

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
SUB REGISTRY SAN FERNANDO

H.C.A NO. S-942 OF 2005

IN THE MATTER OF THE CONSTITUTION
OF TRINIDAD AND TOBAGO

And

IN THE MATTER OF THE GUARANTEES OF
FUNDAMENTAL HUMAN RIGHTS AND
FREEDOMS PART 1 OF THE SAID
CONSTITUTION

And

IN THE MATTER OF AN APPLICATION
BY DONNY BRIDGELAL FOR REDRESS
IN PURSUANCE OF SECTION 14 OF
THE SAID CONSTITUTION IN
RELATION TO THE APPLICANT

Between

DONNY BRIDGELAL

Applicant

And

**THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO**

Respondent

Before the Honourable Mr. Justice James Aboud

Appearances: Mr. Anand Ramlogan for the Applicant.

Ms. Josefina Baptiste for the Respondent.

JUDGMENT

1. The applicant, Donny Bridgelal, claims that his constitutional rights have been infringed. His Attorney-at Law filed a constitutional motion on 24 May 2005 seeking *inter alia* various declarations and an order for damages. Two reliefs in the motion concern his alleged arrest and detention and two concern the alleged infringement of his right to retain and consult a legal advisor. After filing affidavits in opposition, the Attorney General filed a Notice of intention to take a preliminary objection on 14 July 2005. The Notice alleges that the motion is “an abuse of process of the Court in that a parallel remedy exists and should therefore be withdrawn or dismissed” in accordance with *Thakur Persad Jaroo v The Attorney General of Trinidad and Tobago* 59 WIR 519. On 17 February 2006, I heard arguments on the preliminary point.

The facts

2. The following facts were agreed in the course of the argument:
 - 1.1 On 26 June 2002, the applicant was issued with a “Notice of Opportunity to Pay Fixed Penalty” (the traffic ticket) by police constable Lalbeharry. He had committed a traffic offence. The traffic ticket specified that non-payment of the fine within 14 days would result in its conversion into a summons to appear at the Siparia magistrates’ court on 10 September 2002.
 - 1.2 Two days later, on 28 June 2002 the applicant paid the fine at the Siparia magistrates’ court.
 - 1.3 Unknown to the applicant, officers of the state failed to record that the applicant had paid the fine, and it was accordingly converted into a

summons to appear before the Siparia magistrates' court on 10 September 2002.

1.4 The applicant did not appear on that date. The magistrate issued a "fresh summons" addressed to the applicant to appear on 18 December 2002 (the first fresh summons). Further non-appearance by the applicant resulted in the issue of the following fresh summonses, to all of which the applicant did not appear:

- fresh summons to appear on 21 March 2003 (the second fresh summons).
- fresh summons to appear on 18 June 2003 (the third fresh summons).
- fresh summons to appear on 28th January 2004 (the fourth fresh summons).

1.5 On 28 January 2004 the magistrate issued a warrant for the arrest of the applicant. On 31 March 2005 police constables Friday and Seepaul visited the applicant at home and told him they had a warrant for his arrest. (The applicant says that this occurred on 1 April 2005).

1.6 The applicant was then transported to the Princess Town police station. (He says that he went involuntarily, because, while they did not show him any warrant, the police officers informed him that they had one and told him to get into their police vehicle. The State contends that the applicant was invited to accompany the police officers and did so voluntarily.)

1.7 The applicant attended the Princess Town magistrates' court on 1 April 2005 and presented his receipt for payment of the fine. The presiding magistrate transferred the matter to the Siparia magistrates' court for hearing on 11 April 2005. He was placed on a bond of \$500.

1.8 On 11 April 2005 the applicant appeared at the Siparia magistrates' court, again presented his receipt for payment of the fine, and the presiding magistrate dismissed the matter.

3. Disputes of fact have emerged since the filing of the respondent's affidavits. The gravamen of the applicant's accusations relate to his treatment by the police officers who "arrested" him at his home and those who came into contact with him at the magistrates' courts in Princess Town and Siparia. He says that he informed police constables Friday and Seepaul that the fine was paid and that some mistake must have occurred. They are alleged to have spoken harshly to him at the Princess Town Police station, threatening to put him in a cell. There is no evidence that the officers advised the applicant of his right to consult an Attorney when they detained him at the station. Eventually, he says, he was allowed to go home on condition that he return on the next day. Police constable Friday deposes that the warrant was executed on 1 April 2005 and that after reading it to him, he "showed it to him and cautioned him but he remained silent". He did not particularize what he meant by the word "cautioned". At the Princess Town magistrates' court the applicant says that he was manhandled and placed in a holding cell. It bore bloodstains and was unsanitary. Another officer later commanded him to sit inside the court. After presenting the receipt, the magistrate told him that it was irrelevant and, placing him on a bond, transferred the matter to the Siparia magistrates' court. At his second court appearance he was "scared, having never been foul of the law before". He hired a lawyer and eventually the matter was dismissed. He claims to have suffered emotional trauma and depression and produced a psychiatrist's sick leave certificate. The respondent disputes most of these facts. All police officers are alleged to have acted properly and courteously, and the conditions in the holding cell were described as clean and sanitary.
4. The Respondent argued that the arrest and all subsequent prosecutorial events arose as a result of the applicant's non-appearance to the original summons

(created by his “non-payment” of the fine) and the four later fresh summonses. It was not as a result of the traffic offence. In any event, it was argued, the applicant should have sought the parallel remedies available under the common law instead of Constitutional relief.

The law

5. The preliminary objection raises yet again the thorny effect of *Jaroo*. Is this “an exceptional case” within the meaning of its language? *Jaroo* is the culmination of a line of important constitutional cases that began in *Harrikissoon v Attorney General of Trinidad and Tobago* [1980] AC 265 and was developed in such notable cases as *Chokolingo v Attorney General of Trinidad and Tobago* [1981] 1 WLR 106, *Maharaj v Attorney General of Trinidad and Tobago*(No. 2) [1979] AC 385 and *Attorney General of Trinidad and Tobago v McLeod* [1984] 1 WLR 522.
6. *Jaroo* has had the effect of a virtual judicial injunction granted in the terms contained in the following passages:
 - “...*the right to apply to the High Court which section 14(1) provides should be exercised only in exceptional circumstances where there is a parallel remedy.*” (Paragraph 29)
 - “...*the originating motion procedure under section 14(1) is appropriate for use in cases where the facts are not in dispute and questions of law only are in issue. It is wholly unsuitable in cases which depend for their decision on the resolution of disputes as to fact. Disputes of that kind must be resolved by using the procedures which are available in the ordinary courts under the common law.*” (Paragraph 36)
 - “*The appropriateness or otherwise of the use of the procedure afforded by section 14(1) must be capable of being tested at the outset when the person*

applies by way of originating summons to the High Court. All the court has before it at that stage is the allegation. The answer to the question whether or not the allegation can be established lies in the future.” (Paragraph 38)

- *“...before he resorts to this procedure the applicant must consider the true nature of the right allegedly contravened. He must also consider whether, having regard to all the circumstances of the case, some other procedure either under the common law or pursuant to statute might not more conveniently be invoked. If another such procedure is available, resort to the procedure by way of originating motion will be inappropriate and it will be an abuse of process to resort to it. If...it becomes clear after the motion has been filed that the use of the procedure is no longer appropriate, steps should be taken without delay to withdraw the motion from the High Court as its continued use in such circumstances will also be an abuse.” (Paragraph 39)*

In Jaroo their Lordships contemplated that some sort of conversion of the motion to seek the parallel remedy was possible. At Paragraph 36, the Learned Board pointed out that “instead of amending his pleadings to enable him to pursue the common law remedy that had always been available to him, the appellant chose to adhere to what had now become an unsuitable and inappropriate procedure”. An originating motion, although defined as “pleadings” within the meaning of the Rules of the Supreme Court, 1975 (as amended), cannot be amended to claim relief under the common law. Such relief is only available by Writ. The suggestion that a “conversion” was possible was nonetheless given, and a door was opened, albeit a small door, for certain classes of applications.

7. In the case of *Joseph George v Attorney General of Trinidad and Tobago* (Unreported decision dated 13 May 2002 in High Court Action No. 1861 of 2001) Madame Justice Dean-Armorer grappled with these questions with a prescience that was finally clarified by the Judicial Committee of the Privy Council in *Attorney General of Trinidad and Tobago v Siewchand Ramanoop* 66 WIR 334.

With a view to dispelling the uncertainty which had arisen since *Jaroo*, the Learned Board in *Ramanoop* identified two situations where constitutional motions might escape an abuse of process objection:

“What, then, of the case where on the information available to an applicant a constitutional motion is properly launched but it later becomes apparent (1) that there is a substantial dispute of fact or (2) that a claim for constitutional relief is no longer appropriate? As to the first of these two events, the emergence of a factual dispute does not render the proceedings an abuse where the alleged facts, if proved, would call for constitutional relief. Where this is so, the appropriate course will normally be for the applicant to apply promptly for an order that the constitutional proceedings continue as though begun by writ and for any appropriate ancillary directions for pleadings, discovery and the like. Where appropriate, directions should also be given for expedition and a timetable set for the further steps in the proceedings. If the second of these two events happens, and constitutional relief is no longer appropriate, it would be an abuse of process for the applicant to continue to seek constitutional relief at all. In such a case the applicant should either abandon his motion entirely or, here again, seek a direction that the proceedings continue as though begun by writ. In this case, however, unlike the first case, the applicant will also need to amend the relief he seeks so as to abandon his claim to constitutional relief and instead seek to pursue his parallel remedy. Needless to say, on all such applications the court will exercise its discretion as it sees fit in all the circumstances. Moreover, the court may of its own motion give any of these directions.”
(Paragraph 30)

Is this motion an abuse of process?

8. In the instant case the State has taken objection to the motion on the ground that there are parallel remedies available under the common law. Additionally, in the

course of oral submissions certain disputes of fact emerged (and I will shortly come to those). As far back as *Harrikissoon*, Lord Diplock recognized that an application alleging contravention of constitutional rights, made ‘solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy’, would amount to an abuse of process. The applicant’s case contains a mix of allegations. Paragraphs 3 and 4 of the motion seek declarations that his right to be informed of his entitlement to retain and instruct a legal advisor was infringed. While it may be arguable that common law remedies are available for wrongful arrest, false imprisonment or assault and battery, there is no common law remedy available for this species of constitutional infringement. The motion cannot therefore be said to be brought “solely” for the purposes described by Lord Diplock in *Harrikissoon*. Such an infringement was carefully considered by Sharma CJ in the recent case of *Damien Belafonte v Attorney General of Trinidad and Tobago* (unreported decision of the Court of Appeal in Civil Appeal No. 84 of 2004 delivered on 3 June 2005.) In that case, the failure to inform an accused person of his right to retain an Attorney was described by the Learned Chief Justice in these terms: “*This was a breach of a constitutional right for which there had previously been no tortious remedy at common law. It is not a liability in tort at all; it is a liability of the state in public law. There is therefore no collateral remedy available to the appellant.*” In the case of *Rajesh Ramsarran v Attorney General of Trinidad and Tobago* (Privy Council, unreported opinion delivered by Lord Carswell on 28 February 2005) this right was held to exist even in cases of arrest for non-payment of a fine: “*...a simple and straightforward rule is required, which can be operated in the case of all arrests, a rule that does not demand the police officers draw distinctions between real challenges and others and would not give rise to avoidable litigation. This can only be effectively achieved if there is a comprehensive rule that on any occasion when persons are arrested or detained they are entitled to the constitutional protection specified in section 5(2)(c).*” (Paragraph 12)

9. Another area of potential overlap concerns the issuance of the fresh summonses.

If service is not proven then relief would be better sought by common law action. However, if it is established that the applicant was served, and disobeyed the summonses, then, even though he might be deemed to be the architect of his own misfortune, it would be open to him to question the legality of the fresh summonses. They arose out of “non-payment” of a fine that had, in fact, already been paid. Can they be said to be legally issued? The answer to this question lies in public, not private law.

10. *Jaroo* established that the time to test the appropriateness or otherwise of a section 14(1) application was “at the outset when the person applies by way of originating motion to the High Court”. (Paragraph 38).
11. Was the applicant entitled to claim an infringement of his constitutional rights at the time that the motion was filed? It was only when the affidavits in response were filed that the appropriateness of the procedure came into question and substantial disputes of fact emerged. The affidavits in opposition explained the reason for the arrest and/or detention of the applicant. I do not favour the state’s explanation that the applicant was not under arrest when he was first carried to the Princess Town Police Station. To hold otherwise would be to ignore the coercive potential of a man in uniform. A simple request in one ear may sound quite ominous and imperative in another, especially one not accustomed to the directives of a police officer. The applicant contended that there must have been some mistake and, at the police station, declared that he had paid the fine. The respondent’s affidavits provided an explanation for the arrest and/or detention. The police had made an error. His payment of the fixed penalty was not properly recorded. The conversion of the traffic ticket took place without his knowledge, and so too the issue of the four fresh summonses. The question as to whether any were served on him is, in my view, a critical question of fact to which I shall shortly come. In the absence of any contradictory factual indications the applicant was entitled to file his constitutional motion. The character of the

reliefs claimed in the motion cannot be described as non-constitutional, especially those relating to the issue of access to legal advice: *Belafonte* (page 14).

12. *Ramanoop* set out two scenarios for judicial intervention. In my view, constitutional relief is still the appropriate remedy for the facts as alleged by the applicant and as challenged by the respondent. The overlap between the constitutional remedies and the tortious remedies does not deprive the motion of its appropriateness as a potential engine of justice or, indeed make it abusive to pursue. The proper administration of justice does not favour a multiplicity of actions. The dispute of fact, (the second scenario considered in *Ramanoop*) which emerged since the filing of the motion is more troubling. Many critical facts are now disputed. There is no agreement that any of the fresh summonses were served on the applicant. Police constable Lalbeharry deposed that all four fresh summons were served on the applicant, but that only the fourth fresh summons was served on the applicant personally by him. Mr. Ramlogan said that the issue of service was not contested by any affidavit of the applicant. He had an opportunity to do so after the filing of the respondent's notice. He said he did not file affidavits in reply in order to save costs and to keep his focus on resisting the preliminary objection. I do not consider this a good enough reason to remain silent. Nonetheless, I still have doubts about service, even in the absence of a specific denial by the applicant. The summonses are described in the respondent's affidavits as "fresh summonses". Such a summons is only issued when there has been no service of a previous summons or the previous summons has expired after its 6 month lifespan. Admittedly, when the traffic ticket was converted into a summons and there was non-appearance to it, it is likely that the magistrate would have ordered the first fresh summons. The second fresh summons would not have been issued if the first was served, and so too with the third and fourth fresh summons. If there was service and non-appearance, the magistrate would have been entitled to issue the so-called bench warrant for non-appearance; she was not likely to call for the issue of another fresh summons. I think that this is an important factual dispute. It casts doubt on the veracity of

police constable Lalbeharry's affidavit that all fresh summonses were served. The respondent ought properly to have addressed it by producing a record from the magistrates' court. Other important disputes of fact concern the conduct of the police officers at the station and at the magistrates' court and the conditions of the court. Most importantly is the issue of whether the applicant went voluntarily to the Princess Town police station, or whether he was under arrest.

13. In my view there is no single-action parallel remedy in the common law for the type of reliefs claimed in the motion. It is not desirable to split up the motion so that the alleged infringement of the right to counsel proceeds for redress under the constitution and the other alleged torts proceed by way of a fresh writ action. To this extent, then, the motion is still the "appropriate procedure".

14. It does not serve the interests of justice to dismiss this motion on the ground of a factual dispute. To do so would be to ignore the suggestions made in *Jaroo*, the clarifications provided in *Ramanoop* and the decision in *Belafonte*. I am not minded to "convert" the motion and let the action proceed as if begun by writ. The motion contains a mix of reliefs. A writ action will not provide an answer to the constitutional issue of the right to legal counsel. Conversely, the hearing of the constitutional motion will be lengthened by the cross-examinations that will ensue and might also be delayed if further public records are required. The procedural tools of writ action are not available in a trial by affidavit. It must be remembered that in *Ramanoop* some flexibility was left open to the constitutional court. The Learned Board described the "conversion" process as being "normally" appropriate in cases where a factual dispute emerged (Paragraph 30). This is not a normal case and some creativity is needed for its resolution.

15. For the reasons given above I overrule the preliminary objection. The constitutional motion will proceed but not precisely in the manner set out in the Rules of the Supreme Court, 1975 (as amended) (RSC). The motion was filed prior to the implementation of the Civil Proceedings Rules, 1998 (as amended

1999) (CPR). The CPR revolutionized the terms by which parties engaged themselves in the civil courts. However, by a practice direction dated 8 September 2005 and published in the Trinidad and Tobago Gazette on 13 September 2005 the Chief Justice directed that when RSC matters have been assigned to a judge (as this motion was assigned to me) “he shall require the parties to attend before him for a pre-trial review, at which hearing the judge shall give directions for the trial...”. Paragraph 4 of the practice direction provides as follows: “The Judge conducting the pre-trial review shall have all the powers of case management as are given to a Judge under Parts 26, 27, and 39 of the CPR”. The powers available here are quite extensive and designed to achieve the overriding objective of the CPR but *within* the context of an RSC action. Affidavits may be treated as witness statements. The parties could also be ordered to file agreed and unagreed statements of issues of fact and law to be determined. Very strict timelines could be imposed. The trial by affidavit could be more effectively managed and focused by use of this practice direction. I therefore order the hearing of a pre-trial review to immediately follow the delivery of this judgment at which time specific directions and time lines will be given for the hearing of this action. The costs of the preliminary objection are the applicant’s costs in the cause.

Dated this 14th day of March, 2006.

James Christopher Aboud
Judge