord Steyn, in Ex parte Simms (supra) has boldly declared in relation to the right of freedom of expression: "In a democracy it is the primary right: without it an effective rule of law is not possible". Lord Steyn recognises that freedom of expression is not an absolute right; as he explains, "sometimes it must yield to other cogent interests". What is necessary to curtail the right? "A pressing social need" and even then "the restrictions should be no more than is proportionate to the legitimate aim pursued".*

21. The defendant submits however that in this case, there is a significant danger of the courts acting on minimal intrusions into the right as opposed to guarding the individual against true oppression. The defendant has relied on several other cases emanating from jurisdictions outside of the Commonwealth in some cases but which the court believes in any event to either not apply to this case or which are simply of no assistance.

22. While sitting at first instance In the High Court in Anguilla, Justice Saunders in the case of **Benjamin et al v The Honourable Minister of Information and Broadcasting et al** No. 56 of 1997 reiterated the importance of the Constitutional right to expression. His words were:

*...freedom of expression conduces to the enhancement of our democratic values. It is a necessary condition for the effective pursuit of truth. It heightens the ability of the citizenry fully to participate in the making of decisions. By being able freely to ventilate grievances, a healthy social pressure valve is created and utilised. If this valve is clogged or its usage denied, the result could be violent and dangerous expression. Freedom of expression provides the mechanism through which is often peacefully resolved that tension that always exists between social change and preservation of the status quo, that this right is to be found in the First Amendment to the United States Constitution is not a coincidence. It is a testament to its primacy.*

23. Years later as a Judge of the Caribbean Court of Justice, Justice Saunders in **McEwan and others v The Attorney General of Guyana** [2018] CCJ 30 AJ commented on the importance of the right of freedom of expression at paragraphs 75-76:

*.....it underpins and reinforces many of the other fundamental rights, freedom of expression is rightly regarded as the cornerstone of any democracy. A regime that unduly constrains free speech produces harm, not just to the individual whose expression is denied, but to society as a whole. On the one hand, the human spirit is stultified. On the other, social progress is retarded. The fates of brilliant persons like Galileo, and Darwin, and countless others, sung and unsung, betray a familiar pattern*

*in the history of humankind. Today's heresy may easily become tomorrow's gratefully embraced orthodoxy.*

*It is essential to human progress that contrary ideas and opinions peacefully contend. Tolerance, an appreciation of difference, must be cultivated, not only for the sake of those who convey a meaning, but also for the sake of those to whom it is conveyed.'*

24. This court readily associates itself with the erudite exposition on the right set out above. The crux of the issue in this case however is whether the instruction by the PC to "put down" the placard, that he was "not allowed to put up" the placard and "was not supposed to have" the placard was the direct cause of an infringement of the right of freedom of the claimant to express his thoughts and if so whether it was a minimal infringement as suggested by the defence. An examination of the evidence as to what occurred thereafter is therefore fundamental. In relation to the viva voce evidence, there was some pushback as it were from the claimant in that he told the PC that he was allowed to stage a one man protest. The result was that he took the placard down. In the video evidence which is 5 minutes and 43 seconds long, the conversation between the PC and the claimant takes up 2 minutes and 24 seconds of that time. It is equally clear that the video is edited in that immediately thereafter the claimant begins to speak directly into the camera of the person recording the video. However, his first words which in context may have by inference been "I am being advised" is cut to "being advised". Further, the composition of the recording has then changed. It follows also by way of inference that by then the PC had walked away as he testified in his own evidence.

25. But the video shows that despite the sworn testimony of the claimant that he was forced to put down the placard, to the contrary the claimant kept his placard high up to his chest area and proceeded to engage in a monologue with the camera, highlighting firstly that he was being forced to abandon his protest by the police but then going on to set out his plight in relation to the issue of the regulations imposed on the water park and calling upon the Minister of Health to work with them to resolve the issue. His words from 2:53;

*Claimant: I am here for a peaceful demonstration to highlight my dissatisfaction with regards to the safe zone policy as it pertains to the family entertainment business in Trinidad. I am*

*forced to make this demonstration this morning as all of the letters that we have written to the Minister of Health pertaining a conversation with him to see how we have resolved the matter has failed. He has never responded to us. My business fun splash water park and other businesses, chuckee cheese, movietowne, fun station, Harry's water park and five islands water park form part of this family entertainment business and now that PC Sinanan has advised me that I cannot do a one man demonstration I have no other option but to put down my sign and leave here and look for some other recourse in which I could have peaceful resolve to this matter. You know it is sad to know that I can't voice my opinion, I have tried all the civil methods in terms of writing to the Minister etcetera and nothing has happened now I decided to come and highlight my issue here and the police officers are surrounding us, I feel very intimidated and I would like to let the Minister of Health know that collaboration works better than intimidation. You know as a leader of this country the Minister of Health should really understand that collaboration with the stakeholders who promote the growth and development in Trinidad and Tobago is more important than intimidation. Right now the police officers are here and like I say I am getting a little bit scared as to what might be happening with me. I have already lost my business for the last twenty three months I have been financing from borrowed loans to keep my business afloat and time is running out on us and we are saying again that the safe zone policy is unfair to us, if you are designated safe zone to be an area where vaccinated persons can attend and engage and assemble, you know our core clients are children and children cannot get vaccinated and cannot attend our facility. However at the beaches and the public beaches you have both vaccinated and unvaccinated people attending there and children are allowed to mix and mingle with them. So we believe that the safe zone policy needs to be revisited and it is unfair to us, very very unfair to us and we are asking them to allow us to operate under normal terms and conditions and we as responsible businessman (sic) will ensure that all the Covid 19 protocols are adhered to because the safety of our customers is very important to us.*

*Cameraman: Thank you sir.*

26. It is therefore abundantly clear to the court that the claimant ignored the instruction of the PC contrary to the impression given in his written evidence and proceeded for some 3 minutes and 17 seconds thereafter to ventilate and fully articulate the subject of his demonstration loudly enough for

it to be recorded in full view of the parliament with his large white placard with large printed red letters that read "SAFE ZONE discriminates and oppressive" raised high to his chest all the while. There is also a clear inference that the PC had by then moved away and the claimant is shown as having stepped back closer to the fence of Woodford Square so as to enter into his monologue. The video does not at anytime show the claimant having left the area or having lowered the sign.

27. The written evidence of the PC is that he had moved away and proceeded to the area where Sergeant Rampersad and Corporal Mohan were speaking with the very woman that WPC Rulow had been speaking with earlier. He stood a few feet away from them. By that time it appears to the court that having made the misstep of giving the instruction to the claimant to put down the placard he was now interested in assisting in the enquires of the other persons present. He had moved on from the claimant. He was able to provide details of what was being said by the woman in relation to an entirely different issue that is of no relevance to this case. While all this was going on he observed from the corner of his eye as it were that the claimant walked behind him with the placard down next to his legs. The claimant then stated "I made my point", left the pavement and went away. The inference is of course that this would have taken place after the claimant had had his say on the issue in respect of which he came to make his point. The court accepts the evidence of PC Sinanan in this regard as there is no evidence to the contrary and additionally it is highly plausible having regard to the full statement that the claimant appears to have made after the PC walked away.

28. The courts must of course be vigilant to guard and protect the citizens against the arbitrary use and abuse of power by the state whether by the police or otherwise. The right to express oneself is a fundamental right that has been the driving factor in relation to development of our healthy democracy long before Trinidad and Tobago attained independence. It often is the only avenue for person to make their views known on crucial issues and the court must be alert to the ensure that that right is in no way trampled upon so as to have the effect of the stifling of the voice of the people.

29. That being said, the court is of the view that the claimant went on nonetheless to exercise his right to express himself when he launched into the discourse unhindered. It is clear that he refused to abide by the unlawful instruction given by Sinanan and proceeded to accomplish that for which he came by holding his large conspicuous sign up high and delving into the issue for which he had come. It follows

that the actions of Sinanan did nothing to prevent the claimant from exercising his fundamental right to freedom of thought and expression.

30. In relation to the claimant's claim in the video that he was scared and so was stopping his demonstration, the court is of the view that his actions certainly spoke otherwise in that he continued to give full effect to his rights by treating with the issue for which he had attended to treat which included the effects of the regulations on his business, a solution to the problem, desire to have meaningful discourse with the Minister and a promise to keep his patrons safe should the policy be revisited to his benefit. The court finds that he did in fact accomplish his goal and had "made his point" as he stated so that there could not have been and was not a breach of his right to freedom of thought and expression and enshrined under the constitution by the unlawful instruction of PC Sinanan.

#### The Section 4(a) and section 4(b) rights

31. There is no evidence in this case of the deprivation of liberty or property of the claimant so that the issue of infringement of the right under section 4(a) simply does not arise. Indeed it appears that no submissions were made frontally thereon on this issue by the claimant. In relation to the 4(b) right of protection of the law, having regard to the findings of the court above there could have equally been no deprivation of that right and the court so finds. It is therefore unnecessary to traverse and discuss the submission of the defendant in that regard.

#### **Conclusion**

32. In the view of the court, the unlawful instruction given by the PC did not on this occasion lead to any constitutional infringements. That is to not to say however that the PC was justified in his actions. Fortunately the claimant in this case would have ignored his instructions in deeds although not in words and would have proceeded to exercise his constitutional entitlement. Not every citizen possesses such strength of character to stand firm in the face of unlawful action by the police and so police officers tasked with enforcing the law must be very careful so as not to unwittingly trample upon the rights of citizens in circumstances such as these. The officer involved in this case was a

Constable who was junior in rank to the others. In such a case perhaps it may have been prudent for him to await the action of his senior officers on the scene and follow their instruction. Had he done so he would not have made the faux pas which he did. Those who carry with them the power of the State must be vigilant themselves to ensure that citizens do not feel taken of advantage of especially where they feel they have a right to be heard. It is a delicate balancing exercise that requires maturity of thought and action.

33. The claim will therefore be dismissed and having regard to the finding of unlawfulness made by the court the court is of the view that the bringing of the claim was reasonable as it was for the court to determine the issue of constitutionality in the peculiar and unique circumstances of this case. The court is therefore of the view that each part should bear its own costs.

#### **Disposition**

34. The order is as follows;

- I. The claim is dismissed.
- II. Each party shall bear its own costs of the claim.

Ricky Rahim

Judge