

IN THE HIGH COURT OF BELIZE, A.D. 2023

Claim No. 214 of 2021

BETWEEN

**KENAN LOPEZ
DEIDRE JONES**

**FIRST CLAIMANT
SECOND CLAIMANT**

AND

**CPL. ESMIN FLORES
P.C. DYRAN CHAN
ATTORNEY GENERAL OF BELIZE**

**FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT**

Before the Honourable Madam Justice Geneviève Chabot

Date of trial: November 30th and December 1st, 2022

Date of last written submissions: January 10th, 2023

Appearances

Darrell Bradley, for the Claimants

Samantha Matute and Jorge Matus, for the Defendants

JUDGMENT

Introduction

1. Kenan Lopez and Deidre Jones filed a Fixed Date Claim Form for constitutional relief seeking declarations and damages against the Defendants. The Claimants allege that Cpl. Esmín Flores and P.C. Dyrán Chan breached their constitutional rights to liberty and security, their right to protection from arbitrary search and seizure, and their right to privacy when they entered the Second Claimant's yard, searched the First Claimant, assaulted the Second Claimant, detained both Claimants, and maliciously prosecuted the Second Claimant.

2. The Defendants allege that the First and Second Defendants had reasonable and probable cause to act the way they did. As a preliminary matter, the Defendants raise that this Claim is properly a private law claim, and that the Claimants ought not to pursue a claim for constitutional relief in the circumstances. The Defendants argue that this Claim is an abuse of process and ask this Court to dismiss it on that ground.
3. The Claim is dismissed. This Claim presents no “special feature” that justifies bringing it as a constitutional claim. This is a matter where the facts are disputed, and where an appropriate remedy in private law exists. The Claimants have not satisfactorily explained why this matter justifies invoking the *Belize Constitution*.¹

Background

4. The Claimants filed a Fixed Date Claim Form for constitutional relief under Part 56 of the *Supreme Court (Civil Procedure) Rules, 2005* (the “*Rules*”). The Claimants seek declarations and damages in relation to events that occurred in the early morning of March 20th, 2020. The Claimants, who are siblings, allege that the First and Second Defendants entered the Second Claimant’s yard without a warrant and without reasonable and probable cause, and carried on in an abusive and aggressive manner. The First Claimant alleges that he was searched, but that nothing incriminating was found. Despite finding nothing, the First and Second Defendants remained in the yard, where they assaulted, arrested, and detained both Claimants. Both Claimants were taken to the Queen Street Police Station, where they were further detained for approximately 6 hours. They were both released without being questioned or charged. The Second Claimant suffered injuries for which she was treated at the Karl Heusner Memorial Hospital.
5. The Claimants allege that the First and Second Defendants acted flagrantly, abused the authority of their office, and violated the Claimants’ constitutional rights. The First and Second Defendants thereafter allegedly maliciously prosecuted the Second Claimant.
6. The Claimants seek the following relief:
 - a. A declaration that the First and Second Defendants breached the First Claimant’s constitutional right to personal liberty and security of person, guaranteed under Section 5 of the Constitution, Chapter 4 of the Substantive Laws of Belize, when the First and Second Defendants unlawfully and without any proper cause and justification detained the First Claimant and held him in police custody against his will in a cell at the Queen Street Police Station for a period from approximately 1:10 a.m. to 7:00 a.m. on the morning of 20 March, 2020;

¹ Chapter 4 of the Substantive Laws of Belize.

- b. A declaration that the First and Second Defendants breached the Second Claimant's constitutional right to protection from arbitrary search and seizure and protection of privacy and the security and inviolability of her home, guaranteed by Sections 9 and 14 of the Constitution, Chapter 4 of the Substantive Laws of Belize, when the First and Second Defendants without reasonable and proper cause or suspicion and without a search warrant entered upon the residential premises of the Second Claimant then located at 7041 Elston Kerr Street, Belize City, Belize District, Belize and thereupon assaulted the Second Claimant.
 - c. A declaration that the First and Second Defendants breached the Second Claimant's constitutional right to personal liberty and security of person guaranteed under Section 5 of the Constitution, Chapter 4 of the Substantive Laws of Belize, when the First and Second Defendants unlawfully and without any proper cause and justification assaulted the Second Claimant at her home at 7041 Elston Kerr Street, Belize City, Belize District, Belize and thereafter arrested and charged the Second Claimant, including that they kept her in police custody against her will in a cell at Queen Street Police Station from approximately 1:10 a.m. to the time of her bail and thereafter proceeded on malicious charges against her.
 - d. Damages for breach of the foregoing constitutional rights.
 - e. Aggravated and exemplary damages.
 - f. Such further or other relief this Court deems just.
 - g. Costs.
7. The Defendants deny the Claim. The First and Second Defendants allege that they saw two males entering the yard and suspected they might have illegal firearms or drugs in their possession. While they were searching the First Claimant, the Second Claimant assaulted the First Defendant. The Defendants deny any breaches of the Claimants' constitutional rights as there was a proper cause to detain both Claimants.
8. The Defendants also submit that the Claim is not a proper constitutional claim, but rather a private law claim for false imprisonment, assault, battery, trespass, or malicious prosecution. The Defendants say that the Claim is an abuse of process and ought not to be maintained in its current form.

Issues for Determination

9. The following issues must be determined in this Claim:
 - a. Whether this Claim is appropriate for constitutional redress.
 - b. Whether the First and Second Defendants, without reasonable and proper cause or suspicion and without a search warrant, entered upon the residential premises of the Second Claimant then located at 7041 Elston Kerr Street, Belize City, Belize District, Belize.
 - c. Whether the First and Second Defendants' actions constitute a breach of the Claimants' constitutional right to protection from arbitrary search and seizure and protection of privacy and the security and inviolability of the Second Claimant's home guaranteed by sections 9 and 14 of the *Belize Constitution*.
 - d. Whether the First and Second Defendants unlawfully and without any proper cause and justification detain the First Claimant and held him in police custody against his will in a cell at the Queen Street Police Station for a period from approximately 1:10 a.m. to 7:00 a.m. on the morning of 20 March, 2020.
 - e. Whether the First and Second Defendants unlawfully and without any proper cause and justification assaulted the Second Claimant at her home, and thereafter arrested and charged the Second Claimant, including that they kept her in police custody against her will at the Queen Street Police Station from approximately 1:10 a.m. to the time of her bail and thereafter proceeded on malicious charges against her.
 - f. Whether the First and Second Defendants' actions constitute a breach of the First and Second Claimants' constitutional rights to personal liberty and security of the person guaranteed under section 5 of the *Belize Constitution*.
 - g. Whether the State of Emergency proclaimed in SI No. 34 of 2020 and the corresponding regulations contained in SI No. 35 of 2020 were properly applied to the Claimants.
 - h. What remedies, if any, are to be given for breach of the Claimants' constitutional rights.

Analysis

Whether this Claim is appropriate for constitutional redress

10. This Claim was brought as a Fixed Date Claim Form for constitutional relief under Part 56 of the *Rules*. The Defendants dispute that this Claim is appropriate for constitutional redress because the Claimants have an alternative remedy in private law.
11. The starting point in the analysis is subsection 20(1) of the *Belize Constitution*, which provides persons with a right of redress for breaches of the fundamental rights guaranteed under sections 3 to 19:

20.-(1) If any person alleges that any of the provisions of sections 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.
12. Subsection 20(1) applies “without prejudice to any other action with respect to the same matter which is lawfully available”. While this language may suggest that a claim for constitutional relief under the *Belize Constitution* can coexist with a claim in private law, that is not how subsection 20(1) has been interpreted by our apex Court.
13. In *Juanita Lucas and Celia Carillo v The Chief Education Officer et al.*² the Caribbean Court of Justice (“CCJ”) upheld a decision of the Belize Court of Appeal finding that the appellants had not established a breach of their constitutional rights. While the majority focused their analysis on the various constitutional breaches alleged by the appellants, Justice Saunders, in his dissent, addressed the issue of whether the appellants’ claim breached the “parallel remedies” principle. Of note is that Justice Saunders’ analysis was not challenged by the majority in *Lucas*, and was subsequently adopted by this Court in matters including *Bhrea Bowen v Attorney General of Belize and anor*³ and *Melissa Belzair Tucker v Chief Executive Officer et al.*⁴
14. Despite the language in subsection 20(1) of the *Belize Constitution*, Justice Saunders found that the “parallel remedies” principle applies in Belize. Under the “parallel remedies” principle, if a parallel remedy exists, a person is not entitled to constitutional relief “unless the circumstances of which complaint is made include some feature which justifies resort to

² [2015] CCJ 6 (AJ) (“*Lucas*”).

³ Claim No. 493 of 2017.

⁴ Claims No. 305 of 2014 and 199 of 2015.

a claim for breach of a fundamental right”.⁵ The “parallel remedies” principle applies equally to claims in public and private law. According to Justice Saunders:

Courts will frown on the filing of a constitutional Motion in lieu of a judicial review action when the latter is perfectly capable of yielding all the relief the litigant requires. Proceeding by constitutional Motion may well be an impermissible strategy either for unfairly jumping the litigation queue or evading the scrutiny of a judicial review judge charged with filtering out groundless or hopeless cases. A similar principle is applied where the litigant has adequate recourse in private law but chooses to proceed by way of constitutional motion. In those instances the courts will entertain a constitutional action only if the circumstances disclose some “special feature” that justifies going beyond private law remedies and invoking the constitution.⁶

15. The rationale for the “parallel remedies” principle is grounded in the value attached to the fundamental rights and freedoms protected by constitutions. As noted by Lord Diplock in *Harrikissoon*, framing any unlawful governmental action as a violation of fundamental rights or freedoms to bypass the regular procedure for the control of governmental action risks diminishing the value of constitutional redress:

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 I 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.⁷

16. While the outcome of each case will turn on its own facts, the case law provides examples of “special features” which may justify resorting to constitutional redress where a parallel remedy exists. In *Ian Cunha v The Belize Defence Force and anor*, James J. noted that such “special features” include the arbitrary use of state power and where there are breaches of multiple rights.⁸ This latter “special feature” is detailed in the Court of Appeal for Trinidad

⁵ *Lucas*, *supra* at para. 132. See also *Jaroo v Attorney General of Trinidad and Tobago*, [2002] UKPC 5 at paras. 29-30 (“*Jaroo*”); *Harrikissoon v A-G of Trinidad and Tobago*, [1980] AC 265 at 268 (“*Harrikissoon*”); *Ramanoop v A-G of Trinidad and Tobago*, [2005] UKPC 15 at para. 25 (“*Ramanoop*”).

⁶ *Lucas*, *supra* at para. 133.

⁷ *Harrikissoon*, *supra* at 268.

⁸ *Ian Cunha v The Belize Defence Force and anor*, Claim No. 175 of 2020 at para. 30 (“*Cunha*”), citing *Attorney General of Trinidad and Tobago v Ramanoop* [2005] UKPC 15 and *Belfonte v Attorney General* [1968] W.I.R. 416.

and Tobago's decision in *Belfonte (Damian) v Attorney-General*,⁹ where the Court of Appeal held that this "special feature" arises where the rights that are said to have been infringed are a mix of both a common law and a constitutional nature. According to the court in *Belfonte*, "it would not be fair, convenient or conducive to the proper administration of justice to require an applicant to abandon his constitutional remedy or to file separate actions for the vindication of his rights".¹⁰

17. The mere existence of an alternative remedy, however, does not automatically warrant excluding constitutional proceedings. As noted by James J. in *Cunha*, "the crux is their adequacy". The Court must not only consider whether a parallel remedy exists, but also whether the allegations grounding constitutional relief are being brought "for the sole purpose of avoiding the normal judicial remedy for unlawful administrative action".¹¹
18. In *Jaroo*, the Privy Council added that where a remedy at common law exists, it is not appropriate to resort to a constitutional claim if the facts are in dispute:

[36] Their Lordships wish to emphasise that the originating motion procedure under s 14(1) is appropriate for use in cases where the facts are not in dispute and questions of law only are in issue. It is wholly unsuitable in cases which depend for their decision on the resolution of disputes as to fact. Disputes of that kind must be resolved by using the procedures which are available in the ordinary courts under the common law.¹²

19. In *Jaroo*, the appellant claimed that his constitutional right to property had been breached by the police, who had taken custody of his vehicle on suspicion that it had been stolen. Just like in this Claim, the appellant in *Jaroo* claimed that the police abused their authority by keeping custody of the vehicle without any legal justification. The Privy Council held that the appellant's constitutional claim was an abuse of process, as it should have properly been brought as a common law action for delivery in detinue. Allegations of abuse of authority alone do not amount to a "special feature" justifying a court to entertain a constitutional claim where a private law claim exists.
20. While this Court readily accepts that it can entertain a constitutional claim where a parallel remedy exists, this Claim presents no "special feature" that justifies bringing it as a constitutional claim. In their written submissions, the Claimants submit as follows:

14. [...] In the instant case, the Claimants contend that the First and Second Defendants, using the cover of their office, abused their authority and violated the

⁹ (2005) 68 WIR 413 ("*Belfonte*").

¹⁰ *Belfonte*, *supra* at para. 19.

¹¹ *Lucas*, *supra* at para. 134, citing *Belfonte*, *supra* at para. 18.

¹² See also *Ramanoop*, *supra* at para. 22.

rights of the First and Second Claimants, including in the conduct of the search without reasonable cause and the detention of the First Claimant for no reason and the arrest and prosecution of the Second Claimant on allegations which were false. The First and Second Claimants contend that the First and Second Defendants lied about their conduct, including to say that the First Claimant was not detained and then to say, clandestinely, that the First Claimant used insulting words to the Second Defendant and to say that the Second Claimant punched the First Defendant. The entire ordeal deals with the use of state power and the conduct of Police Officers and part of the defence is that this use of force is sanctioned because of a State of Public Emergency. The Defendants, therefore, assert governmental power within the context of a Public Emergency, including the authority given to Police Officers under the Regulations governing this particular emergency period. The nature of this case, therefore, in the round, raises constitutional issues, including the actions of Police Officers and whether they acted in a capricious manner. A private law claim for trespass, false imprisonment and malicious prosecution does not do justice to what the Claimants are saying that occurred [emphasis added].

21. In closing submissions, the Claimants further argue as follows:

5. The Claimants ask this Honourable Court to consider that the very nature of the Claimants' case alleges arbitrary use of state power, including imputations of capricious and excessive use of police power and misconduct in falsifying allegations against the Claimants. The Claimants allege that the First and Second Defendants, under cover of their office, wrongfully entered upon the Second Claimant's yard and proceeded to manhandle her and thereafter wrongfully detained her and her brother, the First Claimant, including by falsifying allegations that the First Claimant used insulting words and that the Second Claimant punched the First Defendant. The essence of this case is capricious police action and misconduct.

22. This is a matter where the Claimants allege that the Defendants abused their authority as police officers. Their allegations are that the Defendants unlawfully entered the Second Claimant's yard, unlawfully searched the First Claimant, assaulted the Second Claimant, wrongfully detained both Claimants, and maliciously prosecuted the Second Claimant. Each of these allegations, if proven, can be remedied in private law. The allegation that the Defendants entered the Second Claimant's yard is actionable by way of the tort of trespass to land. The allegation related to the search of the First Claimant without a warrant is actionable by way of the tort of trespass to the person or goods.¹³ The remaining allegations

¹³ *R (on the application of Gillan) v Metropolitan Police Comr*, [2006] 2 AC 307 at 346.

are actionable by way of the torts of assault or battery, false imprisonment, and malicious prosecution, which is how matters such as this one usually come to this Court.

23. The Claimants do not challenge the validity of the *Proclamation Declaring a State of Public Emergency in the Southside of Belize City*¹⁴ or the *Belize Constitution (Emergency Powers) Regulations, 2020*,¹⁵ under which the Defendants allege they derived their authority to act as they did. While the Claimants' submissions hint to the expansive powers given to police officers under the *Regulations* as being unconstitutionally wide, no remedy has been sought in relation to the *Regulations*. Had the Claimants challenged the constitutionality of the *Regulations*, this Claim would have been properly brought as a claim for constitutional relief, as any actions taken by police officers pursuant to an unconstitutional instrument would have been unconstitutional themselves. This Claim, however, challenges the lawfulness of the actions of police officers taken under a valid legislative instrument. These actions are tortious in nature.
24. Distilled to its essence, the Claimants' argument is that the gravity and the "capriciousness" of the First and Second Defendants' conduct in the circumstances would not be properly reflected in any cause of action grounded in private law. This Court is not persuaded that "doing justice" for what has allegedly occurred between the parties is a sufficient justification to mount a constitutional challenge, as opposed to bringing a claim in private law. Courts can "do justice" to the gravity of the facts as they are established before them through the nature and quantum of the damages they award. Had this Claim been substantiated, the Claimants could have been awarded compensatory, aggravated, and punitive damages if appropriate. The quantum of any such damages would have been adjusted to reflect the gravity of the First and Second Defendants' conduct in the circumstances.
25. Furthermore, this Claim involves heavily disputed issues of facts, which, as stated in *Jaroo*, militates against taking the constitutional route. While these evidentiary concerns have been mitigated by the parties' decision to proceed by way of witness statements, this factor remains relevant in considering whether the avenue of redress selected by the Claimants was appropriate.
26. On the whole, this Court finds that there is no "special feature" justifying this Claim to have been brought as a constitutional claim. This is a matter where the facts are in dispute, and for which an appropriate remedy in private law exists. The Claimants have not explained to this Court's satisfaction why this matter justifies invoking the *Belize Constitution*.

¹⁴ SI No. 34 of 2020.

¹⁵ SI No. 35 of 2020 (the "*Regulations*").

27. It is not lost on this Court that this ruling comes after trial. Witnesses have been heard and full submissions on the merits of this Claim have been filed. However, the Court wishes to emphasize that the appropriateness of bringing this Claim as a constitutional claim has been raised from its very inception, in the Defendants' Defence and again in their closing submissions. The Claimants could have requested leave to amend their Claim, or directions from this Court to remedy the issue. They could have requested a ruling on this discrete issue of law before proceeding any further. Yet, the Claimants chose to pursue their Claim as a constitutional claim.
28. Parties are reminded to be vigilant before filing a claim for constitutional relief where parallel remedies exist. As explained by the Privy Council in *Jaroo*:

[39] 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.¹⁶

29. This Claim must therefore be dismissed.

IT IS HEREBY ORDERED THAT

- (1) The Claim is dismissed.
- (2) Costs in the amount of \$5,000 are awarded to the Defendants.

Dated May 11th, 2023

Geneviève Chabot
Justice of the High Court

¹⁶ *Jaroo, supra* at para. 39.