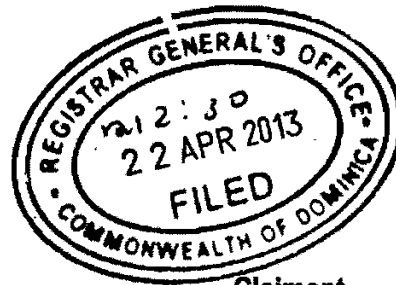


COMMONWEALTH OF DOMINICA

DOMHCV2011/0358



BETWEEN:

MICHAEL PETERS

Claimant

and

ATTORNEY GENERAL

DIRECTOR OF PUBLIC PROSECUTION

Defendants

CPL. CLIFTON JNO. BAPTISTE

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Zena Dyer for the Claimant

Ms. Nuraiyah Sebastien for the Defendants

[2013: April 22nd]

JUDGMENT

- [1] **COTTLE J:** The claimant is a prison officer. He is presently on suspension. He was placed on suspension subsequent to being charged with criminal complaints which alleged that he had negligently permitted the escape of a prisoner or willfully allowed the prisoner to escape. He pleaded not guilty and the matters went to trial before the magistrate. Evidence was taken from some witnesses. There were many adjournments of the matter before the magistrate. Several adjournments were at the behest of counsel for the claimant who was engaged at other courts. Eventually the matter was dismissed by the magistrate for want of prosecution on 12th July 2010.
- [2] The Director of Public Prosecutions filed charges against the claimant on 30th July 2010 containing the same allegations as the earlier charges. The claimant filed the present constitutional claim. He seeks the following relief
- i. A declaration that charges DOMMCR2010/1838 and DOMMCR2010/1839 as particularized in the Affidavit hereto and preferred by the 3rd defendant are unconstitutional, illegal, void and of no effect being in contravention of section 8(1) of the constitution in that the claimant/applicant has not been afforded a fair trial within a reasonable time and that the claimant/applicant is not liable to stand trial thereon and that such charges are an abuse of process

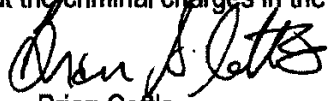
- ii. An Order that the said charges be squashed (sic) and no further proceedings be taken in respect of the offences charged against the claimant/applicant
- iii. Damages for breach of the claimant's/applicants constitutional rights to a fair trial within a reasonable time.
- iv. Such further order and directions as may be appropriate to protect the fundamental rights of the claimant/applicant guaranteed by the constitution and to avoid any further contravention of the constitution
- v. Further or other relief
- vi. An Order that the costs of and incidental to this application be paid by the respondents /defendants

[3] When the matter came up for hearing before me I ordered the parties to make written submissions by 31st May 2012. The matter would then be determined on those submissions. The defendants complied. The claimants have not yet sent in any submissions.

[4] Counsel for the defendants urges the court to deny the claimant relief. She does so on the basis that alternative means of redress are available to the claimant. Counsel cites the case of Jaroo v AG of Trinidad & Tobago 2002 UK PC 5. At paragraph 29 the court said "***The right to apply to the High Court which section 14 (1) of the Constitution provides should be exercised only in exceptional circumstances where there is a parallel remedy.***"

[5] In his Affidavit in Support the claimant offers no explanation why he does not take the point before the magistrate that his right to a fair trial within a reasonable time has been infringed. I can see no reason why he cannot have this matter dealt with in the normal course of the criminal proceedings. If he is not happy with any ruling of the magistrate he can engage the attention of the Court of Appeal. There is nothing exceptional which would justify his bypassing the normal criminal process and launching the present constitutional action.

[6] I therefore decline to give the claimant the relief he seeks and direct that the criminal charges in the Magistrate Court proceed in the normal way.


Brian Cottle
High Court Judge

