

REPUBLIC OF TRINIDAD TOBAGO

IN THE HIGH COURT OF JUSTICE
Sub Registry, San Fernando

H.C.A. No. S 2025 of 2004

IN THE MATTER OF THE CONSTITUTION OF
TRINIDAD AND TOBAGO BEING THE SCHEDULE
OF THE CONSTITUTION OF THE REPUBLIC OF
TRINIDAD AND TOBAGO ACT 1976

AND

IN THE MATTER OF AN APPLICATION BY ANGUSTINE FRANCIS
FOR REDRESS IN PURSUANCE OF SECTION
14 OF THE SAID CONSTITUTION OF THE REPUBLIC OF
TRINIDAD AND TOBAGO FOR A CONTRAVENTION IN
RELATION TO THE APPLICANT

Between

ANGUSTINE FRANCIS

Applicant

And

THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO

Respondent

JUDGMENT

Before the Honourable Mr. Justice V. Kokaram

Appearances:

Mr. Sunil Gopaul Gosine for the Applicant

Mr. Mitra Bhimsingh for the Respondent

1. **BACKGROUND FACTS**

5.7 The Applicant, Augustine Francis, met with unfortunate circumstances on 21st November 2000. On that day around 8:00 a.m., the Applicant attended the Marabella Police Station on the request of a police officer at duty at the Station. The Applicant had previously made a report to the Marabella Police Station that a man whom he knew as Barry Joseph stole his bicycle. The Applicant having received word that the police had arrested this person, was attending the Marabella Police station in response to the request of the police to identify the person in custody whom the Applicant claimed had stolen his bicycle. However while at the station, after the Applicant had identified the person detained, a police officer told the Applicant to sit down. The officer then said to the Applicant: **“Blubber you know it has a warrant for you”** and placed the Applicant into a cell next to the person he previously identified for the theft of his bicycle.

5.8 Another police officer read two warrants for the Applicant’s arrest. The first was a “time allowed warrant” for the payment of a fine of \$200.00 based on a previous conviction for the possession of a cutlass.¹ The second was for a charge of robbery². This second warrant did not bear the Applicant’s name but that of **“Blubber”** of “Line Road Marabella”.³

5.9 The Applicant deposed that he was eventually released from custody when he was “later taken” to the San Fernando Magistrates’ Court and was placed on his own bond for \$20,000.00 in relation to the charge of robbery. The Applicant contended that *“the magistrate asked me my real name and same was then written on the information*

¹ Warrant #6217/89

² Warrant #2281/91

³ These warrants are examined in detail below.

before the magistrate". See paragraph 5 of the Applicant's affidavit. It is noted however that the name "Angus Francis" and not "Angustine Francis" was inserted on the warrant.

5.10 The charge against the Applicant was eventually dismissed on 21st August 2001 on account of the non appearance of the virtual complainant⁴.

5.11 The Applicant contends that his arrest and/or detention and prosecution on the charge of robbery was unconstitutional and illegal which contravened sections 4(a) and 4(b) of the Constitution of Trinidad and Tobago.

2. **THE APPLICATION:**

2.1 Before the Court is the Applicant's originating motion filed on 4th November 2004 pursuant to section 14(1) of the Constitution seeking the following declaratory relief and consequential orders:

(e) A declaration that the arrest and/or detention and/or imprisonment of the Applicant on a charge of robbery in case No. 2281 of 1991 on the 21st day of November, 2000 was unconstitutional and illegal.

(f) A declaration that the placing of the Applicant on a bail bond in the sum of \$20,000.00 on the charge of robbery in case number 2281 of 1991 was unconstitutional and illegal.

(g) A declaration that the action of the State through the Police in prosecuting the applicant on case number 2281 of 1991 for Robbery was unconstitutional and illegal.

(h) An interim order that the Applicant do submit himself for a fingerprint test at the Police Headquarters, Edward Street, Port of Spain to have his fingerprints verified as against the

⁴ See extract of Magistrate's Case Book dated 24th February 2003 exhibit A.F. 3 annexed to the Applicant's affidavit

original fingerprints of the person charged for the offences set out in case number 2281 of 1991 for confirmation whether the Applicant was the person originally charged for the said offence.

(i) An Order that Monetary Compensation be assessed by a Master in Chambers on behalf of the Applicant.

2.2 *Attorney for the Applicant particularised the constitutional rights of the Applicant which are in issue on this application as the right to liberty and security of the person⁵, the right to the protection of the law⁶ and the right not to be deprived of such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms⁷.*

2.3 In response to the Applicant's motion the Respondent filed a notice of a preliminary objection dated 13th December 2004 in the following terms:

“That the action should be dismissed or withdrawn in accordance with the principles of Thakur Persad Jaroo Privy Council appeal No 54 of 2000 in that no breach of a constitutional right has been disclosed and alternatively that a parallel remedy exists.”

3. **THE RESPONDENT'S AFFIDAVIT:**

5.7 On the morning of the hearing of this motion, 20th February 2006, the Respondent filed an affidavit sworn by Vidia Shastri Patel in response to the Applicant's motion. This affidavit was filed almost ten (10) months after the expiration of the deadline set by the Court by order dated 13th March 2005 for the Respondent to file its affidavit(s) in response on or before 29th April 2005. Attorney for the Applicant objected to the late

⁵ Section 4(a) of the Constitution

⁶ Section 4(b) of the Constitution

⁷ Section 5(h) of the Constitution

filing of this affidavit and indeed comment was made about the absence of the Respondent's affidavit in the Applicant's skeleton arguments filed on 20th February 2006.

5.8 Attorney-at-Law for the Respondent indicated that many of its witnesses have retired and he encountered difficulty in contacting them. The Applicant's position with regard to the contents of the Respondent's affidavit was that the Applicant joins issue or denies that the Applicant remained silent when the warrants were read to him and referred the Court to paragraph 4 of the Applicant's affidavit. However no argument was advanced as to any prejudice that may be suffered by the Applicant as a result of the late filing which could not be compensated for in an order for costs. The contents of the affidavit do not themselves raise any violent contest of fact. Accordingly leave was granted to the Respondent to enlarge the time for the filing of this affidavit. The last two (2) sentences of paragraph 10 of the said affidavit and the exhibit "V.S.P. I" was struck out and expunged as both Attorneys agreed that the records exhibited as "V.S.P.I." to the affidavit were not properly certified. The Court reserved the issue of costs of the Respondent's application to the end of the hearing.

5.9 The Respondent's position articulated in this affidavit is quite simple. Mr Patel was the warrants officer attached to the Marabella Police Station. He deposed that on 20th November 2000 he identified himself to the Applicant cautioned the Applicant, who remained silent, and proceeded to execute the warrants on the Applicant by reading same to him and further informing him of his legal rights and privileges. Mr. Patel contends that at no time during the execution did the Applicant indicate that he was not the person named in the warrant. Mr. Patel deposed that the issue of identification was not a factor when the warrants were executed and he did not have to verify the identification of the Applicant when the warrants were executed on him. The Court also notes the statement in paragraph 6 of this affidavit that "*Augustine Francis also called*

Blubber hereinafter referred to as the Applicant arrived at the Marabella Police Station.”

4. **THE ISSUES:**

The issues to be resolved on this motion are as follows:

- (e) Whether the motion constituted an abuse of the process of the Court.
- (f) In the event that the motion constituted an abuse whether the Court will strike out the motion or cure the defect in proceedings if any.
- (g) In the event that the motion is not an abuse, whether the warrant executed by the Respondent was unlawful and/or vitiated the arrest/detention and/or prosecution of the Applicant.

5. **ABUSE OF THE PROCESS:**

5.7 The Respondent made a frontal assault on the Applicant’s motion by relying upon the frequently cited authority of *Thakur Persad Jarro v The Attorney General*⁸. The main thrust of the Respondent was that the procedure adopted by the Applicant by filing an originating motion under section 14 of the Constitution is an abuse of the Court for the following reasons:

- (e) The proceedings on the face do not disclose any breach of a constitutional right. A mere allegation of a breach of a constitutional right will not suffice to successfully invoke proceedings under section 14 (1) of the Constitution.
- (f) There were facts which are in dispute, namely whether the Applicant was properly identified as the accused on the warrant;
- (g) The Applicant’s proper remedy lay in a common law action for false imprisonment and unlawful arrest. Attorney for the Respondent did not pursue and abandoned the point that the Applicant could also pursue a private action in malicious prosecution.

⁸ Privy Council 54 of 2000. Referred to herein as *Jarro* Also reported in (2002) 59 WIR 519

5.8 Attorney for the Applicant however attempted to outflank the Respondent's assault by submitting that:

- (e) The arrests, detention and prosecution of the Applicant arose out of a defective warrant.
- (f) The warrant #2281/91 issued by and/or under the hand of the Court was irregular and unlawful and that this procedural irregularity tainted and affected the entire judicial proceedings;
- (g) Even if the Applicant was properly identified, the warrant on its face is improper and unlawful.
- (h) A fortiori the Applicant's right to liberty and protection of the law were breached.
- (i) There was no other parallel remedy to raise these issues as no common law action will lie against the Magistrate. Further no action can be successfully pursued against police officers who acted upon or executed a warrant. See section 42 of the Police Service Act Chapter 14:01.
- (j) There is no dispute of fact in this case.
- (k) Based on the foregoing this case is distinguishable from *Jarro*.

5.9 The nub of the Applicant's case is that his arrest stemmed from a defective warrant. The police executed a warrant on a person who did not fit the description on the warrant. Put simply the police arrested the wrong person. This tainted the entire proceedings.

5.10 The mere allegation that a human right has been contravened is not of itself sufficient to entitle an applicant to invoke the jurisdiction of the Court to seek redress under the Constitution. One of the principles that will guide the Court in sifting out unmeritous constitutional motions was elucidated by Lord Diplock in *Khemraj Harrikissoon V The Attorney General of Trinidad and Tobago (1979) 31 WIR 348*.

"The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply

with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under section 6 (1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves contravention of any human right or fundamental freedom.”

- 5.11 It was therefore a plain abuse for a litigant to seek to obtain constitutional relief where no such right was being asserted. Indeed the claims asserted as breaches of the Applicant’s constitutional rights in that case were held to be “manifestly untenable”.⁹ Further constitutional relief was denied to that litigant where he deliberately chose not to avail himself of the other remedies available to him in law.¹⁰ It is noted that the Privy

⁹ Per Lord Diplock, pg 350 paragraph D.

¹⁰ Per Lord Diplock pages 350 to 352

Council held in *Harrikissoon* that it was manifest that the right of a holder of a public officer not be transferred against his will from one place to another was not included among the human rights and fundamental freedoms specified in Chapter 1 of the Constitution. Where therefore an Applicant is not asserting a genuine right recognized under the Constitution he is not entitled to invoke the Court's jurisdiction under section 14 of the Constitution.

5.6 **THE JARRO GUILLOTINE:**

The Privy Council in *Jarro* elevated this statement to a principle which became a watershed in constitutional law and procedure in this jurisdiction. Referring to this statement their Lordships stated:

“it has been made clear more than once by their lordships Board that the right to apply to the High Court which section 14(1) of the Constitution provides should be exercised only in exceptional circumstances where there is a parallel remedy.”¹¹

“38. 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 a person applies by way of originating motion to the High Court. All the court has at that stage is that allegation. The answer to the question whether or not the allegation can be established lies in the future. The point which Lord Diplock drew attention was that the value of the important safeguard that is provided by section 14(1) would be diminished if it were allowed to be used as a general substitute for the normal procedure in cases where those procedures are available. His warning of the need for vigilance would be deprived of much of its

value if a decision as to whether resort to an origination motion was appropriate could not be made until the applicant had been afforded the opportunity to establish whether or not his human rights or fundamental freedoms had been breached.”

5.7 In *Jarro* the Applicant’s motion was dismissed as an abuse of the Court in circumstances where he asserted a common law right; disputes of fact existed and he had a parallel common law remedy. Since that decision a number of constitutional motions in this jurisdiction suffered at the *Jarro* guillotine.¹² In many of those cases where there was a parallel remedy and disputes of fact emerged the motions were dismissed outright.

5.8 Recently, quite appropriately, there has been a judicial retreat from the liberal application of *Jarro* and an attempt to place that decision within its proper context. This is evident in two recent decisions of *Ramanoop*¹³ and *Belafonte*¹⁴.

5.9 It is instructive to note the comments of the Law Lords in *Ramanoop*:

“Where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. To seek constitutional relief in the absence of such a feature would be a misuse or abuse of the court’s process...That said their Lordships hasten to add that

¹¹ Per Lord Hope of Craighead, Page 532 paragraph 29

¹² For a useful summary of the cases in which the Jarro principle was invoked see the judgment of Myers J in HCA 905 of 1999 Michael Ramnauth v The Attorney General of Trinidad and Tobago at page 3. See also CA 63 of 02 Joseph George v The Attorney General of Trinidad and Tobago

¹³ The Attorney General of Trinidad and Tobago v Siewchand Ramanoop [2005] UKPC 15 (23rd March 2005)

¹⁴ CA 84 of 2004 Damien Belfanote v The Attorney General of Trinidad and Tobago

the need for the courts to be vigilant in preventing abuse of constitutional proceedings is not intended to deter citizens from seeking constitutional redress where acting in good faith they believe the circumstances of their case contain a feature which renders it appropriate for them to seek such redress rather than rely simply on alternative remedies available to them. Frivolous vexatious or contrived invocations of the facility of constitution redress are to be repelled. But bona fide resort to rights under the Condition ought not to be discouraged.”

5.10 In *Belafonte* the Court of Appeal held that the true nature of the complaint by that applicant was a breach of his constitutional rights. At the core of that case were breaches of the fundamental right to freedom of religious belief and observance and the right to be informed of his right to counsel. With respect to those breaches there are no alternative common law remedies. The learned Chief Justice stated:

“16. The cases which stress the need to guard against abuse of the procedure for redress under the constitution are in sharp contrast to those in which there has been a clear infringement of a constitutional right...

What is evident from Jarroo and other similar cases is that the determining factor in deciding whether there has been an abuse of process is not merely existence of a parallel remedy but also that the pursuance of the application to the High Court must be viewed as being made for the sole purpose of avoiding the normal judicial remedy for unlawful administrative action.”

5.11 The principles to be culled from these authorities¹⁵ are as follows:

¹⁵ *Harikissoon, Jarro, Ramanoop and Belafonte*

- (e) An applicant must make an informed decision prior to initiating proceedings as to whether the rights being infringed are common law or constitutional rights. The applicant must consider the true nature of the right contravened. Not every application will be appropriate for relief by constitutional motion. Applicants must recognize that constitutional remedies are to be sparingly used and only availed to assert genuine constitutional rights. The Court will not countenance the “dressing up” of a common law action under the guise of constitutional redress. Frivolous, vexatious or contrived invocations of the facility of constitutional redress are to be repelled.
- (f) If the true nature of the right allegedly contravened is a common law right (a parallel remedy exists) but also fits the definition of a right protected by the Constitution, the applicant must demonstrate some exceptional feature of his case that would make resort to the constitutional procedure more appropriate. Such features will include an absence of a dispute of facts¹⁶, the arbitrary use of state power, a fundamental subversion of the rule of law¹⁷, the assertion of a “mixed claim” of breaches of rights some of which are common law rights and the others only capable of redress under the constitution.¹⁸
- (g) Usually where it subsequently emerges from the Respondent’s response to the application that there is a dispute of fact the originating motion procedure may not be the appropriate mechanism. Although the constitutional motion is not to be used as a device to avoid the necessity of a trial, in circumstances where the alleged facts, if proved would call for constitutional relief, the Applicant should as soon as possible apply for directions or the court can give directions for a trial as though the proceedings begun by way of writ.
- (h) However, where there is on the face of the application an arguable case for constitutional relief a litigant ought not to be deprived of utilizing the remedy even

¹⁶ See Ramanoop

¹⁷ Forbes v The Attorney General Privy Council no 2 of 2001

¹⁸ See Bellafonte page 13

where there are minor differences of fact. Where there is no substantial dispute of facts in cases which call for constitutional relief the trial judge should proceed to make findings of fact rather than prolong the proceedings by requiring the applicant to file new proceedings and present the case all over again before a different judge.

- (i) Similarly where it subsequently emerges that a claim for constitutional relief is no longer appropriate, the Court can also make directions that the proceedings continue as though begun by writ with the necessary amendments to the relief sought to pursue the parallel remedy. However before doing so a Court must be satisfied that the constitutional motion was properly launched in the first place.
- (j) For these reasons, there is an onus on the Respondent to bring to the attention of the Applicant as soon as it can, probably by way of letter before action, the grounds upon which it refuses to entertain the applicant's claim for redress under the Constitution.¹⁹. This is to allow the applicant the opportunity to properly assess his claim and to make an informed choice as to his procedural options. Failure to do so may result in an order for costs being made against the State if its response could have averted the course of action taken by the applicant.

7. It would appear that, for the moment as a result of these recent decisions, motions for constitutional relief in this jurisdiction may spared be the *Jarro* guillotine²⁰. Unfortunately this is not the case for this Applicant for the reasons set out below.

6. **THE APPLICANT'S CONSTITUTIONAL RIGHTS:**

5.7 Pursuant to these principles, the Applicant must first demonstrate that his application raises genuine issues of constitutional law and that the true nature of the complaint is a breach of his constitutional rights. The Applicant contends that his rights under sections

¹⁹ The requirement of the Pre Action protocols in the Civil Proceedings Rules (1998) may hopefully make the days of silent respondents springing surprises on the applicant at the last moment a practice to be condemned to prehistoric litigation.

4(a) and (b) of the Constitution: the right to liberty and the protection of law and not to be deprived thereof except by the due process of law, were infringed by the State.

- 5.8 Unfortunately the Applicant's claim as articulated in this application that his right to liberty and protection of the law were breached by the actions of the State are not on the facts of this case genuine issues of constitutional law.
- 5.9 The facts as set out in the Applicant's affidavit are not very satisfactory. They are sketchy and lacking in the detail one would expect in motions such as these. The Applicant pegs his case essentially on the warrant #2281/91 being executed on the wrong person. The Applicant contends that the warrant read to him was defective in that there was no proper description of the person on whom the warrant was to be executed and further the Applicant did not fit the description of the person so named on the warrant. The Applicant is not "Blubber". Therefore the procedure to arrest the Applicant was illegal from the outset and vitiated the entire prosecution. It is noted that for the very least an issue arises as to whether the Applicant is also known as "Blubber". Accepting for the moment that the proper alias is not reflected on the warrant this, as is discussed below, is a mere irregularity and does not give rise to any live issue of constitutional law.
- 5.10 The Applicant relied on *Mc Grath v Chief Constable of the Royal Ulster Constabulary and Another*²¹ in which Lord Clyde stated:

" If warrants which are apparently valid are to be taken at their face value and justify the action taken in conformity with them it is necessary that there be strict controls governing the granting and

²⁰ It would be of interest to determine how these principles would be applied to constitutional motions filed under the Civil Proceedings Rules (1998) with its more flexible approach to litigation.

²¹ [2001] 2 A.C. 731

the execution of them. In so far as warrants may authorize what would otherwise be an unlawful invasion of private rights, there are various safeguards which accompany the granting and execution of them. Whether or not they are granted under statutory provisions the procedures require for the granting of them must be carefully followed. They must state whatever the particular statutory provision under which they are issued required them to state (e.g. R v Inland Revenue Comrs, Ex p Rossminster Ltd [1980] AC 952. The warrants must be sufficiently clear and precise in their terms so that all those interested in their execution may know precisely what are the limits of the power which has been granted. As Colman J stated in Hoye v Bush 1 Man & G 775, 778. “It is of the essence of a warrant that it should be so framed, that the officer should know whom he is to take, and that the party upon it is executed should know whether he is bound to submit to the arrest.” Compliance with the proper procedure is particularly important where the liberty of the subject is concerned. (R v Metropolitan Police Comr, Ex p Hammond [1965] AC 810, 837).”

- 5.11 The Court is mindful that **McGrath** is a claim in tort for false imprisonment. However it is clear that the person to be arrested on the warrant #2816/91 was one “Blubber” from “Train Line Marabella”. Therefore on the force of this authority only that person who fits that description can lawfully be detained. It is important to note that with reference to a line of argument which was presented to that Court under reference to Article 5 of the European Convention for the protection of Human Rights and Fundamental Freedoms the Court stated that the article did not advance the case further than a consideration of whether the execution of the warrant was lawful. The right asserted from the outset was therefore a common law right.

- 5.12 It is also noted that a perusal of the Applicant's affidavit demonstrates that the Applicant never protested that he was not known as "Blubber" until his first hearing before the Magistrate's Court. Even so he simply says that he told the Magistrate that "*he was the wrong person being brought before the court on the said charge.*" Even this does not necessarily raise the issue that the Applicant is not the person named in the warrant. It may simply convey the Applicant's innocence with regard to the commission of the offence and that some other person committed it. An issue of substantive fact.
- 5.13 The Court also takes a dim view of the Applicant's attempt to contest the validity of the first warrant claiming that the name "Augustine Francis" in that warrant did not refer to himself. To the credit of Attorney at Law for the Applicant this argument was not pursued before this Court. It is noted that the receipt issued to the Applicant and accepted by him was in the name of "Augustine Francis" and not "Angustine Francis". It is also noted that the Applicant contends that his name was written in on the second warrant²². However a perusal of that warrant reveals that the name "Austin Francis" and not Augustine Francis was written on the warrant.
- 5.14 It is to be remembered that Sections 4(a) and (b) of the Constitution guarantees to the Applicant the right not to be deprived of liberty and protection of the law except by due process of law. Not every error of the State would be capable of an infringement of the rights protected by section 4(a) and (b) of the Constitution. If the State commits an error of fact or substantive law, even where a person has gone to goal as a result which can be appealed or a mere irregularity in procedure, even though it goes to jurisdiction, that falls short of a failure to observe one of the fundamental rules of natural justice (which would mean that there was no due process) no right recognized under section 4(a) can be breached. The Court can do no better than cite with approval the statement of Lord Diplock in *Maharaj v The Attorney General of Trinidad and Tobago*:

“No human right or fundamental freedom recognized by Chapter 1 of the Constitution is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person’s serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. Where there is no higher court to appeal to then none can say that there was error. The fundamental human right is not to a legal system that is infallible but one that is fair. It is only errors of procedure that are capable of constitution infringement of the rights protected by section 1(a) and no mere irregularity in procedure is enough, even though it goes to jurisdiction; the error must amount to a failure of the fundamental rules of natural justice. Their Lordships do not believe that this can be anything but a rare event.”

5.15 It is unarguable, that the Applicant can lawfully be deprived of this liberty in circumstances if he was arrested without a warrant on reasonable suspicion²³ or is arrested pursuant to a warrant.²⁴ Prima facie the police officers at the Marabella Police Station arrested and detained this Applicant on a warrant contending that he is also known as “Blubber”. There is no complaint by the Applicant in his initial detention of a failure to observe the fundamental rules of natural justice. It is important to note that the Applicant does not advance any of the classical cases which would have entitled him to seek constitutional relief such as the deprivation of his right to counsel or to be brought before a magistrate promptly. The Applicant contends that there was no proper identification on the warrant. This Court does not agree. It is clear that the judicial officer issuing the warrant had a person in mind a name was given and an address. Even

²² See paragraph 5 and 6 of the Applicant’s affidavit

²³ See section 4 of the Criminal Law Act Chapter 10:04. This scenario does not arise on the facts of this case.

²⁴ See Criminal Law Act

if the issuing of a warrant in a name such as “Blubber” was an irregularity it falls short of a failure to observe the rules of natural justice.

5.16 This approach has been applied and adopted in several cases *Harrikisson, Chokolingo v the Attorney General of Trinidad and Tobago*²⁵ *Nankisson Boodram v The Attorney General*²⁶ *Forbes v The Attorney General*²⁷

5.17 It remains therefore that an error in the execution of a judicial order, in this case warrant #1621/91 not shown to be malicious and liable to be set aside by a judge for error of fact or law could not amount to a breach of fundamental rights, even where the error has resulted in someone serving a term of imprisonment.

In CA 154 of 2000 *Curtis Wright v The Attorney General of Trinidad and Tobago* the Court of Appeal considered a similar position where the Applicant in that case was arrested by virtue of a bench warrant. The applicant contended that he was not the person fitting the description of the person named in the warrant. The police officer as in the present case simply “nabbed the wrong man”. Nelson JA stated the following which binds this Court:

“Indeed it is clear that even if there was an error in the execution of the warrant and the wrong person was under a bona fide mistake apprehended and detained a claim for constitutional reliefs would not normally lie. Not every error of an organ of the State public authority or public officer will give rise to a breach of constitutional rights...

*In **Cooling v AG** Lord Diplock emphasized that the passage cited although obiter has been the subject of careful consideration by*

²⁵ (1980) 32 WIR 354

²⁶ 47 WIR 459

²⁷ PC Appeal No 2 of 2001

*the Board. Ibrahim J as the then was applied those dicta of Lord Diplock in **Burroughs v AG** and treated a failed prosecution on the basis of perjured evidence as being an error of substantive law for which there was no constitutional redress. If there was an error there was due process...it was an error of fact which would not support a claim for constitutional relief.”*

5.18 Taken at its highest if the Applicant’s contention is correct it is met with the argument that he is “also known as Blubber”. A dispute of fact to be determined by the criminal court. As in **Wright** this Court is therefore constrained to similarly hold that the alleged error in nabbing the Applicant as “Blubber” is an error of fact which can and was dealt with by the due process afforded to the Applicant of a judicial system to ventilate his defence that he was not the correct person before the Court.

5.19 As a consequence the Applicant cannot successfully contend that his constitutional rights were breached. The Applicant’s right is to the existence or availability of a system which is designed for the enforcement and protection of the rights of individuals. In **Boodram** Lord Mustill said:

“The purpose of sub section (2) is to make clear that certain fundamental rights which would otherwise exist in law are not taken away. Here neither Parliament nor any other body is seeking to take away the appellant’s right to the fair trial which is part of the due process of law guaranteed by section 4(a) That right is undisputed and the appellant has no need for recourse to the High Court in order to establish it. Properly analyzed the real gist of the appellant’s complaint is that the adverse publicity will prejudice not the existence of the right by the exercise of it. Whether this complaint is well founded is a matter for decision and

if necessary remedy by the ordinary and well established methods and principles of criminal procedure which exist independent of the Constitution. Provided that the safeguards remain in place and are made available to the appellant in the trial court and if necessary on appeal he has the benefit of the fair trial process to which he is entitled...

The due process of law guaranteed by this section has two elements First and obviously there is the fairness of the trial itself. Secondly there is the availability of the mechanisms, which enable the retrial court to protect the fairness of the trial from invasion form outside influences. These mechanisms for part of the protection of law, which is guaranteed by, section 4(b). It is only if it can be shown that the mechanisms themselves as distinct from the way in which in the individual case they are put into practice) have been, are being or will be subverted that the complaint moves form the ordinary process of appeal into the realm of constitutional law.”

5.20 The Applicant cannot successfully advance such a claim in this case. Upon his arrest he is later taken to the San Fernando Magistrates Court where he is granted bail. He is not prevented from obtaining representation and indeed he elects to represent himself. The matter was eventually dismissed by the Magistrate.

5.21 Further the Court does not find that the placing of the Applicant on a bail bond was unconstitutional and illegal. The Applicant did not advance any argument to support this declaration save that the entire proceedings were tainted by the illegal arrest. If the Applicant was denied bail that may have been another matter, however the grant of bail maintains the presumption of innocence and is evidence of due process which requires

the grant of bail to the Applicant. There is no allegation that the Magistrate failed to give the accused a fair hearing before the grant of bail.²⁸

5.22 On the facts and circumstances of this case this Applicant was not denied the right to liberty and protection of the laws. This Court is satisfied that the Applicant failed to carry out the requisite balancing exercise prior to initiating these proceedings to ascertain that the true nature of his claim was not constitutional in nature. Indeed common law remedies exist for unlawful arrest as articulated in the authority of *McGrath* on which the Applicant relied.

7. **PARALLEL REMEDY:**

5.7 There is no “parallel remedy” in this case. There is the only remedy of instituting a common law action for damages for wrongful arrest and false imprisonment. Indeed the authority of *McGrath* was a decision in the private action of false imprisonment.

5.8 Although section 42 of the Police Service Act Chapter 15:01 provides an absolute defence to a police officer executing a warrant for acts done in “obedience to the warrant” it is clear that a police officer executing a warrant is protected only if he or she executes the warrant absent the person actually named in the warrant. The protection does not extend to the officer if the warrant is executed absent some other person. There would have been no bar therefore for this Applicant instituting common law proceedings against the officers and the Respondent for unlawful arrest and false imprisonment.

5.9 As is observed above there are no special features or circumstances in this case, which would justify resort to constitutional redress. Although there is no violent contest on the facts, this case from the outset was not properly a claim for constitutional redress.

²⁸ See HCA 3129 of 1987 *Premnath Beharry v Algernon Jack* and HCA 2168 of 2002 *Pantro Horne v The Attorney General of Trinidad and Tobago*

5.10 Section 14 of the Constitution was abused as a convenient vehicle to advance a common law claim in a constitutional court. It cannot be contended that there was a bona fide claim or a constitutional motion that was to use the words in Ramanoop “properly launched.”

8. **CONCLUSIONS AND FINDINGS:**

5.7 The Court therefore agrees that this motion is an abuse of the process of the Court. The Applicant has not raised any genuine issues of constitutional law to properly launch his constitutional motion. A claim for constitutional relief was never appropriate. Unfortunately for the Applicant this motion is dismissed. The Court noted its disapproval of the filing of the Respondent's affidavit. Attorney-at-Law for the Respondent has not insisted on its costs in this application. There shall be no order as to Costs.

Dated this 6th day of March, 2006.

Vasheist Kokaram
Judge.