

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No.748 of 1998

BETWEEN

MARSHA CAMPO

Applicant

AND

**THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO**

Respondent

Before the Honourable Mr. Justice Ventour

Appearances:

Mr. S. Jairam SC. and Mr. S. Maharaj for the Applicant

Mr. Narinesingh for the Respondent

JUDGEMENT

On the 1st day of February, 1999, I delivered an oral judgement dismissing the preliminary objection raised by Attorney-at-Law for the Respondent with respect to the Motion filed on behalf of the Applicant herein. Sometime thereafter, before the order was perfected, Counsel for the Respondent made an application asking the Court to re-visit the order made on the 1st February, 1999 with a view to varying the said order in light of certain legal authorities which were not put before the Court when the preliminary objection was first raised. The question that arises for determination is whether the circumstances are of such a nature as to justify the Court recalling its order for the purpose of varying same. Counsel for the Applicant thinks not. It will be helpful

if the history of the matter is clearly set out in order to better understand the circumstances giving rise to the application before the Court.

The History of the Matter

On April 19, 1998 the Applicant filed a Notice of Motion in which she claims the following reliefs:-

- (1) A Declaration that the arrest and/or detention and/or imprisonment of the Applicant on 20th day of December 1996 to 21st day of December, 1996 was unconstitutional and illegal;
- (2) A Declaration that the Applicant upon her arrest or detention was denied her constitutional right to retain and instruct without delay a Legal adviser of her choice and to hold communication with him;
- (3) A Declaration that the Applicant upon her arrest and/or detention and/or incarceration was denied the right to be brought promptly before an appropriate judicial authority;
- (4) An Order that monetary compensation and/or damages including exemplary or punitive and/or aggravated damages be assessed for the damage and loss suffered by the Applicant as a result of the above mentioned unconstitutional action.

There were other consequential reliefs sought in the said Notice of Motion which also sets out the grounds upon which the application is based. Her affidavit in support of the said Motion was filed on April 9, 1998, and she also relied on an affidavit filed on her behalf by one Lawrence Adams on 9th April, 1998.

Two affidavits were filed on behalf of the Respondent on 21st September, 1998. The first is that of one Dennison Henry, Police Corporal attached to the Arima Police Station and the other by Mark Superville, Police Constable attached to the St. Joseph Police Station. Both the Applicant and Lawrence Adams responded to the affidavits filed on behalf of the Respondent by affidavits filed on 12th October, 1998. On September 21, 1998 the Respondent filed a Notice indicating that at the hearing of the application the Respondent will contend that the Notice of Motion is bad on the following grounds:-

- (1) That the Notice of Motion was not filed within one year following the accrual of the cause of action;
- (2) Alternatively because of the Applicant's unreasonable delay in bringing the Motion the Court should not exercise its discretion in the Applicant's favour and should therefore dismiss the Motion.

When the Motion came before this Court on 14th January, 1999 leave was granted to Attorneys-at-Law for the respective parties to cross-examine the deponents on specific paragraphs of their affidavits. On the 14th January, 1999 the matter was adjourned to 22nd January, 1999 for the hearing of the Motion. On 22nd January, 1999 Counsel for the Respondent with the leave of the Court delivered written submissions to support the contention raised in the notice filed on September 21, 1998. In his written submissions Counsel argued that the Applicant's Notice of Motion ought to be struck out on the ground that it was not filed within the one year time limit prescribed by the Public Authorities Protection Act, Chapter 8:03. Alternatively he argued that the Applicant is barred by laches from pursuing the action. Counsel listed a number of authorities in support of his submission. The following cases were cited:

- (1) Mervyn Phillips –vs- The Attorney General of Trinidad and Tobago,
H.C.A. 701 of 1989;**
- (2) Harridath Balchan & Haniffa Ali –vs- The Director of Public
Prosecutions & The Attorney General of Trinidad and Tobago,
H.C.A. 800 of 1994;**
- (3) Alvin Augustus Smith –vs- Jules Bernard, the Commissioner of
Police & The Attorney General of Trinidad and Tobago H.C.A.
No.S 17 of 1995;**
- (4) James Sewlal –vs- The Attorney General of Trinidad and Tobao,
H.C.A. No.3035 of 1997;**
- (5) Felix Augustus Durity –vs- The Attorney General of Trinidad
And Tobago H.C.A. No.569 of 1997;**
- (6) Williams –vs- The Attorney General 1992 LRC 310;**
- (7) Rosie Blanchfield & others –vs- The Attorney General of
Trinidad and Tobago and the Chaguaramas Development
Authority C.A. No.38,118 of 1994.**

On the issue of delay Attorney for the Respondent relied on the following cases:

- (1) Tilokchand Motichand & ors. –vs- Munshi & another (1969)
2 CR 824;**
- (2) Farouke Warris –vs- The Comptroller of Customs & Excise
& The Attorney General of Trinidad and Tobago H.C.A. No.
2354 of 1990;**
- (3) Alvin Augustus Smith –vs- Jules Bernard, the Commissioner of**

Police & The Attorney General of Trinidad and Tobago (supra);

(4) Felix Durity –vs- The Attorney General of Trinidad and Tobago

(supra).

Counsel for the Respondent submitted that the Authorities to which he has referred clearly establish that the Police is a Public Authority entitled to the protection under the provisions of the Public Authorities Act, more particularly, Section 2(1) thereof. Consequently on the basis of the provisions of that Act and the finding that the police is a Public Authority the Applicant is required to commence her action within one year from the date of her arrest, that is, within one year of 20th December, 1996 the day on which she is alleged to have been arrested. He submits that since the Applicant filed her Motion on 9th April, 1998 almost sixteen months after her arrest, she has therefore failed to comply with the statutory period of one year and consequently her action is statute barred and ought to be dismissed.

Alternatively Counsel argued that the delay of sixteen months is not in keeping with the principle laid down in several legal authorities to which he has referred the Court, that is, where redress is sought following a breach of one's constitutional rights, the Applicant is obligated to pursue such redress with utmost expedition. Counsel asked the Court to hold that the period of sixteen months amounts to an unreasonable delay and consequently the Applicant ought to be precluded from obtaining any constitutional redress. Moreover, no evidence has been put before the Court in an attempt to explain the rather inordinate delay in bringing the action.

In response to the preliminary objection Senior Counsel for the Applicant argued that the cause of action of the Applicant did not accrue on 21st December, 1996 as

contended by Counsel for the Respondent but rather the Action accrued on 9th April, 1997. His contention was that an action for wrongful prosecution only arises on a successful determination of the charges before the Magistrate's Court. He relied upon the case of **Ramsey Olivierre –vs- The Attorney General of Trinidad and Tobago H.C.A. No. 1068 of 1985** where Lucky J. held (correctly in my respectful view) that the cause of action of malicious prosecution only accrued when the Defendant's appeal is allowed and the conviction quashed.

It is to be noted that in the Ramsey Olivierre's case the learned Judge held that the Public Authorities Protection Act did not apply (the Judge having found on the evidence that there was malice) and therefore the State could not have pleaded the one year limitation period as a defence to the claim. Counsel for the Applicant also submitted that the one year limit set by Section 2(1) of the Public Authorities Protection Act applies only to civil proceedings and not to constitutional motions. In fact, he contended that the authorities upon which Counsel for the Respondent relied in support of his contention were decided per incuriam and therefore should not be followed by this Court.

Essentially those were the arguments and submissions made by Counsel for the respective parties on the preliminary point raised by Attorney for the Respondent. The Court then adjourned the matter for decision to 1st February, 1999.

On 1st February, 1999 this Court held that the cause of action upon which the Applicant relies did accrue on 9th April 1997 and not 21st December, 1996 as contended by Counsel for the Respondent. As a consequence the Court ruled that the filing of the motion by the Applicant on 9th April, 1998 was within the statutory limit and therefore

overruled the preliminary objection made by Attorney for the Respondent. The question of cost was reserved.

The matter was then adjourned to 23rd February, 1999 for the hearing of the Motion. On 23rd February, 1999 the parties appeared before me in the Fourth Civil Court in Port of Spain and indicated that discussions for a settlement were being pursued both on the question of cost as well as on the substantive motion. As a result, hearing of the Motion was adjourned to 17th March, 1999 at the Civil Chamber Court in San Fernando. On 17th March, 1999 Counsel for the Respondent appeared and offered no objection to an application made by Junior Counsel for the Applicant seeking an adjournment because of the unavailability of leading Counsel. At that hearing Mr. Dhaniram of Counsel held for Mr. Maharaj. On that occasion Counsel for the Respondent invited the Court to re-visit the decision of the Court made on 1st February, 1999. Further written submissions on the issue was made available to the Court. I indicated to Counsel then that I have no objection examining the further submissions made but that he should forward a copy of same to Counsel for the Applicant and thereafter I will be willing to hear both parties on the application. The matter was adjourned to 19th April, 1999.

On 19th April, 1999 Mr. Maharaj attended before the Court and once again sought an adjournment on the basis that leading Counsel was out of the jurisdiction. Mr. Byam who appeared on Mr. Narinesingh's behalf had no objection to the application. I inquired of Mr. Maharaj whether he had received a copy of the further written submissions made by Counsel for the Respondent and he responded in the affirmative. I indicated then that Senior Counsel Mr. Jairam ought to have a copy of the written submissions well in time so that the parties could address the Court on the matters raised therein on the adjourned

date. The matter was then adjourned to 10th May, 1999. On 10th May, 1999 Mr. Jairam, Senior Counsel appeared on behalf of the Applicant and confirmed that he had received a copy of the written submissions and sought an adjournment to be able to consider in more detail the submissions made and to file his written submissions in response. The matter was again adjourned to 20th May, 1999 at 11:00 a.m. on which date both Counsel appeared and oral arguments and submissions were made on behalf of the respective parties.

Summary of Arguments and Submissions

The issue before the Court is whether the Court has the power to recall the order made on 1st February, 1999 in the circumstances described above. Counsel for the Respondent has argued that provided the order of the Court is not perfected the Court has the power to recall its order if justice requires it. On the other hand Counsel for the Applicant submitted that even though the order of the Court is not perfected the Court will only recall a judgement given orally in very exceptional circumstances and that in the present case there are no such circumstances which would justify the Court recalling its order made on the 1st February, 1999. Counsel further contended that if Attorney for the Respondent is dissatisfied with the decision of the Court made on the preliminary point then the Respondent should appeal the decision and not seek to have “two bites at the cherry” by re-arguing the case.

The power of the Court to recall its order

Paragraph 555 of Halsburys Laws of England, Fourth Edition states:

“Until a judgement or order has been entered there is inherent in every Court the power to withdraw, alter or modify it, either on the application

of one of the parties or on the initiative of the judge himself, although an oral judgement cannot be re-opened save in most exceptional circumstances.”

In support of that proposition the learned authors of Halsburys referred to the case of **Re: Harrison’s Share under a settlement, Harrison –vs- Harrison (1955) 1 AER 185**. In that case an order was made approving a settlement affecting family trust, but before the order was drawn up or perfected the House of Lords, in the case of **Chapman –vs- Chapman (1954) 1AER 798** decided that there was no jurisdiction in the Court to make orders of that nature. The Judge decided that it was in the interest of justice to recall his order and summoned Attorneys to re-appear before him to make submissions. Thereafter he proceeded to vacate the order and to dismiss the originating summons on which the order had been made. On appeal the Court of Appeal held that the Judge was entitled to recall the order on his own initiative, whether the order was originally made in Chambers or in open Court and notwithstanding any consequential inequality in relation to other similar orders already perfected and that in the present case it was right that the order should have been recalled. I am yet to discern what was the exceptional circumstance in the case which gave the learned Judge the authority or power to recall the said order. Simply put the Judge had made an order but the decision of the House of Lords showed quite clearly that he was wrong in that he had no jurisdiction to make the order that he had made and before the order was perfected he proceeded to do what he thought was just and right in the circumstances.

Counsel for the Applicant relied heavily on the authority of **Re: Barrell Enterprises & others (1972) 3 AER 631** where at page 626 Russel LJ. said:

“When oral judgements have been given, either in a Court of first instance or on appeal the successful party ought to, save in the most exceptional circumstances to be able to assume that the judgement is a valid and effective one. The cases to which we were referred in which judgements in civil courts have been varied after delivery (apart from the correction of slips) were all cases in which some most unusual element was present.”

Consistent with Russell’s L. J. reasoning I take it that the unusual element in the Harrison’s case must be the fact that a decision of the House of Lords in the Chapman’s case was brought to the attention of the learned Judge confirming that the decision he had arrived at earlier was wrong. I could find nothing of an exceptional circumstance justifying the decision in the Harrison’s case. In the Barrell Enterprises case however, the issue for determination before the Court of Appeal was whether to re-open the Appeal by admitting fresh evidence. I do not think with the greatest respect that that case establishes any principle which is applicable to the instant case. I have no doubt that to recall a case to hear fresh evidence would require the presence of some “unusual element” as indicated by Russel LJ. in the Re: Barrel case or some exceptional circumstance as the learned authors in Hallsbury’s Fourth Edition have suggested.

It is a long established principle that before a judgement is perfected or entered up or prior to the filing of a Notice of Appeal the Court has the power to recall the decision for the purpose of either withdrawing, modifying or altering the decision. For example, as early as 1876 in the case **Re: Australian Direct Steam Navigation Co., Miller’s case (1876) 3 Ch.D. 661** Master of the Rolls Sir George Jessel after he had given an oral

judgement and before the order was perfected he had cause to further consider other material to which his attention had not previously been drawn for the purpose of altering his earlier decision. The same learned Judge referred to the Miller's case in the later case of **Re: St. Nazzaire Co. (1879) 12 Ch. D. 88 at page 91** in the following words:

“In Miller’s case no order had been drawn up. A Judge can always re-consider his decision until the order has been drawn up.”

A few years later Fry, L.J. accepted the principle stated in the St. Nazzaire case when he said in the case of **Re: Seffiela & Watts, ex-parte Brown (1888) 20 QBD 693 at page 697:**

“Re: St. Nazzaire Co. shows that, when an order or judgement of the High Court has once been perfected, the Court has no jurisdiction to alter it. So long as the order has not been perfected the Judge has the power of re-considering the matter, but when once the order has been completed the jurisdiction of the Judge over it has come to an end.”

Finally in **Millensted –vs- Grovenor House (Park Lane) Ltd. (1937) 1 AER 736**, the trial Judge after delivering his oral judgement and before it had been drawn up, reduced the amount of damages from 50 pounds sterling to 35 pounds sterling. On appeal the Court of Appeal upheld the order. Fairwell, J. at page 740 expressed the principle this way:

“It is now well settled that, until an order made by a Judge has been perfected, by being passed and entered, there is no final order, and consequently, the Judge may at any time until the order is so perfected, vary or alter the order which he had intended to make:”

From these several authorities I am of the view that provided there is no appeal nor has the order been perfected the Judge continues to have jurisdiction over the matter and has an inherent power to recall his order for the purpose of varying same.

Are there circumstances for varying the Order?

Having decided to recall the order the question is whether the order should be varied consistent with the request made by Attorney acting on behalf of the Respondent. Counsel for the Respondent has argued that the cause of action giving rise to the Constitutional Motion could not have arisen on 9th April, 1997 when the charges against the Defendant were dismissed by the presiding Magistrate but rather the cause of action arose on 20th December, 1996 when the Applicant was actually arrested by the Police. In support of the submission he has referred the Court to the authority of **Raghibir –vs- The Attorney General H.C.A. No. 796 of 1979** the case in which the Plaintiff claimed damages for wrongful arrest, false imprisonment and malicious prosecution. In that case the Respondent raised the issue of limitation, arguing that there was no malice and that the action was statute barred. Justice Hosein (as he then was) found as a fact that there was no malice in the prosecution of the accused and he also found that the Applicant ought to have filed the writ within one year from the date of arrest and not the later date of dismissal of the charge and that not having done so the action had failed by virtue of Section 2 of the Public Authorities Protection Act.

Counsel also referred the Court to the case of **Ramsey Olivierre –vs- The Attorney General H.C.A. No. 1068 of 1985** where Lucky, J. in dealing with the case of malicious prosecution brought by the Applicant against the Attorney General the learned

Judge found the protection afforded by the Public Authorities Protection Act could not have been relied upon by the State. The Judge said at page 15 of his judgement:

“Since, in my opinion, the Defendant is not protected by the Act time begins to run from the date on which the cause of action accrued which is the date on which the Plaintiff’s appeal was allowed and the conviction quashed. Therefore the provisions of the Act do not apply in this instance.”

As I indicated earlier I agree with the reasoning of Lucky, J. in the Ramsey Ollivierre case in that the cause of action for malicious prosecution can only arise after the prosecution of the case by the Police against the Defendant or in the event that there is a conviction and appeal upon a successful prosecution of the appeal and quashing of the conviction.

Counsel for the Respondent has drawn the Court’s attention to the practice where constitutional motions are filed while criminal charges are being prosecuted and a stay of the proceedings in the High Court with respect to the constitutional motion is readily allowed so that the prosecution of the criminal charges is not compromised or prejudiced. Such a practice affords the Applicant the right of preserving her rights under the constitution without having to face the challenge which invariably arises on the limitation point. Counsel for the Applicant has characterised this practice as an abuse of the Court’s process. I don’t agree. I think it meets the ends of justice.

On the Motion filed by the Applicant there is no claim for malicious prosecution so as to bring the case within the Ramsey Ollivierre principle. In paragraph one of her Motion filed on 9th April, 1998 the Applicant seeks a declaration that her arrest and/or

detention and/or imprisonment on 20th day of December, 1996 to 21st day of December, 1996 was unconstitutional and illegal. Quite clearly the wrong allegedly inflicted upon her was, in her own words, effected on the 20th to 21st December, 1996. The right to bring an action for the alleged wrong doing (arrest, detention or imprisonment) would therefore have arisen, at the latest on 21st December, 1996.

The second relief she seeks is a declaration that upon her arrest or detention she was denied her constitutional right to retain or instruct without delay a legal adviser of her choice and to hold communication with him. Once again she admits by the evidence which she has filed in support of her application that the arrest or detention was effected on the 20th December, 1996 to 21st December, 1996. Finally, she contends that upon her arrest and/or detention and/or incarceration she was denied the right to be brought promptly before an appropriate judicial authority. She argues that that right was allegedly violated on 20th or 21st December, 1996.

On the evidence of the Applicant she was arrested by the Police during the early hours of December 20th, 1996 and was released on 21st December, 1996 at around 4:00 p.m. In paragraph 16 of her affidavit filed on 9th April, 1998 she states:

“On Saturday 21st December, 1996 around 9:45 a.m. or thereabout I was informed by the officer in attendance that a Mr. Adams had come to the station to inquire about me. I gave him the name and number of the relative which I tried to give to him previously. Later that day, around 4:00 p.m. I was released from the station. I was never asked to secure bail or anything to guarantee my release.”

It is quite clear from the evidence that all the wrong which the Applicant alleges was done to her would have been done on 20th and/or 21st December, 1996. The evidence disclose that the charges brought against this Applicant by the Police were never prosecuted and in fact were eventually dismissed on 9th April, 1997. It is therefore difficult to conceive of any cause of action which arose on or about the 9th April, 1997 that would have given rise to the filing of the Constitutional Motion.

I have carefully reviewed all the arguments and submissions made by Counsel for the Applicant and I do not believe that his arguments are supported by the several authorities to which the Court has been referred. He sought to distinguish the Ramsey Ollivierre case and the Neil Raghbir case by arguing that they dealt with “Writ Actions” and not constitutional motions. I do not appreciate the distinction in view of the fact that the Court is here dealing with the date of accrual of the cause of action and therefore whether the relief is sought by constitutional motion or a writ of summons is in my respectful view totally irrelevant.

CONCLUSION

In conclusion I must admit that I am persuaded by the arguments and submissions made by Counsel on behalf of the Respondent. I find as a fact that the cause or causes of action giving rise to the constitutional motion arose on or about the 20th or 21st December, 1996. According to the provisions of the Public Authorities Protection Act the Applicant was statutorily bound to file her action within one year from the date of the accrual of the cause of action, that is, 19th to 20th December, 1997 and not having done so the Respondent is entitled to plead as a defence the statutory period of limitation provided by the Act.

Accordingly, the Notice of Motion filed on 9th May, 1998 is therefore dismissed. I do not think that in the circumstances I need to deal with the alternative argument raised by Counsel for the Applicant with respect to the laches point. In view of all that has transpired I am of the view that the justice of the case demands that I make no order as to cost.

Dated this 29th day of July, 1999

**S. Ventour
Judge**