

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**CIVIL JURISDICTION**

**CV NO. 1563 of 2016**

**BETWEEN**

**MATTHEW ROMMEL GITTENS**

**CLAIMANT**

**AND**

**THE COMMISSIONER OF POLICE**

**DEFENDANT**

**Before Dr. The Hon. Madam Justice Sonia L. Richards, Judge of the High Court.**

**2019: January 22**

**2020: October 21**

**Mr. F. Albert Pollard, Attorney-at-Law for the Claimant.**

**Ms. Anika N. Jackson and Ms. Allison J. Burke, Attorneys-at-Law for the Defendant.**

## **DECISION**

### **Introduction**

[1] This is an application by the Claimant alleging a breach of his constitutional rights under sections 17(1) and 18 of the Constitution, pursuant to an allegedly illegal search of his motor vehicle and his home.

## **Background**

- [2] The Claimant was charged with two counts of possession of cannabis contrary to section 6(1) of the Drug Abuse (Prevention and Control) Act, (“Cap. 131”); one count of supplying cannabis contrary to section 5(1) of Cap. 131; and one count of trafficking contrary to section 18(2) of Cap. 131. He pleaded not guilty to the charges.
- [3] The case was heard by a Magistrate assigned to the District ‘A’ Magistrate’s Court. During the trial, the prosecution adduced evidence of drugs discovered by police after a search of the Claimant’s motor vehicle and his home. Counsel for the Claimant vigorously objected to the admission of the drugs as exhibits in the case. He argued that the Defendant’s case:
- “...rests entirely on the production of improperly obtained evidence acquired as a result of the arbitrary and reckless stop and hence illegal detention and search of the Claimant and his property without a warrant to search and secondly, the search of a dwelling house in reliance on a warrant which was procured as a direct result of the earlier arbitrary, illegal and continuing acts by the Police; the constitutionality of which is challenged in these proceedings”. (Para. 1 of Notice of Application filed on 28 November 2016).
- [4] The Claimant’s counsel was granted an adjournment by the Magistrate, whereupon the Application before this Court was filed. A stay of the proceedings in the lower court was granted by this Court on 17 July 2018.

Other orders were made with respect to the filing of additional affidavits and written submissions on behalf of the parties.

### **The Pleadings**

[5] The Claimant is seeking a number of declarations and orders from the Court, namely:

- (1) a declaration that the stop, detention and search conducted by the Police on 02 January 2012 at Wildey Road near Harris Paints, St. Michael was arbitrary and reckless and in breach of the Claimant's constitutional rights to the inviolability of his person and property enshrined in section 17(1) of the Constitution and hence illegal;
- (2) a declaration that all evidence procured as a result of the said search conducted at Wildey Road, St. Michael was in breach of the Claimant's constitutional right to the inviolability of his person and property enshrined in section 17(1) of the Constitution and is inadmissible at any criminal trial regardless of its relevance;
- (3) a declaration that the search of the Claimant's premises situate at Lower Burney's, St. George, procured by warrant but as a direct result of the arbitrary and reckless continuing conduct by the Police, was an illegal authority to search;
- (4) a declaration that all evidence procured as a result of the said search conducted at Lower Burney's St. George was in breach of the Claimant's constitutional right to the inviolability of his dwelling enshrined in section 17(1) of the Constitution and is inadmissible at any criminal trial regardless of its relevance.
- (5) a declaration that the production of any evidence obtained from the searches conducted by the Police would prejudice the right of the Claimant to a fair trial enshrined in section 18 of the Constitution and would bring the administration of justice into disrepute;

- (6) an order against the Defendant compensating the Claimant for the trespass to his person, property and dwelling and/or in the adjudication of his claim;
  - (7) exemplary damages;
  - (8) a stay of the proceedings by the Defendant in the matter Commissioner of Police v. Matthew Rommel Gittens pursuant to the provision of sections 24 (1) and (2) of the Constitution until a final adjudication of the matter;
  - (9) interest pursuant to section 35 of the Supreme Court of Judicature Act, Cap. 117A, and Part 65A (2) of the Supreme Court (Civil Procedure) Rule, 2008;
  - (10) costs; and
  - (11) all such orders, writs or directions as may be necessary or appropriate to secure redress by the Claimant for the contravention of the human rights and fundamental freedoms guaranteed by the Constitution.
- [6] The Claimant filed an affidavit in support of his application. He alleged that:
- “3. On the 2<sup>nd</sup> day of January 2012 I was driving motor vehicle registration No. MB 8278 along Wildey Road near Harris Paints in the parish of Saint Michael when, without cause, I was stopped, detained and searched by Police Constable 1551 Theodore Carter who is alleged to have found a quantity (8.42 grams) of the controlled drug cannabis, in the vehicle. Police Constable Theodore Carter did not have a search warrant to search me or my motor vehicle and I did not consent to the search.
  4. Police Constable 1551 Carter gave sworn evidence in the Court below that I was not observed speeding; had not been observed swerving from side to side; had not

been observed breaking any red traffic lights; had not been observed breaking any no-entry sign; had not been observed breaking stop signs or in any way driving in such a manner as to pose a danger to other road users or otherwise observed committing a breach of road traffic laws which would ordinarily have [caused] him under the correct legal circumstances, to stop, detain and search me and my motor vehicle. All in all, Constable Carter had no reasonable grounds for suspecting that I had committed any offence.

5. Constable Carter further gave sworn evidence that the events which transpired on Wildey Road directly led him to obtain a warrant to search my dwelling house at Lower Burney's in the parish of Saint George where a further quantity of the controlled drug cannabis is alleged to have been found".

[7] In his supplemental affidavit filed on 01 March 2017, the Claimant deposed that:

- “2. At the trial (part heard) in the Magistrate's Court for District “A” my attorney-at-law objected on constitutional grounds to the admissibility of evidence obtained as a result of the arbitrary and reckless stop and hence illegal detention and search of my person and property without a warrant to search and secondly, the search of my dwelling house in reliance on a warrant which was procured as a direct result of the earlier arbitrary, illegal and continuing acts by the Police.
3. ....
4. I am advised by my attorney-at-law and do believe that my constitutional rights have been breached by an agent of the State and there can be no adequate

remedy other than the Declarations which I have prayed in aid.

5. Further, I am advised by my attorney-at-law and verily believe that my Application also raises as a point of public interest how courts are to treat evidence obtained arbitrarily, recklessly and illegally in breach of a person's Fundamental Rights and Freedoms as enshrined in the Constitution of Barbados".

[8] Two affidavits were filed by the individual before whom the matter is part heard in the lower court. PC 1551 Carter also filed an affidavit. The Claimant responded to the affidavits of the Magistrate (Ag.) and PC Carter.

### **The Issues**

[9] Counsel for the Claimant frames the issues before the Court as follows:

“The preliminary questions for the High Court are:

- (1) Whether the Claimant is able to avail of an adequate means of redress pursuant to **section 24 (2) (b) of the Constitution of Barbados.**
- (2) Whether the present Application is an abuse of process”.

(See Claimant's Submissions filed on 20 September 2018 at para. 6).

[10] Counsel for the Defendant had a similar view of the preliminary issues. (See Written Submissions filed on 26 September 2018).

[11] This Court will treat with a single issue, namely, whether adequate means of redress are available to the Claimant.

### **The Constitutional Framework**

[12] This Court's jurisdiction to entertain constitutional applications, that allege a breach of a fundamental right is grounded in section 24 of the Constitution.

Section 24 provides *inter alia* that:

“(1) Subject to the provisions of subsection (6), if any person alleges that any of the provisions of sections 12 to 23 has been, is being or is likely to be contravened in relation to him .... then, without prejudice to any other action with respect to the same matter which is lawfully available, that person...may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction

(a) to hear and determine any application made by any person in pursuance of subsection (1); and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3),

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 12 to 23:

Provided that the High Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

- (3) If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of sections 12 to 23, the person presiding in that court shall refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.
- (4) Where any question is referred to the High Court in pursuance of subsection (3), the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under this Constitution to the Court of Appeal or to the Caribbean Court of Justice, in accordance with the decision of the Court of Appeal or, as the case may be, of the Caribbean Court of Justice”.

[13] The Acting Magistrate did not refer any constitutional issues, raised by counsel for the Claimant, to the High Court for a determination under section 24(3) of the Constitution. This is the Claimant’s application. The Court presumes that the presiding officer considered those issues to be frivolous and vexatious. It is for this reason that the Court has confined itself to consideration of a single issue, that of adequate means of redress.

**Adequate Means of Redress**

[14] In **Smithfield Foods Ltd. v. Attorney-General of Barbados [1992] LRC (Const) 605**, the Privy Council opined that the proviso to section 24(2) of the Constitution:

“is designed, inter alia, to remove from the ambit of the section cases in which relief by way of an appeal to a higher court is available’.

Similar sentiments were expressed by the Board in **Hinds v. Attorney-General of Barbados et al [2001] UKPC 56**. In **Hinds** Lord Bingham posited that:

“The ordinary process of appeal offered the appellant an adequate opportunity to vindicate his constitutional right”. (At para.19).

[15] More recently in **Andrew Lovell v. The Attorney-General, B’dos Civ. Ap. No. 18 of 2018, decision dated 09 October 2020**, the Court of Appeal reminded us that:

“The Courts have repeatedly disapproved of the resort to applications under the human rights provisions as a substitute for the normal legal procedures available to the litigant”. (At para. [30] of judgment).

[16] This Court is of the considered opinion that adequate means of redress were available to the Claimant under the Magistrate’s Courts Act, (“Cap. 116A”). Section 238 of Cap.116A provides that:

“(1) Subject to this Part,

(a) ...

(b) where a magistrate convicts or makes an order, the person convicted or against whom the order

is made, may appeal to the Court of Appeal against such conviction or order;”.

[17] Section 243 of Cap. 116A further provides that:

“A notice of grounds of appeal may set forth all or any of the following grounds, and no others;

....

(f) that the magistrate refused to convict or make an order or that the appellant is not guilty, as the case may be, either of which grounds shall entitle the appellant to maintain

(i) ....

(ii) that inadmissible evidence has been admitted by the magistrate and there is not sufficient admissible evidence to sustain the decision on rejecting such inadmissible evidence;”.

[18] It was open to the Claimant to appeal any order made by the Magistrate to admit the drugs into evidence. Alternatively, the Claimant could have awaited a final disposition of the matter by the Magistrate. Had there been a finding of guilt he had a statutory right to appeal on the basis that the evidence was inadmissible.

### **Disposal**

[19] There is nothing before the Court that would persuade it to a finding that the

means of redress under Cap. 116A are inadequate in the circumstances of this case. For these reasons the claim is dismissed.

**Dr. Sonia Richards**  
Judge of the High Court