THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

CLAIM NO. SKBHCV2018/0261/0262

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 56.7 AND 56.8 OF THE CIVIL PROCEDURE RULES 2000 AND SECTION 3, 5, 7, 8 AND 10 OF THE CONSTITUTION OF SAINT CHRISTOPHER AND NEVIS

BETWEEN:

1. SYLVESTER CROSSLEY
2. VANCE THOMAS

Claimants

and

1. THE ATTORNEY GENERAL OF SAINT CHRISTOPHER AND NEVIS
2. DIRECTOR OF PUBLIC PROSECUTIONS
3. ROYAL SAINT CHRISTOPHER POLICE FORCE
4. CONSTABLE ABIGAIL CHARLES

Defendants

Appearances:
Ms. Simone Bowman and Ms. Dawn De Couteau for the Claimants
Mrs. Simone Bullen Thompson, Solicitor General, for the Defendants

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2019: March 29
April 5

JUDGMENT

[1] **VENTOSE, J**.: On 24 October 2018, the Claimants filed applications by way of origination motion with supporting affidavits against the Defendants seeking identical declarations and reliefs as follows:

1. Leave for constitutional relief;
2. A Declaration that the Claimant (sic) arrest and/or detention for a period of (9) months without trial was unreasonable;
3. A Declaration that the Claimant (sic) arrest and/or detention for a period of (9) days (sic) without trial violated his constitutional right to personal liberty and was in contravention of the provisions of section 5(5) of the Constitution of St. Christopher and Nevis.
4. A Declaration that the Claimant was subjected to inhumane or degrading punishment and treatment, in contravention of section 7 of the Constitution.
5. An order that the Claimant is entitled to damages for unlawful arrest and/or detention pursuant to section 5(6) of the Constitution of Saint Christopher and Nevis ("**Constitution")**;
6. An Order that the Claimant is entitled to compensation and damages pursuant to section 18 of the Constitution of the unconstitutional deprivation of his liberty and contraventions of his constitutional rights;
7. In the alternative, damages for
   a. Malicious prosecution, and/or Misfeasance in public office;
   b. False imprisonment and wrongful arrest;
   c. Negligent breach of custodian's duty; and
   d. Negligent investigation by police
8. General Damages and Special damages in an amount to be specified;
9. Aggravated Damages;
10. Exemplary and punitive damages;

[2] The fundamental rights and freedoms of the Claimants allegedly breached are the right to protection of right to personal liberty and the right to protection from inhuman treatment. Significantly, the Claimants also claimed in the alternative for general, special, aggravated and exemplary damages for malicious prosecution and/or misfeasance in public office, false imprisonment and wrongful arrest,

negligent breach of custodian's duty and negligent investigation by the police. The Defendants on 20 December 2018 filed applications with supporting affidavits for the applications by way of originating motion to be struck off and removal of the Third Defendant as a party, which applications were subsequently amended on 1 March 2019. The two applications by way of origination motion were consolidated by order of the court on 14 January 2019.

[3] The decisions of the Privy Council in **Jaroo v Attorney General of Trinidad and Tobago** [2002] UKPC 5; [2002] 1 AC 871, [2003] 2 WLR 420 and **Attorney General of Trinidad and Tobago v Ramanoop** [2005] 2 WLR 1324 were applied in this jurisdiction in **McMillian v Carty et al** (Claim No. SKBHCV2017/0380 dated 20 November 2018). In **Carty**, this court summarized **Jaroo** (at [10]) as follows:

> **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.

[4] The Claimants in submissions filed conceded that they have alternative private law remedies in their applications by way of originating motion as outlined above. Having read the applications by way of originating motion, the affidavits in support and the affidavits in response; and the applications to strike out and the affidavits in support and the affidavits in response, I am of the view that the Claimants have alternative remedies in the tort of wrongful arrest and false imprisonment, malicious prosecution and misfeasance in public office. These private law remedies are specifically pleaded in the Claimants' applications by way of originating motion, and the Claimants' constitutional claims seem to be secondary as the applications focus primarily on these torts. It is, therefore, clear that the applications by way of origination motion filed by the Claimants are an abuse of

process insofar as they include claims for which there is a parallel remedy at common law. I am mindful that striking out a statement of claim is a draconian remedy that should be used in the clearest of cases and that in the circumstances of these cases the better option should be to grant leave to the Claimants to pursue their claims in private law.

[5] However, not all the constitutional claims in the applications by way of origination motion are subject to the principle enunciated in **Jaroo**. In light of the conditions in which they were detained at Her Majesty's Prison, the Claimants have also alleged a 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. **Browne v Attorney General of Saint Christopher and Nevis** (Claim No. SKBHCV2016/0074 dated 19 November 2018), a decision of this court, considered this issue as recently as 4 months ago. There can be no doubt that there is no equivalent private law remedy in respect of this issue in both applications. The Defendants' contrary view cannot be sustained. It is for the court at trial to determine whether, based on the evidence presented, there is a breach of section 7 of the Constitution of Saint Christopher and Nevis.

[6] CPR 56.8(3) provides that:

> (3) The court may however at any stage –
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> (a) direct that any claim for other relief be dealt with separately from the claim for an administrative order; or
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> (b) direct that the whole application be dealt with as a claim and give appropriate directions under Parts 26 and 27; and
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> (c) in either case, make any order it considers just as to costs that have been wasted because of the unreasonable use of the procedure under this Part.

[7] In **Lucas et al v Chief Education Officer** [2015] CCJ 6 (AJ), the Caribbean Court of Justice explained that:

> [135] Harrikisoon must also be considered in light of new procedural rules which simplify the processes for initiating claims, strengthen the court's extensive case management powers and specifically authorise litigants to

> claim damages, as relief under the Constitution, in judicial review proceedings. Part 56 entitles a litigant to include in an application for judicial review a claim for any other relief or remedy that arises out of or is related or connected to the subject matter of the claim. Part 56 specifically permits a litigant to seek constitutional relief (and in particular, damages) in a judicial review application. These are sensible procedural provisions. A pure administrative judicial review application (what we used to refer to as a writ for a prerogative order) yields inflexible remedies that may be hopelessly inadequate and the court should discourage a multiplicity of actions when one alone can suffice. The onus is on the court, not the litigant, to manage filed cases and police the appropriate use of any jurisdiction conferred on the court. The civil procedure rules encourage and equip judges with all the necessary tools so to do. At an early stage the court may dismiss a claim for constitutional relief if it is vexatious or has no realistic prospects of success.

[8] CPR 56.8 entitled, "Joinder of claims for other relief", contemplates that a Claimant may claim private law remedies, which touch and concern the subject matter of the claim for an administrative order. In **Basdeo et al v Guyana Sugar Corporation Limited** et al [2018] CCJ 24 (AJ), the Caribbean Court of Justice, when considering CPR 56.03(3) of the Civil Procedure Rules of the Cooperative Republic of Guyana, which states that where the court considers it appropriate, it may at any stage direct that any claim for other relief be dealt with separately from the claim for an administrative order, stated that CPR 56.03 clearly provides that while claims can be joined, the court retains a discretion as to whether claims should be heard separately (at [44]).

[9] At the hearing of the application, the court was concerned about the way in which the matter could proceed if it was minded to allow the application by way of origination motion to proceed only in respect of the claim in relation to section 7 of the Constitution. The issue is the manner in which two claims, one for an administrative order and one in private law, can proceed in the same action. CPR 56.8(3)(a) gives the court the power to direct that any claim for other relief be dealt with separately from the claim for an administrative order. In this case, the private law claims can in principle be dealt with separately from the claims for an administrative order, namely, the applications by way of origination motion. There is no question that an application by way of originating motion is a claim for an

administrative order (see CPR 56.7(1)(c)). In light of my approach below to the claim in relation to section 7 of the Constitution, it is not necessary to decide this issue. However, if it were necessary I would have allowed the applications by way of originating motion to continue only in respect of the claim in relation to the section 7 of the Constitution, and allow the private law claims to proceed alongside as ordinary claims with appropriate directions being given in accordance with the CPR. Both claims would, therefore, have been allowed to proceed in the same action.

[10] The applicable principles relating to striking out applications were summarized by Chief Justice Dame Janice Pereira in **Cedar Valley Springs Homeowners Association Incorporated v Pestaina** (ANUHCVAP 2016/0009 dated 18 January 2017) as follows:

> [6] A useful starting point is the consideration of the appellant's complaint to the effect that the master misapplied the relevant legal principles in relation to a strike out application. Counsel for the appellant, Mr. Martin, relies on the three authorities of this court, namely: [**Spencer v Attorney General of Antigua and Barbuda** [ANUHCVAP 1997/0020A dated 8 April 1998], [**Tawney Assets Limited v East Pine Management Limited** [BVIHCVAP 2012/0007 dated 17 September 2012] and [**Citco Global Custody NV v Y2K Finance Inc.** BVIHCVAP2008/0022 dated 19 October 2009]. From these authorities the following principles may be distilled:
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> (a) This summary procedure which calls for the exercise of a discretionary power, should only be used in clear and obvious cases as it is a drastic step. The result of such a measure is that it deprives 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.
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> (b) This procedure should only be used where it can be seen on the face of the claim that it is obviously unsustainable, cannot proceed or in some other way is an abuse of process of the court. This has been expressed in terms that the claim should not be struck out if there is a 'scintilla' of a cause of action.
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> (c) In treating with an application to strike out made pursuant to CPR 26.3(1)(b), the trier of the application should proceed on the assumption that the facts alleged in the statement of case are true.
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> (d) The employment of this procedure is appropriate in the following instances: where the claim sets out no facts indicating what the claim is about, or if it is incoherent and makes no sense, or if the facts it states,

> even if true, do not disclose a legally recognisable claim against the defendant.
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> (e) Conversely, this procedure would be inappropriate where the argument involves a substantial point of law which does not admit of a plain and obvious answer, or the law is in a state of development, or where the strength of the case may not be clear because it has to be fully investigated

[11] The Defendants contend that the matters outlined in the Claimants' affidavits in relation to the conditions in which they were detained at Her Majesty's Prison do not meet the required threshold to constitute a breach of section 7 of the Constitution, citing the decision of this court in **Browne**. I agree with Counsel for the Defendants that the conditions outlined in the two affidavits are remarkably similar to the conditions as stated in the affidavit of the claimant in **Browne,** and as found by the court when it visited Her Majesty's Prison on 9 November 2018. In **Browne**, after examining the affidavit evidence of the claimant, the evidence of the Defendant, and outlining the conditions as found by the court, I concluded as follows:

> [61]. Based on the affidavit evidence presented by the Claimant, the affidavit evidence of the Respondents and the prison visit conducted by the court, I am of the firm view that the conditions outlined by the Claimant in his application by way of originating motion do not meet the threshold required for a breach of section 7 of the Constitution. There should be and there is a minimum standard that every civilized society should meet, even a third world country, and it is my view that the conditions in the Her Majesty's prison only *marginally* meet that standard. However, that does not mean that the conditions in which the Claimant was detained amounts to torture or to inhuman degrading punishment or other like treatment. I agree with view expressed by Lord Millet in **Thomas and Baptiste** that to fall foul of the constitutional prohibition against cruel and inhuman treatment, it must be shown that "the conditions in which [the Claimant was] kept involved so much pain and suffering or such deprivation of the elementary necessities of life that they amounted to treatment which went beyond the harsh and could properly be described as cruel and unusual".
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> [62]. The court is of the considered view that although the conditions outlined by Claimant were less than ideal they do not reach the threshold required for a infringement of section 7 of the Constitution, which provides that a person shall not be subjected to torture or to inhuman degrading punishment or other like treatment. It is correct that the threshold for *this* constitutional infringement is set extremely high since the words of the

> constitution must have some meaning – "torture", "inhuman" or "degrading" are all ordinary English words, which should be given their plain meaning. The Oxford Advanced Learner's Dictionary 1993 defines: (1) torture as "infliction of severe bodily pain, esp. as a punishment or means of persuasion"; (2) inhuman as "brutal; unfeeling; barbarous"; and (2) degrading as "1 humiliate, dishonour. 2 reduce to a lower rank." To contravene section 7 of the Constitution, the conditions of the prison must be such that severe bodily or mental pain is inflicted on the prisoner, or the prisoner is subject to conditions that are brutal, barbarous or conditions that would tend to humiliate or debase him.
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> [63]. It is no surprise that such a constitutional prohibition found its way in Commonwealth Caribbean constitutions given our history with the barbarism associated with centuries of the slave trade and slavery. No doubt the drafters of section 7 of the Constitution had in mind the types of punishments meted out to slaves for over 300 years. I am reminded of the remarks of Lord Millet in **Thomas and Baptiste** that '[i]t would not serve the cause of human rights to set such demanding standards that breaches were commonplace". The conditions experienced by the Claimant during his time in prison fall far short of the threshold required to establish a contravention of section 7 of the Constitution.

[12] I am reminded of the words of the Caribbean Court of Justice in **Basdeo** that "[a]t an early stage the court may dismiss a claim for constitutional relief if it is vexatious or has no realistic prospects of success". I am mindful of the case law of the Court of Appeal, including **Pestaina**, and the Privy Council, including **Real Time Systems Ltd v Renraw Investments Ltd** [2014] UKPC 6, that make it clear that striking out is a draconian remedy that should be used only in exceptional cases. The drafters of the CPR gave the court this power in CPR 26.3(1)(b) to strike out a statement of case or part of a statement of case if it appears to the court that the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim. Having regard to the pleadings in the affidavits of the Claimants and their remarkable similarity to the affidavit of the claimant in **Browne**, the court's own assessment of the conditions at Her Majesty's Prison, and the comprehensive examination of this issue conducted in **Browne**, it is my view that the Claimants' claim in respect of section 7 of the Constitution does not disclose any reasonable ground for bringing the claim and has no realistic prospect of success.

[13] In any event, I agree with Counsel for the Respondents that it is for the trial judge hearing the private law claims to decide what relevance if any would the conditions in which the Claimants were detained at Her Majesty's Prison have on the issue of aggravated damages in relation to the tort of false imprisonment.

Disposition

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

1. The Claimants' claims in relation to section 7 of the Constitution in the applications by way of originating motion are hereby struck off.
2. Unless the Claimants file and serve the necessary amendments to the applications by way of originating motion to: (1) allow them to continue as if they were ordinary claims only in respect of the private law claims; and (2) remove the Third Defendant as a party, within 21 day's of today's date, the applications by way of origination motion shall stand dismissed without further order of this court.
3. The claims shall thereafter proceed in accordance with the CPR 2000.
4. No order as to costs.

Eddy D. Ventose
High Court Judge

By the Court

Registrar