

**THE EASTERN CARRIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHCV2022/0188

IN THE MATTER of Sections 5(1), 5(1)(e), 5(1)(f),
5(3)(a), 5(6) and 5(2), 5(4), 5(5) and 6 of the
Constitution of St. Christopher and Nevis

And

IN THE MATTER of an Application for Declaratory
Compensatory relief by JEROD STAPLETON
pursuant to Section 18(1) & (2) of the Constitution
of St. Christopher and Nevis.

BETWEEN:

JEROD STAPLETON

Claimant

and

THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND NEVIS

Defendant

**CONSOLIDATED WITH
SKBHCV2022/0189**

IN THE MATTER of Sections 5(1), 5(1)(e), 5(1)(f),
5(3)(a), 5(6) and 5(2), 5(4), 5(5) and 6 of the
Constitution of St. Christopher and Nevis

And

IN THE MATTER of an Application for Declaratory
Compensatory relief by ELLISTER THOMAS
pursuant to Section 18(1) & (2) of the Constitution
of St. Christopher and Nevis.

ELLISTER THOMAS

Claimant

and

THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND NEVIS

Defendant

Appearances:

Mr. Hesketh Benjamin for the Claimants

Mrs. Simone Bullen Thompson, Solicitor General, for the Defendant

2025: March 6;
June 5.

JUDGMENT

- [1] **GILL, J.:** Two accused men acquitted of murder seek constitutional redress. Sharing a similar fate, their separate claims were heard together.
- [2] On December 12, 2022, the claimants Jerod Stapleton and Ellister Thomas filed separate fixed date claim forms against the Attorney General of St. Christopher and Nevis, in each case moving the court for the following relief:
- 1) A declaration that the claimant's detention, arrest, charge and ultimate prosecution were wrongful, illegal and in breach of his constitutional rights including the claimant's right to an attorney at the time of his arrest, which amounted to misfeasance in public office.
 - 2) Special damages for wages for the period September 8, 2017 to May 31, 2022.
 - 3) General damages for wrongful arrest, false imprisonment, degrading and inhumane treatment, malicious prosecution, malicious process, breach of the claimant's constitutional rights and malfeasance in public office.
 - 4) Vindictory damages
 - 5) Aggravated damages
 - 6) Exemplary damages
 - 7) Interest
 - 8) Costs
 - 9) Such further or other relief as the Court considers just.

- [3] In their separate affidavits filed on December 12, 2022 in support of the fixed date claims, both claimants indicated that they were claiming that their constitutional rights pursuant to sections 5(1), 5(1)(f), 5(3)(b) of the Constitution of St. Christopher and Nevis ("the Constitution) were breached. The claimants filed a consolidated amended affidavit on April 4, 2024 alleging breach of sections 5(5), 5(6), 8(1) and 10 of the Constitution.
- [4] In opposition to the claims, on November 15, 2024 and November 18, 2024, the defendant, the Attorney General, filed the affidavits of Sergeant of Police Vivian Caesar and Greatess Gordon-Hazel, Assistant Director of Public Prosecutions.

Brief summary of the facts

- [5] In September 2017, the claimants were taken into custody on suspicion of the murder of Kishorne Edwards allegedly committed on July 4, 2017. They were formally arrested, cautioned and charged for the offence of murder. Following a preliminary inquiry in the Magistrate's Court, the claimants were committed to stand trial at the High Court. They were indicted for the offence of murder. In May 2022, they were tried and found not guilty by a jury of their peers. They were released from custody on May 31, 2022, having spent four years and nine months on remand.

Strike out application

- [6] On January 20, 2023, the defendant filed an application in each case to strike out the claims on the ground that each claim was an abuse of the court's process as the claimants had recourse to effective alternative remedies. In light of the issues relating to delay, I determined that all issues could and would be dealt with at trial. Leave was then given to the defendant to file evidence in opposition to the evidence filed by the claimants.
- [7] In light of the relief sought, the defendant contends that in determining whether the claimants should be granted the relief they seek, the court should consider whether they have or have had available to them adequate alternative/parallel remedies. In their fixed date claims, the claimants sought relief in the form of general damages

for wrongful arrest, false imprisonment, malicious prosecution, malicious process and misfeasance in public office. The defendant submits that insofar as they have or have had adequate alternative/parallel remedies available to them, they ought not to be granted relief.

The claims

- [8] A major part of the claimants' case surrounds the prosecution witness, Kurtlyn Cannonier, who was previously charged jointly with the claimants and T'Sean Hendricks for the murder of Kishorne Edwards. The murder charge was withdrawn against Ms. Cannonier and she became what the claimants refer to as "the star witness" for the prosecution. The claimants' evidence is that Ms. Cannonier testified in open court that the police told her that in addition to withdrawing the charge, they would offer her police protection and pay her \$2000.00 per month if she gave evidence against the claimants. Further, the then Director of Public Prosecutions, in his opening address to the jury, stated that Kurtlyn Cannonier was his main witness, "but you will find that she is not an entirely truthful witness".
- [9] The claimants allege that the investigating officer, Detective Vivian Caesar, gave false evidence against them and encouraged, assisted and made promises to Kurtlyn Cannonier to give false evidence against them in an effort to secure their committal for trial on indictment for the purpose of securing a conviction against them in the High Court.
- [10] In these circumstances, the claimants allege that their detention, arrest and charges were wrongful, and without lawful authority or justification and/or without reasonable or probable cause and/or in bad faith and without reasonable belief in the lawlessness of the claimant's actions and knowing that such actions [of the police] were likely to cause harm to them. They allege that the institution of proceedings against them by Detective Vivian Caesar was undertaken in bad faith, maliciously and without reasonable and probable cause. They contend that Detective Caesar at all material times knew that there was no basis for arresting, charging or

instituting proceedings against them and/or for the prosecution of the committal proceedings against them.

- [11] The claimants accuse Detective Caesar of seeking to prosecute them to make it appear that they had committed the offence in spite of the fact that he was aware of evidence that made it clear that they were not and could not have been involved in the offence.
- [12] In addition, the claimants allege that their detention for almost 5 years before trial was exceedingly unreasonable, and amounts to inordinate delay.
- [13] The claimant Jerod Stapleton claims that prior to his detention he was employed as a mechanic. The claimant Ellister Thomas claims that prior to his detention he was employed by the Skills Training Empowerment Program funded by the Government of St. Christopher and Nevis. The claimants claim damages for loss of earnings from the time of their arrest to the date of their release.
- [14] The claimants aver that they were deprived of their fundamental rights and freedoms for approximately five years as citizens of St. Christopher and Nevis to which they were, and are, entitled as guaranteed by the Constitution.

Issues

- [15] The court must determine:
- 1) Whether the claims ought to be dismissed on the basis that the claimants had alternative or parallel remedies available to them;
 - 2) In the alternative, whether any of the claimants' fundamental rights and freedoms under the Constitution were breached.
 - 3) If there was any Constitutional breach of the claimants' rights, to what relief are they entitled.

Alternative remedies

[16] The claimants seek relief for breach of their constitutional rights pursuant to the redress provision in section 18 of the Constitution, which provides for redress for breaches of the fundamental rights provisions contained in Chapter II of the Constitution. The claimants recognise that resort to the constitutional jurisdiction of the court is not as of right. Section 18(1) and section 18(2) read:

(1) If any person alleges that any of the provisions of sections 3 to 17 (inclusive) has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction –
(a) to hear and determine any application made by any person in pursuance of subsection (1); and
(b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (3)

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 17 (inclusive):

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. (Empasis added)

[17] The issue of the availability of adequate means of redress was extensively discussed in the Privy Council cases of **Harikissoon v The Attorney General of Trinidad and Tobago**,¹ **Jaroo v Attorney General of Trinidad and Tobago**,² **The Attorney General of Trinidad and Tobago v Ramanoop**,³ and **Brandt v**

¹ (1979) 31 WIR 348; [1979] UKPC 3

² [2002] UKPC 5

³ [2005] UKPC 15

Commissioner of Police and others.⁴ The principles in these cases have been applied by the Eastern Caribbean Supreme Court in cases such as **Urban St. Brice v Attorney General**,⁵ **Johnson Moise v Attorney General of Dominica**,⁶ and **Al Beausoleil v The Attorney General**.⁷

[18] The guiding principle was enunciated in **Ramanoop** at paragraphs 25 and 26 as follows:

“ ... 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.

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.”

[19] The authorities establish that where there is an alternative/parallel remedy, constitutional relief should not be sought unless there is some feature which makes it appropriate to do so. An application for redress under the Constitution by the originating motion procedure ought not to be used as a substitute for or to circumvent the normal procedures where such procedures are available to the applicant.

⁴ [2021] UKPC 12

⁵ SLUHCVP2012/0027

⁶ DOMHCV2015/0132

⁷ SLUHCVP2020/0344

Section 5 of the Constitution

[20] The claimants allege breach of their rights under sections 5(1)(f), 5(3)(b), 5(5) and 5(6) of the Constitution. Section 5 protects a person's fundamental right to personal liberty. The relevant provisions are:

5. - (1) *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 -*

...

(f) upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under any law;

(3) Any person who is arrested or detained –

...

(b) 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.

(5) If any person is 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.

(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:...

[21] The court is to consider whether adequate alternative/parallel means of redress have been available to the claimants for the alleged breaches of section 5 of the Constitution by way of an ordinary claim for damages in tort.

Wrongful arrest

- [22] The claimants allege that they were wrongfully arrested because when they were arrested, given the relevant facts at the time, the chief investigator could not have conscientiously entertained even the semblance of reasonable suspicion.
- [23] The defendant submits that adequate remedies were available to the claimants by an ordinary claim for damages for wrongful arrest, false imprisonment and malicious prosecution. In the alternative, the defendant submits that the police and the prosecutors had sufficient evidence to provide reasonable suspicion to arrest and charge the claimants for the offence of murder.
- [24] The test for reasonable suspicion was explained by Ramdhani J (Ag.) in the oft-cited case of **Everette Davis v Attorney General**⁸ where His Lordship stated:
- “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 officer 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.”
- [25] The defendant submits that it was open to the claimants to assert in an ordinary claim for damages for unlawful arrest that the circumstances of the case could not have reasonably led the police to believe that they committed the offence with which they were charged.

⁸ SKBHCv2013/0220 at para. 12

False imprisonment

- [26] The tort of false imprisonment involves the unlawful restraint of another's freedom of movement. In the case of **Gregory Decaul v Attorney General of St. Vincent and the Grenadines and others**,⁹ Byer J explained the tort as follows:

"In Halsbury's Laws of England, the definition of false imprisonment made it clear that it can only be effected where there is "...total restraint of the liberty of the person for however short a time by the use or threat of force or by confinement" (my emphasis).

Additionally, it is recognised that "nothing short of actual detention and complete loss of freedom can support an action for false imprisonment" and further "the restriction upon the plaintiff's liberty must be unlawful".

.....

Thus, as was stated in the case of Bostien v Kirpalani's Ltd by Deyalsingh J "it is clear from the authorities that to constitute false imprisonment there must be a restraint of liberty ...a taking control over or possession of the plaintiff or control his will. The restraint of liberty is the gist of the tort. Such restraint need not be by force or actual physical compulsion. It is enough if pressure of any sort is present that reasonably leads the plaintiff to believe that he is not free to leave or if the circumstances are such that the reasonable inference is that the plaintiff was under restraint even if the plaintiff was himself unaware of such restraint."

- [27] The defendant contends that it was open to the claimants to assert claims for false imprisonment insofar as they claim that there were restrictions on their liberty arising from their arrest and detention by the police.

Malicious Prosecution

- [28] Malicious prosecution arises where a person alleges that the prosecution was instituted against him for some improper motive. In **Stuart v Attorney General of Trinidad and Tobago**,¹⁰ Lord Burrows explained:

"The tort of malicious prosecution has five elements all of which must be proved on the balance of probabilities by a claimant: (1) that the defendant prosecuted the claimant (whether by criminal or civil proceedings); (2) that the prosecution ended in the claimant's favour; (3) that the prosecution lacked reasonable and probable cause; (4) that the defendant acted maliciously; and (5) that the claimant suffered damage."

⁹ SVGHCV2014/0162, delivered January 11, 2018, at paras. 27, 28 and 34

¹⁰ [2022] UKPC 53 at para. 1

- [29] The defendant posits that the assertions made by the claimants encompass the elements of the tort of malicious prosecutions as outlined in **Stuart** so that it was open to the claimants to bring a claim for malicious prosecution insofar as they allege that there was no basis for charging and prosecuting them and that the actions of the prosecution were malicious.

Misfeasance/malfeasance in public office

- [30] The essential ingredients of the tort of misfeasance in public office are set out in the case of **Three Rivers District Council and Others v Bank of England (No. 3)**¹¹ as follows:

“...(1) an abuse of the powers given to a public officer; (2) that the abuse was constituted by a deliberate act or deliberate omission by the public officer with knowledge that the act or omission was wrongful or with recklessness as to whether or not the act or omission was wrongful; (3) that the public officer acted in bad faith; and (4) that the public officer knew that his act or omission would probably injure the plaintiff or was reckless as to the risk of injury to the plaintiff. In addition the plaintiff must prove that the act or omission caused him loss, but issues of causation do not arise at this stage.”

- [31] The parties did not make submissions on this tort but it was open to the claimants to file claims for misfeasance in public office if they alleged abuse of State power. Further, there was no evidence that the claimants were denied their right to an attorney at the time they were arrested.

Section 8 of the Constitution

- [32] The claimant Ellister Thomas claims that his jacket and cell phone were taken by the police in contravention of section 8(1) of the Constitution. Section 8(1) reads:

No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except for a public purpose and by or under the provisions of a law that prescribes the principles on which and the manner in which compensation therefor is to be determined and given..

¹¹ [2001] 2 All ER 513 at para. 121

- [33] The defendant submits that the issue of breach of section 8 of the Constitution does not arise in the circumstances of this case. The items in issue were taken into police custody during the course of a criminal investigation. No request was made by the claimant for the return of the items. The items remain in police custody and there is no objection to them being returned to the claimant.
- [34] The defendant further submits that the claimant had an adequate alternative remedy available to him by way of an ordinary claim for the return of the items or for an award of damages. In **Jaroo**, the claimant applied for constitutional relief by way of originating motion claiming that the actions of the police in detaining his vehicle breached his rights under the Constitution of Trinidad and Tobago not to be deprived of the enjoyment of his property without due process of law. The Privy Council held that the claim for redress under the Constitution was an abuse of process as there was an appropriate remedy by way of an action for delivery in detinue at common law. Similarly, in this case the claimant could have brought an ordinary claim to recover his property or its value.
- [35] Given the foregoing, the defendant submits that the claim for breach of section 8 of the Constitution is an abuse of process and should be dismissed.

Limitation Period for Ordinary Claims

- [36] The question arises as to why the claimants failed to bring ordinary claims for the torts of unlawful or wrongful arrest, false imprisonment and malicious prosecution. The defendant asks the court to note that at the time the claimants filed their fixed date claims, ordinary claims would have been statute barred under section 2(1)(a) of the Public Authorities Protection Act¹² which sets a limitation period of six months for the institution of such claims. This raises the issue of the use of the constitutional jurisdiction as a substitute for the ordinary procedures of the court and the defendant submits that the absence of an explanation for same is indicative of an abuse of the process of the court.

¹² Cap. 5:13 of the Laws of Saint Christopher and Nevis

[37] The answer to this failure or omission by the claimants comes from the submission of learned counsel for the claimants, Mr. Benjamin. Learned counsel submits that on the face of it, given the unlawful draconian predicament and deplorable circumstances under which the claimants were placed and ultimately experienced, it became impossible for them to have filed a claim within the very short period of six months after they were arrested. Mr. Benjamin points out that from the date that they were arrested, they were permanently deprived of their liberty and other basic necessities relevant to their survival; they were deprived by the powerful arm of the State; to wit, freedom of movement, freedom of association, deprivation of reasonable means of communication with family; and egregious of them all, they both lost their jobs and by extension their weekly wages so soon after their respective arrests. Counsel submits that labouring under such gruesome toils and snares, not only for six months but for five years, common sense dictates that it would have been clearly not feasible to resort to normal civil proceedings at the time, having been unlawfully and wantonly deprived from doing so.

[38] The learned Solicitor General, Mrs. Bullen Thompson, on behalf of the defendant, retorted that although the claimants were incarcerated, they had Counsel. On the issue as to whether they could have afforded a lawyer, Mrs. Bullen Thompson pointed out that the claimants have not pleaded impecuniosity in their affidavits.

Ruling on alternative remedies

[39] In my respectful view, this is a classic case where the claimants had alternative/parallel remedies for the torts of unlawful or wrongful arrest, false imprisonment, malicious prosecution, misfeasance in public office and a claim in detinue in relation to the wrongful taking of personal property. The authorities cited by the defendant give clear guidance on this issue. The claimants have not identified, or submitted to this court that there is any special or exceptional feature allowing them to bypass the resort to ordinary remedies. In fact, learned counsel for the claimants told the court that even if the claimants missed the boat on the torts, they could still come by the Constitution.

[40] The prayer in each fixed date claim specifically asks the court for an order for general damages for wrongful arrest, false imprisonment, malicious prosecution and malfeasance in public office. The learned Solicitor General identified and explained the various torts to which the claimants had redress instead of invoking the court's constitutional jurisdiction. In these areas of the law, the claimants have clearly used the originating motion process as a substitute for the ordinary jurisdiction of the court. The reasons advanced by the claimants for the failure to bring ordinary claims are without merit. At all stages, they were represented by able Counsel, and the excuses they have given ought to have propelled the claimants to move the court, instead of allowing time to expire. They have failed to provide any good reason or explanation for not pursuing actions in tort, and have not identified any exceptional feature in relation to their arrest and prosecution that would make it proper for them to bring constitutional claims.

[41] Following the guidance in **Ramanoop, Jaroo, Brandt** and the host of authorities on this issue, the court ought to decline to exercise its jurisdiction as the claimants had alternative or parallel remedies available to them in tort. In my respectful view, they have abused the process of the court.

The Attorney General's alternative position – the defence – no breach of the Constitution

[42] In the alternative, the defendant submits that there was reasonable suspicion of the claimants having committed the offence of murder, and that the police and the prosecution had sufficient evidence to proceed against the claimants. In his affidavit, the investigating officer, Sergeant Vivian Caesar swore that the claimants were charged, detained and prosecuted based on the evidence collected during the course of the investigation, which included statements of witnesses, and WhatsApp messaging, telephone calls and voice notes between Kurtlyn Cannonier and the deceased. The following is a summary of what Sergeant Caesar's investigation revealed.

- i. Kurtlyn Cannonier and the deceased became acquainted with each other some months prior to his death. They communicated with each other almost daily by WhatsApp.
- ii. On Monday July 3, 2017, Kurtlyn Cannonier and the deceased messaged each other until 7:00 p.m.
- iii. Later that night, she went to Lodge Village to the home of the claimant Ellister Thomas alias Rambo with whom she had a sexual relationship. The claimant Jerod Stapleton alias JBay was also present.
- iv. While there, the deceased messaged Cannonier. Some of the messages were by voice note. Ellister Thomas asked her to whom she was speaking. She replied that it was "Duppy", the alias of the deceased. He told her she should not be speaking to anyone from Cayon. It is known that there is a rivalry between the young men of Cayon and Ottley's/Lodge Villages. Jerod Stapleton then said, "We gar throw een da," locally meaning they were going to do some harm to him.
- v. Ellister Thomas devised a plan to use Cannonier to lure the deceased to Ottley's. He told her to message the deceased and tell him to pick her up. She did so and the deceased agreed to pick her up at the bridge in Ottley's.
- vi. Ellister Thomas and another man who was also at the house left and returned with two firearms – a black rifle and a silver handgun which they loaded with bullets that were already in the house.
- vii. Jerod Stapleton, followed by Ellister Thomas and Kurtlyn Cannonier left and went down the road, leaving T'Sean Hendricks and two others in the house.
- viii. When Ellister Thomas and Kurtlyn Cannonier reached the main road, Ellister whistled and Jerod Stapleton came from behind the ATM machine in the area. Ellister then instructed Jerod to accompany Kurtlyn down by the bridge which he did. Ellister Thomas left and went back to the direction of his home.

- ix. The deceased called Kurtlyn, but Jerod instructed her not to answer. Jerod hid behind a water tank while Kurtlyn stood by the alley.
- x. When the deceased arrived, he slowed down his vehicle and spoke to Kurtlyn. He drove down and started reversing on the bridge.
- xi. Ellister Thomas and T'Sean Hendricks ran out from the alley firing at the motor car. The deceased tried to escape but the car stuck. The deceased was shot multiple times and died at the scene.

[43] Sergeant Caesar states that statements were taken from 19 persons including Kurtlyn Cannonier and another named witness.

[44] The named witness gave a statement on August 28, 2017 relaying conversations he had with, or heard from, the claimants. He remembered a Tuesday morning early in July (he did not remember the date) some minutes to 7:00 a.m. he went by Rambo (Ellister Thomas). Part of the statement reads: *"While I was about to leave, Rambo stop me and said, 'clip Kalibah [alias for T'Sean Hendricks] them ah some fuck around, you know hear we went on a move last night and the man clip jam'. 'He only get to bus three shot from the brico'. 'Them man they soft'. 'I just run up with the AK and hit him one shot in he shoulder and as he try push the car in ah reverse ah hit him ah next one'. He said he foot went on the gas on the car started to rev out and he hit him some more shots and Kalibah try run up on he clip jam. Kalibah was there sitting down just listening."* The witness then left and went to the bush where he spent some time.

[45] The witness further stated that after he left the bush and was going back down, he saw JBay (Jerod Stapleton) and one Struggle by Binny (another alias of Ellister Thomas). They were there with Binny and Kalibah. When he got closer to them, *"I heard JBay tell Struggle that KiKi [Kurtlyn Cannonier] set it up. I stayed there and struggle said 'Yeah, so that mean we can't trust her, she could do the same to are we'. Rambo responded and said, 'da me girl, she ain't go do that to us'. Struggle said 'well if she down with the team, she down with the team but keep a close eye on her'.... When I heard JBay tell Struggle that is Kiki set it up, Struggle said 'so*

she went down the road she one”? JBay said “no, me follow her down and follow her back up”. Struggle ask how she was moving and JBay said “she de moving scared”. Struggle said “true”. I did not hear them say how Kiki set him up or what.”

- [46] It is Sergeant Caesar’s evidence that three statements were taken from Kurtlyn Cannonier, two witness statements and a cautioned statement. Herein lies the claimants’ contention. The witness statement of Kurtlyn Cannonier exhibited to the affidavit of Sergeant Caesar is dated January 18, 2019, that is, over one year and four months after the claimants were arrested and charged on September 1 and 2, 2017. Sergeant Caesar avers that the two other statements given by Kurtlyn Cannonier are not in the Police File, and that he understands that the Office of the Director of Public Prosecutions “is trying to locate its file with the copies of the statements”.
- [47] The claimant Ellister Thomas points out that in the first of her said statements, Kurtlyn Cannonier made no mention whatsoever of his name, but after the charge of murder was nolle prosequied against her, she mentioned his name in subsequent statements. Sergeant Caesar accepts that there were inconsistencies in Kurtlyn Cannonier’s statements but he contends that further investigations including statements taken from witnesses cleared up the inconsistencies in her statements. He denies that he made any promises as alleged by the claimants and he is not aware of any promise made as described.
- [48] Any statement of Kurtlyn Cannonier while she remained an accused in the murder of Kishorne Edwards would be inadmissible as evidence against her co-accused. Her statement/s after the charge was dropped against her would be properly used in the prosecution of the remaining accused. This is a normal practice of the prosecution used to buttress the evidence in certain cases to secure a conviction.
- [49] The issue is whether on the information existing at the time the claimants were arrested and charged, the police had reasonable suspicion that they committed the offence. In my view, notwithstanding the issues with the statements of Kurtlyn Cannonier, there was sufficient information to ground an honest belief in the

investigating officer that the claimants had committed the offence of murder. As pointed out by the defendant, Kurtlyn Cannonier was not the only witness for the prosecution. Sergeant Caesar took statements from 19 witnesses. The statement of the named witness provided evidence coming out of the conversations he had with the claimants apparently later the same day of the incident that resulted in the death of Kishorne Edwards. His witness statement revealed that the claimant Ellister Thomas told him that he shot an individual in a car multiple times, and that the claimant Jerod Stapleton said that Kurtlyn “set it up” and he accompanied her to the bridge. Sergeant Caesar, having taken this statement on August 28, 2017, detained, arrested and charged the claimants a few days later on September 1 and 2, 2017. On these facts, I am of the view that Sergeant Caesar had sufficient evidence to have reasonable suspicion to arrest and charge the claimants at the time he did so.

[50] In relation to the prosecution of the case, it was not for Sergeant Caesar to determine issues of credibility. That was the function of the jury. It is evident that the Director of Public Prosecutions anticipated that the credibility of Kurtlyn Cannonier would be of concern so that at the outset, he alerted the jury that she was not an entirely truthful witness. It was for the jury to decide whether they accepted her evidence or not. Clearly, they did not. The not guilty verdicts did not mean that the claimants were unlawfully arrested or falsely imprisoned or maliciously prosecuted. That is the nature of the criminal justice system. The trial judge sent the case to the jury and there is no evidence that a no-case submission was made on behalf of the claimants. Having heard the evidence and observed the demeanour of all the witnesses, the members of the jury exercised their civic duty, did not find favour with the case for the prosecution, and acquitted the claimants.

[51] In the alternative to my ruling that the claimants had alternative remedies available to them, given the prayer in their claims, I am also of the view that there was no breach of section 5(1)(f) of the Constitution in this case.

Section 5(5) of the Constitution

[52] I repeat section 5(5) of the Constitution which states:

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.

[53] Learned counsel for the claimants, Mr. Benjamin submits that a very careful reading of section 5(5) seems to make it mandatory or obligatory on the State/Prosecutor to initiate and grant bail to a person arrested and charged if the State/Prosecutor is unable to have the accused person tried within a reasonable time.

[54] The defendant submits that section 5(5) is not to be read as indicating that the claimants are entitled to be granted bail as of right, but gives the claimants the right to apply for bail.¹³ The defendant points out that the legal system provided an avenue for them to apply for bail by virtue of the Bail Act.¹⁴ The claimants applied for bail and on May 11, 2021, the High Court heard the claimants' application for bail and dismissed same. Given the circumstances of this case, the defendant submits that the claimants cannot substantiate the assertion that they were deprived of their liberty in breach of section 5(5) of the Constitution, and asserts that the claim for breach of section 5(5) of the Constitution should be dismissed.

[55] Section 5(5) comes into play where a person in custody on a charge can establish that his or her trial has not taken place within a reasonable time, that is, there has been unreasonable or inordinate delay in getting to trial, and he or she remained in prison. In such a case, bail is one condition by which an accused will be released to await trial. Where bail is granted in those circumstances, the bail conditions must not be excessive.

¹³ See *Duncan and Jokhan v Attorney General of Trinidad and Tobago* [2021] UKPC 17

¹⁴ Cap. 3:24 of the Laws of Saint Christopher and Nevis

[56] The section does not confer a right to bail. In order to be released before trial, it is incumbent on an accused person to demonstrate to the court that in the particular circumstances of his or her case, the time it is taking to get to trial is unreasonable. The claimants made use of their right to access bail when they applied for and were refused bail on May 11, 2021 after they were committed to stand trial by the learned Magistrate. There is no evidence that the claimants applied to the High Court for bail (the lower court having no jurisdiction to grant bail for the offence of murder) at any other time before being committed to stand trial, notwithstanding the claimants' allegations of delay. In these circumstances, I am of the view that there was no breach of section 5(5) of the Constitution in this matter.

Section 10 of the Constitution

[57] Section 10(1) provides as follows:

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

The claimants spent four years and nine months on remand before they were found not guilty of murder and released. They submit that it cannot be said that they were tried within a reasonable time within the meaning of section 10(1). They contend that their period of incarceration was exceedingly unreasonable.

[58] It is useful to outline the procedural history of the criminal cases from arrest and charge, appearances in the Magistrate's Court and the High Court in its criminal jurisdiction as extracted from the evidence before this court, mostly from the affidavit of Greatess Gordon-Hazel, Assistant Director of Public Prosecutions.

- i. September 1-2, 2017 – The claimants were taken into custody. They were charged together with T'Sean Hendricks and Kurtlyn Cannonier for the murder of Kishorne Edwards. Soon thereafter, they were remanded to prison awaiting the start of the preliminary inquiry.

- ii. March 2018 - The preliminary inquiry began in March 2018 before the Senior Magistrate Renold Benjamin.
- iii. August 27 and 31, 2018, November 26, 2018 and January 11, 2019 – Hearings took place before Magistrate Benjamin and some evidence was led.
- iv. January 11, 2019 – The preliminary inquiry was adjourned to January 21, 2019.
- v. January 18, 2019 - The charge against Kurtlyn Cannonier was withdrawn and the matter was placed on the call over list for April 1, 2019.
- vi. January 21, 2019 – The claimants, T'Sean Hendricks and their Counsel appeared before Magistrate Benjamin and made submissions in relation to the process by which the matter against Kurtlyn Cannonier was withdrawn.
- vii. February 2, 2019 – The matter came on before Magistrate Donna Harris who indicated that the matter would be placed on the call over list before Magistrate Benjamin on April 1, 2019.
- viii. April 1, 2019 – Magistrate Benjamin recused himself and indicated that the matter would be placed before another Magistrate. The matter was adjourned to May 13, 2019.
- ix. May 13, 2019 – The matter came on for hearing and was adjourned to July 19, 2019 for the preliminary inquiry.
- x. July 1, 2019 – The matter came on before Magistrate Fitzroy Eddy. The date of August 26, 2019 was given for the preliminary inquiry. However, Counsel for T'Sean Hendricks indicated that he would be unavailable and the matter was set for October 4, 2019.
- xi. October 4, 2019 – The matter came on for hearing before Magistrate Eddy. The Crown presented an application for the now witness Kurtlyn Cannonier

to give evidence by video link and the defence presented arguments. Magistrate Eddy indicated that he needed time to consider the arguments and adjourned the matter to November 18, 2019 for report.

- xii. November 18, 2019 – Magistrate Eddy indicated he would start the preliminary inquiry afresh and that the application for video link would be heard on December 9, 2019.
- xiii. December 9, 2019, – The matter was called before Magistrate Eddy. Counsel for the claimants were not present when the matter was called. Counsel Mr. Benjamin subsequently arrived but Counsel for T'Sean Hendricks did not attend. The matter was adjourned to January 28, 2020.
- xiv. January 27, 2020 - It was indicated that Crown Counsel who had conduct of the matter was appearing in the High Court. The matter was adjourned to March 9, 2020.
- xv. March 23, 2020 – the court ordered a Chamber hearing to determine editing of the lead investigator Constable Caesar's notes in relation to the fear of Kurtlyn Cannonier.
- xvi. After the hearing of March 23, 2020, hearings came to a halt as a result of the COVID-19 pandemic. A State of Emergency was declared and St. Christopher and Nevis experienced lockdowns.
- xvii. February 22, 2021 – The matter came up before Magistrate Eddy. By that time, the Magistrate's Code of Procedure (Amendment) Act 2018 came into force on July 24, 2020. The Act abolished preliminary inquiries. The court took the view that the matter could proceed by Paper Committal. The matter was adjourned to February 26, 2021.
- xviii. February 26, 2021 – owing to the absence of Counsel, the matter was adjourned to March 5, 2021.
- xix. March 5 and 12, 2021 – Exhibits were tendered.

- xx. March 15, 2021 – Submissions were presented.
- xxi. April 26, 2021 – The claimants and T'Sean Hendricks were committed to stand trial at the High Court.
- xxii. May 11, 2021 – The High Court dismissed the claimants' application for bail.
- xxiii. October 14, 2021 – First listing of the case before the High Court
- xxiv. October 21, 25 and 26, 2021 and November 4, 2021 – Preliminary points and ruling.
- xxv. May 3, 2022 – The trial began before judge and jury.
- xxvi. May 31, 2022 – The trial concluded. The jury returned verdicts of not guilty. The claimants were released from custody.
- xxvii. December 12, 2022 – The claimants filed fixed date claims seeking constitutional relief.

[59] The claimants highlight the fact that delay was brought about when Magistrate Benjamin recused himself, followed by Magistrate Harris who heard lengthy submissions and also recused herself. It appears that the matter was sent back to Magistrate Benjamin, with the committal proceedings eventually being concluded by Magistrate Eddy who entertained lengthy submissions as to whether the matter would continue before him or start afresh.

[60] The claimants aver that between October 2021 and February 2022, very intense and vigorous case management and review were undertaken by the High Court (Criminal Division) before the trial began in May 2022.

[61] The defendant also refers to the fact that the matter was subject to legal arguments at various stages arising from the manner in which the matter progressed, in particular, in the Magistrate's Court. Further, the defendant states that hearing

dates were set having regard to the availability of hearing dates before the Magistrates.

[62] The defendant asks the court to note that when the matter was tried in the High Court, notwithstanding the fact that only five witnesses were called, it took approximately one month to complete the High Court trial. The defendant submits that this underscores the fact that the matter was not a simple matter, but suggests that the matter was somewhat complex in nature.

[63] Another contributing factor to the alleged delay pointed out by the defendant was the COVID-19 pandemic and the measures implemented to contain same. As indicated in the defendant's evidence, a State of Emergency was declared in St. Christopher and Nevis and a series of COVID-19 Emergency Regulations were published. St. Christopher and Nevis was placed on lock downs at varying times and restrictions were introduced to curb the spread of the COVID-19 virus. As a result, the operations of the Magistrate's Courts were affected as on some occasions there were no sittings. When the Court did sit, the number of matters scheduled had to be determined taking into account the restrictions, such as the requirement for social distancing, imposed to curb the spread of COVID-19, and the availability of staff as many persons were impacted by quarantine measures. When sittings resumed in earnest, matters had to be scheduled bearing in mind the number of cases waiting to be heard and the court's calendar.

[64] In all the circumstances, the defendant submits that there has been no unreasonable delay in the prosecution of the claimants' criminal matters, and there was no breach of the claimants' rights in contravention of section 10(1) of the Constitution as alleged.

[65] In determining whether there has been unreasonable delay, the judgment of the Caribbean Court of Justice in **Gibson v Attorney General of Barbados**¹⁵ provides useful guidance where the Court stated:

¹⁵ [2010] CCJ 3 (AJ)

“A finding that there has indeed been unreasonable delay in bringing the accused to trial must be made on a case by case basis. It cannot be reached by applying a mathematical formula although the mere lapse of an inordinate time will raise a presumption, rebuttable by the State, that there has been undue delay. Before making such a finding the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the State.”

- [66] It is easily calculated that the time the claimants spent in custody was four years and nine months. On the face of it, without more, this gives grounds for real concern, and a presumption of inordinate delay is raised. The court must further consider the particular circumstances of this case, including whether the State has sufficiently explained and justified the delay.
- [67] From the evidence on both sides, it appears that the matter was of a complex nature, given the submissions made both in the Magistrate’s Court and the High Court. The trial itself took approximately one month to complete, notwithstanding only five witnesses gave evidence.
- [68] The recusal of two Magistrates caused some delay. However, in my view, the 3-month period from Magistrate Benjamin recusing himself on April 1, 2019 to July 1, 2019 when Magistrate Eddy took over the case (with Magistrate Harris presiding in between) is not inordinate.
- [69] The biggest gap was eleven months from March 23, 2020 to February 22, 2021 as a result of the COVID-19 pandemic.
- [70] In all the circumstances of this case, in my view, the delay of four years and nine months was not unreasonable. The matter concerned four accused at first, represented by more than one Counsel. The case took on a different character when the number of accused persons was reduced to three, with Kurtlyn Cannonier transitioning from accused to witness for the prosecution. The case passed through the hands of three different Magistrates. Adjournments were requested by both sides. During the pandemic, the law advanced with the coming into force of the legislation abolishing preliminary inquiries. This turn of events attracted lengthy

submissions in the Magistrate's Court as well as preliminary to trial at the High Court.

[71] I am satisfied that the defendant provided adequate evidence to explain and justify the amount of time it took for the claimants' case to get to trial. The presumption of inordinate delay has been rebutted. Therefore, on the totality of the facts before the court, I cannot conclude that there was a breach of section 10(1) of the Constitution, the claimants' right to trial within a reasonable time.

[72] Based on all the foregoing, I conclude that the claimants are not entitled to the relief sought and the fixed date claims fail.

Costs

[73] The general rule in these matters is that no costs order be made unless the court considers that the applicants (the claimants here) acted unreasonably in making the application. The defendant requests costs in this matter. Given the prayers of the claimants for damages for distinct torts for which alternative remedies were available, and the several and mounting authorities on this issue, I am minded to award costs against the claimants.

[74] This matter follows the trend in this jurisdiction of accused persons acquitted on murder charges filing originating motions. While the court does not by any means discourage genuine claims for relief for breaches of a person's fundamental rights guaranteed by the Constitution, the court must guard against the abusive process of seeking redress simply on the basis of an acquittal. The vindication of the claimants lies in the criminal justice process resulting in their freedom.

[75] However, on the issue of delay of trial within a reasonable time, I am not of the view that the claims were unreasonable. In these circumstances, I will order that the claimants pay two-thirds of the defendants costs of the claims.

Order

In light of the foregoing, it is hereby ordered as follows:

- 1) The claimants' claims are dismissed.

- 2) Each claimant shall pay two-thirds of the defendant's costs of the individual claims to be assessed by this court if not agreed.

Tamara Gill
High Court Judge

By the Court

Registrar