SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHCV 2005/0695

BETWEEN:

PERCIVAL SONSON acting herein by his Next Friend
ANASTASIE SONSON

Claimant

AND

THE ATTORNEY GENERAL
GARVEY HUNTE – PC 236

Defendants

Appearances:

Mrs. Lydia Faisal for Claimant
Mrs. Georgis Taylor Alexander for Defendants

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2006: AUGUST 22

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Mason J

[1] The Claimant is a patient known to the Golden Hope Mental Hospital and on occasion is required to take certain medication in order to control his sometime aggressive behaviour.

[2] Prior to 11th November 2003, the family of the Claimant have sought the assistance of the police in conveying the Claimant to the mental hospital whenever it appeared necessary that his aggressive behaviour needed to be controlled.

[3] On 11th November 2003, at the request of the sister of the Claimant, the police took the Claimant into custody and lodged him at the Choiseul Police Station.

[4] While in custody at the police station, an incident occurred which resulted in the Claimant being shot by the second Defendant. The Claimant was subsequently charged by the police with three (3) offences contrary to the Criminal Code of St. Lucia.

[5] On or about 23rd June 2004, the Claimant filed a private law action against the second Defendant in the High Court which action was discontinued by notice filed on 26th October 2005.

[6] However before this action was discontinued, the Claimant on 27th September 2005 filed a Constitutional Motion seeking various declarations and orders on the grounds that his fundamental rights and freedoms as guaranteed by the provisions of section 1 (a) and section 5 of the St. Lucia Constitution Order 1978 were violated by the Defendants on 11th November, 2003.

[7] The Defendants have now made an application for an order to have the statement of case filed on 27th September 2005 struck out as disclosing no reasonable ground for bringing the claim.

[8] The grounds of the application are:

1) That the Claimant has failed to pursue alternative remedies as required by section 16 (2) of the Constitution.
2) That section 1 (a) of the Constitution does not confer any rights which could be pursued by the Claimant.
3) That the Claimant has not provided any evidence to support his case that his rights under section 5 of the Constitution were breached.

Alternative Remedies

[9] Under this head, it has to be determined whether the Claimant is justified in bringing an action for a constitutional motion or whether he is seeking to avoid the necessity of applying in the normal way for the appropriate judicial remedy for an action which involves no contravention of any human right or fundamental freedom: Harrikissoon v Attorney General (1979) 31 WIR 348 per Lord Diplock.

[10] It should be said that the import of section 16 of the Constitution of St. Lucia was not denied by Counsel for either party, that is, that jurisdiction to hear and determine an

application for redress for the breach of any of the fundamental rights and freedoms guaranteed by sections 2 to 15 inclusive has been conferred on the High Court.

[11] That section provides:

1. "If any person alleges that any of the provisions of sections 2 to 15 inclusive has been .... 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) of this section
    (b) to determine any question arising in the case of any person which is referred to it in pursuance of sub section (3)

and may make such declarations and 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 section 2 to 15 (inclusive):

Provided that the High 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.

[12] It is the contention of Counsel for the Defendants that when someone invokes the Constitution under section 16, they are asking the Court to immediately redress a wrong,

that a constitutional motion is not a substitution for a private remedy nor is it meant to encourage persons to simply get their cases before the court quicker. It would be an abuse of the court process to allow persons to circumvent other available remedies and avenues by attempting to use the constitutional motion process for which it was not conceived.

[13] Counsel referred to and relied on the case of Attorney General of Grenada v Sellwyn Aban (1995) 48 W1R 111 which cited Lord Diplock in Harrikissoon v Attorney General of Trinidad and Tobago (supra) and concluded that if a person can obtain redress for wrongs committed against him under the ordinary law, the proper way of proceeding is to pursue that other remedy and not apply to the High Court under section 16 of the Constitution unless there is "…….some sort of emergency or urgency in his situation or something else whereby it can be said that the ordinary law suit would not provide adequate means of redress"

[14] This, Counsel states, the Claimant has failed to do because the evidence in the Claimant's case discloses issues relating to personal injury which is a tort for which the common law provides adequate remedies and the Claimant has not shown that there are special circumstances why the Court should hear this application pursuant to section 16 of the Constitution.

[15] It would seem therefore at first blush that the present action should properly be brought as a private law action for in the words of Lord Diplock in Harrikissoon (supra):

"*The right to apply to the High Court under the 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".*

[16] However Counsel for the Claimant submits that the Court in exercising its discretion under section 16 should do so after consideration of all the relevant factors.

[17] Counsel contends that the Claimant being a mental patient with no one to bring his action for him and his case not being frivolous, vexatious or a contrived invocation of the facility of constitutional redress ought not to be repelled but viewed as a bona fide resort to rights under the Constitution and not be discouraged: Harrikissoon (supra). The treatment meted out to the Claimant was unwarranted and left him a total cripple, bound to a

wheelchair for the rest of his life and so this case is one which would make it appropriate for relief under the Constitution.

[18] The Claimant in his amended Affidavit at paragraph 11 deposes through his next friend:

> *"Whilst the Claimant was in custody at the Choiseul Police Station on the 11th day of November 2003, the second Defendant was then acting in the course of his employment under the Government of Saint Lucia and as its servant or agent, used excessive force against the Claimant by shooting him in his chest with a service firearm belonging to the Government of Saint Lucia".*

[19] He continues at paragraph 12 (which paragraph will be commented on later):-

> *"The circumstances of the Claimant's shooting were that upon his arrival at the police station the Claimant refused to enter the holding cell because it was wet. Upon his refusal , Officer Garvey Hunte hit him and pushed him towards the cell. He hit the officer back, insisted that he would not enter the wet cell. The officer then rushed upstairs and came back with a pistol. The Claimant was not facing the officer at the time and he raised his left hand over the side of his face as the officer pointed the gun at him and shot him in the left side. The bullet entered the left side of the Claimant's chest (see medical report of Dr. Jeffers) and travelled to his right side where it is lodged between two ribs. As the bullet travelled the abdomen of the Claimant severe injury was sustained. Upon being shot, the Claimant fell to*

*the floor of the station. Nearby, on the floor, was the padlock to the cell into which he had refused to enter, he threw the padlock at the officer before succumbing to the pain of his injury".*

[20] With respect to the question of the court's discretion, Counsel cited the case of Rodneil Theodore v The Attorney General Claim SLUHCV 02224/225 in which the point was raised by the Attorney General that the Claimant should have made a claim in judicial review rather than to have brought a Constitutional motion. Shanks J rejected that argument on the ground that there was no "other law" which provided adequate means of redress and that a claim for judicial review would come back to the same court and would raise precisely the same issues as had been already fully argued'.

[21] It is my opinion, however, that Shanks J in his decision was fully embracing the principle regarding the exercise of the Court's discretion in hearing constitutional matters under sections 2 to 15 but it should be noted that the arguments in that case had been fully ventilated before the Magistrate's court. Our case has not yet been adjudicated.

[22] So while, as the Judge in the Theodore case (supra) opined after reviewing the case that there was "no other law" which could provide adequate means of redress, in the case at bar, the Claimant has available to him a private law action in tort.

[23] Counsel for the Claimant suggests that this case falls squarely within the class envisaged by the Privy Council l in Thornnhill v Attorney General of Grenada (1980) WLR61 viz that actions of police officers often involve the abuse of State power which would give rise to

constitutional relief and that in the present case there had been arbitrary use or the abuse of State power by a police officer made more so by the fact that the victim is a mental patient.

[24] In the Thornhill case (supra) the appellant had been arrested, taken to a police station and had his several requests for him to be given the opportunity of communicating with his lawyers refused.

[25] Lord Diplock in delivering the judgment of the Privy Council in that case said:

> *"It is beyond question, however, that a police officer in carrying out his duties in relation to the maintenance of order, the detection and apprehension of offenders and the bringing of them before a judicial authority is acting as a public officer carrying out an essential executive function of any sovereign state – the maintenance of law and order or, to use the expression originally used in England, "Preserving the King's peace". It is also beyond that in performing these functions police officers are endowed with coercive powers by the common law, even apart from any statute. Contraventions by the police of any of the human fundamental freedoms of the individual that are recognized by Chapter 1 of the Constitution thus fall squarely within what has since been held by the Judicial Committee in Maharaj v Attorney General of Trinidad and Tobago (No.2) [1979] A. C. 385, 396 to be the ambit of the protection afforded by section 6, viz contraventions "by the state or by some other public authority*

*endowed by law with coercive powers". In this context "public authority" must be understood as embracing local as well as central authorities and including any individual officer who exercised executive functions of a public nature. Indeed, the very nature of the executive functions which it is the duty of police officers to perform is likely to practise to involve the commonest risk of contravention of an individual's rights under section 1 (a) and (b), through overzealousness in carrying out those duties.*

[26] There is no doubt that arbitrary use or abuse of State power by those with the responsibility for such power would give rise to a claim for constitutional relief. However I am unable to conclude that the evidence as contained in paragraph 11 of the Claimant's affidavit (supra) evinces that special feature which renders it appropriate for him to seek redress under the constitution rather than rely simply on alternative remedies available to him: see Attorney General of Trinidad and Tobago v Siewchand Ramanoop (2005) UKPC 1324 at paragraph 25.

[27] Counsel for the Claimant in reinforcing the submission that there was no parallel remedy available to the Claimant stated that under Article 2124 of the Civil Code of St. Lucia, claims against public officers are prescribed by six (6) months and the Claimant being under a disability and having no one to assist him was unable to "launch his claim" in a timely manner in order to avoid the expiration of the limitation period.

[28] Counsel is therefore of the view that there being no other law available to the Claimant at this time by which the state could be proceeded against except by a constitutional claim,

and taking into account that there is no limitation period for claims for constitutional relief the court should be guided by the directives laid down by the Privy Council in the case of Felix Durity v The Attorney General of Trinidad and Tobago (2002) UKPC 20 regarding delay in respect of alleged contraventions of constitutional rights and freedoms.

[29] Counsel urged the court to adopt a purposive and generous approach to the claim, taking into account that it is conducting a balancing exercise to decide whether it would be just to shut out the Claimant's whose only redress is this motion simply because the claim was brought one month outside the limitation period for an ordinary civil action.

Article 2124 of the Civil Code of St. Lucia provides:

> *"Actions against public officers in respect of acts done by them in good faith and in respect of their public duties are prescribed by six months".*

[30] Counsel is asking the Court to exercise its discretion to circumvent this statutory provision because the delay was by a single month and the Claimant being under a disability was unable to act on his own to seek the justice that this "case" cries out for".

[31] While I sympathize with the plight of the Claimant, it must be observed that if the action is statutorily prescribed, then there is nothing that the court can do about it. I am guided by the words of Peterkin J A in the oft cited case of Walcott v Serieux (St. Lucia) Civil Appeal No. 2 of 1975. "As long as the evidence in a case discloses that the period of limitation has expired, the judge has no discretion in the matter".

[32] In the Durity case (supra) which must be distinguished the appellant, a senior Magistrate in Trinidad and Tobago, had been suspended from office. It was more than three years before the Judicial and Legal Service Commission preferred a case against him and seven years before the matter was adjudicated. The sole point at issue before the Privy Council was whether the appellant's constitutional motion was subject to limitation under the Public Authorities Protection Act.

[33] Lord Nicholls of Birkenhead in delivering the judgment of the Privy Council stated:

> *"The grant or refusal of a remedy in constitutional proceedings is a matter in respect of which the court has a judicial discretion. These limitations on a citizen's right to pursue constitutional proceedings and obtain a remedy from the court are inherent in the a High Court's jurisdiction in respect or alleged contraventions of constitutional rights and freedoms. But the Constitution itself contains no express limitation period for the commencement of constitutional proceedings. The court should therefore be very slow indeed to hold that by a side wind the initiation of constitutional proceedings is subject to a rigid and short time bar".*

[34] When reiterating the concern of the Court of Appeal of Trinidad and Tobago over the inordinate delay in adjudication of the matter, he however continued:

> *When a court is exercising its jurisdiction under section 14 of the Constitution and has to consider whether there has been delay such as would render the proceedings an abuse or would disentitle the Claimant to relief, it will usually be important to consider whether the impugned*

*decision or conduct was susceptible of adequate redress by a timely application to the court under its ordinary, non-constitutional jurisdiction. If it was, and if such an application was not made and would now be out of time, then, failing a cogent explanation the court may readily conclude that the Claimant's constitutional motion is a misuse of the court's constitutional jurisdiction. This principle is well established. On this it is sufficient to refer to the much repeated cautionary words of Lord Diplock in Harrikissoon v Attorney General of Trinidad and Tobago (1980) AC 265 268. An application made under section 14 solely for the purpose of avoiding the need to apply in the normal way for the appropriate judicial remedy for unlawful administrative action is an abuse of process.*

[35] It is my view that whereas the delay in Durity was brought about by someone other than Durity himself, it is the Claimant in our case who has been tardy in prosecuting his action. I do not therefore consider that the inabilities and disabilities of the Claimant as listed are enough to satisfy that "cogent explanation" which according to the Privy Council, the Court should take into account when it exercises its discretion under section 16 of the Constitution.

[36] That having been said, I would also wish to quote Singh J A in the case of Attorney General of Grenada v Selwyn Aban (1995) 45 WIR 11 which in my opinion is most apt for the present case and so I adopt his words:

*"The issues disclosed in the Affidavits refer to …….all torts which the common law provides adequate means of redress. For the Respondent to*

*remove himself from seeking this ordinary common law redress and to invoke the special constitutional rights to redress under section 16, he has to show something more than a mere grievance emanating from the*

*ordinary common law torts. He has to show some sort of emergency or urgency in his situation or something else whereby it can be said that the ordinary common law suit would not provide adequate means of redress. If this is not shown than he ought not to invoke section 16 and any attempt on his part to do so may amount to a misuse of his rights under that provision of the Constitution".*

[37] In view of the foregoing and more especially taking into account the contents of the Claimant's affidavit, I am satisfied that adequate means of redress for the contravention alleged are or have been available to the Claimant and it would be permitting an abuse of the court process to allow the Claimant to avoid the need to apply in the normal way for the appropriate judicial remedy.

Section 1 (a) of the Constitution

[38] The argument of Counsel for the Defendants is that the commencement of section 1 with the words *"whereas"* indicated that this section is a preamble only, an introduction to sections 2 to 15, not a protective provision and consequently not enforceable by the Court.

[39] To support this argument, Counsel cited the cases of Societe United Docks V Mauritius (1985) 1 AER 864 and Olivier v Buttigieg (1966) 3WLR 310.

[40] Counsel also stated that section 16 (1) of the Constitution which relates to the Enforcement of Protective Provisions clearly omits section 1 of the Constitution when it specifically refers to "the provisions of section 2 to 15" being or likely to be contravened".

[41] Counsel for the Claimant while accepting the submission by the other side that section 1 of the constitution is merely declaratory suggests that that is not the only purpose which the section has and that it must be given a generous and purposive construction.

[42] Counsel submitted that 'security of the person" is listed in section 1 as a fundamental right and freedom and as such must be recognized as an enforceable right even though it is not among those named at sections 2 to 15 of the Constitution.

[43] Section 1 of the Constitution provides:

> *"Whereas every person is Saint Lucia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinion, colour, creed or sex, but subject to respect for the right and freedoms of others and for the public interest, to each and all of the following, namely:*
>
> *(a) life, liberty, security of the person, equality before the law and the protection of the law*

*(b) freedom of conscience, of expression and of assembly and association; and*

*(c) protection for his family life, his personal privacy, the privacy of his home and other property and from deprivation of property without compensation,*

*the provision of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of the protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest".*

[44] I am persuaded by the argument of Counsel for the Defendants regarding the declaratory nature of this section.

[45] This opinion is buttressed by the above quoted cases of Societe United Docks and Olivier.

[46] In the case of Olivier, Lord Morris in referring to section 5 of the Constitution of Malta which is almost identical to section 1 of the Constitution of St. Lucia had this to say:

*"It is to be noted that the section begins with the word "Whereas". Though the section must be given such declaratory force as it independently possesses, it would appear in the main to be of the nature of a preamble. It is an introduction to and in a sense a prefatory or explanatory note in regard to the sections which are to follow. It is a declaration of entitlement*

*coupled with a declaration …The section appears to proceed by way of explanation of the scheme of the succeeding sections".*

[47] This perspective was adopted by the Privy Council in the later Societe United Docks.

[48] In accepting and following these decisions I hold the views that section 1 of the Constitution does not confer any rights but is rather a declaration of entitlement.

Section 5 of the Constitution

[49] Counsel for the Defendant submitted that while this section seems to be the main ground for the Claimant's application for Constitutional motion – that is that the Claimant was subjected to inhuman and degrading treatment or punishment - no grounds have in effect been set out to substantiate the claim that the Claimant's fundamental rights as guaranteed by the Constitution were violated. In addition no evidence had been provided to show that the Defendants subjected the Claimant to torture or to inhuman or degrading treatment or punishment.

[50] The facts, according to Counsel, show that there is a case in tort for damages but that there is nothing in these facts to justify the claim of inhuman or degrading treatment.

[51] In this context Counsel relied on the case of Harding v Superintendent of Prisons and the Attorney General (2000) Civil Appeal No. 13 for a definition of these terms.

[52] Counsel for the Defendant submitted that the Claimant has not discharged the burden placed on him to prove that the acts of the second Defendant were deliberately inflicted on him with the intention that it was a punishment calculated to dehumanize, or that the second Defendant's action were premeditated and were such as to arouse in the Claimant feelings of fear, anguish and inferiority capable of humiliating and degrading him within the meaning of section 5 of the Constitution.

[53] In addition, Counsel argued, there is no evidence or allegation in the affidavit of the Claimant that the second Defendant in discharging the round of ammunition from his service weapon, did so with the intent or motive of punishing or inflicting pain and suffering on the Claimant.

[54] Using the same case of Harding (supra) Counsel for the Claimant contended that the principles stated therein with respect to what amounts to inhuman and degrading treatment are not exhaustive and that what was meted out to the Claimant in this case by the police officer was not proportionate to the alleged assault (which assault is denied) and was in all the circumstances unwarranted and cruel.

[55] The Claimant, based on his mentally unsound condition, was a vulnerable person and the police officer's resort to the extent of physical violence used against the Claimant was not strictly necessary on account of the Claimant's conduct. The result was that the Claimant was not accorded the protection that he deserved, hence the debasement of his physical integrity from being able bodied to being a cripple.

[56] Quoting Singh JA in Harding (supra) Counsel noted that there is no need for the punishment or treatment to have been intended to cause great pain and suffering or be deliberate if as in the case of the Claimant the treatment or punishment did cause severe pain and suffering. The fact that the Claimant had suffered physical injuries was sufficient.

[57] Section 5 of the Constitution provides:

> *"No person shall be subjected to torture or to inhuman or degrading punishment or other treatment".*

[58] In the Harding case (supra) Singh J A delivering the unanimous decision of the Court of Appeal indicated what requirements are to be met to satisfy the constituents of torture, inhuman or degrading punishment or other treatment:

> *"Each word of Section 5 has a separate and distinct meaning. They apply to specific forms of punishment such as the deliberate and intentional infliction of intolerable pain and suffering or treatment which causes severe and unacceptable pain and suffering whether physical or mental or both, calculated to dehumanize, or results in the deprivation of the elementary necessities of life and which triggers off instinctive human revulsion...*
>
> *Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment. It implies a suffering of particular intensity and cruelty.*

*What amounts to "inhuman or degrading treatment or punishment" depends on all the circumstances of the case .....*

*The ill-treatment, including punishment must attain a minimum level of severity if it is to fall within the scope of Section 5 of the Constitution. The assessment of this minimum is, in the nature of things, relative. It depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the matter and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim.*

*Treatment could be both "inhuman" because it was premeditated was applied for hours at a stretch and "caused", if not actual bodily injury, at least intense physical and mental suffering, and also degrading because it was "such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance. In order for a punishment or treatment associated with it to be "inhuman' or 'degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate punishment...*

*The words "degrading punishment or treatment" ought to be given their natural and ordinary meaning. Degrading treatment is treatment which humiliates or debases. Therefore, in considering whether an alleged treatment or punishment is 'degrading' within the meaning of Section 5 of the Constitution the Court ought to have regard to whether the object of the treatment was to humiliate and debase the person and whether, as far as the consequences are concerned. It adversely affected his personality in a manner incompatible with Section 5. (See Koskinen v Finland (1994) 18 EHRR CD at page 158, and Human Rights Law and Practice Butterworths, at paragraphs 4, 3, 7 and 4, 3, 8 page 96).*

[59] Counsel for the Claimant referred the Court to a case from the European Court of Human Rights, Ribitsch v Austria, in which the Claimant after his release from police custody where over two (2) days he had been physically assaulted by police officers, suffered a number of ailments for which he brought an action based on Article 3 of the Human Rights Convention which is in identical terms to section 5 of the Constitution of St. Lucia.

[60] The Court in Ribitsch referred to the applicant's vulnerability while he was unlawfully in police custody and stated:

*"In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. It reiterates that the requirements of an investigation and the undeniable difficulties inherent in the fight against*

*crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals".*

[61] While there is evidence that our Claimant because of his agreed mental condition could be termed a vulnerable person and that he suffered physical harm while in police custody at the hands of the second Defendant, the question which needs to be resolved is whether that harm satisfies the test as set out in the Harding case:

[62] It is the obligation of the Claimant to satisfy the Court that the treatment he received while in police custody constituted inhuman and degrading treatment.

[63] To do this he relies on paragraph 11 of his affidavit quoted earlier. Contained therein is reference to "excessive force". There is not however the sense of humiliation or debasement. It is not merely enough, despite the submission of Counsel for the Claimant, to sustain injury but that injury must be seen both to be deliberate and malicious at the hands of the perpetrator and in the words of Singh J A "such as to arouse …. feelings of fear, anguish and inferiority", and also calculated to dehumanize". The evidence as adduced does not reveal this.

[64] I had promised to speak to paragraph 12 of the Claimant's affidavit (quoted earlier at page 7 ). In my opinion that paragraph is based largely on hearsay, the deponent of the Affidavit not being present during the commission of the alleged "treatment". Thus even if that paragraph were not subject to expungement on the grounds of it being prejudicial and it was allowed to remain, again there is not contained within it, any evidence of which to

conclude that the treatment meted out to the Claimant debased or humiliated him. The paragraph suggests a fight between the parties "Officer Gary Hunte hit him (Claimant) and pushed him towards the cell. He (Claimant) hit the officer back insisted that he would not enter the wet cell".

[65] In the circumstances I have no alternative but to uphold the arguments of Counsel for the Defendant and find that the Claimant has failed to substantiate his claim that his rights under section 5 of the Constitution were violated.

CONCLUSION

[66] The Constitutional motion brought by the Claimant is hereby struck out on the grounds that:

1) The Claimant should properly have pursued alternative remedies as is required by section 16 of the Constitution

2) That section 1 of the Constitution does not confer any rights but is rather a declaration of entitlement

3) That the evidence supplied does not support the Claimant's contention that his rights under section 5 of the Constitution were violated

SANDRA MASON Q.C.

High Court Judge