

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2024/0360

**IN THE MATTER OF SECTION 16 AND SECTION 8, 8(2) AND 8(7) THE
CONSTITUTION OF GRENADA IN SCHEDULE 1 OF THE GRENADA
CONSTITUTION ORDER 1973 GUARANTEEING THE RIGHT TO A FAIR TRIAL
AND WHICH MAKES PROVISION TO SECURE THE PROTECTION OF LAW**

AND

**IN THE MATTER OF SECTIONS 2, 3, AND SECTION 9 OF THE SUPREME COURT
(CONSTITUTIONAL REDRESS GRENADA) RULES, 196 S.R.O. 41 OF 1968**

AND

**IN THE MATTER OF PART 52, RULE 52.4 OF THE EASTERN CARIBBEAN
SUPREME COURT CIVIL PROCEDURE RULES 2000 (AS AMENDED)**

AND

**IN THE MATTER OF SECTION 65 OF THE CIVIL PROCEDURE ACT CAP 55 OF
THE 2010 REVISED LAWS OF GRENADA**

AND

**IN THE MATTER OF SECTIONS 106 AND 111 OF THE CONSTITUTION OF
GRENADA IN SCHEDULE 1 OF THE GRENADA CONSTITUTION ORDER 1973**

AND

**IN THE MATTER OF SCHEDULE 2 OF THE SAID CONSTITUTION ORDER 1973,
PARAGRAPH 1(1) AND (5) THEREOF**

AND

**IN THE MATTER OF JUDGMENT SUMMONS PROCEEDINGS IN CLAIM NO.
GDAHCV2023/0485 (FORMERLY CLAIM NO. GDAHCV1993/0039)**

BETWEEN:

GEORGE WORME

Claimant

and

THE ATTORNEY GENERAL OF GRENADA

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Dwight Horsford, Mr. Sasha Courtney and Mr. Anslem Clouden for the Claimant
Mr. Adeybayo Olowu for the Defendant

2024: November 14th (submissions of claimant);
December 30th (submissions of defendant);
2025: January 15th (submissions in reply);
March 31st

JUDGMENT

- [1] **ACTIE, J.:** The claimant alleges that judgment summons procedure implicates the constitutional rights of an individual under **Section 8** of the **Grenada Constitution**.
- [2] The claimant in originating motion filed on 9th September 2024 contends that the provisions of **Section 65** of the **Civil Procedure Act**¹ (hereafter referred to as “the CPA”) and the Judgment Summons procedure under **Part 52 of the CPR (Revised Edition) 2000** which confer jurisdiction and the process by which a judgment debtor may be imprisoned in consequence of failure to satisfy a judgment debt, contravene or are likely to contravene the right to a fair trial guaranteed under **Section 8 of the Grenada Constitution**.

Background Facts

- [3] The facts giving rise to the constitutional challenge are undisputed. The claimant was the Editor in Chief of the Grenada Today published by the Grenada Today Ltd., a company now in liquidation. By Claim No. 0039 of 1993, now Claim No. GDAHCV2023/0485, Theresa Braveboy obtained judgment against the claimant and the then Grenada Today Ltd. for libel in the sum of \$42,500.00.

¹ CAP 55

- [4] The last payment made in satisfaction of the judgment was on 10th March 2003. On 22nd May 2023, the judgment creditor, Theresa Braveboy, filed a judgment summons initiating committal proceedings requiring the claimant to appear and be examined on oath as to his means and to give reasons why he should not be imprisoned for failure to pay the judgment debt.
- [5] The claimant avers that twenty years have elapsed between the last payment and the lodgement of the judgment summons without execution or enforcement of the judgment, and that he is subject to the risk of imprisonment on a stale civil debt by an archaic procedure which is akin to a criminal proceeding, and incompatible with the protections provided in **Section 8 of the Grenada Constitution**.
- [6] The claimant seeks, among other things, the following relief:
- (1) A declaration pursuant to **Section 16** of the **Grenada Constitution** that **Section 8** of the **Constitution** is likely to be contravened in relation to the claimant by operation of the provisions of **Section 65** of the **CPA** in the proceedings by Judgment Summons;
 - (2) A declaration pursuant to **Section 16** of the **Grenada Constitution** that the procedure for judgment summons under **Part 52** of the **CPR** which engages provisions of **Section 65** of the **CPA** for committal is subject to the fundamental protection for a fair trial guaranteed in **Section 8** of the **Grenada Constitution**, namely:
 - (i) the fact that the respondent judgment debtor had, since the date of the judgment, the means to pay the sum ordered and due is to be proven to the criminal standard of proof; (ii) the fact that the respondent judgment debtor has refused or neglected to pay the sum due must be proved to the criminal standard of proof; (iii) the burden of proof is at all times on the applicant judgment creditor in those proceedings; (iv) the respondent judgment debtor is not compellable to give evidence; and (v) the judgment debtor shall have the right to call witnesses in his behalf and to examine those witnesses called by the judgment creditor
 - (3) An order that the provisions of **Section 65 of the CPA** are to be read and construed as incorporating guarantees and all reference to the

procedure or process of judgment summons which may result in the incarceration of a judgment debtor under **Section 65 of the CPA** are to be construed as subject to those requirements of procedural fairness, so as to bring those provisions in **Section 65** into conformity with the **Constitution of Grenada**.

Defendant's case

- [7] The defendant challenges the interpretation given by the claimant and states that the provision of **Part 52** of the **CPR** and **Section 65** of the **CPA** can be invoked separately or conjointly, and may be commenced by way of civil proceedings.
- [8] The defendant states that **Part 52** and **Section 65** are not in contravention of **Section 8(2)** of the **Constitution of Grenada** as the judgment debtor is never stripped of his presumption of innocence. The defendant states further that the provisions are also not in contravention of **Section 8(7)** of the **Constitution** as the judgment debtor can elect to give evidence by other means as to why he refuses to fulfil his debt obligations.
- [9] The defendant avers that the right to fair trial and requirement of procedural fairness of the claimant are not breached in contravention of **Section 8** of the **Constitution**. The defendant states that the constitutional motion is frivolous, vexatious and ought to be dismissed.

Legal Analysis

- [10] The issue is whether **Section 65** of the **CPA** and **Part 52 Rule 52.5 of the CPR 2000** contravenes the constitutionally guaranteed right to a fair trial and the protection of law under **Section 8** of the **Constitution**.
- [11] The relevant subsections of **Section 8** of the **Constitution**, relied on by the claimant read as follows:

“(1) 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.

(2) Every person who is charged with a criminal offence—

(a) shall be presumed to be innocent until he or she is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he or she understands and in detail, of the nature of the offence charged;

(c) shall be given adequate time and facilities for the preparation of his or her defence;

(d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice;

(e) shall be afforded facilities to examine in person or by his or her legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he or she cannot understand the language used at the trial of the charge,

and except with his or her own consent the trial shall not take place in his or her absence unless he or she so conducts himself or herself as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence:

Provided that, in such circumstances as may be prescribed by law, the trial may take place in the absence of the person charged so long as no punishment of death or imprisonment (other than imprisonment in default of payment of a fine) is awarded in the event of his or her conviction.

...

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

...

(13) In this section, “criminal offence” means a criminal offence under the law of Grenada.”

[12] **Sections 65 to 67 of the CPA** prescribe the following:

“65. Imprisonment where debtor is able to pay and neglects or refuses

(1) The Court or magistrate may commit to prison for a period not exceeding six weeks, unless the sum ordered to be paid is sooner paid, any person who makes default in payment of any debt or instalment of any debt due from him or her in pursuance of an order or judgement, if it is proved to the satisfaction of the Court or magistrate that the person making default has, or since the date of the order or judgement has had, the means to pay the debt or instalment and has neglected or refused to pay it.

(2) Proof of the means of the person making default may be given in such manner as the Court or magistrate thinks just, and for that purpose the debtor and any witness may be summoned and examined.

(3) Notice of the application for the order of committal shall be given to the debtor, who shall be at liberty to attend and be heard on the hearing of the application.

(4) Any person imprisoned under this section shall be discharged as soon as he or she has satisfied the debt or instalment in respect of which he or she was imprisoned, and the costs.

66. Imprisonment for non-payment in special cases

In the following cases the High Court may commit to prison for a period not exceeding one year, namely—

(a) for default in payment of a penalty or sum in the nature of a penalty, other than a penalty in respect of a contract;

(b) for default by a trustee or person acting in a fiduciary capacity in payment of a sum in his or her possession or under his or her control which he or she is ordered to pay;

(c) for default by a solicitor in payment of costs which he or she is ordered to pay for misconduct as a solicitor or in payment of a sum which he or she is ordered to pay in his or her character as an officer of the Court;

(d) for default by a bankrupt or person in insolvent circumstances in payment of any portion of a salary or income which he or she is ordered to pay for the benefit of his or her creditors.

67. Imprisonment not to extinguish the debt

No imprisonment under either of the two last preceding sections shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take execution against the lands or goods of the person imprisoned in the same manner as if the imprisonment had not taken place.”

[13] The judgment summons procedure is prescribed in **Part 52** of the **CPR (Revised edition) 2000**. **Part 52.4**, referenced in the intituling of the extant matter, provides for the service of the judgment summons personally on the judgment debtor. **CPR 52.5**, which counsel for the claimant also referenced in submissions, states the following:

“At the hearing of the judgment summons, the court may –

(a) if satisfied that all reasonable efforts have been made to serve the judgment debtor and the –

- (i) judgment debtor is wilfully evading service; or
- (ii) summons has come to the knowledge of the judgment debtor, proceed in the absence of the judgment debtor as if the judgment debtor had been personally served;

(b) receive evidence as to the means of the debtor in any manner that it thinks fit; and

(c) if satisfied that all statutory requirements have been met –

- (i) adjourn the hearing of the summons to a fixed date;
- (ii) commit the judgment debtor for such fixed term as is permitted by law;
- (iii) suspend such committal upon payment of the judgment debt on such dates and by such instalments as the court may order;
- (iv) dismiss the judgment summons; or
- (v) make an order for payment of the judgment debt by a particular date or by specified instalments and adjourn the hearing of the judgment summons to a date to be fixed on the application of the judgment creditor.”

[14] As can be seen, both the **CPA** and **Part 52** require the court to be satisfied that the judgment debtor was either served personally or is aware of the application for committal. The burden lies on the judgment creditor to provide cogent evidence in support of the application for committal before the court or magistrate can exercise the discretionary power to commit the judgment debtor for failure to satisfy the judgment debt.

[15] Counsel argues that the judgment summons procedure under **Part 52** and **Section 65 of the CPA** impermissibly combines or conflates two distinct exercises in a single hearing or proceeding; that is, on the one hand, it is a means inquiry in respect of which the judgment debtor may be a compellable witness, and on the other hand, it is at the same time a committal proceeding to determine

the debtor is in default and whether he ought to be imprisoned in consequence of such default, a matter in relation to which, the debtor is not a compellable witness. The combination of the two exercises into a single hearing or proceeding by this procedure, contravenes or is likely to contravene the constitutionally guaranteed right to a fair trial and procedural fairness under **Section 8** of the **Grenada Constitution**.

Separate or Conjoint Procedure

- [16] The defendant in response contends that the provisions of **Part 52** of the **CPR** and **Section 65** of the **CPA** can be invoked separately or conjointly and can separately or conjointly require a debtor to provide evidence. However, this point in law was not further developed by counsel for the defendant in submissions.
- [17] Counsel for the claimant opposes this assertion and submits that the **CPR** do not confer on the court substantive jurisdiction. Counsel states that the jurisdiction to imprison a defaulting judgment debtor is given by statute by **Section 65**, and that the provisions of **Section 65** and **Rule 52.5** cannot be invoked separately.
- [18] This aspect of the defendant's case can be dealt with shortly, especially since the point has not been expanded by the defendant in arguments. The court agrees with counsel for the claimant that the statutory jurisdiction to imprison for default of payment of a judgment debt is given by **Section 65** of the **CPA**. It is the court's view that **CPR 52** merely provides the procedural mechanism for a judgment creditor to commit a judgment debtor for the nonpayment of its debt. **Part 52.1** provides the scope of the rule and states: "This Part deals with applications to commit a judgment debtor for non-payment of a debt where this is not prohibited by statute." This is further fortified in **Practice Direction No. 2 of 2007**.
- [19] The court is therefore of the view that the statutory provisions of **Section 65** and the procedure outlined in **Rule 52.5** for committal of a judgment debtor operate jointly.

"Criminal offence"

- [20] Counsel for the claimant argues that the procedure under **Part 52** and the operation of **Section 65** of the **CPA** imply (i) a civil standard of proof in relation to the debtor's default since the date of judgment and on the question whether to imprison him as a consequence of such default, in what is in substance a criminal proceeding and also (ii) places the burden of proof on an individual debtor as to both his means and default so as to avoid incarceration by muddling a means inquiry with a committal proceeding, all in violation of the presumption of innocence in **Section 8(2)** of the **Grenada Constitution**. Counsel also argues that the provisions place the judgment debtor in jeopardy of incriminating himself in what is otherwise a criminal proceeding, contrary to the provisions of **Section 8(7)** of the **Grenada Constitution** which guarantees the right not to be compelled to give evidence in a criminal trial or proceeding.
- [21] The relevance of **Section 8(2)** and **(7)** of the **Grenada Constitution** to matters concerning judgment summons procedure was raised by counsel for the defendant.
- [22] Counsel for the defendant makes the point that judgment summons procedure employs **Section 65** of the **CPA** and **Part 52** of the **CPR**, while **Section 8** of the **Constitution**, as relied on by the claimant, is relative to a fair hearing and due protection of law to a person who is charged with a criminal offence. Counsel for the defendant states that the deduction which can be made about **Sections 8(2)** and **8(7) of the Constitution** is that these provisions are specific, only apply to a person who is clearly charged with a criminal offence and limited by the **Section 8(13)** definition of "criminal offence" as a criminal offence under the laws of Grenada.
- [23] Counsel for the defendant argues that a perusal of the criminal offences under the laws of Grenada reveal that the refusal to pay debt and the procedure to address the refusal have not been classified as criminal offences. Counsel therefore argues that judgment summons procedure cannot be equated to a criminal proceeding, thus **Section 8(2) and (7)** of the **Constitution** are inapplicable.

[24] In response, counsel for the claimant argues that constitutional rights are to be given a generous and purposive interpretation so as to afford the individual in question the fullest measure of the human rights protections assured under the constitution. Counsel makes reference to the case of **Reyes v R**² where Lord Bingham cautioned that:

“...As in the case of any other instrument, the court must begin its task of constitutional interpretation by carefully considering the language used in the Constitution. But it does not treat the language of the Constitution as if it were found in a will or a deed or a charterparty. A generous and purposive interpretation is to be given to constitutional provisions protecting human rights. The court has no licence to read its own predilections and moral values into the Constitution, but it is required to consider the substance of the fundamental right at issue and ensure contemporary protection of that right in the light of evolving standards of decency that mark the progress of a maturing society...”

[25] Counsel for the claimant further relies on **Commissioner of Prisons & Anor v Seepersad & Anr**³ where Sir Bernard McCloskey, who, after referring to the judgment of Lord Bingham in **Reyes**⁴ stated the following:

“[22] One of the main reasons for the generous and purposive approach advocated by Lord Bingham is readily ascertainable. The terms in which individual rights and guarantees are formulated in constitutional instruments are typically broad and open textured, unaccompanied by definition or particularity. Thus, while the exercise of construing a statute has certain similarities, a court engaged in the construction of constitutional provisions must adopt a somewhat broader perspective... Furthermore, the Board considers that the court engaged in the Interpretation exercise must be alert to the historical context of the constitutional instrument in question. It is trite to add that the constitutional provision under scrutiny must be construed by reference to the whole of the instrument in which it is contained.

...

[26] ...The Board considers that s4(a) and s4(b), in common with many constitutional provisions, are protean in nature. Constitutions are living instruments. They are to be construed by reference to the situation of and conditions prevailing in the society which they serve as these evolve from time to time. It is for this reason that the approach of the interpreting court should ordinarily be more liberal than it would be in construing, for example, a measure of legislation or legal instruments such as deeds and contracts. In short, the court is enjoined to adopt a broader perspective.”

² (2002) 60 WIR 42

³ (2021) 98 WIR 486

⁴ (2002) 60 WIR 42

[26] Counsel for the claimant submits that to construe the fundamental guarantees in **Section 8 of the Constitution** as only applying to persons who have been charged with a criminal offence and not to benefit the subject who is facing criminal sanction or committal is retrograde.

[27] The court takes judicial notice of the decision in **AG v Muhammed Ehsan**⁵ by our Court of Appeal. In examining the right to protection of the law, the Court stated thus:

“[56] As a starting point, it is indisputable that section 8(8) of the Constitution provides for the protection of the law or due process of law. The modern approach to the right to protection of the law and its expansive nature has received judicial recognition in a strong stream of jurisprudence both from the Judicial Committee of the Privy Council and the Caribbean Court of Justice. Indeed, in *Maya Leaders Alliance the Caribbean Court of Justice (CCJ)*, speaking through the learned Anderson JCCJ stated at paragraph 47:

“The law is evidently in a state of evolution but we make the following observations. The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However the concept goes beyond such questions of access and includes the right of the citizen to be afforded, ‘adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.’ The right to protection of the law may, in appropriate cases, require the relevant organs of the state to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the state may result in a breach of the right to protection of the law. Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen’s rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy.”

[57] In *Sam Maharaj v Prime Minister* the appellant appealed to the Privy Council against the decision of the Court of Appeal to award him

⁵ GDAHCVAP2019/0020

declaratory relief but not damages on his claim for judicial review of the failure of the government of Trinidad and Tobago to provide him with a response to his request for reappointment as a member of the Industrial Court. The appellant alleged that the failure of the government to verify certain allegations made against him, which were instrumental in preventing his reappointment, constituted a breach of his right to the protection of the law. Allowing the appeal and endorsing the expansive approach to the application of the right to protection of the law, the Board stated the following:

“... In a series of cases where the protection of the law provision in constitutions in various Caribbean countries was considered, an expansive approach to its potential application has been taken. In *Attorney General of Barbados v Joseph and Boyce* [2006] CCJ 3 (AJ) de la Bastide P and Saunders J said at para 60 of their joint judgment for the Caribbean Court of Justice: ‘... the right to the protection of the law is so broad and pervasive that it would be well nigh impossible to encapsulate in a section of a Constitution all the ways in which it may be invoked or can be infringed.’

[58] In *Jamaicans for Justice v Police Service Commission and Another*, the Board reinforced the approach of the CCJ in *Maya Leaders Alliance* thusly: “...The court went on to say, of the right to the protection of the law, that it “affords every person...adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power’ (para 45).”

[59] Cognisance must be paid to the fact that the Constitution clothes persons with fundamental rights. These rights are protected and cannot be abrogated except in very clear cases and, critically, this must be in accordance with the law in order for any encroachment on these fundamental rights to withstand scrutiny for unconstitutionality...”

[28] More recently, Pereira CJ, as she then was, in **AG v Anthony Henry et al**⁶ stated the following:

“[97] The right to protection of the law is embodied generally in section 1 of the Constitution which is quoted above. Section 8 of the Constitution, the material aspects of which are set out above, addresses the right to the protection of the law more substantively, and includes provisions which secure, among other rights, the right to a fair hearing within a reasonable time and the presumption of innocence. It was decided by the Caribbean Court of Justice in *Attorney General v Joseph and Boyce* that the right to protection of the law is in no way limited to or circumscribed by the matters outlined in section 8 of the Constitution. In a joint judgment, de la Bastide PCCJ and Saunders JCCJ in *Joseph and Boyce* observed as follows in

⁶ SLUHCVP2020/0004

relation to section 18 of the Barbados Constitution which is in pari materia to section 8 of the Constitution:

“... In the case of the right to the protection of the law...it is clear that section 18 does not provide, nor does it purport to provide, an exhaustive definition of what that right involves or what the limitations on it are. There is no mention in that section of the protection of the law, which is in itself an indication that section 18 is not intended to be an exhaustive exposition of that right... Section 18 deals only with the impact of the right on legal proceedings, both criminal and civil, and the provisions which it contains are geared exclusively to ensuring that both the process by which the guilt or innocence of a man charged with a criminal offence is determined as well as that by which the existence or extent of a civil right or obligation is established, are conducted fairly. But the right to the protection of the law is, as we shall seek to demonstrate, much wider in the scope of its application. The protection which this right was afforded by the Barbados Constitution, would be a very poor thing indeed if it were limited to cases in which there had been a contravention of the provisions of section 18.”

- [29] The court is of the view that although, generally, the Constitution is to be given a generous interpretation, the right to protection of the law is also multi-dimensional, and should, specifically, be given a broad and pervasive interpretation. This right has been found to be grounded in notions of justice and the rule of law, and protects individuals' basic constitutional right.
- [30] Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result, or after it is taken, with a view to procuring its modification, or both.
- [31] Consequently, though the provisions relied on by the claimant make reference to the existence of a “criminal offence”, given that the claimant's liberty is in jeopardy by the criminal sanction of imprisonment in judgment summons procedure, the court is in agreement with counsel for the claimant that the right to the protection of the law applies to the claimant. Moreover, **Section 8** of the **Constitution** guarantees fairness, requiring that a person who may be adversely affected by a decision will have an opportunity to make representations before the decision is taken, with a view to producing a favourable result.

Presumption of Constitutionality

- [32] Counsel for the defendant further argues that the basic rule in statutory interpretation is that legislation is presumed to be constitutional. Counsel relies on the case of **Chief of Police et al v Nias**⁷ where Sir Hugh Rawlins CJ stated in paragraph 10 that:

“In reviewing legislation for constitutionality, the Court always applies the presumption of constitutionality. This is the presumption that in making legislation, the legislature has not exceeded its constitutional powers to legislate. Legislation is presumed to be constitutional unless there is clear proof to the contrary. The burden is upon the Applicant to rebut this presumption.”

- [33] Counsel for the defendant further relies on the case of **Faultin v A.G of Trinidad & Tobago**⁸, where the Court of Appeal of Trinidad and Tobago stated that:

“... Nullification of enactments and confusion of public business are not lightly to be introduced. Unless, therefore, it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution, it must be allowed to stand as the true expression of the national will”.

- [34] Counsel for the defendant argues that the claimant in the extant case has not discharged this burden. In response, counsel for the claimant states that the presumption of constitutionality has little or no practical force when the court is tasked with interpreting a pre-independence law which is impugned. Counsel relies on pages 89 to 91 of the extra-regional decision of R.F Nariman of the Supreme Court of India in **Johar et al v Union of India Ministry of Law and Justice Secretary**⁹:

“...Parliament is aware of its limitations in enacting laws – it can only enact laws which do not fall within List II of Schedule VII of the Constitution of India, and cannot transgress the fundamental rights of the citizens and other constitutional provisions in doing so. Parliament is therefore deemed to be aware of the aforesaid constitutional limitations. Where, however, a pre-constitution law is made by either a foreign legislature or body, none of

⁷ (2008) 73 WIR 201

⁸ (1978) 30 WIR 351

⁹ WP (Crl) No. 76 of 2016 AIR 2018 SC 4321

these parameters obtain. It is therefore clear that no such presumption attaches to a pre-constitutional statute like the Indian Penal Code.”

- [35] Counsel further relies on the decision of Ventose J, as he then was, in **Ras Sankofa McCabbee v COP et al**¹⁰ where, after making reference to the decision of Sir Hugh Rawlins CJ in **Nias**¹¹ he stated at paragraph 86 that:

“I agree with Rampersad J. in *Jones v Attorney General of Trinidad and Tobago* (2018) 44 BHRC 566 that the so-called presumption of constitutionality, exemplified by the decision of the Privy Council in *Director of Public Prosecutions v Nasralla* [1967] 2 A.C. 238, has no place in constitutional and human rights adjudication in the Commonwealth Caribbean. It harks back to an earlier time in the immediate post-colonial period, the dark ages even, when British judges, unfamiliar as they then were with written constitutions, adopted interpretations that did not give our citizens the full benefit of the wide scope of the Chapter on the fundamental rights and freedoms found in our Constitutions...”

- [36] The court remains cognisant of the sentiments of Blenman JA, as she then was, in the above referred case of **AG v Muhammed Ehsan**¹² when she stated in paragraph 73:

“In all of this, to be clear, I give full weight to the presumption of constitutionality, but I think that this in no way releases the legislation from the scrutiny of the court in order to ascertain its constitutionality...”

- [37] This court is of similar view to that as expressed by Blenman JA. The judgment summons procedure cannot be released from the scrutiny of the court based on an immediately post-colonial principle, given the argument by counsel for the claimant of its likely effect on the fundamental human right of protection of the law.

- [38] The court is therefore tasked with scrutinising the provisions applicable to the judgment summons procedure and its effect on **Section 8 of the Constitution**.

The effect of the provisions of Section 65 of the CPA and Part 52 of the CPR on Section 8 of the Constitution.

¹⁰ SKBHCV2017/0234

¹¹ (2008) 73 WIR 201

¹² GDAHCVAP2019/0020

[39] Counsel for the claimant argues that the judgment summons process collides with the claimant's presumption of innocence, right not to self-incriminate and right not to be compelled to give evidence. Counsel also complains that there is an implication of a civil standard of proof in relation to the debtor's default.

[40] Counsel for the claimant refers to the St Lucia case of **Sexius v AG**¹³, case where the applicant was charged with attempted murder. At a case management hearing in preparation for trial, the trial judge ordered that the applicant file and serve a defence statement on the Office of the Director of Public Prosecutions. The applicant complained that the effect was to place a burden on him to show why he was not guilty, so easing the burden on the prosecution and infringing his rights to a fair hearing.

[41] Counsel for the claimant in the extant matter relies on the holding of the Privy Council that:

“a right to pre-trial silence and to the privilege against self-incrimination, which were not expressly conferred by the Constitution of Saint Lucia, might achieve constitutional protection where any impact on that right might properly to be addressed as an aspect of the rights to a fair hearing under Section 8(1) of the Constitution, to the presumption of innocence under Section 8(2), and not be compelled to give evidence under Section 8(7)”

[42] The decision of our Court of Appeal in **AG v Sexius**¹⁴ was ultimately affirmed in **Sexius**¹⁵ by the Privy Council where the Privy Council further held that:

“a defence statement did no more than require an accused to give advance notice of the case he intended to make at trial, and, **if he proposed not to offer a defence at trial but to require the prosecution to prove the case, the defence statement could so state, thereby allowing a defendant to maintain his right to silence at trial under section 8(7)**; that, before any adverse inferences could be drawn, the prosecutor first had to establish a prima facie case against the accused, thereby upholding the presumption of innocence under section 8(2); that, as to section 8(1), the constituent elements of a fair hearing, including a right to pre-trial silence, were not absolute but might be qualified, provided that the qualifications did not involve a limitation of the absolute right to a fair hearing, served a clear and

¹³ [2017] 1 WLR 3236

¹⁴ SLUHC VAP2012/0034

¹⁵ [2017] 1 WLR 3236

proper public objective, and were no more extensive than the situation required; that the impugned provisions did not involve a limitation of the right to pre-trial silence but in any event had a proper public objective allowing a qualification of the right; and that, accordingly, since the provisions did not involve a limitation on the applicant's section 8 rights, the challenge to the constitutionality of sections 909 and 912(1) of the Criminal Code and rule 11.1(3)(c) of the Criminal Procedure Rules failed" [Emphasis added]

[43] An examination of the language of the provisions of **Section 65** of the **CPA** and **CPR 52.5** reveals a similar tenor to that expressed in the above quotation.

[44] This court has had sight of the decision by Mitchell J. (Ag.) in **Ashandi Edwards v Rholda Bhola et al**¹⁶. In **Edwards**¹⁷, Mitchell J. (Ag.) examined the issue of whether a Master had the jurisdiction to hear an application for sale of land to satisfy a judgment debt. The following instructive statements are made by the learned judge with respect to judgment summons:

"[7] A judgment summons is a statutory creation of the Debtors Act which abolished imprisonment for judgment debtors as a means of enforcement of money judgments. Its procedure is generally governed by CPR Part 52. The Debtors Act is not found as such in the Windward Islands. Instead the judgment summons jurisdiction is now incorporated into the various Civil Procedure Codes. However, it is a clearly distinct procedure from other methods of enforcement of judgments. The judgment summons provides a procedure for a judgment creditor to establish that a judgment debtor has the means to meet a judgment debt but is refusing to pay the debt in contempt of court. That contempt of court is punishable with imprisonment, provided the strict provisions as to evidence are met by the judgment creditor, as an exception to the general prohibition against imprisonment of judgment debtors.

[8] ...Only a judge sitting in open court may proceed to enforce an order made under a judgment summons for committing the debtor to a term of imprisonment..."

[45] This court also takes judicial notice of the decision of Ellis J. (as she then was) in the case of **Liao Chen Toh v Liao Wen Toh**¹⁸, which was referred to by our Court of Appeal in **Jacqueline Charles v Emery Thorne**¹⁹. Ellis J in relation to contempt proceedings stated thus:

¹⁶ GDAHCVAP2013/0021

¹⁷ GDAHCVAP2013/0021

¹⁸ BVI Claim No. 2011/0222

¹⁹ GDAHCVAP2020/0014 consolidated with GDAHCVAP2021/0038

“The power to commit for contempt must be exercised only where the court is sure to the criminal standard of proof that the alleged contemnor is in breach of an unambiguous order. The burden of proof being upon the applicant, the relevant application must therefore make it clear with sufficient particularity what is being alleged and provide sufficient cogent proof which will satisfy a court beyond a reasonable doubt that the relevant breach has been committed.”

[46] **Section 65** is explicit that a judgment debtor is *at liberty* to attend and to be heard on an application for committal, thereby preserving the debtor’s right not to self-incriminate and not to be compelled to give evidence. Moreover, in **CPR 52.5** the court is given discretionary power to receive evidence as to the means of the debtor in any manner that it thinks fit. This is not a compulsory provision as advanced by counsel for the claimant, and any rights not to self-incriminate and not to be compelled to give evidence are preserved by the language of the CPR. The court is of the view that both **the CPA** and the judgment summons procedure under **Part 52** afford the judgment debtor an opportunity to be heard and are in conformity with fair hearing guaranteed by the constitution.

[47] The burden of proof in judgment summons proceedings, a form of contempt proceedings, lies on the judgment creditor to prove the contempt. It is for the judgment creditor to establish that a judgment debtor has the means to meet a judgment debt but is refusing to pay the debt in contempt of court. That burden being placed on the judgment creditor, any presumption of innocence that may come into play in contempt proceedings is safeguarded.

[48] The court is further of the view that the creditor has to provide strong convincing evidence that the judgment debtor has the means and is deliberately refusing to pay the judgment debt. The standard of proof required is of the criminal standard of proof beyond a reasonable doubt. The applicability of the civil standard of proof, as argued by counsel for the claimant, is unsupported in light of the existence of authority by our Courts against the point, and in support of a criminal standard of proof as the applicable standard²⁰. Counsel for the claimant has failed to provide

²⁰ Liao Chen Toh v Liao Wen Toh BVI Claim No. 2011/0222

authority to the contrary. There is a non-requirement of a judgment debtor to give evidence in judgment summons proceedings. The debtor is open to not offer a defence, to maintain his right to silence, and to require the creditor to prove its case.

- [49] Nevertheless, the court has had sight of the judgment summons issued to the claimant, and is of the view that the thrust of the claimant's case is, instead, based on the language contained in Form 21 of the CPR 2000. The judgment summons issued to the claimant in the proceedings in Claim No. GDAHCV2023/0485, and exhibited to the claimant's affidavit sworn on 6th September 2024, is in the form of Form 21 of the CPR 2000, and states that:

“...You are therefore summoned to appear personally in this court No. 3 on the 25th day of September 2023 at 9:00am to be examined on oath as to the means you have had since the date of the judgment or order to comply with the terms of the judgment or order, and also to give good reasons why you should not be committed to prison for failing to comply.”

- [50] This form of judgment summons is similar to that examined by the Court of Appeal in the decision of **Mubarak v Mubarak**²¹ which is heavily relied on by counsel for the claimant. Counsel for the defence submits in response that **Mubarak**²² specifically deals with judgment summons procedure not in compliance with the Human Rights Act of 1998, and, for this reason, is not fully comparable to and is distinguishable from the extant case.

- [51] In **Mubarak**²³, the judgment summons in question stated the following:

“You are hereby summoned to appear personally before [blank] on the 4 day of July 2000 at or after 10.30 o'clock, to be examined on oath touching the means you have or have had since the date of the said Order to pay the said sum in payment of which you have made default and also to show cause why you should not be committed to prison for such default.”

²¹ [2001] 1 FLR 698

²² [2001] 1 FLR 698

²³ [2001] 1 FLR 698

[52] The court agrees with counsel for the claimant that the language of Form 21 of **CPR 2000** is similar to the language of the judgment summons in question in **Mubarak**²⁴ where Thorpe LJ in the Court of appeal described it as:

“(29) ...the old Court 51 procedure is manifestly not Human Rights Act 1998 compliant... the judge did not sufficiently appreciate that in terms of Convention law, an application under the Debtors Act 1869 constituted a criminal proceeding. The judge went no further than to label it as a 'hybrid' proceeding.”

That:

“(30) ...any respondent to a Debtors Act 1869 summons has, as his minimum rights, first the right to a presumption of innocence throughout; secondly, the right to precise articulation of the charge that he meets; thirdly, adequate time to prepare this defence; and, fourthly, a right to examine any evidence adduced in support of the summons...”

And further that:

“(33) All in all, says Mr Howard, the judge failed to recognise that, upon the hearing of a judgment summons, it was his obligation to apply a different test from that which he had applied at the principal hearing, and he had to apply that different test to a different time, namely the time intervening between the two hearings, and particularly to the facts and circumstances as they were at the hearing in October 2000. Above all, he says that, the burdens and presumptions were simply reversed. There was nowhere any recognition of the presumption of innocence, and there was nowhere a recognition of the fact that the burden was upon the wife to prove his default, and not upon the husband to prove that he had not had the ability to comply.”

[53] The court ultimately found that a Practice Direction, headed “Practice Direction: Committal Proceedings (28 May 1999)”, which was not recognised by the court nor drawn to the court’s attention, was to be followed. Brooke LJ stated that:

“The new Practice Direction simply describes, in clear terms, what is required on the making of an application for an order for committal of a person to prison for contempt of court. Paragraph 1.4 of the Practice Direction reads:

‘In all cases the Convention rights of those involved should particularly be borne in mind. It should be noted that the burden of proof, having regard to the possibility that a person may be sent to prison, is that the allegation be proved beyond reasonable doubt.’”

²⁴ [2001] 1 FLR 698

- [54] Counsel for the claimant states that the requirement to show cause why the judgment debtor ought not to be jailed for default in payment compels the debtor to break his silence or to disclose information that would be invasive of his right to silence and presumption of innocence.
- [55] In response, counsel for the defendant argues that there is no contravention of **Section 8(7) of the Constitution** since the judgment debtor is being examined concerning his means to pay a debt he was found to be owed by a competent court of law, and that such an enquiry into his means is legal and within the constitutional framework of what is permissible. Counsel further contends that the claimant is never stripped of his presumption of innocence, and that the provisions of **the CPA** are properly enacted and pursue a legitimate aim that is required in every democratic society. Counsel states that to state otherwise would be tantamount to promoting anarchy and directly flaunting the Rule of Law which also enjoys constitutional protection. Counsel avers that the claimant is seeking to make it difficult or impossible for the judgment creditor to prove the default of the judgment debtor and thereby render injustice to the judgment creditor.
- [56] The court agrees with counsel for the claimant that the language of Form 21 of the **CPR 2000** mandates that the judgment debtor give evidence of their means, which may be self-incriminating, depriving them of the right to silence, and, in effect, may reverse the burden properly safeguarded by **Section 65** of the **CPA** and **CPR 52.5** to be on the debtor and not on the creditor. This is in contravention of **Section 8(7) of the Constitution**.
- [57] The court observes that Form 21 as was under the **CPR 2000** has been altered in the **CPR (Revised Edition) 2023**. There is a crucial difference between the forms. Form 21 of the **CPR 2023** states:
- “To the Defendant(s)/Judgment Debtor(s):
You are summoned to attend personally and to give good reason why you should not be committed to prison for failing to comply. **The judge will consider the evidence given by the judgment creditor and any evidence you may wish to give on [date] at [time] at the High Court office [address]**” [Emphasis added]

[58] The court is of the view that Form 21 of the **CPR Revised Edition 2023** offers sufficient credence to **Section 8 of the Constitution**, safeguarding the presumption of innocence. The Form specifically gives the judgment debtor the option to give any evidence they may wish to, which is in keeping with **Section 65** of the **CPA**. The court is therefore of the view that if Form 21 of **CPR 2023** is strictly adhered to under the judgment summons procedure, this negates applications such as the extant motion and makes the issue academic.

[59] The court is further of the view that the language of Form 21 of the **CPR (Revised Edition) 2023** does not reverse the burden of proof in judgment summons proceedings to being on the judgment debtor, and that it remains the judgment creditor's burden to prove its right beyond a reasonable doubt as the required standard of proof, in contempt cases.

Conclusion

[60] For all the forgoing reasons the court is of the view that the claimant's claims fail to establish that **Section 65 of the Civil Procedure Act** and **Part 52.5** judgment summons procedure do not conform with the **Section 8 of the Constitution**.

[61] The court finds that Form 21 of the **CPR 2000**, through which the judgment creditor filed in support of the judgment summons proceedings, was not in conformity with **Section 8 (7)** of the **Constitution**. However, the revised Form 21 of the **CPR (Revised Edition) 2023** has cured the defect.

[62] The claimant in his amended claim asks for relief as to the court shall appear just and appropriate in the circumstances. It is therefore ordered and directed as follows, that:

- (i) The Judgment Creditor shall file the Amended Form 21 in support of the judgment summons presently before the court within seven (7) days of today's date and a copy of the order shall be served on the judgment creditor.

(ii) The parties each having some measure of success shall bear their own costs.

Agnes Actie
High Court Judge

By the Court

Registrar