

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS  
SAINT CHRISTOPHER CIRCUIT

CLAIM NO. SKBHCV2016/0115

IN THE MATTER of Section 3(a),  
5(1)(f), 5(5), 5(6) and Section 10(1) of  
the Constitution of Saint Christopher  
and Nevis

And

IN THE MATTER of an Application for  
Declaratory and Compensatory relief  
by CHESEL GLASGOW pursuant to  
Section 18(1) and (2) of the  
Constitution of Saint Christopher and  
Nevis

BETWEEN:

CHESEL GLASGOW

Claimant

and

THE ATTORNEY GENERAL OF SAINT CHRISTOPHER AND NEVIS

Defendant

Appearances:

Ms. Deidre Williams for the Claimant  
Ms. Violet Williams and Mrs. Eshe Hendrickson-Johnson for the  
Defendant

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2019: February 11  
March 25  
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JUDGMENT

[1] **VENTOSE, J.:** The Claimant was awakened at 6:00 a.m. on 25 June 2013 when police officers entered his home in search of guns, drugs, ammunition and stolen property. The Claimant was searched and his mobile phone was confiscated. The police found nothing in their search of the Claimant's house that morning. The Claimant was driven to the Old Road Police Station where he was taken into an interrogation room where Officer Treveron Richards questioned him. During the interview, the Claimant informed Officer Richards that he and the deceased were friends. The Claimant was unable to contact his mother or his attorney-at-law via telephone. The Claimant was then taken to a prison cell. During that time, he was informed that he was in custody in relation to the murder of Clement Greene. The Claimant was formally charged on 28 June 2013 for the murder of Clement Greene that allegedly took place on 19 June 2013. Later that day, the Claimant was taken to the Magistrate's Court in Basseterre where he was remanded to Her Majesty's prison by the magistrate.

[2] The Claimant avers that: (1) he was kept in cell number four which he shared with eighteen other inmates; (2) there were six bunk beds in that cell that slept twelve inmates; and (3) he was given a mat on which to sleep because all the available beds were taken. The Claimant also avers that he experienced pains in his lower stomach for which he was subsequently hospitalized and underwent hernia repair surgery on 13 February 2014. He states that while in the hospital his hands and feet were shackled to the hospital bed. The Claimant also states that he returned to the prison but was constantly in and out of the hospital because the surgical cut was infected as a result of the unsanitary conditions in the prison. The Claimant avers that he was placed in "condemn block" for three (3) weeks and three (3) days as punishment because a prison officer alleged that he misbehaved while at the hospital. He also avers that the food served in the prison was not nutritional. The Claimant states that he was also placed in solitary confinement for allegedly smoking marijuana in the prison cell.

[3] As mentioned above, the Claimant was arrested on 28 June 2013. The Claimant's matter came up for hearing before the magistrate on 14 October 2013 but his attorney-at-law was absent so the magistrate adjourned the matter to 29 November 2013. On 29 November 2013, the Crown was not ready to proceed so the magistrate again adjourned the matter to 21 February 2014. On 21 February 2014, the magistrate granted another adjournment to 23 May 2014 but no reasons were provided for that adjournment. On 23 May 2014, the Crown was not ready to commence so the magistrate granted a further adjournment to 15 August 2014. On that latter date, the preliminary inquiry officially commenced. The preliminary inquiry ended on 27 March 2015 when the magistrate discharged the Claimant because he found that no *prima facie* case was made out by the prosecution.

[4] The Claimant on 8 April 2016 filed an application by way of originating motion with supporting affidavit seeking declaratory and compensatory reliefs under section 18(1) and (2) of the Constitution of Saint Christopher and Nevis as follows:

1. A Declaration that his constitutional rights as a citizen of the Federation of St. Kitts and Nevis were violated by members of the Royal St. Christopher Police Force when the police without doing a thorough investigation wrongly arrested and charged him for the murder of Clement "Hump" Greene.
2. A Declaration that his constitutional rights as a citizen of the Federation of St. Kitts and Nevis were violated by members of the Royal St. Christopher Police Force when they arrested and charged him without reasonable or probably (sic) cause for the murder of Clement "Hump" Greene.
3. A Declaration that his constitutional rights as a citizen of the Federation of St. Kitts and Nevis were violated by members of the Royal St. Christopher Police Force when they continued to prosecute the case in the Magistrate (sic) Court knowing full well that they had no evidence to substantiate a charge for murder
4. A Declaration that his incarceration for a period of one (1) year and (9) months and two (2) days from 25<sup>th</sup> June, 2013 to 27 March, 2015, violated his constitutional rights to personal liberty and was in contravention of the provisions of Section 3(a) and 5(1)(f) and 5(1)(e) of the Constitution of St. Christopher and Nevis.

5. A Declaration that a fourteen months time lapse between when he was charged with the offense of murder and the commencement of the preliminary inquiry in the matter violated his constitutional right to (sic) hearing within a reasonable time and was in contravention of the provisions of Section 10(1) of the Constitution of St. Christopher and Nevis.
6. Declaration that he should be compensated the sum of \$29,312.00 as lost income during the period he was unemployed due to his unreasonable and unconstitutional arrest, charge, prosecution and incarceration.
7. An Order that he is entitled to compensatory relief and damages for the unconstitutional deprivation of his liberty, and unreasonable arrest and charge and for the breach of his constitutional rights (sic) to trial within a reasonable time
8. Exemplary damages
9. Such further or other relief as may seem just; and
10. Costs.

[5] The two main issues that arise for consideration are: (1) whether the arresting officer had reasonable and probable cause to arrest, detain and charge the Claimant for the murder of Clement Green; and (2) whether the Claimant was tried within a reasonable time.

#### **Reasonable and Probable Cause**

[6] It will be remembered that the Claimant during his interview with Officer Richards informed Officer Richards that he and the deceased were friends. Officer Richards avers that this gave rise to suspicion based on the previous complaint that the deceased had lodged against Claimant with the police. The evidence of Ms. Ishaw was that on the day of the murder, while she was at the bus terminal some minutes before 12:00 p.m., and while walking to get the bus, she saw the Claimant on a bus that was about to leave to go in the direction of Challengers.

[7] At the time of the Claimant's arrest on 28 June 2013, the police based his arrest and detention primarily on two grounds. The first was a statement given to the police by Mr. Shane Wilkin on 21 June 2013. It should be noted that on 19 June 2013 when the police arrived at the scene one of the persons interviewed was Mr.

Wilkin. The others were Ms. Shantel Wilkin, Mr. Sylvanus Smith and Mr. Ishaw Frazier. A search was conducted on his person. Based on what Mr. Wilkin "indicated to the police" he was taken to the Basseterre Police Station, interviewed and released that same day. Mr. Wilkin revealed that when the murder took place he was in the front room of his house. He agreed to return on 21 June 2013 to the Dieppe Police Station to provide the police with an "official statement".

[8] The lead investigator into the murder of Clement Greene, Officer Treveron Richards, recorded the "official statement" of Mr. Wilkin. A video recording was also made of that statement. Mr. Wilkin stated that after he heard the sound of what he thought was a gunshot, he looked through the window by the front door of his house. His father-in-law came out of the bedroom but said nothing to him. He stated that he saw a male person with locks longer than his hair running up the road. That person had on cream gloves, a black "hoodie" and khaki long pants. While running up the hill, the person stumbled and the "hoodie" blew off so he was able to see the left side of the person's face. The person tried to pull back the "hoodie" over his head but he was able to make out the person to be the Claimant, a person he had known for approximately five (5) years, who was shorter than him, had a fair complexion, had a child with Ms. Resie Liburd and also worked with him chopping grass in the "PEP" Programme. He also stated that the Claimant did not work that day on the PEP Programme.

[9] Mr. Wilkin also stated that the road on which the Claimant was running lead directly from the shop owned by the deceased. He also stated that the distance from which he was able to see the Claimant's face was approximately 80 feet from his house. Mr. Wilkin stated that he previously observed the Claimant and the deceased arguing and that he was aware that the Claimant and the deceased did not like each other. This was because the Claimant "used to talk to" the deceased's daughter which the deceased did not like. He also stated that two (2) months prior to the murder, the Claimant informed him that the deceased was an informer because the deceased accused "them" in Estate Yard of stealing his "weed" and that he (the deceased) had called the police for them.

- [10] Mr. Wilkin returned to the police station on 24 June 2013. This time, his stepfather, Mr. Sylvanus Smith, accompanied him. Mr. Wilkin's statement was read to him in the presence of his stepfather and he then signed and swore to the contents thereof and the oath administered to him.
- [11] At trial and in his affidavit on behalf of the Defendant in response to the application by way of originating motion, Officer Treveron Richards avers that Mr. Wilkin's story was partly corroborated by the statements of his sister, Ms. Shauntel Wilkin, and his stepfather, Mr. Smith. However, nothing in the statements of Ms. Wilkin or Mr. Smith corroborates the material aspect of Mr. Wilkin's statement that he saw the Claimant running along the road leading from the shop owned by the deceased moments after Mr. Wilkin allegedly heard the gunshot. In cross-examination, Officer Richards conceded that Mr. Smith and Ms. Wilkin corroborated only one part of Mr. Wilkin's statement, namely, that he (Mr. Wilkin) was in the house at the material time. Officer Richards avers that the Claimant was arrested and charged based on reasonable and probable cause to suspect that the Claimant had committed the offence of murder and his assessment was based in part on the witness statements of Mr. Smith and Ms. Wilkin. Again, on cross-examination, Officer Richards conceded that he could not have had reasonable and probable cause based on the witness statement of Mr. Smith because that witness statement was given on 1 July 2013, four days after the Claimant was arrested and detained by the police on the murder charge.
- [12] The second ground for the arrest and detention of the Claimant was that on 26 January 2013 the deceased made a report to the police station that the Claimant was threatening to burst his head and requested the police to warn the Claimant. The police contacted the Claimant on the same day and it was noted that the Claimant denied the allegation but was warned nonetheless as requested by the deceased.
- [13] Counsel for the Claimant submits that the Claimant's arrest and charge for murder was based on the uncorroborated statement of Mr. Wilkin. The Respondent submits that in addition at the interview with Officer Richards the Claimant stated

that he and the accused were friends and that the Claimant was seen some minutes before 12:00 p.m. on a bus heading to Challengers. The Defendant further submit that this would have given the Claimant more than enough time to arrive in Challengers and commit the murder. The Defendant contends that, based on the investigation the arresting officer was of the belief that the Claimant had indeed committed the act of murder, and that the arresting officer reasonably suspected the Claimant of committing the murder of Clement Greene.

### **The Legal Principles**

- [14] The decision of Ramdhani J (Ag.) in this jurisdiction in **Davis v The Attorney General of St. Kitts and Nevis** (SKBHCV 2013/0220 dated 30 June 2014) Ramdhani J (Ag.) bears some similarity to the instant case. The facts of that case have been helpfully summarized in the headnote that accompanied the decision of the trial judge, which I gratefully reproduce as follows. The claimant, a 37 year-old man, was detained twice by the police who were investigating first a missing person's report, which later became a murder investigation. On the first occasion the police detained him for nearly 48 hours doing no more than questioning him about the missing person, and the fact that he had had a previous altercation with the then missing man. He answered all their questions, and near to the end of the 48 hours period he was released. Several days later, after the dead body of the missing man was found, the investigating officer again detained the claimant. At this stage there was no more evidence except a tee shirt with the initials 'KOD' which had been found near the crime scene. It was apparently believed by the police that this tee shirt belonged to an acquaintance of the claimant. Again he was questioned, and being asked for DNA samples volunteered hair and blood samples. Two days later the police charged him and two other persons jointly for the murder of the deceased.
- [15] The preliminary inquiry began on the 22 June 2012, at which time the claimant was remanded to Her Majesty's prison. There he was held for the next eight months and some days being brought on numerous occasions to the magistrate where the prosecuting officer continuously requested and was granted

adjournments on the basis that he did not have the investigating file. Eventually when the matter was called up on the 4 February 2013, the prosecuting officer informed the court that he had finally gotten the file and that he was withdrawing the matter against the claimant. The claimant who had by then spent 230 days in the custody of the State was released. The claimant then filed this matter against the Attorney General in his capacity as representative of the State, seeking declarations that his constitutional right to liberty had been infringed and for orders for compensation and exemplary or vindictory damages be made. The Attorney General defended the matter arguing that there had been reasonable grounds to arrest and charge the applicant and as such there was no breach of any constitutional right, and alternatively, that if the court were inclined to grant compensation it should be not exceed the sum of EC\$18,000.00 and further that this was not a case for exemplary and vindictory damages.

[16] On the question of whether the police had reasonable and probable cause to arrest and detain the claimant in **Davis**, the trial judge held that, first, there was no reasonable and probable cause to detain or arrest much less to charge the claimant for the offence of murder. Second, evidence that the claimant has had an altercation several months old with another person does not rise to the threshold to make any reasonable police officer believe that if that other person is later discovered dead, that the claimant was responsible for his death. Third, the latter piece of evidence made him a “person of interest” justifying the police inviting him to assist in their inquiries, but that if he were to refuse to assist, they would not be entitled to detain or arrest him.

[17] In **Davis**, Ramdhani J. (Ag) summarized the applicable legal principles as follows:

#### **The Power to Detain, Arrest and Charge on Reasonable Suspicion**

[12] The law gives the police the right to detain and or arrest anyone upon reasonable and probable cause that that person has or is about to commit an offence. The test as to whether there is reasonable and probable cause is both subjective and objective. The perceived facts must be such as to allow the reasonable third person and actually cause the officer in question to suspect that the person has committed or is about to commit a crime. It does not matter if the information available to the police



leads equally or more to a view that the person may be innocent of the offence, once it leads reasonably to a conclusion that he may have committed, or is about to commit the offence, that is sufficient to ground the arrest. The reasonable police officer is assumed to know the law and possessed of the information in the possession of the arresting officer, and would have believed that the claimant was guilty of the offence for which he was arrested. The term 'reasonable suspicion' relates to the existence of facts at the time. It does not relate to a perception on the state of the law.

[13] It is significant to note that there is no need for the officer to have admissible evidence amounting to a prima facie case to ground reasonable suspicion when it comes to mere detention without charge. A lower standard is permissible and can be founded on inadmissible evidence. Of course reasonable suspicion can also be founded on admissible evidence. Such reliance on either admissible or inadmissible evidence must be shown to have actually existed and was reasonable in the circumstances.

[14] Reasonable suspicion may arise from the overt acts of the person who becomes the suspect. It may also arise from statements made by that person. Statements from known third persons may also provide such grounds. Thus information from an informer or a tip off from a member of the public may provide such reasonable grounds. It is debatable whether information from an anonymous telephone caller can provide grounds for reasonable suspicion. Much would ultimately depend on the type of information being conveyed. A statement by one officer to a second officer that X is a suspect is not sufficient to ground suspicion in that second officer. However, a police briefing outlining the reasons for the suspicion, might provide reasonable grounds for suspicion, and so too might a police bulletin providing sufficient information.

[15] When it comes to the basis for the preferment of a criminal charge, it must be made clear that no criminal charge can be laid against anyone unless the police ground their suspicion that the person has committed that offence on admissible evidence.

[16] When the police detain or arrest (the two being the same in law) on the basis of such reasonable suspicion, they are not entitled [in] law to simply keep the person in custody for the full statutory period without charge unless it is reasonable to do so. The Constitution by prescribing a 48 hour period in the first instance and a maximum of 72 without being taken to court did not intend to allow the police to simply detain and keep persons in custody for either 48 or 72 hours without charge, and then release. At least by the end of the 48-hour period, the police should pursuant to section 5(2) of the Constitution inform the detainee of 'the reason for his arrest of detention and be afforded reasonable facilities for private communication and consultation with a legal practitioner of his own

choice and in the case of a person under the age of eighteen years with his parents or guardian'. Section 5(2) should be construed purposefully with a view of giving effect to the right to liberty. Accordingly, the constitutional allowance of 48 hours is to be utilised to facilitate law enforcement to be able to investigate crimes. So that if the full 48 hours is to be employed, there must be a reason for it. In the usual case, the police will detain someone for enquiries, that is, to question and interrogate them with regard to the allegations or information received by the police. It might also be proper to detain the person for the period where there is reasonable grounds to believe that he might, for example, if released, warn other suspects or tamper with evidence or interfere with the investigation in some other way. So too, it might be reasonable to detain the person for the period where there is a constant flow of information and it is important to continue questioning over the duration of the 48 hours. It might also be reasonable to hold the person for the full period if there are reasonable grounds to believe that it is necessary to do so for the person's protection; in these latter situations it would be necessary that the person is informed of the dangers and their consent sought for the continued detention. In a case of this nature one would have expected the some evidence to be presented as to why the full 72 hours had to be employed; there was no such evidence.

[18] I distill the following from the above statements. First, the police have the right to detain and or arrest anyone upon reasonable and probable cause that the person has committed or is about to commit an offence. Second, the test of whether there is reasonable and probable cause is both subjective and objective, namely, the perceived facts must be such as to allow the reasonable third person and actually cause the officer in question to suspect that the person has committed or is about to commit a crime. Third, reasonable suspicion can be founded on either admissible or inadmissible evidence that must be shown to have actually existed and was reasonable in the circumstances. Fourth, when it comes to the basis for the preferment of a criminal charge, it must be made clear that no criminal charge can be laid against anyone unless the police ground their suspicion that the person has committed that offence on admissible evidence. Fifth, where the police intend to detain a person without charge for the full 72 hours, some evidence must be presented to justify why the full 72 hours had to be employed.

[19] In **Kennedy v Morris and the Attorney General of Trinidad and Tobago** (Civil Appeal No 87 of 2004), Chief Justice Sharma stated as follows:

The grounds for the prosecutor's belief therefore depended more on a reasonable belief in the existence of the facts to justify prosecution rather than the actual existence of such facts. The following passage from Halsbury's Law is instructive in this regard:

The presence of reasonable and probable cause for prosecution does not depend upon the actual existence, but upon a reasonable belief held in good faith in the existence of such facts as would justify a prosecution. It is not required for any prosecutor that he must have tested every possible relevant fact before he takes action; his duty is not to ascertain whether there is a defence but whether there is reasonable and probably cause for prosecution. The belief in the existence of such facts as would justify a prosecution or the belief in the accused's guilt, may arise out of the recollection of the prosecutor, if he has always found his memory, trustworthy, or out of information furnished to him by others and accepted by him as true."

- [20] The important points I take from this passage is that first reasonable and probable cause for prosecution does not depend upon the actual existence, but upon a reasonable belief held in good faith in the existence, of such facts as would justify a prosecution. Second, the prosecutor is not required to test every possible relevant fact before he takes action; his duty is not to ascertain whether there is a defence but whether there is reasonable and probably cause for prosecution.

#### **Application of Legal Principles**

- [21] In light of the statements made by Mr. Wilkin to the police and the previous report made by the deceased to the police concerning the Claimant, the question is whether the police had reasonable and probable cause to arrest, detain and charge the Claimant for the murder of Clement Greene. The investigating officer averred that there was corroborating evidence for the statements made by Mr. Wilkin. However, on cross-examination he accepted that neither the statements of Ms. Wilkin nor Mr. Smith corroborated the statements made by Mr. Wilkin. Their evidence only placed Mr. Wilkin in the house at the material time. Apart from the evidence of Mr. Wilkin, there was no evidence, forensic or otherwise, to link the Claimant to the crime scene that was presented to the magistrate during the preliminary inquiry. The items of clothing worn by the person Mr. Wilkin allegedly saw were never found and the police did not find the gun used in the murder of

Clement Greene. Officer Richards stated in evidence at the hearing of the application by way of origination motion that a “hoodie” was found but could not recall if it was used in the preliminary inquiry in the Magistrate’s Court.

[22] In **Davis**, Ramdhani J (Ag.) stated that:

[28] When the investigating officers first arrested the claimant, all they had was information that he had had a previous altercation with the deceased. When the claimant admitted this to them, it became admissible evidence against him. But it was evidence which was woefully short of any threshold in grounding any reasonable or probable cause that the claimant had committed murder. Having a previous altercation with a person who is months later murdered is no basis to ground any lawful inference that the person committed murder. There must have been something more, perhaps even hearsay information (for the detention) or evidence (for the charge) that this claimant might have threatened the deceased with future harm, or that he was seen in the location and time of the crime. There was nothing more.

[23] In the case at bar, when the Claimant was arrested, the only evidence the investigating police officer had was the statement of Mr. Wilkin and the police report that the deceased made concerning the Claimant. These two pieces of evidence justified both the initial arrest and detention of the Claimant, and the subsequent charge for murder. In **Davis**, Ramdhani J stated (at [28]) that:

... There must have been something more, perhaps even hearsay information (for the detention) or **evidence (for the charge) that this claimant might have threatened the deceased with future harm, or that he was seen in the location and time of the crime.** (Emphasis added)

[24] When taken in the context of the statement made by Mr. Wilkin that the Claimant was seen at the location and time of the crime, the previous altercation becomes significant and material. The fact that at the preliminary inquiry Mr. Wilkin distanced himself from his sworn statement made to the police does not undermine the question of whether the police officer had reasonable and probable cause at the time of detention and charge to believe the Claimant had committed the crime in question. Even if Mr. Wilkin’s evidence turned out later to be completely wrong, it would not negate the reasonable suspicion the officer had at

the time of the Claimant's arrest, detention and charge. The threshold is not a high one.

- [25] What matters is that at the material time, namely, at the time of the detention, arrest and charge of the Claimant, the police had reasonable and probable cause to do so. In my view, the facts were such as to allow the reasonable third person and actually caused the police officer in question to suspect that the Claimant had committed the murder of Clement Greene. The reasonable suspicion that the Claimant had committed the murder of Clement Greene was, therefore, founded on admissible evidence that was shown to have actually existed and was reasonable in the circumstances. The Claimant has not shown that the officer did not have reasonable suspicion that he committed the offence of murder for the court to declare that his arrest and detention was unconstitutional. Consequently, there is no contravention of section 5(1)(f) of the Constitution of Saint Christopher and Nevis which provides that a person shall not be deprived of his or her personal liberty save as may be authorised by law in any of the following cases, that is to say, upon reasonable suspicion of his or her having committed, or about to commit, a criminal offence under any law.

#### **Trial within a Reasonable Time**

- [26] The preliminary inquiry into the murder of Clement Greene came on for hearing before the magistrate on 14 October 2013, approximately four (4) months after the Claimant was arrested and charged, and was adjourned to 29 November 2013 because the Claimant's attorney-at-law was not present. The matter was adjourned three (3) other times, two of these were because the Crown was not ready to proceed and the other adjournment was without a reason. The preliminary inquiry started on 15 August 2014, during which the following adjournments took place:
- (a) 18 August 2014 - the Claimant and witnesses for the Crown were present but the Claimant's attorney-at-law was absent. The matter was adjourned to 28 November 2014;

- (b) 28 November 2014 - the Claimant and Crown's attorneys-at-law were present, but Claimant's attorney-at-law was absent. The matter was adjourned to 19 December 2014;
- (c) 19 December 2014 - the parties were heard and matter adjourned to 16 January 2015;
- (d) 16 January 2015 - the Claimant and Crown's attorneys-at-law were present but the Claimant's attorney-at-law was absent. The matter was adjourned to 19 January 2015;
- (e) 19 January 2015 - there is no record of what took place;
- (f) 13 February 2015 - the matter was adjourned to 6 March 2015;
- (g) 6 March 2015 - the matter was adjourned to 27 March 2015.

[27] The preliminary inquiry ended on 27 March 2015 when the magistrate upheld a no case submission by Counsel for the Claimant after the close of the prosecution's case.

[28] There was one (1) year and nine (9) months between the date of charge and the conclusion of the preliminary inquiry and one (1) year and four (4) months between the date of charge and the commencement of the preliminary inquiry. I have taken into account: (1) the nature of the charge which was one of murder; (2) the length of the delay; and (3) the contribution of the Claimant and the prosecution to the delay. In addition, I am not of the view that there was any prejudice to the Claimant as a result of the delay. Taking into account all the circumstances of this case there is no basis to find a breach of section 5(5) of the Constitution which provides that if any person arrested or detained as mentioned in subsection (3)(b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial, and such conditions may include bail so long as it is not excessive.

[29] I once again make the point that Claimants may include alternative constitutional grounds in their application by way of origination motion, but they are not permitted to argue grounds that are diametrically opposed unless they are included as

alternatives. A breach of section 5(5) of the Constitution is based on there being reasonable and probable grounds for the arrest and detention since it states that, “(5) If any person **arrested or detained as mentioned in subsection (3)(b)** is not tried within a reasonable time...” (Emphasis added). Section 5(3)(b) of the Constitution provides that any person *who is arrested or detained upon reasonable suspicion* of his or her having committed, or being about to commit, a criminal offence under any law and who is not released, shall be brought before a court without undue delay and in any case not later than seventy-two hours after his or her arrest or detention. Section 5(5) of the Constitution is only engaged if there is no breach of section 5(3)(b) of the Constitution which includes the arrest and detention upon reasonable suspicion of any person who has committed, or is about to commit, a criminal offence under any law.

- [30] The Claimant was afforded a fair hearing within a reasonable time by an independent and impartial court established by law. The time periods within which the preliminary inquiry commenced and concluded, taking into consideration the reasons for the delay, the Claimant’s contribution to that delay and the resources available to the State, were reasonable. It cannot in all circumstances be said that the hearing did not take place within a reasonable time period. The delay was therefore not unreasonable. The Claimant is, therefore, not entitled to a declaration that section 5(5) of the Constitution was contravened and consequently is not entitled to compensation pursuant to section 5(6) of the Constitution.

### **Prison Conditions**

- [31] This court recently considered this issue in **Browne v Attorney General of Saint Christopher and Nevis** (Claim No. SKBHCV2016/0074 dated 19 November 2018). Since the Claimant did not specify any breach of section 7 of the Constitution of Saint Christopher and Nevis which provides that a person shall not be subjected to torture or to inhuman degrading punishment or other like treatment in his application by way of originating motion or in his affidavit in support of his application, the conditions in which he was in prison do not assist his application

by way of originating motion. In addition, since the circumstances outlined in the Claimant's affidavit do not differ in any material extent from the evidence in **Browne**, there is no basis in any event for finding a breach of section 7 of the Constitution.

**Disposition**

[32] The Claimant is, therefore, not entitled to redress for any constitutional infringements under section 18(1) and (2) of the Constitution.

[33] For the reasons explained above, I make the following orders:

- (1) The application by way of originating motion is dismissed.
- (2) No order as to costs.

**Eddy D. Ventose**  
High Court Judge

**By the Court**

**Registrar**