IN THE COURT OF APPEAL OF BELIZE AD. 2021

CIVIL APPEAL NO. 14 OF 2019

HILLAIRE SEARS **APPELLANT**

V

DIRECTOR OF BELIZE CENTRAL PRISON **FIRST RESPONDENT**

MINISTER OF NATIONAL SECURITY **SECOND RESPONDENT**

THE ATTORNEY GENERAL **THIRD RESPONDENT**

V

Before the Honourable:

Madam Justice Minnet Hafiz Bertram **President (Ag)**
Mr Justice Samuel Awich **Justice of Appeal**
Mr Justice Murrio Ducille **Justice of Appeal**

Appearances

Mr. Hector D. Guerra for the Appellant
Mrs. Samantha Matute-Tucker for the Respondents

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By Written Submissions

8 April 2021

HAFIZ BERTRAM P (Acting)

Introduction

[1] This is an appeal against the judgment of Arana J dated 11 June 2019, dismissing the constitutional claim of Hillaire Sears ('the appellant') brought by Fixed Date Claim Form dated 24 June 2018.

[2] The appellant was an Emergency Medical Technician of Belize City and presently a prisoner at the Belize Central Prison ('the prison') at Hattieville, Belize. The first respondent is the Parole Board, a body responsible for making decisions regarding the release of prisoners on parole. The second respondent is the Ministry of National Security which has responsibility for the prison. The third respondent is the Attorney General of Belize who is the legal adviser for the Government of Belize.

[3] The parties had agreed that this matter be determined by written submissions.

Brief Background

[4] The Appellant was convicted of manslaughter on 12 December 2002, and was sentenced to twenty five (25) years imprisonment at the prison. He served his sentence for ten (10) years before he was granted parole on the 21 December 2012.

[5] One of the conditions of the Appellant's parole included that he "***will not indulge in the illegal use, sale, possession, distribution, transportation or be in the presence of controlled drugs***".

[6] The 'Parole Conditions and Restrictions' was signed by the appellant and he agreed to comply with them. It stated that **"if you violate any of the conditions of your parole, *you are subject to arrest, revocation of your parole, and return to the Hattieville Prison*.**"

[7] While the appellant was on parole he worked at the prison as an emergency medical technician.

[8] On 3 April 2014, the Appellant was detained by prison guards at a holding cell at the prison for suspicion of being in possession of a parcel containing suspected cannabis. A urine sample was thereafter taken from him.

[9] On 4 April 2014, the appellant was placed in Tango Ten at the prison.

[10] On 28 May 2014, the appellant was informed by the Parole Board that his urine analysis tested positive for cannabis. As a result, he was recalled and his parole revoked by the Parole Board. He has been in custody at the prison since the revocation of his parole.

[11] On 24 June 2014, the appellant wrote a letter to the Chief Justice of Belize explaining his situation and asking for assistance.

[12] On 29 September 2014, the appellant wrote to the Director of Public Prosecutions explaining his situation and seeking assistance.

[13] Almost three years later, in August of 2017, the appellant retained Marine Parade Chambers LLP, to represent him in the instant matter.

The Constitutional Claim

[14] The Constitutional claim brought by the appellant challenged the lawfulness of his detention by prison guards as well as the revocation of his parole by the Parole Board. He claimed that on 3 April 2014, he was unlawfully detained by the prison guards on orders of the Superintendent of Prisons. Further, that on 28 May 2014, his parole was unlawfully revoked. Also, that during his detention he had been subjected to cruel and inhuman prison conditions.

Reliefs

[15] The appellant claimed constitutional relief, damages and an order securing his release from prison as shown below:

> "a. A Declaration that the Claimant's detention is unlawful and in clear violation of his constitutional right to personal liberty guaranteed by section 5 of the Belize Constitution;

b. A Declaration that the Defendant's revocation of the Claimant's parole breached the Claimant's rights to due process and equal protection of the law as guaranteed by section 6 of the Belize Constitution by arbitrarily depriving him of his right to personal liberty guaranteed by section 5 of the Belize Constitution;

c. A Declaration that the conditions of the Claimant's detention are in clear breach of the Claimant's absolute right against inhuman and degrading punishment guaranteed by section 7 of the Belize Constitution, as well as his right to dignity guaranteed by section 3 of the Belize Constitution.

d. A Declaration that the Defendants' arbitrary deprivation of the Claimant's personal liberty deprived the Claimant of his right to freedom of movement guaranteed by section 10 of the Belize Constitution;

e. An order that the Claimant be released forthwith;

f. Damages;

g. Vindicatory Damages;

h. Costs; and

i. Such further or other relief as this court sees fit."

Decision of Arana J

[16] On 11 June 2019, Arana J (as she was then) dismissed the constitutional claim by the appellant and ordered costs against him. The reasons for dismissal by the learned judge were:

(a) The Parole Board had clear proof of the violation of the appellant not to engage in illegal use of drugs and therefore, it was legally empowered under the Prison Rules to revoke the parole.

(b) There was no mandatory requirement for an oral hearing to be granted to parolees as stated in **Regina v Parole Board ex parte Smith** [2005] UKHL 1.

(c) The wrong procedure was used in bringing the claim as the substantive case clearly calls for a review of the Parole Board's decision. Therefore, the claim ought to have been brought by way of judicial review since the substantive relief sought is the quashing of the decision of the Parole Board and an order for the immediate release of the appellant.

(d) The delay of four years in bringing the matter before the court was excessive.

Grounds of Appeal

[17] The Appellant appealed on the following grounds:

"(i) The learned trial judge erred in law and/or misdirected herself in finding that the breach of condition can be the only consideration when revoking parole;

(ii) The learned trial judge erred in law and/or misdirected herself in failing to determine whether a parolee has the right to be heard prior to the revocation of his or her parole;

(iii) The learned trial judge erred in law and/or misdirected herself in finding that the Appellant pursued the wrong procedure in bringing this matter before the Court;

(iv) The learned trial judge erred in law and/or misdirected herself in failing to determine whether the right to personal liberty was breached by the detention of the Appellant prior to the revocation of the parole;

(v) The learned trial judge erred in law and/or misdirected herself in finding that the delay of four years in bringing this matter to be excessive in the circumstances;

(vi) The learned trial judge erred in law and/or misdirected herself in failing to determine whether the prison conditions amounted to a breach of the Appellant's constitutional right under section 7 of the Constitution;

(vii) The learned trial judge erred in law and/or misdirected herself in refusing the reliefs sought; and

(viii) The learned trial judge erred in law and/or misdirected herself in ordering costs against the Appellant."

Reliefs sought on Appeal

[18] The appellant sought the following Orders and Declarations on appeal:

"(i) An Order setting aside the Order of the Supreme Court dated 20 June 2017 in Claim No. 411 of 2018;

(ii) A Declaration that the appellant's detention is unlawful and in clear violation of his constitutional right to personal liberty guaranteed by section 5 of the Belize Constitution;

(iii) A Declaration that the Defendants' revocation of the Claimant's parole breached the appellant's rights to due process and equal protection of the law as guaranteed by section 6 of the Belize Constitution by arbitrarily depriving him of his right to personal liberty guaranteed by section 5 of the Belize Constitution;

(iv) A Declaration that the conditions of the Claimant's (appellant's) detention are in clear breach of the Claimant's (appellant's) absolute right against inhuman and degrading punishment guaranteed by section 7 of the Belize Constitution, as well as his right to dignity guaranteed by section 3 of the Belize Constitution.

(v) An order that the Claimant (appellant) be released forthwith;

(vi) Damages;

(vii) Vindicatory Damages;

(viii) Costs; and

(ix) Such further or other relief as this court sees fit.

(x) That the Respondents pay the appellant's costs of the appeal and in the court below."

Preliminary Issues

[19] Learned counsel, Mr. Guerra stated, in his written submissions, that grounds three and five are in the nature of preliminary objections to the exercise of the court's jurisdiction. It is therefore, prudent to firstly consider these issues shown below:

(i) Whether the trial judge erred in law in finding that the Appellant pursued the wrong procedure in bringing this matter before the Court. (Ground 3); and

(ii) Whether the trial judge erred in law in finding that the delay of four years in bringing this matter to be excessive in the circumstances; (Ground 5);

[20] The trial judge at page 29 of her decision found the following on both issues:

> "…I am of the considered view that the **wrong procedure** was used in bringing this matter before the court. The substantive case clearly calls for a review of the Parole Board's decision and I therefore agree with Ms. Duncan's submission that the matter should have been brought by way of judicial review, since the substantive relief sought is the quashing of the decision of the Parole Board and an order for the immediate release of the prisoner. I also consider the **delay** of four years in bringing the matter to court to be excessive. The Claim is therefore dismissed with costs to the Defendant."

[21] Learned counsel, Mr. Guerra submitted that the trial judge failed to appreciate that the claim not only sought the quashing of the decision but also declarations and damages for the appellant's detention prior to the revocation decision. Also, that the claim also challenged the prison conditions. As such, the constitutional claim was the most appropriate to address the totality of the appellant's case.

[22] Mr. Guerra further contended that the old rigid approach to the exercise of the Court's protective jurisdiction changed with the repeal of the proviso in the Belize Constitution which stated that:

> "Provided that the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law."

[23] Counsel relied on the judgment of **Stephen Edwards v The Attorney General of Guyana and another** [2008] CCJ (AJ) at paragraph 46, to bolster his argument. He submitted that the CCJ had considered the impact of the removal of a similar provision from the Guyanese Constitution. Mr. Guerra argued that while the opinion by Justice Pollard (as he was then) was *obiter dicta*, the passage provides useful guidance on the diminished role of the existence of alternative remedies. Justice Pollard said the following at para 46:

> "It may be argued with considerable persuasive force that the deletion of this proviso from Article 153(2) removed the obligation, peremptorily imposed on the High Court by the 1980 Guyana Constitution, to desist from exercising its fundamental rights jurisdiction "if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law." As such, the High Court was no longer obliged to desist from employing its constitutional jurisdiction where it was persuaded that the complainant had an adequate alternative procedure in the common law or administrative law or any other law. The Court of Appeal was not unmindful nor insensitive to the juridical implications of this important amendment which must be seen as operating to disapply several judicial regional determinations to the Guyana jurisprudential landscape despite the apparent convergence of the language of commitment in relevant regional

constitutional provisions. My opinion is based on a significant development in the jurisprudence of Guyana which diverged from that of other Commonwealth Caribbean states."

[24] Mr. Guerra further argued that the claim fell within the parameters of **Attorney General of Trinidad and Tobago v Ramanoop [2006] UKPC 15**, a case in which a constitutional motion was brought for declaration and damages arising out of the appellant's arrest and imprisonment. Counsel referred to the speech of Lord Nicholls of Birkenhead, at paragraphs 24-26, where he spoke of parallel remedy at common law or statute. Mr. Guerra submitted that in this instant matter, the purpose of bringing the claim through a constitutional claim was not to avoid the necessity of applying in the normal way for the appropriate judicial remedy. Further, that there were genuine and rational bases for considering that the constitutional motion was the most appropriate avenue to redress the various violations committed against the appellant, which included arbitrary use of state power.

[25] Learned counsel, Mrs. Matute-Tucker referred to the reliefs sought by the appellant and submitted that it is apparent that he sought to challenge his detention as being unlawful which is an alternative remedy in private law of false imprisonment. Counsel contended that Constitutional redress should only be sought as a last resort. Further, she submitted that the trial judge had properly relied on the dicta of the then Chief Justice de La Bastide in **AG of Trinidad and Tobago v Luciano Vue Hotel et al** (2001) 61 WIR 406, where the learned judge stated the following:

"It is time in my view that this abuse of using constitutional motions for the purpose of complaining of breaches of common law rights should be stopped. The only effective way of doing so is for the court at first instance to dismiss summarily any process which on its face seeks to force into the mould of a constitutional motion, a complaint of some tort or other unlawful act for which the normal remedy is an action at common law for damages or injunctive relief."

[26] Mrs. Matute-Tucker also relied on the case of **Thakur Persad Jaroo v The Attorney General** [2002] UKPC 5, where Lord Hope of Craighead said at paragraph 39, the following:

> "Their Lordships respectfully agree with the Court of Appeal that, 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 the process to resort to it. If, as in this case, 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."

[27] Mrs. Matute-Tucker contended that there was further abuse of process by the appellant as one of the substantive relief sought by the appellant was to have the decision of the parole Board reviewed and quashed and for the appellant to be released from prison immediately. Counsel argued that such relief should have been by way of an application for judicial review within three months of the decision to revoke the parole and leave would have been required to do so in accordance with **Part 56** of the **Supreme Court (Civil Procedure) Rules 2005 ('CPR')**. Counsel relied on the case of **Kemrajh Harrikissoon v The Attorney General** (1979) 31 WIR 348 at 349, where Lord Diplock opined that the Court should not entertain a constitutional claim where it is pursued for the purpose of avoiding the necessity of applying in the normal way for appropriate judicial remedy. Lord Diplock said the following:

> "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 no contravention of any human right or fundamental freedom."

[28] Mrs. Matute-Tucker argued that the appellant had not presented any exceptional circumstances which justified pursuing a constitutional claim. Further, that the trial judge was correct that the claim should have been brought by way of judicial review.

Discussion

[29] The appellant's claim for constitutional redress was dismissed by Arana J who considered substantive and procedural issues. The learned judge found that the claim should have been brought by way of judicial review as the substantive relief sought was the quashing of the decision of the Parole Board and an order for the immediate release of the prisoner. The relief claimed by the appellant in the constitutional redress matter as shown at paragraph 15, was for declarations for violation of his constitutional rights and also "*An order that the Claimant (appellant) be released forthwith.*" In my opinion, the trial judge was correct to find that the substantive relief sought, amounts to a quashing of the decision of the Parole Board which in effect would allow for the appellant to be released. There is no doubt, in my mind, that the order sought cannot be made without reviewing and quashing the decision of the Parole Board.

[30] Mr. Guerra's reason for bringing a constitutional claim was that it addressed the totality of the appellant's case. That is: (a) the quashing of the decision of the Parole Board; (b) declarations and damages for the appellant's detention prior to the revocation of the decision of the Parole Board and (c) the challenge to the conditions at the Belize Prisons. As such, the constitutional claim was the most appropriate to address the totality of the appellant's case. Mr. Guerra did not shy away from the fact that the appellant

was seeking a quashing order. In my view, the appellant was mistaken when he placed all his woes in one basket as the order sought by him to be released from prison requires the quashing of the decision of the Parole Board.

Part 56 of the CPR – Constitutional and Administrative law

[31] Part 56 of the CPR provides for four different types of applications which include judicial review and for relief under the Constitution. A person can seek declarations by making an application for constitutional redress or judicial review. This has been established in this jurisdiction. See the case of **The Association of Concerned Belizeans et al v The Attorney General** et al, Civil Appeal No. 18 of 2007. But, this is not the position in relation to a quashing order. When an order of that nature is sought, an application has to be made under Rule 56.1 (3) which provides:

> "56.1 (3) "**Judicial Review**" includes the remedies (whether by way of writ or orders) of
>
> (a) *certiorari,* for quashing unlawful acts;
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> (b) *prohibition*, for prohibiting unlawful acts; and
>
> (c) *mandamus*, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case.
>
> ....."

[32] The substance of the claim that was before the trial judge, included a review and quashing of the decision of the Parole Board. As such, it is my opinion that an application should have been made for judicial review for a remedy of *certiorari*. This would have entailed seeking leave of the court by a person of sufficient interest.

Requirement for permission by person of sufficient interest

[33] Rule 56.2 provides:

> "(1) An application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application.
>
> (2) This includes –
>
> (a) any person who has been adversely affected by the decision which is the subject of the application;
>
> ....."

[34] The appellant was affected by the decision of the Parole Board and therefore he had sufficient interest in making an application for judicial review. But, firstly he had to obtain leave of the court to do so. Rule 56.3 (1) provides that a person wishing to apply for judicial review must first obtain permission and this had to be done within the time limit specified by Rule 56.5 (3) which provides:

> "An application for permission to apply for judicial review shall be made **promptly and in any event within three months from the date when grounds for the application first arose** unless the court considers that there is good reason for extending the period within which the application shall be made." (Emphasis added)

[35] When the appellant brought his claim for constitutional relief, it was four years after the Parole Board made its decision. This would have been an excessive delay if there was an application for Judicial Review.

[36] The argument of Mr. Guerra in relation to alternative remedies, was that the old rigid approach to the exercise of the Court's protective jurisdiction changed with the repeal of the proviso in the Belize Constitution, that "*the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.*" In my view, the repeal of the proviso in relation to alternative remedies

is unhelpful in the circumstances of the case of the appellant. Although declarations can be sought in a claim for constitutional redress or in an application for judicial review, a quashing order could not have been made under a claim for constitutional redress.

[37] The case of **Stephen Edwards v The Attorney General of Guyana** and another relied upon by Mr. Guerra is inapplicable to the circumstances of this case. I find that **Attorney General of Trinidad and Tobago v Ramanoop**, relied upon by Mr. Guerra is useful. In that case, Lord Nicholls of Birkenhead explained availability of alternative remedy and discretion to grant constitutional orders. At paragraphs 23 to 26, he said the following:

> "[23] The starting point is the established principle adumbrated in **Harrikissoon v Attorney General of Trinidad and Tobago** [1980] AC 265. Unlike the constitutions of some other Caribbean countries, the Constitution of Trinidad and Tobago **contains no provision precluding the exercise by the court of its power to grant constitutional** redress if satisfied that adequate means of legal redress are otherwise available. The Constitution of The Bahamas is an example of this. Nor does the Constitution of Trinidad and Tobago include an express provision empowering the court to decline to grant constitutional relief if so satisfied. The Constitution of Grenada is an instance of this. Despite this, a discretion to decline to grant constitutional relief is built into the Constitution of Trinidad and Tobago. Section 14(2) provides that the court "may" make such orders, etc, as it may consider appropriate for the purpose of enforcing a constitutional right.
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> **[24]** In **Harrikissoon** the Board gave guidance on how this discretion should be exercised where a parallel remedy at common law or under statute is available to an applicant. Speaking in the context of judicial review as a parallel remedy, Lord Diplock warned against applications for constitutional relief being used as a general substitute for the normal procedures for invoking judicial control of administrative action. Permitting such use of applications for constitutional redress would diminish the value of the safeguard such applications are intended to have. **Lord Diplock observed that an allegation of contravention of a human right or fundamental freedom does not of itself entitle an applicant to invoke the s 14 procedure if it is apparent this allegation is an abuse of process because it is 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 no**

contravention of any human right": [1981] AC 265, 268 (emphasis added).

[25] In other words, 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. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. **To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process. A typical, but by no means exclusive, example of a special feature would be a case where there has been an arbitrary use of state power.**

[26] That said, their Lordships hasten to add that 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 constitutional redress are to be repelled. But "bona fide resort to rights under the Constitution ought not to be discouraged": Lord Steyn in Ahnee v Director of Public Prosecutions [1999] 2 AC 294, 307, and see Lord Cooke of Thorndon in Observer Publications Ltd v Matthew (2001) 58 WIR 188, 206."

[38] Learned counsel, Mrs. Matute Tucker, relied on the case of **Harrikissoon** (relied above in the case of **Ramanoop**) where Lord Diplock opined that the Court should not entertain a constitutional claim where it is pursued for the purpose of avoiding the necessity of applying in the normal way for appropriate judicial remedy.

[39] In the instant matter, Mr. Guerra argued that the purpose of bringing a constitutional claim was not to avoid the necessity of applying in the normal way for the appropriate judicial remedy. Counsel submitted that there were genuine and rational bases for considering that the constitutional motion was the most appropriate avenue to redress the various violations committed against the appellant, which included arbitrary use of state power. In my respectful view, there was no arbitrary use of state power in this case by the Parole Board. An application could have been made by the appellant

within three months of the decision of the Parole Board to review the decision making process and whether it was lawful.

[40] The roll up constitutional redress claim for three different remedies was not adequate where an order was sought for the appellant to be released from prison. This would have amounted to a reviewing and quashing of the decision of the Parole Board. The proper claim where a quashing order is sought is Judicial Review but, this had to be made promptly or within three months. Further, the claim for unlawful detention should properly be pursued by the alternative remedy of false imprisonment instead of constitutional relief. See the case of **AG of Trinidad and Tobago v Luciano Vue Hotel et al**, and the case of **Jaroo** relied upon by Mrs Matute-Tucker, where the Court said that the applicant must consider the true nature of the right allegedly contravened and also consider if a procedure under the common law or statute might be more conveniently invoked.

[41] As for the challenge of the conditions at the prisons, while it may be appropriate for constitutional redress, it should have been a stand alone claim and not wrapped up with other reliefs. Further, such a claim could not have resulted in the quashing of the decision of the Parole Board, thereby causing the appellant to be released from prison.

[42] The constitutional claim brought by the appellant addressed three different grievances, and I am of the opinion, for reasons discussed above, that it was not an appropriate claim for the reliefs sought. The ultimate goal of the constitutional claim by the appellant was for an order to be released from prison. The trial judge was therefore, correct in dismissing the claim and finding that the appellant used the wrong procedure instead of judicial review of the decision of the Parole Board.

Costs

[43] The trial judge dismissed the claim with costs to the respondents. There was no discussion by the trial judge as to the reasons why costs was awarded in the administrative claim. It can be assumed that it is because the appellant was the unsuccessful party.

[44] The claim before the court was for declarations and certiorari. Part 56.13 of the CPR provides that: "*no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application."* I am of the view, that the appellant had not acted unreasonably in making the application or in the conduct of the application. Mr. Guerra had a strong view that the claim involved serious issues of constitutional law and the three different grievances could have been brought together. But as discussed above, the constitutional claim is not appropriate when a quashing order is also sought.

[45] In relation to the appeal, for which there was no oral hearing, Mr. Guerra urged the Court, in written submissions, to consider the preliminary issues first and only if successful to proceed with the substantive issues. The appellant was not successful in the preliminary issues and therefore, it was not necessary to proceed with the substantive issues.

[46] I have also considered that the appellant is serving his sentence in prison.

[47] For these reasons, I am of the opinion, that there should be no order as to costs in the court below and in this Court.

Disposition

[48] For reasons discussed above, I would propose the following order:

(a) The order of Arana J made on 11 June 2019, dismissing the claim of the appellant is affirmed with the exception of the costs order;
(b) The costs order in the court below is set aside;
(c) The appeal is dismissed;
(d) There will be no order as to costs in this Court and the court below.

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HAFIZ BERTRAM P (Ag)

AWICH JA

[49] I concur in the order proposed by the learned Hafiz-Bertram (Ag) President that, the appeal be dismissed. I totally agree with the Acting President that, Arana J. (now Chief Justice) decided correctly that, the claim by an application for constitutional relief should have been by an application for judicial review. I also concur in the order proposed that, the order made by Arana J. (now Chief Justice) dismissing the claim of Hillaire Sears be confirmed.

[50] However, I respectfully disagree with the Acting President on her view that, the order by Arana J. (now Chief Justice) that, the claimant-appellant pay costs to the defendant was erroneous; Arana J. (now Chief Justice) did not give reason. The reason for awarding costs against the claimant was abundantly disclosed in the judgment of the learned judge and in the evidence. Arana J. (now Chief Justice) stated that, the claim was for an order quashing the decision of the Parole Board, and that the claim should have been brought by judicial review proceedings. Further, the learned judge noted that, the claim accrued four years before, there had been excessive delay. So, the inference was that, the constitutional proceedings were "pursued for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy."-see **Harrikissoon v 2 Attorney General of Trinidad and Tobago** (1979) 31 WIR 348. The purpose of the claimant-appellant of avoiding judicial review proceedings was an abuse of the process of the court –see **Thakur Persad Jaroo v The Attorney General of Trinidad and Tobago** [2002] UK PC 5. An abuse of the process of the court should be met with an order for costs against the abuser. R.56.13 (b) which provides that no order for costs may be made against an unsuccessful applicant for an administrative order is for the purpose of not discouraging genuine applicants for administrative orders from making their R.56 application claims-see **Toussaint (Randolph) v Attorney General of**

Saint Vincent and the Grenadines [2007] UK PC 48. The rule is not to be interpreted as excusing abuse of the process of the court, and should not be applied to excuse or encourage abuse of process.

[51] For the same reason, I would award costs of this appeal to the respondents against the appellant. The costs are to be taxed, if not agreed.

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SAMUEL LUNGOLE AWICH JA.

DUCILLE JA

[52] I have had the opportunity of reading in draft, the judgment of Hafiz Bertram P (acting) and I agree with her reasons for judgment and the orders proposed therein.

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DUCILLE JA