IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

IN THE HIGH COURT OF JUSTICE

SUIT NO. GDAHCV2011/0234

IN THE MATTER OF THE GRENADA CONSTITUTION

AND

IN THE MATTER OF AN APPLICATION BY A PERSON ALLEGING THAT THE RIGHTS GUARANTEED TO HIM BY SECTION 8(1) OF THE CONSTITUTION ARE BEING CONTRAVENED IN RELATION TO HIM

AND

IN THE MATTER OF REDRESS IN ACCORDANCE WITH SECTION 16 OF THE GRENADA CONSTITUTION

AND

IN THE MATTER OF A PERSON CHARGED PURSUANT TO SECTION 6(2), 7(1), 18(2)(A), 18(4) OF THE DRUG ABUSE (PREVENTION AND CONTROL) ACT CHAPTER 3 VOLUME 1 OF THE 1994 REVISED LAWS OF GRENADA AND SECTION 43(1) (a) OF THE PROCEEDS OF CRIME ACT CHAPTER 3 OF THE 2003 REVISED LAWS OF GRENADA

BETWEEN:

GREGORY LETT

Applicant

AND

THE COMMISSIONER OF POLICE
ATTORNEY GENERAL

Respondents

Appearances:
Mr. Ruggles Ferguson for the Applicant
Mr. Darshan Ramdhani for Respondents

2011: June 2, July 5
2013: May 28.

JUDGMENT

[1] **PRICE FINDLAY, J.:** This is an application by way of Fixed Date Claim Form for the following relief:

1. A declaration that the protracted delays, involving 33 adjournments so far in completing the trial of the Claimant in police cases Nos. 336/06, 337/06, 338/06 (COP v Gregory Lett and Krishna Jagganaught) and 339/06 (Commissioner of Police v Gregory Lett) constitutes a violation of his rights to a fair trial within a reasonable time as guaranteed by section 8 (1) of the Constitution
2. An order permanently staying police cases Nos. 336/06, 337/06, 338/06 an 339/06 in the St. David's Magistrate's Court
3. Damages for breaches of the Claimant's constitutional right
4. Such further or other relief as this Honourable Court deems just
5. Costs"

[2] In his supporting affidavit the Claimant sets out the facts on which he depends to substantiate his application.

[3] The Claimant is a member of the Royal Grenada Police Force and at the time of the application he had been a member for 16 years. He is a Constable.

[4] On 30th May, 2006 he was arrested and charged summarily along with Krishna Jagganaught with the following:

a. Handling a controlled drug to wit: cocaine contrary to section 7(1) of the Drug Abuse (Prevention and Control) Act Chapter 3 Volume 1 of the 1994 Revised Laws of Grenada; police case No. 338/06

b. Being in possession of a controlled drug to wit: cocaine contrary to section 6(2) of the Drug Abuse (Prevention and Control) Act Chapter 3 Volume 1 of the 1994 Revised Laws of Grenada; police case No. 336/06

c. Trafficking in a controlled drug to wit: cocaine contrary to sections 18(4) and 18(2)(a) of the Drug Abuse (Prevention and Control) Act Chapter 3 Volume 1 of the 1994 Revised Laws of Grenada; police case No 337/06."

[5] He was also charged with knowingly receiving EC$1,000.00 knowing it to be the proceeds of a crime.

[6] He appeared in Court for the first time on 16th June 2006. He claims the materials in connection with the charges were not sent to the Government chemist until August 2006. The substance was then tested on or about early September 2006. He was not served with the analyst's certificate until 8th December 2006.

[7] The trial of the matter did not start until 6th July, 2009, two years and ten months after the testing of the substance. On that day, one prosecution witness testified and the matter was adjoined for further cross-examination.

[8] By that time he had already appeared in court some 19 times. The cross-examination of the first prosecution witness by his co-accused began in July 2009, and was adjourned to 25th September, 2009 for continuation, but this did not continue until 13th November, 2009.

[9] His co-accused' Counsel requested an adjournment to have the station diary presented in court. There was an adjournment to 15th January, 2010, but the cross-examination was not completed on that day. Further adjournments followed. He deponed that between 6th July, 2009 and 15th January, 2010 he made a further four appearances at Court.

[10] He further deposes that since January 2010 he has been awaiting the completion of the matter. The last scheduled hearing was April 8 2011, but on that date it was adjourned to May 30, 2011. There was no hearing on 8th April, 2011. He was present at court on each of these occasions.

[11] He has attended Magistrate's Court at least 33 times, but there were only hearings on three of those occasions. His Attorneys applied for adjournments on three occasions, and apart from these times, the matter was adjourned by the police, Counsel for the co-accused, or the Court on its own motion.

[12] He proclaims his innocence and says that he is unable to prove this due to the numerous adjournments and the inordinate delay in the completion of the prosecution case. He made an application to the court under S.16(3) of the Constitution, but this was overruled.

[13] He deponed that he believed that the constant delays constituted a violation of his constitutional rights to a fair and impartial trial by an independent and impartial court.

[14] The protracted delay has caused him emotional and financial hardship in that he has been on half pay for approximately five years. Further, the protracted delay will affect the ability of the Magistrate to properly weigh and assess the evidence when the time comes to make a determination in the matter. It will also affect his ability to present his defence to the court.

[15] He states that of the 33 times the matter has come up, the following sequence of events has taken place: -

a. Witnesses for the Prosecution has been absent on at least ten (10) occasions.

b. On at least two occasions the Magistrate was absent and as a result there was no court

c. My Attorney-at-Law requested adjournments approximately three times

d. Counsel for my co-accused would have requested adjournments on at least ten (10) occasions

[16] He is seeking the relief he has set out in his Fixed Date Claim Form. He has also applied for a permanent stay of the proceedings by way of Fixed Date Claim Form based on the following grounds:

1. On even date the Claimant filed a Constitutional motion alleging breach of his constitutional right pursuant to section 8(1) of the Constitution, his matter in the St. David's Magistrate Court having been adjourned on 33 occasions (from June 2006 to April 8, 2011) notwithstanding his presence in court and his readiness to continue with the trial

2. The matter has been scheduled on May 30, 2011, having been adjourned for the 33rd time on the last occasion.

3. The applicant contends that he would be unable to receive a fair and impartial trial given the protracted delays. The prosecution's case have not even been completed with the first witness still on the witness stand, having begun his testimony on July 6, 2009 and with cross-examination from the co-accused still incomplete after nine (9) adjournments.

4. The Claimant will be severely prejudiced if the matter in the St. David's Magistrate's Court were to continue and to be adversely determined against him but he is thereafter granted the relief sought pursuant to the constitutional motion.

5. Further, it is in interest of all parties to grant a stay in these proceedings.

6. Based on the history of this matter, if no stay is granted the matter is likely to continue to be adjourned for several times over and above the already 33 adjournments.

[17] The facts deponed to in this application are basically the same as in the constitutional application and will not be repeated here. In response the Respondents deponed through Glen Charles, a Sergeant of Police who was the prosecutor in the matter.

[18] He says that the matter came on for hearing for the just time on 7th June 2006 and was adjourned some 40 times thereafter, but that the prosecution has always been ready to proceed in the matter since the fifth hearing.

[19] He says that an examination of the cases involving the Claimant showed that there were eight adjournments by prosecution, broken down as follows: -

- 2 to facilitate the testing of the drugs, 1 to facilitate the serving of the certificate, 5 for the unavailability of police officers, 23 adjournments were at the instance of Counsel for Claimant and his co-accused, 13 on behalf of the Claimant, 22 on behalf of the Claimant co-accused, the remaining nine adjournments were as a result of the Magistrate being absent or the Court being on recess.

There were 26 adjournments before the trial started on 6th July, 2009, broken down as follows:

- 4 – the matter only be called for mention, 2 – the Magistrate was absent, 3 – unavailability of prosecution's witnesses, 2 – to facilitate the testing of the substance, 1 – to facilitate service of analyst certificate, 1 – for the first hearing of the matter, 13 – at the instance of Counsel for the accused men

[20] He agrees that the first prosecution witness was led on the 6th July 2009 (some three years after the arrest of the Claimant). He depones that the matter was adjourned for the cross-examination of the witness by Counsel for the Defendants.

[21] He further deposes that ever since that adjournment Counsel for the accused have sought further adjournments, or have been absent. The last sitting in May 2011 the Claimant's co-accused Counsel requested a stay on the ground that an application was before the High Court for dismissed due to undue delay.

[22] He depones that the Respondents have always been ready to proceed with the matter since the fourth hearing and that the prosecution witnesses are in the jurisdiction ready, willing and able to have the matter completed.

[23] The Claimant has largely contributed to the delay along with his co-accused and the application should be refused. In an affidavit in response the Claimant denied the assertions that the numerous adjournments were on the part of the defence and re-asserts that the following reasons were given by the prosecution for adjournments: -

a. Absence of witnesses. On at least one occasion Summons was issued by the Court to secure the attendance of the Police witnesses as they were not in attendance and no excuse was forwarded for their absence.

b. Witnesses on vacation and were unable to be contacted. In the month of April 2009 the court was informed that Inspector Alexander was on vacation. Sgt. Smart's absence could not be accounted for.

c. Witnesses out of State. In the month of March 2009 Inspector Alexander was out of State for approximately three weeks and as a result the cases were not started. Numerous adjournments were requested where at least one of the witnesses was frequently out of state.

d. On the 30th May, 2011, the last court appearance, the Prosecution witnesses were both absent and unable to be accounted for.

[24] He further adds that on one occasion an application was made by defence Counsel to have the matter dismissed for want of prosecution. It was not granted.

[25] A summary of the number of appearances was submitted as an exhibit by Officer Glen Charles. It details 37 times that the matter came on for hearing. This clearly does not detail all the times that the matter came on for hearing.

[26] Of those 37 times the defence was absent on 13 occasions but also on those 13 occasions the witnesses were absent on 10 occasions. The Court record sets out 43 occasions on which this matter came on for hearing. Of those 43 hearings, the accused men were present for each hearing.

[27] Mr. Clouden, Counsel for the co-accused, requested an adjournment on five occasions, the Magistrate was absent three times, it was sent down for pre-emptory hearing on five occasions and for mention twice. But it does not indicate if the prosecution's witness were present.

The Law

[28] Section 8(1) of the Constitution of Grenada[1] states:

> "If any person charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

[29] As was pointed out in **Darmalingum v The State**[2], this section contains three guarantees: (1) a right to a fair hearing (2) within a reasonable time (3) by an independent and impartial court established by law.

[30] In **Bell v DPP**[3] Lord Templeman stated:

> "Their Lordships agree with the respondent that the three elements of s.20, namely fair hearing within a reasonable time by an independent and impartial tribunal established by law form part of one embracing form of protection afforded to the individual. The longer the delay in any particular case the less likely it is that the accused can still be afforded a fair trial. But the Court may nevertheless be satisfied that the rights of the accused provided by s.20(1) have been infringed although he is unable to point to any specific prejudice."

[1] Laws of Grenada, Section 8(1)
[2] 2000 1 WLR 2302 at 2307
[3] 1985 AC 937

[31] Of course, it is accepted that the right conferred by s.8 of the Constitution must be balanced against the public interest in seeing justice done.

[32] Lord Steyn in **Darmalingum**[4] said:

> "Hence if a Defendant is convicted after a fair hearing by a proper court this is no answer to a complaint that there was a breach of the guarantee of disposal within a reasonable time. And even if his guilt is manifest, this factor cannot justify or excuse a breach of the guarantee of a disposal within a reasonable time. Moreover the independence of the reasonable time guarantee is relevant to its reach. It may of course be applicable where by reason of inordinate delay a Defendant is prejudiced in the deployment of his defence. But its reach is much wider. It may be applicable in any case where the delay has been inordinate and oppressive."

[33] As stated in many cases decided with respect to this point, if there is inaction by the relevant public authority in seeing that a criminal charge is determined within a reasonable time there will necessarily be a breach of the Defendant's constitutional right, and for such a breach there must be an appropriate and proportionate remedy.

[34] This remedy will depend on the nature of the breach, having looked at all the circumstances of the case including the stage of the proceedings at which the breach was established.

[35] In this case the breach seems to be twofold (1) the delay in commencing the trial (2) the delay in completing the trial. According to the authorities, if the breach is established before the hearing it would not be appropriate to stay or dismiss the proceedings unless there could no longer be a fair hearing or it would be unfair to try the Defendant.

[36] In this case the trial has commenced. Starting with the arrest of the Claimant in May 2006, the trial began on 6th July, 2009, some three years after his arrest, and as of May 2011, some five years after his arrest the first prosecution witness is yet to complete his evidence.

[37] I refer the Lord Bingham in **Dyer v Watson**[5]:

[4] Supra
[5] 2002 UKPC DI, 2004 AC 379 at 403-3

> "In any case in which it is said that the reasonable time requirement has been or will be violated, the first step is to consider the period of time which has elapsed. Unless that period of time is one which on its face and without more gives grounds for real concern, it is almost unnecessary to go any further …
>
> The threshold of proving a breach of the reasonable time requirement is a high one, not easily crossed. But if the period which has elapsed is one which on its face and without more gives ground for real concern, two consequences follow. First, it is necessary for the Court to look into the detailed facts and circumstances of the particular case …
>
> Secondly, it is for the contracting State to explain and justify any lapse of time which appears to be excessive."

[38] The Court went on to identify three areas of inquiry: -

a) The complexity of the case

b) The conduct of the Defendant, and

c) The manner in which the case has been dealt with by the administrative and judicial authorities.

[39] With respect to the complexity of the case, it has long been recognised that the more complex the case, the greater the amount of witnesses, the heavier burden of documentation, the longer the time by virtue of necessity the matter would take to complete it. But even given the complex nature of the case, there comes a time when the passage of time can become excessive and unacceptable.

[40] With respect to the conduct of the Defendant, it is well accepted that it is possible for a Defendant to cause a delay in a trial by any number of means, including but not limited to changing legal advisors, making spurious applications, among other things. A Defendant cannot complain of delay of which he is the author, but time wasting tactics by a Defendant does not entitle the prosecution to not diligently seek to move the trial along towards completion.

[41] The third limb which the Court must consider is the administrative and judicial handling of the matter. Unacceptable delays cannot be blamed on the lack of judges or court houses but by the same token, a prosecutor with several matters to deal with cannot reasonably be expected to devote all his time and energy on one case; it is simply not proper, nor

does it make good sense. But where there is a marked lack of expedition on the part of the prosecutor, it is unacceptable and will point to a breach of the reasonable time requirement. It is to be noted that the authorities state that time runs from the time the Defendant is charged.

[42] In this matter, I find that this is a relatively simple matter. The charges are not complex, handling possession and trafficking in illegal drugs is not an intricate or complex matter. Certainly there were at best two or three witnesses to be called and their evidence would have been fairly routine.

[43] With respect to the conduct of the Claimant in the matter, I do not find that he has delayed the proceedings unnecessarily. There is no assertion that he has made spurious applications, nor has he absented himself nor has he changed numerous legal advisors. What has happened is that there have been requests for adjournments, six (6) in all by defence.

[44] What has to be looked at is the number of adjournments requested by the defence in the context of the entire proceedings. I do not find the requests of Counsel for adjournments to be inordinate or unacceptable in the circumstances.

[45] In looking at how the case has been dealt with, I am somewhat confused as to the purpose of the peremptory fixtures in this matter.

[46] There were five (5) such fixtures in the matter, on three such occasions the matter was adjourned, with no reason being given for adjournments. On one such occasion, from the Magistrate Court record, it shows that the witnesses were present and the defence was present yet the matter was adjourned. No reason is given. Four (4) times the Magistrate was absent and the witnesses were absent on at least 8 occasions.

[47] It is incumbent upon the State to organise its legal system to ensure that the reasonable time requirement is adhered to, but this does not mean that a blind eye should be turned to the realities of litigation. Plans however carefully laid can be disrupted by any number of legitimate occurrences but a telling lack of expedition well point to a breach of the right.

[48] I use the words of Lord Carswell in **Boolel v The State** [6] :

> "Their Lordships consider, however, that when it became clear that time was dragging on and that the appellant was bent on dislocating the course of the trial and prolonging the proceedings by every means within his power, it was incumbent on the Court to take such steps to expedite matters and reach a conclusion."

[49] I find here that the Court was less than pro-active in moving the case along given the protracted delays, many of which were caused by the absence of Prosecution witnesses, most if not all of whom are police officers. From all accounts the Prosecution intended to call two at best three witnesses.

[50] I find therefore that the Claimant's trial cannot be completed within a reasonable time. I quote Hardie Boys J in the New Zealand case of **Martin v Tauranga District Court** [7] :

> "The right is to a trial without undue delay, it is not a right to be tried after undue delay."

[51] In the circumstances, I will make the following orders:

1. A declaration that the protracted delays, involving 33 adjournments so far in completing the trial of the Claimant in police cases Nos. 336/06, 337/06, 338/06 (COP v Gregory Lett and Krishna Jagganaught) and 339/06 (Commissioner of Police v Gregory Lett) constitutes a violation of his rights to a fair trial within a reasonable time as guaranteed by section 8 (1) of the Constitution
2. An order permanently staying police cases Nos. 336/06, 337/06, 338/06 and 339/06 in the St. David's Magistrate's Court
3. Costs in the sum of $4,000.00.

Margaret A. Price Findlay
High Court Judge

[6] 2006 UPKP 46
[7] 1995 2 NZLR 419 at 432