IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 820 of 2023

BETWEEN:

JAVAN CLARE

Claimant

AND

[1] Attorney General of Belize
[2] The Belize Police Department
[3] CPL. 2072 Shaheed Mai
[4] DC 668 Ricardo Cowo

Defendants

Appearances:

Mr. Leroy Banner for the Claimant
Mr. Jarvis Lou for the Defendants

2024: April 19;
April 22

ORDER

Constitutional claim; abuse of process; arrest and detention beyond forty eight (48) hours

[1] **GOONETILLEKE, J.**: The claimant on the 27th of November 2023 has filed this constitutional claim alleging that he was arrested on 28th April 2023 and detained for more than forty-eight (48) hours in violation of his constitutional rights. The claimant alleges that without being released from custody, on 30th April 2023 upon the expiration of forty-eight (48) hours from his arrest, he was while still in the Police cell given a second acknowledgement of arrest form to sign, detaining him further. It is alleged that thereby he spent a total of approximately one hundred (100) hours in Police custody without being produced in court.

[2] Mr. Samuel Bonilla, Assistant Superintendent of Police, filed an affidavit on behalf of the defendants stating that the claimant had been arrested in connection with a murder and that the claimant had been convicted previously of being a member of a gang. He stated that the claimant was arrested on 28th April 2023 but that before the lapse of forty-eight (48) hours, the claimant was without charge released from Police custody on 30th April 2023. Mr. Bonilla then goes on to state at paragraph 19 of his affidavit that the claimant was re-arrested while exiting the Queen's Street Police Station, and thereafter released before the lapse of the second forty-eight (48) hours. He therefore states at paragraph 23 of his affidavit that before the lapse of forty-eight (48) hours, the claimant was released from Police custody in each instance. He ends his affidavit by stating that the claim is frivolous, vexatious, and in any event *de minimis*. He states that the claimant did not suffer loss, injury or prejudice and moves for a dismissal of the claim.

[3] On the 26th of February 2024, the defendants filed an Application to strike out the claim on the basis that the claim is an abuse of the process of court. The strike-out application has been filed on the basis that a constitutional claim ought to be a matter of last resort and that the claimant had an alternative private law remedy of unlawful arrest and/or false imprisonment. The strike-out application also states that the matters alleged are not serious enough to warrant a constitutional claim.

[4] The claimant and the defendants were granted an opportunity to file submissions in regard to the strike-out application which was heard on 19th April 2024.

[5] The submission on behalf of the defendants was that there was an alternate remedy that could have been pursued by the claimant. It was submitted that the right to apply to the High Court in terms of ***Section 20*** *of the* ***Constitution*** should be used in exceptional circumstances. It was submitted that to do so otherwise, when there was a parallel or alternate remedy available, would be an abuse of the process of the court. In support of this proposition, the Privy Council cases of ***Jaroo v. Attorney General of Trinidad and Tobago***[1], ***Hinds v. Attorney General***[2] and ***Webster v. Attorney General of Trinidad and Tobago***[3] were cited. Further, the cases of ***A.G. of Trinidad and Tobago v.***

[1] [2002] UKPC 5
[2] [2001] UKPC 56
[3] [2011] UKPC 22

Ramanoop[4], ***Harrikissoon v. Attorney General of Trinidad and Tobago***[5] and ***Chocolingo v. A.G. of Trinidad and Tobago***,[6] were cited as cases from comparable jurisdictions. The cases of ***Lucas and Carrillo v. Chief Education Officer et al***[7] from the Caribbean Court of Justice (C.C.J.) and the case of ***Shelly Whitney Scott v. Attorney General***[8] were also relied upon as precedents in this jurisdiction in that regard.

[6] The defendants also submitted that in this instance, the ***de minimis principle*** would also apply even in regard to constitutional claims. It was submitted that for the claimant to succeed, he has to show that the violation was of such a nature to warrant a constitutional claim and not an alternate remedy. This argument was conjoined with the ***proportionality principle,*** whereby, it was suggested that if there were several alternate remedies, the remedy proportional to the violation should be chosen. Thus, it was argued by the defendants that the facts of this claim did not warrant a constitutional claim but should have been instituted as a claim for arrest and false imprisonment. The Ugandan case of ***Ochwa Charles v. A.G. of Uganda***[9] was cited as a persuasive authority on this point. In that case, the court held that; "*When several remedies are available, the proportionality principle is used to select the best solution available vis a vis the seriousness of the violation*".[10]

[7] In this background, it was argued for the defendants that the institution of a constitutional claim was an abuse of process and should be dismissed in terms of **Rule 26.3 (1) (b)** of the **Supreme Court (Civil Procedure) Rules 2005** (hereinafter referred to as the **CPR**).

[8] For the claimant, it was argued that striking out the claim should be the last resort. The claimant relied on the recent C.C.J. case of ***Hilliare Sears v. Public Parole Board***[11] as having distinguished the previous case of ***Lucas v. Chief Education Officer***.[12] It was submitted that the C.C.J. in this later judgment on the point, had held that; "*the determining factor in deciding whether there had been an abuse of process was not merely the existence of a parallel remedy, but also, the assessment whether*

[4] [2005] 2 WLR 1324
[5] [1980] AC 265
[6] [1981] WLR 106
[7] [2015] CCJ 6 (AJ) (BZ)
[8] Claim No. 297 of 2020, decided on 1st March 2021
[9] High Court of Uganda, Suit No. 41 of 2012, decided on 27th February 2020
[10] Ibid, Para [63]
[11] [2022] CCJ 13 (AJ) BZ
[12] [2015] CCJ 6 (AJ) (BZ)

the allegations grounding constitutional relief were being brought 'for the sole purpose of avoiding the normal judicial remedy of unlawful administrative action.'"[13]

[9] It was argued for the claimant that what was being challenged was not only wrongful arrest and detention but also failure to follow due process which thereby violated the right to equal protection of the law guaranteed in **Section 6** of the **Constitution**. In this regard, the claimant cited the case of ***Maya Leaders Alliance v. Attorney General of Belize***[14] which referred to the right to protection of the law in the following terms:

> *"The right to protection of the law prohibits acts by the government which arbitrarily or unfairly deprive individuals of their basic constitutional right to life, liberty or property. It encompasses the right of every citizen to access the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However, the concept goes beyond such questions of access and includes the right of citizens to be afforded, adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power".*

[10] The claimant cited as precedent, the case of ***Bhera Bowen v. The Attorney General of Belize***[15] as an instance in which an arrested person was permitted to proceed by way of a constitutional claim despite a parallel remedy being available. The claimant also cited the Trinidad and Tobago Court of Appeal case of ***Belfonte (Damien) v. Attorney General***[16] to support the argument that where there is a matter for constitutional redress mixed with a regular claim, it was possible to pursue the constitutional claim even though there were alternate remedies.

[11] On this basis, it was argued for the claimant that the Police, by keeping him under arrest for more than forty-eight (48) hours without producing him in court, had violated his right to "protection of the law". It was argued that private law remedies such as unlawful arrest and/or false imprisonment would not adequately remedy the violation of the right to protection of the law, which could only be remedied by

[13] [2022] CCJ 13 (AJ) BZ, Para [31]
[14] [2015] CCJ 15 (AJ) BZ
[15] Claim No. 493 of 2017, decided on 3rd July 2018
[16] [2005] 68 WIR 413

a constitutional claim. The claimant therefore urged that the application to strike out the claim should be dismissed.

Analysis

[12] The application to strike out the claim is based on **Rule 26.3 (1)(b)** of the **CPR** which reads as follows:

> "***26.3 (1)*** *In addition to any other power under these Rules, the court* ***may*** *strike out a statement of case or part of the statement of case, if it appears to the court –*
>
> ***..(b)*** *that the statement of case or the part to be struck out is an abuse of the process of court or is likely to obstruct the just disposal of the proceedings;…"* [Emphasis added]

It is clear from a plain reading of this Rule, that striking out the statement of any case or any part of the statement of any case is at the discretion of the court, and is not a mandatory rule. Even if it were to use its discretionary powers to strike out the claim, the defendants would first have to satisfy the court, that the claim was an abuse of the process of court.

[13] The facts of this case as disclosed by the claimant indicate that he had been in custody for more than forty-eight (48) hours without being produced to court. The Defendants' version was that the claimant was released within forty-eight (48) hours and then re-arrested for another forty-eight (48) hours when the claimant was leaving the Police station after he was released consequent to the first arrest. Even if the defendants' version is to be accepted, this practice raises very serious questions relating to liberty and protection of the law guaranteed in the Constitution.

[14] The requirement to produce an arrested person before a court within forty-eight (48) hours of arrest is a constitutional guarantee and one that needs to be protected jealously. This requirement is in place in the Constitution to ensure judicial control of detention. As stated in the case of ***Charles v. A.G.***,[17] "*longer detention in custody of law enforcement officials without judicial control unnecessarily increases the risk of ill-treatment, torture and cruel or degrading treatment*".[18] Ironically this passage comes from a case cited by the defendants, nevertheless it captures the rationale and importance of judicial control of those arrested and detained.

[17] High Court of Uganda, Suit No. 41 of 2012, decided on 27th February 2020
[18] Ibid, Para [58]

[15] The right to protection of the law cannot be addressed in a private law remedy such as false imprisonment. False imprisonment would be the appropriate remedy where the person arrested was duly released within forty-eight (48) hours. As alleged by the claimant, this is not such an instance. The defendants' version of releasing the claimant and then re-arresting him when he is walking out of the police station is a practice that could be adopted multiple times in an attempt to circumvent the right of an arrested person to be produced before court if detained for more than forty eight (48) hours. This issue has a direct bearing on the right to protection of the law guaranteed in the Constitution. The allegation of the claimant is therefore a matter that should receive the attention of the court as a constitutional claim.

[16] The C.C.J. case of ***Hilliare Sears v. Public Parole Board***[19] which is a more recent case to that of ***Lucas v. Chief Education Officer***[20], has permitted matters relating to arrest and detention to be proceeded with as constitutional claims. The case of ***Lucas*** did not concern arrest and detention and therefore can be distinguished from the circumstances of this case.

[17] I am also persuaded by the thinking of the court in ***Belfonte (Damien) v. A.G.,***[21] though it is not binding. In that case, the Court of Appeal of Trinidad and Tobago cited the following passage from the decision of the Privy Council in ***A.G. v. Siewchand Ramanoop***[22]:

> *"…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 arguable, 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".*

[19] [2022] CCJ 13 (AJ) BZ
[20] [2015] CCJ 6 (AJ) (BZ)
[21] [2005] 68 WIR 413
[22] [2006] UKPC 15, 66 WIR 334

The Court of Appeal of Trinidad and Tobago then went on to add to the list of special features and stated:

> "*Another example of a special feature would be a case where several rights are infringed, some of which are common-law rights and some for which protection is available only under the Constitution. It would not be fair, convenient or conducive to the proper administration of justice to require an applicant to abandon his constitutional remedy or file separate actions for the vindication of his rights*".[23] [Emphasis added]

[18] The facts of this case, either on the claimant's version or on the defendants' version, would fall squarely within the special circumstances outlined in the dicta cited above. I therefore reject the argument made on behalf of the defendants that the claimant has an adequate alternative private law remedy. Each case must depend on its facts. I hold that in the instant case, the facts warrant that this court examine whether there has been a constitutional violation in the practice of re-arresting a person within forty-eight (48) hours of his arrest to overcome the constitutional requirement of producing that person before a court.

[19] **IT IS HEREBY ORDERED THAT:**

(1) The Application to strike-out the claim is dismissed.

(2) Costs of this application will be the costs in the cause.

Rajiv Goonetilleke
High Court Judge

[23] Ibid, Para [19]