

IN THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
COMMONWEALTH OF DOMINICA

(CIVIL) -

DOMHCV2015/0132

BETWEEN:-

**JOHNSON MOISE**

Claimant

And

**ATTORNEY GENERAL  
CHIEF OF POLICE**

Defendants

**Appearances:** Mr Lennox Lawrence for the Claimant

Mrs Joanne Xavier Cuffy for the Defendants

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2015: October 20

2016: April 28

2017: April 4  
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[1] **STEPHENSON J.:** This is an application to strike out proceedings brought by the respondent on the grounds that:

- a. there are no reasonable grounds for bringing the claim and that it is an abuse of process of the court because, the claimant has available to him an alternative or parallel remedy.

- b. the applicants also contend that the claim form filed on the 8<sup>th</sup> day of June 2015 does not comply with Part 56.7(3) of CPR 2000 and should in the circumstances be struck out.

### **STRIKING OUT**

[2] The principles on which the jurisdiction of the Court is exercised when striking out a statement of case were stated by the Court of Appeal in the case ***Baldwin Spencer v Attorney-General of Antigua and Barbuda***<sup>1</sup>. The principle adumbrated in this case has been applied by the courts throughout the jurisdiction and is considered the principle to be followed. It is noted that this case was decided under the 1970 Rules of the Supreme Court however those principles have been held to remain the same under CPR 2000.

[3] In the ***Baldwin Spencer*** case Byron C.J. stated the principles as follows:

*"In brief the Court is empowered to dismiss an action in a summary way without a trial where the statement of claim discloses no cause of action, or is shown to be frivolous or vexatious or is otherwise an abuse of the process of the Court. This summary procedure should only be used in clear and obvious cases, when it can clearly be seen on the face of it, that a claim is obviously unsustainable cannot succeed or in some other way is an abuse of the process of the court. In one of the cases from Canada on which reliance was placed the standard was expressed in terms that the Claim should not be struck out if there is even a scintilla of a cause of action (Operation Dismantle v the Queen (1986) L.R.C. (Constitutional) p. 421)."*

Further at page 8 of the ***Baldwin Spencer*** case the Learned Chief Justice stated:

*"... the operative issue for determination must be whether there is even a scintilla of a cause of action. If the pleadings disclose any viable issue for trial then we should order the trial to proceed but if there is no cause of action we should be equally resolute in making that declaration and dismiss the appeal."*

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<sup>1</sup>Civil Appeal No. 20A of 1997

## The Claim

[4] The claimant ("The Respondent") re-issued proceedings<sup>2</sup> against the defendants ("The Applicants") making the following claim for:

- (i) *"A declaration that the Claimant's rights were infringed and that the Defendants did offend the Claimant from the fundamental rights as guaranteed by sections 1(c), 3(1), 3(6), 7(1) 12 and 16(1) of the Constitution;*
- (ii) *A declaration that the Claimant's rights to protection of his personal information were offended and that the dissemination of the said information was unlawful and detrimental to the Claimant. Further that the Claimant did suffer damages in his trade and profession as a result of the unauthorized dissemination of his personal information;*
- (iii) *A declaration that the search of the Claimant's premises and his arrest were unlawful and that the action of the Second Defendant and the officers of the Police Service were not protected in law;*
- (iv) *A declaration that the acts of the Defendants were unlawful and improper and were not protected by the Public Authorities Protection Act;*
- (v) *Damages inclusive of aggravated damages for violation of the Claimant's constitutional rights and freedom inclusive of the liberty and the presumption of innocence presented by the constitution;*
- (vi) *Damages for trespass and unlawful entry;*
- (vii) *Damages inclusive of aggravated damages for assault, battery and false imprisonment;*
- (viii) *Damages for unlawful arrest and detention;*
- (ix) *Damages for negligence and breach of the duty of care to preserve and protect the Claimant's personal information from unauthorized disclosure to third parties;*

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<sup>2</sup>The claimant on the 27<sup>th</sup> May 2014 filed a claim against the defendants arising out of the same incident as the current claim, claiming damages for trespass, unlawful entry, aggravated damages for assault, battery and false imprisonment, damages for wrongful arrest and detention, damages inclusive of aggravated damages for violation of the his constitutional rights and freedom inclusive of the constitutional rights to liberty and costs. This claim was discontinued on the 29<sup>th</sup> September 2014.

*(x) Costs; and*

*(xi) Further and other relief."*

- [5] It is the respondent's case that at the end of the month of July 2013 his home which is located in Petit Savanne was searched by members of the Commonwealth of Dominica Police Force on the strength of a warrant. Nothing liable to seizure was found, and neither the respondent nor any member of his household was arrested or taken into custody.
- [6] It is the respondent's case that about ten heavily armed police officers came to his house and ransacked his house. During this visit a number of photographs were taken of his house and of him without his consent. Further, that during this time his fiancé and his then one year old child was thoroughly frightened and traumatized by the presence and actions of the police and the heavy weapons that were present.
- [7] The respondent further contended that it was alleged that the police search was related to an alleged finding of narcotics at another location at the home and house of someone with whom he has no relationship and where he has no control over. It is noted that he also contended that that person was never arrested and or charged by the police in relation to same.
- [8] It was contended by the defendant that he was never during his period of being questioned ever confronted about the said narcotics neither was it ever suggested to him that he had any knowledge, possession or custody of the alleged narcotics.
- [9] On a subsequent date in August 2013, members of the police force once again visited the home of the respondent and on this occasion, he was arrested and transported to the Roseau Police Station and kept in custody for 72 hours. During the period he was in custody, the claimant was made to stay in police cells and subjected to inhumane conditions. It is noted that the respondent contended that nothing liable to seizure was found on his premises on the second visit made by the police.

[10] The respondent in his statement of claim claims that when he was arrested he was photographed once again and his fingerprints taken and that same was entered into the police database as if he were a common criminal. That he has never been in conflict with the law and neither was he charged with any offence in the incident giving rise to this litigation.

[11] The respondent informed the court that he was informed via communication from the second named defendant that he was arrested on suspicion of possession of 39 kilos of cocaine.

[12] The respondent contended that prior to this incident he worked in the cruise ship industry for in excess of 20 years and he has never gotten a problem or issue applying for or obtaining a Visa for the United States. However after this incident he was subsequently denied his visa by the US Embassy in Barbados resulting in him losing his job.

[13] The respondent contended that when he visited the embassy he was informed by the consular officer in his interview that the embassy had been notified that he was arrested on suspicion of possession and trafficking in narcotics.

[14] The respondent further submitted that the said second named defendant is and was the proper authority for relaying intelligence information to the United States Embassy and INTERPOL and that in the circumstances of his case the second named defendant acted improperly when the information regarding his arrest was thus conveyed. That having done this, his employment and non-immigrant status was adversely affected.

[15] The applicants have not filed a defence to the claim, they have however filed an acknowledgement of service in which they state that they do not admit the respondent's claim. The applicants immediately filed the application being dealt with here.

## GROUND 1

That the claim relating to section 1 of the constitution will fail as a matter of law because there are no reasonable grounds for bringing the claim and ought to be struck out.

### Applicant's case:

[16] Learned Counsel Mrs Jo – Anne Xavier Cuffy pointed out to the court that the respondent in his statement of case alleged that his rights as guaranteed by sections 1(c), *inter alia* of the Constitution of the Commonwealth of Dominica has been breached. The applicants contend that section 1 of the Constitution has been held to be an “enacting provision in the form of a preamble and does not give rise to any enforceable rights”

[17] Learned Counsel Mrs Xavier Cuffy cited and relied on the Privy Council decisions in the case of **Blomquist –v- The Attorney General of the Commonwealth of Dominica**<sup>3</sup> which concerned section 1 of the Constitution of Dominica and also on the case **Grape Bay Ltd –v- The Attorney General of Bermuda**<sup>4</sup> which considered Section 7 of the Constitution of Bermuda .

### The Respondents case:

[18] Learned Counsel Mr Lennox Lawrence for the respondent contended that the issues to be considered by the court is whether section 1(a) and 1(c) of the Constitution are enforceable rights and further whether the said sections provide a constitutional right to security of the person, protection of the law and privacy of a person's home and their other property inclusive of their photographs and their fingerprints, and against a deprivation of those property rights without compensation. Further whether there is an alternative remedy to the Constitutional protection of privacy and the deprivation of property in the photographs of his home, in his fingerprints and personal photographs without compensation.

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<sup>3</sup>(1987) 1 AC 489

<sup>4</sup>(1999) UKPC 43

[19] Learned Counsel submitted that the respondent's right to the protection of the law was violated and his fundamental rights to protection of his personal privacy of his home and his property rights in his photographs were all violated without compensation

[20] Counsel submitted that the fundamental aspect of the case is whether or not section 1 of the Constitution is enforceable.

[21] Learned Counsel submitted that section 1 of the Dominica Constitution is identical to section 3 of the constitution of St Christopher and Nevis and in the case of **Jovil Williams & Jason Campell –v- The Attorney General of St Christopher and Nevis and the Chief of Police**<sup>5</sup>it was dealt with and Counsel submitted that this decision is good law in Dominica.

[22] Learned Counsel also made reference to the case of **Matadeen and another –v- Pointu (Applied in the Jovil Williams Case)** where the rights were recognised and declared to exist in section 3 of the Constitution of Mauritius which it was contended is the exact rights protected by section 1 of the Dominica Constitution and they were declared to be enforceable rights and that this section expressed a general justiciable principle of equality.

[23] Learned Counsel Mr Lawrence submitted that the **Matadeen decision** settle the argument that section 1 of the Constitution of Dominica contains enforceable rights.

#### Courts considerations:

[24] The claim brought by the claimants in the **Jovil Williams case**<sup>6</sup> in Nevis was not brought solely under section 3 of the Constitution of St Christopher and Nevis, in fact the learned trial Judge Lorraine Williams stated that "The claimants' motion to the court was filed pursuant to Section 18 of the Constitution of St Kitts and Nevis which provides that a person who alleges that any provisions of section 3 to 17 inclusive has been or is likely to be contravened in relation to his or her, they may without prejudice to any other action apply to the Court for redress."<sup>7</sup>

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<sup>5</sup>(NEVHCV 2013/0120)

<sup>6</sup> Op cit

<sup>7</sup>Ibid at paragraph 21

[25] The learned judge went on to declare that the claimants' rights to privacy and property as guaranteed by Sections 3, 8 & 9 of the Constitution were infringed by the named police officers ..."

[26] Section 3 of the Constitution of St Christopher and Nevis is on all fours with section 1 of the Dominica Constitution.

[27] It is noted however, that a review of the decision of the Learned Trial judge shows that the justiciability of Section 3 of the St Christopher and Nevis Constitution does not seem to have been canvassed before the trial judge and in those circumstances I am not inclined to follow this decision.

[28] It is also worth mentioning that in fact of the **Jovill Williams Case**<sup>8</sup> the behaviour of the police officers was indeed found to be egregious which operated to breach the claimant's constitutional rights quite like the standard of behaviour found in the **Jaroo case**.<sup>9</sup>

[29] The Court of Appeal in **The Attorney General of Anguilla and others –v- Bernice Lake and others**<sup>10</sup> considered section 1 of the Anguilla Constitution which is in the same terms as section 1 of the Dominica Constitution and Justice of Appeal Adrien Saunders had this to say

"The first point to note is that these provisions of Chapter 1 make a very clear distinction between the broad rights declared in section 1, on the one hand, and the elaborately set out rights described in sections 2 -15, on the other hand that distinction is critical. Any of sections 2 -15 can be enforced by the mechanisms provided for by section 16. One searches the Constitution in vain however for any provision that tells a person in Anguilla whether, or how, that person can enforce the rights declared in section 1. The conclusion seems to me inescapable. The rights declared in section 1 are incapable of being enforced save in so far as they are contained in some section lying between sections 2 and 15 (inclusive) and then, only to the extent that the relevant section permits. In effect, what can be enforced is not section 1 but rather the particular section that contains the right in question. Section 1 is a mere statement of the broad principles upon which the

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<sup>8</sup> Op cit

<sup>9</sup> Op Cit

<sup>10</sup>[Civil Appeal number 4 of 2004] Anguilla



fundamental rights and freedoms adumbrated in sections 2 to 15 are crafted. Any purported breach of section 1 is not justiciable" (Para 41)

Justice of Appeal Saunders went on to say that

*"The above analysis of Chapter 1 is not novel. Their Lordships in the Privy Council have had occasion to pronounce upon this. See: **Blomquist v. Attorney-General of the Commonwealth of Dominica**<sup>11</sup> and **Grape Bay Limited v. Attorney General of Bermuda**.<sup>12</sup> It follows that the Respondents were entitled to allege breaches of section 7 of the Constitution, i.e. the section protecting persons from unlawful deprivation of property, but they were not entitled to allege a breach of a **general** right of enjoyment of property unless the breach related to some specific infringement of section 7."*<sup>13</sup>

[30] Reference is also made to **In the Matter of the Constitution of Saint Vincent and the Grenadines Chapter 2 of the Laws of Saint Vincent and the Grenadines and others v The Attorney General of the Saint Vincent and the Grenadines and others**<sup>14</sup> where Justice Gertel Thom held that the alleged contravention of Section 1, is a mere preamble. It does not establish any right which is enforceable under Section 16(1) of the Constitution. Section 1 of the St Vincent Constitution is similar to the section in the Dominica Constitution

[31] I would therefore agree with the applicant that section 1 of the Constitution is not capable of being separately enforced or as held by the Privy Council in the Dominica Case of **Blomquist –v- Attorney General of the Commonwealth of Dominica** and by Saunders JA and Thom J that the section is not justiciable and I so hold.

[32] Learned Counsel for the Applicant further contended that section 16 of the Constitution of Dominica does not include any rights provided for in section 1. She submitted that this provision specifically includes sections 2-15 of the constitution and not section 1(c) which is the section that respondent is relying on. That in the circumstances of the case the applicant further submitted that the respondent must locate his right in section 2 to 15 which he has failed to do and in the circumstances his claim

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<sup>11</sup> Op cit

<sup>12</sup> Op cit

<sup>13</sup> Ibid (Para 42)

<sup>14</sup> High Court Civil Claim No. 179 of 2007 (St Vincent & The Grenadines)

pursuant to section 1 of the Constitution ought to be struck out as a matter of law. I agree with this submission and hereby strike out the claimant's claim for breach of section 1 of the constitution.

## Ground 2

**That the statement of claim should be struck out as an abuse of process of the court because the claimant has available to him a parallel or alternative remedy.**

### Applicants' case

[33] The thrust of the applicants' case in this regard is that the respondent's claim for damages for breach of his constitutional rights is an abuse of process as he has available to him alternative remedies such as an ordinary claim and should be struck out.

[34] The applicants urge the court to decline to exercise its discretion pursuant to proviso of section 16(2) of the Constitution on the grounds that there are adequate means of redress available to the respondent for the alleged contraventions under other law.

[35] The proviso of section 16 (2) relied on by the applicant reads

*"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."*

[36] Learned counsel Mrs Xavier Cuffy on behalf of the applicants directed the court's attention to sections 3 and 12 of the Constitution which states:

### ***Protection of rights to personal liberty.***

*3. A person shall not be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:-*

- a) (...)
- (...)

*(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting.*

***Protection of freedom of movement.***

*12.- (1) A person shall not be deprived of his freedom of movement that is to say, the right to move freely throughout Dominica, the right to reside in any part of Dominica, the right to enter Dominica, the right to leave Dominica and immunity from expulsion from Dominica.*

- 1. Any restriction on a person's freedom of movement that is involved in his lawful detention shall be held to be inconsistent with or in contravention of this section.*
- 2. (...).'*

[37] The applicants submitted that the respondent also has the alternative remedy of a claim for damages for trespass, unlawful search and entry and that based on his allegations of fact he can possibly be adequately compensated for same.

[38] The applicants further contend that the respondent recognised his alternative rights when he filed his initial claim and claimed damages for his common law remedies<sup>15</sup>.

[39] Learned counsel Mrs Xavier Cuffy on behalf of the applicants relied on the decision of the Privy Council in the **Jaroo –v- Attorney General of the Trinidad and Tobago** [2002] UKPC 5 where it was held that where a claimant has an alternative remedy he ought to frame his claim accordingly. The court in this matter held that the claimant's motion under section 14 of the Trinidad Constitution was an abuse of process on the ground that the appropriate claim was in the common law tort of detinue.

[40] The court also held that the jurisdiction of the High Court to hear a matter concerning breach of constitutional rights where there is an alternative remedy should only be in exceptional circumstances. Learned Counsel submitted that these exceptional circumstances did not exist in the **Jarroc**Case and neither does in exist in the case at bar.

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<sup>15</sup> ON May 27<sup>th</sup> 2014, the claimant previously filed a claim against the defendants seeking damages for trespass and unlawful entry, damages including aggravated damages for assault, battery and false imprisonment, damages for unlawful arrest and detention and ...

[41] Reference was made to the Privy Council case of Attorney General of Trinidad & Tobago and Ramanoop where the Board considered factual circumstances that it held took the case outside of the ruling in **Jaroo**. The board concluded that the facts of the **Ramanoop** case exemplified exceptional circumstances. In that case the claimant was victim of egregious conduct by the Police which allowed him to frame his claim as breach of his constitutional rights.

[42] Learned Counsel for the claimant submitted that the facts of the case at bar is in “obvious contrast” to the case in **Ramanoop**, that there is no claim by the claimant that he was verbally or physically abused in any way or at all. Learned counsel submitted that in fact the claimant did not in the case at bar plead any other facts that will take his case outside the normal claim for common law damages.

[43] Reference was also made to the dicta in the **Antonio Webster Case**<sup>16</sup>and the explanation made of the finding of the exceptional circumstances in **Ramanoop**. Where at paragraph 19 of the judgment it was stated

*“What was the feature which entitled the claimant in Ramanoop not to make his claims in tort for assault, battery and false imprisonment and therein to claim exemplary damages including by reference to breaches of his constitutional rights? The Board’s answer was that the police officer’s conduct, which had been “quite appalling”, had represented a shameful misuse of the coercive powers with which the state had endowed him: see [1], [21] and [25]. ... The facts in Ramanoop exemplify the exceptional circumstances to which in Jaroo the Board had made reference”*

[44] I understand the thrust of the application before the court is that on the facts as alleged before it thus far, the question to be asked is whether there are exceptional circumstances attendant in this case which would allow the claimant to frame his claim for breach of constitutional rights? The applicants are urging to the court to hold that based on the alleged facts as pleaded by the Claimant there are no exceptional circumstances which would permit the claimant to bring a claim for breach of his constitutional rights and in the circumstances should be struck.

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<sup>16</sup> Antonio Webster –v- the Attorney General of Trinidad and Tobago[2011] UKPC 22

## Claimant's case

[45] Learned Counsel Mr Lennox Lawrence on behalf of the defendant submitted that defendant's arguments that an alternative remedy exists is essentially an admission by the defendants that the claimant's several constitutional rights have been violated. It was submitted that the defendants are no denying the violation but are simply seeking to exempt the constitutional remedy to an argument an alternative remedy exists.<sup>17</sup>

[46] Learned counsel on behalf of the claimant submitted that the applicants failed to identify any alternative remedy available to the claimant to:

- a. To a section 117 determination of the constitutionality of the Public Authorities Protection Act;
- b. Of the constitutional rights to liberty, security of the person and protection of the law as provided in section 1(a) of the constitution;
- c. Of the constitutional rights to privacy and the deprivation of property without compensation as provided by section 1(c) of the Constitution;
- d. To breach of the fundamental rights provision as contained in section 3(1), 2(6), 7(1), 8 and 12 of the Constitution.

[47] It was submitted on behalf of the claimant that the applicants' argument that there is an alternative remedy fails and the issue becomes essential one of Constitutional remedy.

[48] Learned Counsel Mr Lennox Lawrence submitted that in the case at bar there was a shameful misuse of the police powers where the members of the Dominica Police Force searched a citizen's home without the strength of a search warrant . That the fact that the claimant's home was photographed without his permission and that he was "incarcerated" for three days without being charged, that he was finger printed and photographed and his information placed on the police data base of criminal offenders and which information was later disseminated without lawful authority was oppressive and abusive and an unlawful exercise of police powers.

[49] That there is no law in Dominica authorizing the police officers to do as they did and therefore in the circumstances of this case the actions of the police officers amounted to a shameful misuse of police powers which are the criteria laid down by the Privy Council in the **Ramanoop** Case. That the

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<sup>17</sup> See paragraph 34 of the claimant's submissions filed on the 28<sup>th</sup> April 2016.

“shameful” misuse of the police powers in this case resulted in the claimant losing his visa rights and he was as a result unable to continue his employment which he enjoyed for over 22 years prior to this incident complained of.

[50] Learned counsel submitted that the claimant satisfied the applicable test and that on a prima facie basis there is no alternative means of legal redress that is suitable for the claimant to seek.

**Court’s considerations.**

[51] It is not the court’s right or intention to discourage applications to the court to pursue bona fide rights for constitutional redress, however, at the same time the court is cognisant of the need to be vigilant to protect its own process and to further the Overriding Objective of the Civil Litigation as stated in Part 1 of CPR 2000 which requires saving expense, ensuring that matters are dealt with expeditiously and that in allotting the court’s resources that consideration be given to the other cases in the system, to protect its process from abuse by frivolous, vexatious and contrived invocations and prayers for constitutional relief and redress. This is to be actively discouraged.

[52] The facts which the claimant seeks to rely on can be stated as follows:

- a. That in the month of July 2013 his home located at Petit Savanne was searched by members of the Commonwealth of Dominica Police Force on the strength of a warrant.
- b. That nothing liable to seizure was found.
- c. That during the search, photographs were taken of his dwelling and the presence and action of the police caused him and members of his family trauma and that the actions of the police were arbitrary and unreasonable.
- d. The police on a second occasion in August 2013 once again searched his house without a warrant and arrested the claimant and detained him for 72 hours during that period of time the claimant was interviewed and questioned about narcotics which were allegedly found on the premises of a third party and over which the claimant exercised no rights whatsoever.
- e. The claimant contended that he was photographed and fingerprinted and his personal and confidential information was placed on the police database. That he was released without any explanation being given to him or any apology and his information was retained in the police data base as though he was a common criminal.

[53] It is the claimant's case that his arrest was arbitrary, oppressive and punitive and that he was placed and detained in filthy police cells for a period of 72 hours without being substantially interviewed or charged with any offence and that his particulars were entered into the police database which were linked to the databases of INTERPOL and other security services inclusive of the American Embassy resulting in him not being able to renew his US Visa and therefore causing him not to continue in his chosen field of employment which he enjoyed for many years.

[54] In **Re Ramanoop** it was said that <sup>18</sup>

*"...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 arguably, 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."*

[55] In the **Jaroo Case**<sup>19</sup> The Privy Council made the point that the right to apply to the court for constitutional redress should be exercised in exceptional circumstances where a parallel remedy exists. In this case the Privy Council repeated the warning of Lord Diplock who in the case of **Khemraj Harrikisoon –v- Attorney General**<sup>20</sup> said

*"The mere allegation that the Human Rights or a fundamental freedom of a person has been contravened is insufficient to invoke the constitutional jurisdiction of the court. If it appears to the court that the allegation which is being made is an abuse of process of the court which is being instituted solely for the purposes 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,"*

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<sup>18</sup>at page 343 para 25

<sup>19</sup> Op cit

<sup>20</sup>(1979) 31 WIR 348

[56] If it is in essence a breach of the claimant's common law right, then the fact that it could fit the description of a right protected by a constitution does not by itself justify resort to procedure by way of constitutional motion. The question is, is there an exceptional feature such as the absence of any disputed facts, as this would make such a procedure more convenient and appropriate?

[57] Is there substantial dispute as to the facts in the case? Learned Counsel Mr Lawrence for the Claimant submits that there is no dispute as to the facts in the case. I do not agree with this, the only statement of case that is before the court is that of the claimant. The defendant has not as yet filed a defence or proper response to the facts as alleged by the claimant. The defendant immediately filed their application to strike which is being dealt with right now. It is therefore impossible to say that there is no dispute as to the facts. In fact the stance of the defendants thus far in the matter clearly indicates that there is a dispute as to the facts though the exact nature of that dispute is not yet clearly before the court.

[58] I ask myself the question, is there any feature in this case that would entitle the claimant to pursue his claims for breach of his constitutional rights? I follow the guidance given in the **Jaroo, Ramanoop and Webster cases** where the Privy Council found that the conduct of the police had to be "appalling" and "egregious" to warrant the pursuit of a constitutional claim.

[59] The claimant has failed to show based on his statement of case and affidavits filed thus far that his claim meets the requirements that would make constitutional redress appropriate. That is, there has been no pleading or averment by the claimant that would support a case that the action of the members of the Commonwealth of Dominica Police Force amounted to a shameful misuse of their coercive powers with which they are empowered or that their action were egregious or appalling in the circumstances of the case"

[60] I hasten to say that the actions of the police officers may not have been lawful but the claim as pleaded thus far does not put their action in the category of being called egregious or appalling as has been found in the **Ramanoop Case**<sup>21</sup> and discussed in the **Webster and Jaroo Cases**<sup>22</sup>.

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<sup>21</sup> Op cit

<sup>22</sup> Op cit



[61] Based on the alleged peculiar circumstances of this case that is, the taking of pictures in the claimant's home and the alleged uploading of his personal data to the Police Data Base and the possible access to the said data by international agencies and the US Embassy when he was not charged with any criminal offence the claimant may be able to make a claim for aggravated and exemplary common law damages if he is able to make out his claim.

[62] Following the guidance given in **Jaroo** which was examined and applied in the **Webster** and **Ramanoop** cases.<sup>23</sup> I find that the case as pleaded by the claimant does not satisfy the criteria laid down in those cases to allow him to pursue constitutional redress. Accordingly, the claimant's claim for the declaration of his rights, remedies and reliefs under the Constitution of the Commonwealth of Dominica and his claim for a determined on the constitutionality of the sections of the Public Authorities Protection Act are hereby struck out<sup>24</sup>.

[63] I find that it cannot be disputed that the claimant has an alternative claim for the remedies of general, special, exemplary and aggravated damages in Tort. For the avoidance of doubt the claimant could continue to pursue his claim for common law damages for wrongful arrest, trespass and negligence against the defendants.

#### **Costs:**

[64] This claim is being considered by virtue of Part 56.1 (1) (a) of CPR 2000 which deals with application brought for relief under the Constitution of a member state. Part 56.1(2) states that in this Part – such applications are referred to generally as “applications for an administrative order”.

[65] Part 56.13(6) provides that “The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application”.

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<sup>23</sup> Op cit

<sup>24</sup> Claimant's Amended Fixed Date Claim form filed on the 13<sup>th</sup> April 2016 Paragraphs (a), 1,2,3,4, and (b), 1,2,3,4,6 and 7 of the claim.

[66] The general rule is that a successful party is entitled to his costs. This case concerns an application for an Administrative Order and I find that the Claimant did not act unreasonably in making the prayers in their fixed date claim and in the circumstances I make no order as to costs.

[67] I wish to close with an apology to Counsel and the parties for the late delivery of this ruling. The parties in obedience to the directions of the court filed their written submissions as ordered however, the file was mistakenly filed away and it is only after repeated requests made by me that the file was eventually brought to me with the submissions on them. I immediately got to reviewing the submissions filed and prepared the rulings herein.

M E Birnie Stephenson  
High Court Judge

