THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

CLAIM NO. SKBHCV2017/0380

IN THE MATTER of Sections 5(1), 5(1)(f), 5(6), 9(2) and 14(1), (2), & (3) of the Constitution of Saint Christopher and Nevis

And

IN THE MATTER of an Application for Declaratory and Compensatory relief by MATTHEW MCMILLAN pursuant to sections 18(1) & 18(2) of Constitution of Saint Christopher and Nevis

BETWEEN:

MATTHEW MCMILLAN

Claimant

and

1. ALONZO CARTY
2. THE COMMISSIONER OF POLICE
3. THE ATTORNEY GENERAL OF SAINT KITTS AND NEVIS

Defendants

Appearances:

Mr. Jason Hamilton for the Claimant
Mr. Dane Hamilton Q.C., with him, Mr. Victor Elliot-Hamilton for the Defendants

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2018: November 19
November 20

JUDGMENT

[1] VENTOSE, J.: The Claimant is a citizen of the United States of America. He has visited the Federation of St. Christopher and Nevis on numerous occasions,

carrying out his business without any trouble with the law. That, however, was to change on 4 December 2017. The following is the Claimant's version of events on that fateful day. The Claimant checked in at the Robert Llewellyn Bradshaw International Airport, completed the immigration checks and proceeded to the security checkpoint at approximately 8:30 a.m. While approaching that area, he was informed by an immigration officer that he was on a "watch list" and that he should follow the immigration officer. The Claimant duly complied. The immigration officer told him that he was unable to leave the country because he (the Claimant) was needed for questioning by an Inspector from Nevis. The Claimant was taken to a waiting area to await the arrival of the Inspector. He was not told at that time that he was under suspicion for anything or that he was under arrest. The Claimant was later transferred to the Basseterre Police Station and at 10:30 a.m. he met the Inspector from Nevis, the First Defendant.

[2] The First Defendant questioned the Claimant in the presence of his attorney at law and upon instructions from his attorney at law the Claimant informed the First Defendant that he (the Claimant) did not wish to make a statement or answer any questions. The Claimant was then informed by the First Defendant that he was under arrest for "suspicion of invasion of privacy". The Claimant states that he was held for several hours at different offices in the Basseterre Police Station and that his travelling bags were searched and the contents recorded. The Claimant further states that the First Defendant informed him that the police had a warrant to search all the data on his mobile phone and on his laptop computer. The Claimant continues that he requested a copy of the warrant but the First Defendant failed to produce it. The Claimant was then transferred to a holding cell late in the afternoon where he remained until approximately 8:00 p.m. that evening when he was eventually discharged.

[3] The Claimant filed on 15 December 2017 a Fixed Date Claim seeking declaratory and compensatory relief under section 18 of the Constitution of Saint Christopher and Nevis. In particular, the Claimant claimed, among other things, a declaration that his arrest and/or detention for suspicion of invasion of privacy for

approximately 11 hours: (1) was unreasonable and unlawful: (2) was unconstitutional and violated his rights under section 5(6) of the Constitution; (3) violated his constitutional right to personal liberty and was in contravention of the provisions of sections 5(1), 5(1)(f) and 5(6) of the Constitution; and (4) violated his constitutional right to freedom of movement and was in contravention of the provisions of section 14(1), 14(2) and 14(3) of the Constitution. He also claimed a declaration that the seizure of his property violated his constitutional right to protection from arbitrary search and was in contravention of the provisions of section 9(1) of the Constitution.

[4] The Defendants acknowledged service on 1 February 2018 but did not file a defence within the time period required by CPR 10.3 and 10.2(2). The Defendants however filed on 22 February 2018 an application with supporting affidavit pursuant to CPR 26.3(1)(c) for the origination motion filed by the Claimant to be struck out as an abuse of process of the court. The basis of the application was that the Claimant has an alternative means of redress, namely, false imprisonment and trespass; and that there are facts in dispute, which meant that the claim should more properly be dealt with in the ordinary jurisdiction of the court under the common law.

[5] The application came up for hearing on 19 November 2018 when I made the following orders:

(1) The application by way of originating motion filed by the Claimant on 15 December 2017 shall continue as if it were an ordinary claim.
(2) Unless the Claimant files and serves any necessary amendments to the originating motion to allow it to continue as if it were an ordinary claim within 7 day's of today's date, the originating motion shall be struck off without need for further order.
(3) The Defendants shall file a defence within 7 days of service of the amended statement of case.
(4) The matter is set for case management in due course before the master on a date to be determined by the court office.

(5) Each party to bear its own costs.

[6] I indicated to the parties that I will put the reasons for the orders in writing in a judgment that will be handed down in the usual way in due course. I now provide the following reasons for the orders made above.

Alternative Remedies in Constitutional Litigation

[7] One of the earliest authorities of the Privy Council on alternative remedies in constitutional litigation in the Commonwealth Caribbean is the decision of Harrikissoon v Attorney General of Trinidad and Tobago [1980] A.C. 265, [1979] 3 W.L.R. 62. In that decision, the appellant, who was transferred from one school to another by the Teaching Service Commission, brought a constitutional claim alleging contraventions of his human rights and fundamental freedoms under section 1 of the 1962 Constitution of Trinidad and Tobago. He failed first to make use of the review procedure under regulation 135 of the Public Service Commission Regulations. Lord Diplock, in his characteristic style, stated (at p. 268) as follows:

> The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter I of the Constitution is fallacious. The right to apply to the High Court under 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.

[8] Lord Diplock is making three important points in that paragraph. First, the mere failure by a public authority to comply with a law does not of itself mean that there is a breach of the fundamental rights and freedoms found in the Constitution.

Second, the redress clause will be devalued or diminished if it is used as a general means of judicial control of executive action. Third, and most importantly, if the allegation is made for the sole 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, the applicant will not be allowed to invoke the jurisdiction of the court. The latter point is of significance because Lord Diplock was not concerned with administrative actions that do not involve any contravention of any human right or fundamental freedom.

[9] In Jaroo v Attorney General of Trinidad and Tobago [2002] UKPC 5; [2002] 1 AC 871, [2003] 2 WLR 420, police officers kept the appellant's vehicle despite repeated requests by him for it to be returned. The vehicle was sent to the police for investigation by the licensing authorities who suspected that it might have been stolen. The appellant sought redress under section 14(1) of the Constitution of Trinidad and Tobago for an order for return of the car, and damages for contravention of his rights under, among other things, section 4(a) of the Constitution on the ground that he had been deprived of the enjoyment of his car (his property) without due process of law. The question the Privy Council had to answer was whether the constitutional motion was an abuse of process because of the availability of the parallel remedy of an action for delivery in detinue at common law. Lord Hope explained that:

> Abuse Of Process
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> 29 Nevertheless, it has been made clear more than once by their Lordships' Board that 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. …
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> 36 Their Lordships wish to emphasise that the originating motion procedure under section 14(1) is appropriate for use in cases where the facts are not in dispute and questions of law only are in issue. It is wholly unsuitable in cases which depend for their decision on the resolution of disputes as to fact. Disputes of that kind must be resolved by using the procedures which are available in the ordinary courts under the common law. …

> 39 Their Lordships respectfully agree with the Court of Appeal that, before he resorts to this procedure, the applicant must consider the true nature of the right allegedly contravened. He must also consider whether, having regard to all the circumstances of the case, some other procedure either under the common law or pursuant to statute might not more conveniently be invoked. If another such procedure is available, resort to the procedure by way of originating motion will be inappropriate and it will be an abuse of the process to resort to it. If, as in this case, it becomes clear after the motion has been filed that the use of the procedure is no longer appropriate, steps should be taken without delay to withdraw the motion from the High Court as its continued use in such circumstances will also be an abuse.

[10] Jaroo therefore confirms that: (1) the procedure by way of originating motion should be exercised only in exceptional circumstances where there is a parallel remedy; (2) before resorting to this procedure an applicant must first examine the nature of his claim to determine if there is a parallel remedy at common law or statute; (3) if there is a parallel remedy, resort to the procedure by way of originating motion will be inappropriate and an abuse of process; and (4) if, after the claim is filed, resort to that procedure becomes inappropriate, steps should immediately be taken by the applicant to withdraw the motion, and if it is not withdrawn that will also be an abuse.

[11] In Attorney General of Trinidad and Tobago v Ramanoop [2005] 2 WLR 1324, Lord Nicholls provided some additional guidance on the circumstances in which an applicant may bring a constitutional claim where a parallel remedy exists. In that decision, the applicant filed an application by way of originating motion seeking constitutional relief rather than a common law action for damages in respect of his unlawful detention and the assaults made upon him by a police officer. Lord Hope explained that:

> 22 Had the facts set out by Mr Ramanoop in his affidavit been disputed it might well have been appropriate for the court to direct that the proceedings should continue as though they had been by way of writ. An originating motion is a summary procedure. Save in the simplest of cases it is ill-suited to decide substantial factual disputes. Satisfactory resolution of such disputes usually requires pleadings, discovery and oral evidence. That situation did not arise in this case.

[12] After examining the decision in Harrikissoon, Lord Hope continued that:

> 25 In other words, 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.
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> 26 That said, their Lordships hasten to add that the need for the courts to be vigilant in preventing abuse of constitutional proceedings is not intended to deter citizens from seeking constitutional redress where, acting in good faith, they believe the circumstances of their case contain a feature which renders it appropriate for them to seek such redress rather than rely simply on alternative remedies available to them. Frivolous, vexatious or contrived invocations of the facility of constitutional redress are to be repelled. But "bona fide resort to rights under the Constitution ought not to be discouraged":

[13] Ramanoop reiterated the point made in Jaroo that since an application by way of originating motion is a summary procedure, it is not suited to cases where the court must decide substantial factual disputes. Ramanoop adds a gloss on the Harrikissoon principle when Lord Hope stated that notwithstanding the existence of a parallel remedy an applicant might still use the originating procedure if the circumstances of which he complains contain some feature that makes it appropriate so to do. That feature must arguably indicate that the means of legal redress otherwise available would not be adequate, for example, where there has been an arbitrary use of state power.

[14] The Privy Council also provided guidance on the process to be followed where an applicant realizes after making an application by way of originating motion that: (1) there is a parallel remedy; (2) there is a substantial dispute of fact; or (3) a claim for constitutional relief is no longer appropriate. Lord Hope stated that:

> 30 What, then, of the case where on the information available to an applicant a constitutional motion is properly launched but it later becomes apparent (1) that there is a substantial dispute of fact or (2) that a claim for constitutional relief is no longer appropriate? As to the first of these two events, the emergence of a factual dispute does not render the proceedings an abuse where the alleged facts, if proved, would call for constitutional relief. Where this is so, the appropriate course will normally

> be for the applicant to apply promptly for an order that the conditional proceedings continue as though begun by writ and for any appropriate ancillary directions for pleadings, discovery and the like. Where appropriate, directions should also be given for expedition and a timetable set for the further steps in the proceedings. If the second of these two events happens, and constitutional relief is no longer appropriate, it would be an abuse of process for the applicant to continue to seek constitutional relief at all. In such a case the applicant should either abandon his motion entirely or, here again, seek a direction that the proceedings continue as though begun by writ. In this case, however, unlike the first case, the applicant will also need to amend the relief he seeks so as to abandon his claim to constitutional relief and instead seek to pursue his parallel remedy. Needless to say, on all such applications the court will exercise its discretion as it sees fit in all the circumstances. Moreover, the court may of its own motion give any of these directions.

[15] In such circumstances, the applicant can apply for order, or the court can order, that the proceedings should continue as if they were begun by an ordinary claim, and for trial directions. The applicant can also abandon the application by way of originating motion or seek directions from the court. Lord Hope also emphasizes that the court may of its own motion give any of these directions.

The Case for the Defendants

[16] The First Defendant avers that the Claimant was arrested on reasonable suspicion of having committed a crime and that his detention was to facilitate continuing investigations into the matter. The First Defendant continues that he received a report from Mrs. Sharon Brantley (the "Complainant") concerning the use of an automated drone, which allegedly was filming her and her family at their residence. The First Defendant avers that the Complainant was complaining about an invasion of privacy which right is held by every individual within the State under the Constitution of Saint Christopher and Nevis. The First Defendant also avers that the act of filming the Complainant and her family from a drone over her airspace is capable of occasioning the offence of watching and besetting at common law. The First Defendant avers that the Complainant followed the drone and found a vehicle that she believed had the drone operators. The First Defendant then obtained a search warrant dated 3 December 2017 for Mervin Powell of Prospect on the basis there is "reasonable cause to believe that certain

property, to with, Controlled Drugs, Firearms and ammunitions alleged to have been concealed in on certain premises, to with Mervin Powell of Prospect".

[17] The search warrant revealed that the vehicle carrying the licence plate number "R1394" was rented to the Claimant. The First Defendant avers that it was suspected that the Claimant was staying at Carino Development and a search warrant was obtained on 3 December 2017 and executed at an apartment in Carino Development but nothing was found. The First Defendant also avers that since the individuals concerned were alleged to be foreign nationals, he placed an alert with the Immigration Department.

[18] The First Defendant states that it is the practice of the Royal Saint Christopher Police Force upon arrest of any individual to determine the contents of all of the items they are carrying, so as to ascertain what is safe for the individual to retain in his or her possession and what should properly be secured in police custody and returned upon release. Following that practice, the First Defendant continues, all the items held by the Claimant were itemized at the time of his arrest. The First Defendant avers that the Claimant's electronic devices were separated but not searched and that the Cyber Crimes Unit were requested to prepare an application for a production order. This was done with the intention of searching the devices held by the Claimant "to determine if any pictures or videos had been taken of the alleged trespass into (sic) the privacy of the Complainant".

[19] The First Respondent avers that he tried to interview the Claimant in the presence of his attorney at law but the Claimant's attorney at law informed him that the Claimant would not be answering any of his questions. The First Defendant also avers that at the time of the Claimant's arrest he had not yet discussed a drone in the Claimant's possession and had not yet confirmed the identity of the other person that was seen with the Claimant. The First Defendant states that he reported his findings to the Deputy Commissioner of Police who advised that he (the Deputy Commissioner of Police) would seek instructions from the Director of Public Prosecutions. The First Defendant also states that the Claimant was detained at the airport on or about 10:00 a.m., arrested on or about 11:27 a.m.

and released from custody at 8:21 p.m. upon the instructions of the Deputy Commissioner of Police. The possessions of the Claimant were then returned to him.

[20] The Defendants contend that the continued use of the originating motion procedure in this case amounts to an abuse of process for the following reasons. First, when one examines the nature of the relief sought by the Claimant it is clear that his contention is that his arrest and detention is unlawful and as such infringes his right to personal liberty and freedom of movement. The Claimant has a parallel remedy under the common law in the form of the tort of false imprisonment, which protects against the unlawful imposition on another's freedom of movement from a particular place. The tort of false imprisonment adequately protects individuals who have been unlawfully arrested and detained by police officers. Second, the Claimant seeks a declaration that he is entitled to compensatory damages and further that he is entitled to exemplary damages. Such relief would be available to the Claimant if he were to succeed in an action for false imprisonment.

[21] Third, the Defendants dispute that the arrest/detention of the Claimant was unlawful because there was reasonable suspicion that the common law offence of watching and besetting was committed or was about to be committed. These contentions, the Defendants continue, are best tested under the ordinary civil procedures, with discovery of documents, witness statements and cross-examination at trial. It is not a case where the facts are settled and only the law needs to be decided upon. Fourth, the Claimant has not set out in his affidavit any feature which makes the originating motion procedure more appropriate and there are no allegations in his affidavit indicative of any heavy handed and arbitrary actions by the police officer similar to the facts of Ramanoop.

[22] The Defendants submit that the Claimant complains of a search carried out in relation to his possessions while the First Defendant states that this was done pursuant to police procedure properly to identify and secure the Claimant's possessions and the devices required for further investigations pending the application for a production order. The Defendants contend that if the search of

which the Claimant complains were found to be unlawful, the Claimant would be entitled to damages under the tort of trespass.

The Case for the Claimant

[23] The Claimant in an affidavit filed in response to the application to strike out avers that the relief sought in his originating motion extends beyond a claim for false imprisonment or unlawful imprisonment. The Claimant continues that the actions of the Defendants prevented him from boarding a scheduled flight to depart Saint Christopher and Nevis, and that he was wrongly detained at the airport and at the Basseterre Police Station. The Claimant also avers that the Defendants unlawfully searched and confiscated his personal property and attempted to conduct an unlawful examination of his electronic devices in a fishing expedition to determine whether he held any pictures or documents concerning the Complainant, in a clear abuse of authority and in breach of his constitutional rights. The Claimant contends that the Defendants unlawfully deprived him of his freedom of movement particularly his right freely to leave Saint Christopher and Nevis on the basis of suspicion of committing an act that is not an offence under the laws of Saint Christopher and Nevis. The Claimant therefore states that his originating motion is properly brought before the court and should not be struck out. The Claimant also contends that the court has powers to correct any procedural errors in any statement of claim and that if any errors are found to exist he should be allowed to rectify them.

[24] The Claimant submits that his case cannot be described as a "mere allegation" or one being done for the "sole purpose of avoiding the necessity of applying (sic) the normal way" as stated in Harrikissoon and Jaroo. The Claimant further submits that his case falls within the Ramanoop exception, noting "the present claim contains special features which renders it appropriate for the Claimant to seek constitutional redress". These special features are that: (1) the Claimant was placed in police custody; (2) the Claimant was not informed of the reason for his detention until he was formally arrested; (3) the Claimant's personal items were confiscated and a preliminary and secondary search took place; and (4) no

warrant was ever produced to justify access by the First Defendant to all the data on his mobile telephone and laptop computer.

[25] The Claimant also submits that his arrest occurred without a warrant, even though he concedes that section 6 of the Police Act CAP 19.07 of the Laws of Saint Christopher and Nevis empowers officers to make an arrest without a warrant. The Claimant contends that: (1) at the time of the Claimant's arrest, there was no ongoing threat or possible renewal of any alleged breach of the peace; and (2) the Claimant was held under suspicion of a crime that is unknown to the laws of Saint Christopher and Nevis. The Claimant continues that, at the time of his detention, there was no evidence that could form the basis of any suspicion by the First Defendant that he had committed an offence. The Claimant also contends that: (1) there was no valid ongoing investigation so the arrest, search and restriction of his freedom to leave the jurisdiction were all constitutional infringements; (2) the actions of the agents of the State were arbitrary and oppressive; and (3) these actions created an overlap between the ambit of a tort and that of a constitutional breach.

[26] The Claimant submits that in Merson there was an overlap between the facts constituting the tortious assault and battery and the facts constituting the constitutional infringement but the overlap was not complete. The Claimant also submits that in Merson the Privy Council held that the constitutional infringements overlapped only marginally, and in some cases not at all, with the facts constituting the nominate torts. The Claimant contends that Privy Council in Merson also found that the conduct of the police officers showed an extreme disregard of the rule of law and the rights of the appellant to the protection of the law.

The Application to Strike Out

[27] Although the Court of Appeal has on many occasions stated that the application to strike out is a draconian measure that should be used only in exceptional circumstances, its deployment as first resort in civil litigation in the Eastern Caribbean countries and territories continues unabated. In Cedar Valley Springs

v Pestaina (ANUHCVAP 2016/0009 dated 18 January 2017), Chief Justice Dame Janice Pereira stated that:

> In my view, it is never an appropriate or proportionate response to utilise this exceptional and draconian measure to deprive a party of his right to a trial and his ability to strengthen his case through the process of disclosure and other procedures such as requests for information or indeed to be deprived of an opportunity to amend his case by adding additional information or further facts which better particularise his cause of action which he has clearly made out on his pleaded case.

[28] In Real Time Systems Ltd v Renraw Investments Ltd [2014] UKPC 6, the Privy Council stated that:

> 17. In that connection, the court has an express discretion under rule 26.2 whether to strike out (it "may strike out"). It must therefore consider any alternatives, and rule 26.1(1)(w) enables it to "give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective", which is to deal with cases justly. As the editors of The Caribbean Civil Court Practice (2011) state at Note 23.6, correctly in the Board's view, the court may under this sub-rule make orders of its own initiative. There is no reason why the court, faced with an application to strike out, should not conclude that the justice of the particular case militates against this nuclear option, and that the appropriate course is to order the claimant to supply further details, or to serve an amended statement of case including such details, within a further specified period. Having regard to rule 26.6, the court would quite probably also feel it appropriate to specify the consequences (which might include striking out) if the details or amendment were not duly forthcoming within that period.

[29] The Claimant submits that it is well settled that striking out a party's statement of case should be limited to plain and obvious cases where there is no point in having a trial. The Claimant continues that in the case at bar there are issues which arise concerning the constitutional protection of the Claimant from misuse of state power and the arbitrary and oppressive behavior of the First Defendant.

[30] In Ramanoop, Lord Hope stated that an applicant who has made an inappropriate application by way of originating motion or who after filing subsequently discovers that either such originating procedure is no longer appropriate or that there is a substantial dispute of fact can apply to the court for an order that the application continue as an ordinary claim and directions for trial. This approach prevents the

entire claim from being struck out as an abuse of process, which will not further the overriding objective of dealing with cases justly.

Conclusions on Application

[31] A significant aspect of the Claimant's case rests entirely on his arrest and detention for suspicion of invasion of privacy by the First Defendant, which he alleges are in breach of his fundamental rights and freedoms. Four of the five orders that the Claimant seeks are based on his arrest and detention. The other declaration relates to an alleged search and seizure of personal property arising from the same arrest and detention. The following questions arise: (1) Does the Claimant have a parallel remedy at common law for the arrest and detention by the First Defendant? (2) If the answer is yes, are there any features of the Claimant's arrest and detention that makes it appropriate to allow him to continue using the originating procedure? (3) If the answer is no, what should the court do?

[32] It is arguable that the Claimant has, as the Defendants argue, a parallel remedy for false imprisonment at common law. In Barkhuysen v Hamilton [2016] EWHC 2858, Warby J stated that:

> 42. The tort involves an "unlawful imposition of constraint on another's freedom of movement …": Collins v Wilcock [1984] WLR 1172, 1179. Detention by arrest involves a constraint on freedom of movement. It is therefore common ground that there was an "imprisonment" of the claimant by the police. The issues raised by the defendant are (1) whether she is responsible in law for causing or procuring the arrest, or did no more than provide information to the police for them to act on as they saw fit; and (2) whether the arrest was "false", that is to say without lawful excuse or lawful authority.

[33] The tort of false imprisonment is apt to describe the circumstances in the case at bar. The onus is the Claimant to establish the requirements for the tort in an ordinary claim. The Defendants dispute the Claimant's version of events. In response to the first question, I therefore hold that the Claimant has a parallel remedy in the tort of false imprisonment at common law.

[34] The only feature to which the Claimant refers is the unlawful search and seizure of his personal property during the time in which he was detained. The Defendants

dispute that there was any unlawful search and seizure of the Claimant's personal property and provide an alternative explanation. This issue requires examination and determination at trial. There are substantial disputes of fact (relating to the arrest and detention, and the alleged search and seizure) that makes the originating procedure ill suited for this type of claim. Any satisfactory resolution of this issue would necessarily require pleadings, discovery and then oral evidence at trial. The application by way of origination motion being a summary procedure is not suited to this type of inquiry.

[35] The circumstances as alleged by the Claimant do not make this case any different from the usual run of false imprisonment cases brought against police officers in Saint Christopher and Nevis. Consequently, I therefore hold that there are no circumstances or features that make it appropriate to allow the Claimant to continue his application by way of originating motion.

[36] The Court has the general power pursuant to CPR 26.9 to rectify matters where there has been a procedural error and also has the power to make an "unless order" that must identify the breach and require the party in default to remedy the default by a specified date pursuant to CPR 26.4(5). Having regard to all the circumstances of this case and the Privy Council's decision in Real Time Investments I will engage the provisions of CPR 26.9 and 26.4(5) and accordingly grant an unless order allowing the Claimant to amend the originating motion to allow it to continue as if it were an ordinary claim within 7 days of today's date. Consequently, the orders I made at [5] answer the third question posed above.

Eddy D. Ventose
High Court Judge

By the Court

Registrar