

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT LUCIA
CLAIM NO. SLUHCV2021/0347



BETWEEN:

AL BEAUSOLIEL

Claimant

And

THE ATTORNEY GENERAL

Defendant

Appearances:

Mr. Leslie Prospere of Counsel for the Claimant
Ms. Kozel Creese Crown Counsel with Mr. George K. Charlemagne, Crown
Counsel, Attorney General's Chambers for the Defendant

2023: October 16;
2024: April 04

JUDGMENT

- [1] **INNOCENT, J.:** The following facts are not in dispute. On 31st January 2020, the claimant attended at the Gros Islet Police Station. He was subsequently detained by WPC Fevrier. The claimant's rights as a prisoner in custody were explained to him and he was subsequently interviewed by WPC Fevrier. The claimant was kept in police custody at the Gros Islet Police Station.
- [2] On 2nd February 2020, the claimant was charged with the offences of threatening words and assault with a dangerous weapon, and kept in police custody until 3rd February 2020.
- [3] On 3rd February 2020, the claimant was taken before the magistrates' court. It appeared that due to the unavailability of a magistrate the claimant was detained in police custody until 4th February 2020.

- [4] On 4th February 2020, the claimant was again taken before the magistrates' court where he was granted bail. The claimant was not immediately released from police custody. Instead, he was taken to the Police Custody Suites and subsequently conveyed to the Micoud Police Station where he remained until his release without charge on 7th February 2020.
- [5] The claimant subsequently brought this claim for false imprisonment. The claimant's complaint is that he was wrongfully and unlawfully deprived of his liberty from approximately 1:30 pm on 2nd February 2020 and 3:50 pm on 7th February 2020.
- [6] The claimant's pleaded case was that following the bail hearing on 4th February 2020, he did not enter into the recognizances relative to the charges preferred against him by WPC Fevrier because he was prevented due to the conduct of the police from attending at the District Court Office for the purpose of entering into and signing the recognizances on the grant of bail to him.
- [7] This assertion made by the claimant gave rise to serious dispute between the parties. There appeared to be a serious dispute regarding the date on which the claimant entered into the recognizance on the charges. Although a resolution of this issue is not exactly relevant to the decisive issues in the case, the court will deal with it in passing for the sake of completeness.
- [8] The confusion regarding the above was in large measure clarified by the testimony of Ms. Agdoma who testified at the trial. Therefore, there is no need to deal with this issue at length. The court has concluded from the evidence that the claimant has failed to establish the allegation that the police had prevented him from signing his recognizance on bail. The recognizances entered into had in fact been signed on 4th February 2020.
- [9] In support of his case that the police had acted in bad faith, the claimant gave evidence that he was not taken to sign the recognizance on the grant of bail but was instead informed by the police that he would not be taken to sign the recognizance

and would not be released since there was another related incident relative to which the Micoud Police were desirous of interviewing him.

[10] The pith and substance of the claimant's case was that the police authorities acted in bad faith. The allegation of bad faith is premised on the following broad assertions as contained in his pleadings:

- (1) the Gros Islet Police failed to grant him police bail for his summary criminal charges despite being specifically empowered to do so under section 594 of the Criminal Code;
- (2) he was arbitrarily, deliberately and continuously detained in police custody for a further duration of 72 hours, contrary to section 584 of the Criminal Code, and despite having been granted bail by the magistrates' court on summary criminal charges;
- (3) the Gros Islet Police, during his bail hearing, where he was represented by Counsel, failed to oppose his application for the grant of bail or apply to the Magistrate for an extension of his detention despite previously having information in their possession that he was wanted for questioning by the Micoud Police;
- (4) the Gros Islet Police deliberately and wilfully disregarded and/or ignored their colleagues at Custody Suites who strongly urged them to carry him to the District Court Office to sign his bail recognizance;
- (5) the Gros Islet Police deliberately and wilfully refused to carry him to sign his bail recognizance despite being urged to do so by their colleagues at Custody Suites;
- (6) the Micoud Police threatened to shoot him on the way to the Micoud Police Station;
- (7) he was kept in unsanitary conditions throughout most of his detention in police custody;
- (8) he was released by the Micoud Police only after he protested against his continued detention in police custody; and

- (9) the Micoud Police failed to prosecute him for any criminal charges whatsoever arising from an alleged related incident for which they wished to interview him.
- [11] The Attorney General's case was simply that in all the circumstances of the case, the police authorities had acted properly and in good faith, and in accordance with their duty as police officers and in keeping with what they described as "responsible and practical policing".
- [12] The Attorney General took the position that there were reasonable grounds for suspecting that the claimant had committed the offence of arson and therefore, the police authorities had acted reasonably and lawfully in arresting the claimant a second time, notwithstanding that he had been granted bail in relation to the first two charges.
- [13] Therefore, according to the Attorney General, the claimant's re-arrest by the police authorities was lawful and justifiable in circumstances where an investigation was being conducted in respect of a report of arson made by the same complainant in the other matters giving rise to the previous charges; and there were reasonable grounds to suspect that the claimant had committed this offence.
- [14] In a nutshell, the underlying basis of the case for the Attorney General is that the facts relied on by the claimant in support of his case cannot raise the spectre of bad faith in these proceedings and that the actions of the police authorities did not amount to bad faith. Therefore, on that premise, the claimant cannot succeed on the present claim, having failed to establish liability on the part of the Crown as a matter of law, since the claim was brought outside of the period prescribed by Article 2124 of the Civil Code. In the circumstances, it appears that the Attorney General has relied almost substantially on the principle of prescription to defeat the present claim.
- [15] The preceding issues raised by the Attorney General go entirely to the question of liability of the Crown and not necessarily whether the claimant has a viable cause

of action. The court appreciates the viability of the points raised by the Attorney General. However, in the court's view, the question of whether the claimant has a viable and sustainable cause of action is not entirely dispositive of the present case. Therefore, the salient and discrete question in these proceedings, in the court's respectful view, is whether the police authorities had acted in bad faith or had acted unlawfully. In the court's view, these two questions are entirely dispositive of the present claim in respect of both liability of the Crown and the sustainability of the claimant's cause of action.

- [16] In the premises, the court will first consider the issues relative to the conduct of the police authorities. Should these issues be decided in favour of the Attorney General, then there will be no need for the court to go on to consider the technical points raised relative to the question of the Crown's liability.
- [17] The present proceedings seem to interrogate the conduct of the police in relation to two periods of the claimant's arrest and detention. For all intents and purposes, it appears from the pleadings that the claimant has treated these two periods of detention as one broad continuum and therefore, as the relevant period within which the court must assess the conduct of the police authorities sought to be impugned in the present proceedings. For the sake of exposition the court thinks that it is appropriate to bifurcate the two periods of the claimant's arrest and detention. In the court's view, the purpose for so doing will become self-evident in the course of this judgment.
- [18] The claimant's main contentions on the present claim can be articulated in the following propositions which can be distilled from his pleaded case and the evidence presented at the trial, namely: (1) that the failure of the police to offer him station bail and his continued detention at the Gros Islet Police Station after it had become impracticable to bring him before a magistrate for the purposes of bail after he was charged with the subject offences amounted to an unlawful imprisonment; (2) that his re-arrest by the police and his subsequent detention at the Micoud Police Station and his subsequent release without charge after he had been admitted to bail by

the magistrates' court amounted to unlawful imprisonment; and (3) that the actions of the police were actuated by or carried out in bad faith.

- [19] In relation to his initial arrest and detention, the claimant relied on the following assertions: (1) that the police had acted in bad faith by failing to grant him station bail despite being empowered to do so by virtue of the provisions of section 594 of the Criminal Code; (2) that the police failed to oppose the grant of bail to him or to apply to the presiding magistrate for an extension of his period of detention despite being aware of the fact that he was suspected of having committed a separate and presumably related offence for which the Micoud Police was seeking his arrest; (3) the Gros Islet police deliberately and wilfully refused to bring him from Custody Suites to the District Court Office for the purpose of signing his recognizance on bail despite the protestations of the police officers at Custody Suites who implored them to do so; and (4) as a result of all of the above, he was arbitrarily, deliberately and continuously detained in police custody for a further period of 72 hours, contrary to section 584 of the Criminal Code despite having been granted bail by the magistrates' court.
- [20] The court is asked to answer the following questions, namely: (1) whether the Gros Islet police acted otherwise than in accordance with the provisions of section 594 of the Criminal Code, and therefore unlawfully, having failed to grant the claimant station bail prior to the period of 72 hours' detention expiring; (2) whether the Gros Islet police had acted otherwise than in accordance with the provisions of section 595 of the Criminal Code, and thereby unlawfully, by not seeking an order for the claimant's further detention relative to the suspected offence of arson being investigated by the Micoud police; (3) whether the police authorities conducted themselves in such a way which prevented the claimant from entering into his recognizance on the grant of bail to him for the purpose of securing his continued detention in police custody despite having been granted bail by the magistrates' court; (4) whether, assuming that the conduct of the police authorities described at (1), (2) and (3) was unlawful, whether the claimant's continued detention in police custody for the duration of a period in excess of 72 hours amounted to false

imprisonment; (5) whether the claimant's continued detention by the police authorities was justifiable; and (6) ultimately, whether if the conduct alleged on the part of the police authorities is proven whether it amounted to bad faith.

Initial arrest and detention

- [21] There appeared to be no factual dispute between the parties relative to the claimant's initial arrest and detention. However, the court will now examine the claimant's allegation that the police had acted unlawfully having failed to grant him station bail; and having failed to release him upon the grant of bail by the magistrates' court despite not having obtained an extension of time for him to be held in custody.
- [22] The claimant's contention in the present claim was that after being charged on 2nd February 2022 with suspicion of having committed the subject offences, the period of 72 hours having not expired when the police attempted to bring him before the magistrates' court, and having regard to the fact that it was impracticable to have brought him before the magistrate, the police ought to have released him on the grant of station bail pursuant to section 594 of the Criminal Code or ought to have sought an extension of time to keep him in custody pursuant to section 595 of the Criminal Code. Therefore, the police having failed to release him on the grant of station bail or having failed to obtain an extension of time as aforesaid resulted in his continued detention amounting to unlawful detention.
- [23] The first limb of the claimant's second contention which can be distilled from the claimant's pleaded case is that having been granted bail by the magistrates' court, his re-arrest and detention by the Micoud police was unlawful because the police had failed to obtain an extension of time for his continued detention.
- [24] The second limb appears to be that since the initial period of detention was unlawful, it followed that the period of his subsequent detention was also unlawful as it resulted in his continued detention beyond the prescribed 72 hour period. This second limb of the claimant's argument appears to be premised on the fact that the

police had no reasonable grounds for suspecting that he had committed the second offence, namely arson. Therefore, his continued detention at the Micoud Police Station was unjustifiable and amounted to unlawful imprisonment.

- [25] The claimant's case also appeared to be premised on the proposition that if his subsequent arrest was unlawful then the subsequent period of detention at the Micoud Police Station was also unlawful. According to the claimant's argument it is axiomatic that the second period of detention was also unlawful with the result that the conduct of the police amounted to bad faith.

The statutory provisions

- [26] Section 584(1) of the Criminal Code provides that a person arrested for any cause, whether with or without warrant, shall be brought before the Court or the judge, or a magistrate, as the case may be, as soon as is practicable but not later than 72 hours of his or her arrest. The use of the words "as soon as is practicable but not later than 72 hours" appear to be quite instructive.
- [27] It is beyond peradventure that the claimant was kept in police custody relative to his initial arrest within the prescribed period of 72 hours. It seems to the court, having regard to the evidence at the trial, that the police authorities relied on the expression "but not later than 72 hours of his or her arrest" contained in section 584(1) of the Criminal Code while ignoring the fact that these words are qualified by the expression "as soon as practicable". It is clear that the object of section 584(1) of the Criminal Code is to prevent the mischief of unnecessary and prolonged incarceration between the period of arrest and disposition whether by way of charge or release; and more importantly to protect the rights of arrested citizens guaranteed to them by the relevant provisions of the Constitution.
- [28] Therefore, on the foregoing basis, it appears that the claimant's argument when taken to its logical conclusion is that the failure of the police authorities to comply with the provisions of section 584(1) of the Criminal Code resulted ipso facto in the claimant's continued detention even within the 72 hour period unlawful and contrary

to his rights guaranteed under the Constitution and was contrary to the provisions of section 584(1) itself.

[29] This proposition begs the question of what alternatives were available to the police authorities barring the claimant's release without charge. The answer lies within the provisions of sections 594 and 595 of the Criminal Code. However, the court was initially of the view that the police authorities could not, given the nature of the charges laid against the claimant, have availed themselves of the provisions of section 595 of the Criminal Code because the charge of assault with a dangerous weapon carried a term of imprisonment on conviction.

[30] Section 594 of the Criminal Code provides:

"Where a person is taken into custody for an offence without a warrant, if it is not practicable to bring him or her before a magistrate without undue delay but in any event not later than 72 hours after he or she has been taken into custody, a police officer not below the rank of inspector or a police officer in charge of the police station to which the person is brought, shall inquire into the case, and—

(a) if the offence is not one punishable with imprisonment, shall grant the person bail;

(b) if the offence is one punishable with imprisonment, may, unless the offence appears to be a serious one, grant the person bail,

with or without sureties on the condition that he or she shall appear before a magistrate at such time and place as the police officer appoints."

[31] The other relevant provision of the Criminal Code is section 595 which provides that:

"(1) Despite any provisions of this Part, a police officer not below the rank of inspector may make or cause to be made an ex parte application to a magistrate to have the person arrested for any offence specified in subsection (2), detained in police custody for a further period not exceeding 72 hours where the investigation of the offence is incomplete and where the police officer—

(a) has to secure or preserve evidence relating to the offence; has reasonable grounds to believe that the person arrested will interfere with or tamper with the evidence in respect of the

offence or interfere with or cause physical injury to other persons;

- (b) has reasonable grounds to believe that the person arrested will alert other persons suspected of having committed or being involved in the commission of the offence who are yet to be arrested;
- (c) has reasonable grounds to believe that the person arrested will hinder the recovery of any property obtained as a result of the
- (d) offence.

(2) The offences to which subsection (1) relates include—

- (a) murder, rape, robbery, arson, and any drug-trafficking offence under the Drugs (Prevention of Misuse) Act punishable on indictment by imprisonment of not less than 5 years, any offence under the Firearms Act;
- (b) any other indictable offence which the Attorney General may from time to time by notice in the Gazette specify."

In the court's considered view, the provisions of section 595 of the Criminal Code have no relevance to the present discussion. The factual matrix of the present case is not captured by the provisions of section 595.

[32] The provisions of the Criminal Code highlighted above conform with the rights guaranteed to an arrested person by virtue of section 3 of the Constitution and must be interpreted in accordance with the provisions of the Constitution. Section 3(1) (e) of the Constitution provides that:

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

Section 570(3) of the Criminal Code provides that:

"Where a police officer with reasonable cause, suspects that an offence has been committed, he or she may arrest without warrant anyone whom he or she, with reasonable cause, suspects committed the offence."

In addition, section 3(3) of the Constitution provides:

"(3) Any person who is arrested or detained—

- (a) for the purpose of bringing him or her before a court in execution of the order of a court; or
- (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 72 hours after such arrest or detention."

[33] The provisions of section 3(4) of the Constitution are also instructive, and provides that:

"(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his or her having committed or being about to commit an offence, he or she shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court."

The provisions of section 595 of the Criminal Code protects a suspect's rights guaranteed under section 3(4) of the Constitution and therefore must be read in conjunction with that provision of the Constitution.

[34] The claimant was charged with the summary offences. Both of the offences with which the claimant was charged are provided for under Part 5 of the Criminal Code which relates specifically to summary offences.

[35] The claimant was charged with the offence of assault with a dangerous weapon contrary to section 426 of the Criminal Code which provides that a person who unlawfully assaults any other person is liable on summary conviction to a fine of \$1,000, or to imprisonment for one year.

[36] The claimant was also charged with the offence of threatening words contrary to section 543(a) of the Criminal Code which provides that a person who utters to or at any other person any threatening words or gestures or behaviour is liable on summary conviction to a fine of \$1,000.

- [37] In the circumstances, it becomes necessary to examine the options that were available to the police authorities having become aware that it was impracticable to bring the claimant before a magistrate prior to the expiry of the 72 hour period of detention in the context of the nature of the offences with which the claimant was charged.
- [38] The offence of assault is punishable with imprisonment whereas the offence of threatening language is punishable with a fine. At first glance, it is arguable that given the fact that the former offence is punishable with imprisonment, the police authorities were not empowered to grant the claimant station bail. In respect of the latter offence which is punishable by a fine it is clear that the police authorities were so empowered.
- [39] However, on the subject of the offence of assault, it is the court's view that the provisions of section 594(b) gives the police authority a discretion whether or not to grant bail notwithstanding that the offence is one that is punishable with imprisonment. The conferment of this discretion is clearly expressed in the wording of section 594(b) where it specifically states: "if the offence is one punishable with imprisonment, may, unless the offence appears to be a serious one, grant the person bail" (court's emphasis). The only proviso to section 594(b) is where the offence appears to be a serious one; and in any case, this also calls for the exercise of discretion by the police authority in making a determination relative to the seriousness of the offence.
- [40] It did not appear from the evidence that any or serious consideration was given by the police authority with respect to the seriousness of the offence of assault with which the claimant was charged. Additionally, it does not appear from the pleadings or the evidence presented at the trial that the police authority provided any or any reasonable explanation or justification for departing from the provisions of section 594 of the Criminal Code or why the discretion conferred by the statutory provision was not exercised save and except that the offence was serious because the assault was occasioned with a firearm.

- [41] WPC Fevrier's evidence was that when the claimant was taken to the magistrates' court on 3rd February 2020, the presiding magistrate was unable to deal with the bail application that day and remanded the claimant to custody. Interestingly enough, no remand warrant was produced or tendered in evidence to support the fact that the defendant had been remanded by the magistrate.
- [42] Even more interesting is the fact that in the court's view, it was highly unlikely that a magistrate would have remanded the claimant into custody on a summary offences as the ones with which the claimant was charged where a period of 72 hours detention was close to expiry. This is clearly unfathomable. WPC Fevrier's evidence on this point also conflicts with the evidence given by the claimant and the claimant's attorney. Additionally, it conflicts with the Attorney General's pleaded case.
- [43] WPC Fevrier also stated in her evidence that the claimant was taken to the Gros Islet Police Station and not remanded at the Police Custody Suites as the claimant alleged.¹
- [44] According to WPC Fevrier she had complied with the provisions of section 594 of the Criminal Code by not having detained the claimant beyond the period of 72 hours. In addition, she stated that given the nature of the offences with which the claimant was charged, she was unaware that the police was empowered to grant the claimant station bail as the offences were punishable with imprisonment and were "sufficiently serious" given the allegation of the use of a firearm to commit the offence.
- [45] The court makes two observations with respect to the foregoing evidence. In the first instance, no firearm was ever recovered and it was uncertain what facts the witness relied on to ground the suspicion that the claimant had committed the offence with a firearm.

¹ Exhibit SF5

- [46] Additionally, it appears that given the discretion conferred on the police pursuant to the provisions of section 594(b) of the Criminal Code, WPC Fevrier either misinterpreted that provision or did not appreciate that the provision granted the police the discretion to grant bail even where the offence charged is punishable with imprisonment.
- [47] Furthermore, the court disagrees with WPC Fevrier's assessment of the seriousness of the offences charged. In any event, it did not appear from the evidence that WPC Fevrier gave any serious consideration to the provisions of section 594(b) of the Criminal Code.
- [48] It also did not appear from the evidence at the trial that the circumstances surrounding the commission of the offence of assault were so serious or egregious that the discretion conferred by section 594(b) could not have permitted the exercise of the discretion conferred by that section.
- [49] The allegation was that the claimant had assaulted his former girlfriend with a firearm. A search was conducted at the claimant's premises on two occasions and no firearm was recovered. On the second search, a cutlass was recovered. It is inconceivable that these circumstances could have given rise to reasonable grounds for suspecting that the claimant had committed an assault with a firearm. This was just one of the matters which the police authority ought to have considered when exercising a discretion which they possessed. In any event, the court has formed the opinion that the police authorities failed to exercise the discretion which they had or that WPC Fevrier did not know that such a discretion existed.
- [50] In the court's view, the provisions of section 594 were designed to alleviate the likelihood of situations of potential unlawful detention occurring and in large measure not only provides a safeguard against potential infringement of the constitutional guarantees afforded to persons detained in police custody but also to provide a measure of protection to the police as well. The court is reminded of the provisions of section 3(3) (b) of the Constitution where the words "without undue delay" appear.

- [51] It has been the experience of the courts that often time's police officers take comfort in the fact that the 72-hour custody period stipulated in the provisions of the Constitution and the Criminal Code provides them with ample leg room that obviates the need to act diligently in the investigation of matters and the charging of suspected persons. The purpose and intent of the statutory provisions was to alleviate the impact of the curtailment of a citizen's right to liberty.
- [52] Therefore, it is incumbent on police officers to take the rights of persons suspected of criminal offences seriously and proceed with their duties with all due dispatch. In the court's view, unnecessary periods of detention due to ineptitude, inertia, torpidity, systemic and administrative failures should be avoided; and a person's detention in custody should be for no longer than is necessary in the given circumstances. So extensive is this constitutional right that where a period of detention will exceed the 72 hour period due to the exigencies of the case, provision is made to apply to the court to have that period extended in certain instances.
- [53] To highlight the point which the court wishes to make, and for the sake of exposition, the court has examined the provisions of the Anguilla Bail Act, 2021. Section 1 of the Anguilla Bail Act makes provision for the grant of bail in two distinct set of circumstances; namely, in criminal proceedings, in or in connection with proceedings for an offence to a person charged with or convicted of the offence;² and bail which is granted in connection with an offence to a person who is under arrest for the offence by warrant or who is otherwise lawfully detained.³
- [54] The provisions of section 1(b) of the Anguilla Bail Act are more germane to the present discussion. This provision by its interplay with sections 2, 11 and 20 of the Anguilla Bail Act provides a suitable safeguard against potential breaches of the constitutional rights of persons detained in police custody. Section 2(1) of the Act reads:

² Section 1(a)

³ Section 1(b)

"Subject to the provisions of this Act, every person who is charged with an offence shall be entitled to be granted bail by a Court, or a police officer, as the case may require."

Section 2 (2) provides:

"A person who is charged with an offence shall not be held in custody for longer than seventy-two hours without the question of bail being considered."

Section 2(7) reads:

"A police officer above the rank of sergeant may grant station bail in the case of any summary offence."

Section 11 (1) of the Act makes provision for the review of custody cases; and provides that where an application for bail has been refused by a police officer, such refusal shall be reviewed by the Magistrate on the defendant's first appearance in Court in relation to the relevant offence.

- [55] Section 20 of the Anguilla Bail Act makes provision for the procedure on arrest or detention. In the court's considered view, this provision provides an additional layer of protection to persons detained in police custody and places the mandate on the police to act with alacrity and due dispatch in dealing with persons detained in their custody. Section 20 provides that:

"Where a person who is arrested or detained is not charged within twenty-four hours after such arrest or detention, he shall be brought forthwith before a Magistrate who shall order that the person be released or make such other order as the Magistrate or the thinks fit, having regard to the circumstances: Provided that where an identification parade is required in relation to that person, the person shall not be brought before a Magistrate but the matter shall be referred to a Magistrate who shall make any such order in the absence of that person."

- [56] To further amplify the point that the constitutional guarantees referred to herein have become enshrined in various statutory provisions and rules regarding bail, the court has adverted its attention to the provisions of the Bail Rules. Although these Rules were not in force at the material time relevant to this case, the underlying principles enshrined therein now formalised, were always part of the existing law. In any event, the simple truth is that police authorities are mandated to carry out their duties in a

manner that is in keeping with the constitutional rights of detained persons and not otherwise. It is important for police officers exercising their powers of arrest to have a deep appreciation for the presumption of innocence which requires them to take the rights of persons seriously, particularly where their liberty is at stake.

[57] Section 3 of the Bail Rules sets out certain overarching principles which must be followed in relation to the grant of bail. Although the Bail Rules refer specifically to the powers exercised by the court, the same principles ought to apply in relation to the police. The section provides that in considering bail, the court shall have regard to following overarching principles; (a) that a person accused of committing an offence is presumed innocent until proven guilty; (b) the right to liberty enjoyed by every person under the Constitution in each Member State and Territory; (c) that bail must not be unreasonably withheld and cogent reasons must be shown for keeping a person accused of committing an offence in custody among other things.

[58] It must be understood that an accused person's right to bail is enshrined in the Constitution itself and does not derive purely from statute. The right to bail must be seen as a concomitant to the presumption of innocence. Therefore, in exercising their powers of arrest and detention it cannot be overemphasised that the police authorities must adhere to these principles in the discharge of their duties.

Subsequent arrest and detention

[59] Before embarking on an excursion relative to the lawfulness of the claimant's subsequent detention, it is necessary to place the entire matter within its relevant context by first considering the nature of the allegations against the claimant. This contextual analysis is a necessary imperative to determining the offence in relation to which the police authorities had reasonable suspicion that the claimant had committed.

[60] The first observation that the court makes is that the offences of threatening words, assault with a dangerous weapon and arson all concerned the same complainant, the claimant's girlfriend. In the court's view, notwithstanding that the several

offences may have occurred on separate occasions and at different locations, it is quite conceivable that they may all properly be regarded as a single transaction. The other observation which the court makes is simply that for the sake of argument, the alleged offences occurred in different magisterial districts.

- [61] However, what is striking is the fact that WPC Fevrier was aware of the report of arson subsisting against the claimant while he was in custody at the Gros Islet Police Station. Nevertheless, she took no immediate steps to inform the police investigator having conduct of the matter on behalf of the Micoud Police Station so that he may have intervened and dealt with the claimant in relation to that report while he was already in police custody. In the court's view, this would have been a more efficacious method of dealing with the claimant in relation to any other suspected offence he may have committed.
- [62] The court is fortified in this view based on the evidence given by WPC Fevrier and PC Biscette. WPC Fevrier's evidence was that during the claimant's detention at the Gros Islet Police Station she had cause to contact the Micoud Police Station to inquire whether the claimant was concerned with any criminal reports at that station. She claimed to have become aware of another report made by the claimant's former girlfriend for which his presence was required by the Micoud Police.
- [63] According to WPC Fevrier, it was confirmed that the claimant's former girlfriend had made a report of arson against the claimant which was being investigated by PC Biscette. She testified that on 3rd February 2020, she informed the Micoud Police that she would be conveying the claimant to the magistrates' court for bail on 4th February 2020. It must be noted that the claimant was in police custody as of 31st January 2020.
- [64] PC Biscette testified that sometime early in the month of February 2020, he was contacted by WPC Fevrier who informed him that the claimant was in custody at the Gros Islet Police Station.

- [65] WPC Fevrier also testified in cross-examination that when she attended the first hearing on 4th February 2020, she was well aware that the claimant was a person of interest to the Micoud Police. She stated that she informed the prosecutor that the claimant was wanted by the Micoud Police. She claimed not to have instructed the prosecutor to oppose the grant of bail to the claimant. She also stated that she did not instruct him to seek an extension of time to keep the claimant in custody.
- [66] PC Biscette testified in cross-examination that WPC Fevrier did not inform him that the claimant had been released on bail. He went on further to state that the claimant's release on bail would not have been of any importance to him.
- [67] The inference which the claimant seeks to have the court distil from this evidence is that given that he was already in custody on matters related to the same complainant, and for all intents and purposes, was conceivably part of the same transaction, that the police ought to have secured an extension of time for his detention pursuant to section 595 of the Criminal Code rather than re-arrest him after his release on bail; and that in all the circumstances of the case, having failed to do so caused him to be unlawfully detained at the Micoud Police Station.
- [68] In the court's view, if one were to follow this argument to its logical conclusion, it meant that the claimant was contending that as opposed to having permitted him to be released on bail on the summary charges, the police ought to have instead sought an extension of time to keep him in custody in relation to the suspected offence of arson. This is a syllogism and in fact a rather circular argument devoid of merit. There simply is no practicality to this argument.
- [69] The provisions of section 3(5) of the Constitution are germane to the present discussion on the point raised by the claimant. Section 3(5) provides:
- "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."

- [70] With respect to the provisions of section 3(5) of the Constitution, the court has formed the view that it is not there is no proscription against an offender being re-arrested after his release on bail. This is obvious from a plain reading of the provisions of section 3(5). The words "without prejudice to any further proceedings that may be brought against him or her" used in that provision of the Constitution clearly support this proposition.
- [71] However, what comes into sharp focus relative to the circumstances of the claimant's arrest and detention by the Micoud Police subsequent to his release on bail are the following matters; namely: (1) whether PC Biscette had reasonable grounds to suspect that the claimant had committed the offence of arson; and (2) whether the period of the claimant's detention was justified in the circumstances; that is, whether the period of 72 hours detention without charge was lawful.
- [72] Having heard the evidence at the trial, the court has come to the ineluctable conclusion that the claimant's period of detention at the Micoud Police Station was unlawful. This conclusion was arrived at based on an assessment of the question of reasonable suspicion held by PC Biscette. The court found on the evidence presented at the trial that PC Biscette did not have any grounds for reasonable suspicion that the claimant had committed the offence of arson. Therefore, the claimant's arrest was unlawful; and it follows that since his arrest was unlawful then the subsequent period of detention following his arrest was also unlawful.
- [73] Section 570(3) of the Criminal Code makes provision for the powers of summary arrest exercised by police officers. The section expressly provides that where a police officer with reasonable cause, suspects that an offence has been committed, he or she may arrest without warrant anyone whom he or she, with reasonable cause, suspects committed the offence.
- [74] In considering whether there was reasonable cause for PC Biscette's suspicion that the claimant had committed an arrestable offence, it was necessary to focus on the offence which he was suspected of having committed. The officer had to have in mind facts which were capable of supporting a reasonable suspicion that the person

arrested committed an offence of the particular kind which the officer had in mind. In the instant case, it was necessary to focus on such matters in the mind of PC Biscette as might support his suspicion that the claimant had committed the offence of arson.

- [75] It was necessary to consider those matters both individually and cumulatively. Considered cumulatively, those matters might provide reasonable grounds for suspicion that the claimant had been involved in some unlawful activity; for example, it might well have given rise to reasonable grounds for suspicion of involvement in threatening words. But the question here is whether it was sufficient to support a reasonable suspicion that the claimant had committed an offence of a kind which PC Biscette had in mind which, in this case, was arson.
- [76] PC Biscette testified that sometime in the month of August 2019, the claimant's former girlfriend made a report to him concerning the claimant's threats to burn down the house which she occupied as a tenant located in Micoud. He said that he interviewed the claimant's former girlfriend on 15th August 2019 and took possession of her mobile device with the intention of submitting it for forensic analysis.
- [77] This witness also testified that on the afternoon of 4th February 2020, he along with other police officers attached to the Micoud Police Station conveyed the claimant from Custody Suites to the Micoud Police Station where he was arrested and detained.
- [78] According to PC Biscette, on 7th February 2020, after conducting an interview under caution with the claimant, the claimant was returned to his cell and later that same day he was released without charge. He suggested that the claimant was not kept in custody beyond the 72 hour period.
- [79] In his written evidence, PC Biscette said that during the period of the claimant's detention, he was awaiting a "report" on the text messages extracted from the mobile device belonging to the claimant's former girlfriend. He said that the claimant

was released because his investigations did not reveal sufficient evidence upon which to charge the claimant.

- [80] Ultimately, PC Biscette said as far as he was aware, the claimant was lawfully arrested and detained for the suspected offence of arson and that he was kept in lawful custody while the police carried out investigations into the report.
- [81] What the court finds most striking about PC Biscette's evidence is that he did not allude to any fact, information, material or evidence upon which he relied that was capable of linking the claimant to the commission of the offence of arson. Apart from PC Biscette's vague reference to the contents of electronic messages on a mobile device belonging to the claimant's former girlfriend, he did not identify any other evidence which was capable of amounting to a reasonable suspicion that the claimant had committed the offence of arson. In fact, it appears that at the time of the claimant's arrest and detention, PC Biscette did not have the contents of the electronic messages in his possession.
- [82] Furthermore, PC Biscette's evidence appeared even more problematic given the fact that by his own admission the police were still carrying out investigations while the claimant was in their custody. On that basis it is quite easy to infer that the only reason that the claimant was arrested and detained was for the purpose of carrying out investigations which further implies that at the time of the claimant's arrest and detention PC Biscette had no information upon which he could rely as forming the basis of reasonable grounds for suspecting that the claimant had committed the offence of arson. Additionally, PC Biscette, by his own admission, supports the contention that upon the claimant's arrest and detention there was no evidence upon which he could have been charged or that there was no evidence linking the claimant to the commission of the offence of arson.
- [83] The court is puzzled by PC Biscette's testimony which was essentially that since the claimant had been released without charge within a 72 hour period, this by itself made his arrest and detention lawful. This statement by PC Biscette exemplifies the

absence of an appreciation of the law and a total disregard for a person's right to liberty except otherwise than in the due process of law.

- [84] Having heard the evidence in the present case, the court has discerned that there exists the misconception that once a person is kept in police custody for a period of 72 hours and then released without charge this makes the initial arrest and detention ipso facto lawful. This is certainly not the case. If this perception of the police power of arrest and detention was not mistaken, then clearly there would be no protection for ordinary citizens from the arbitrary exercise of the power of arrest and detention.

Technical points

- [85] The Attorney General raised the following technical points in defence of the claim. The Attorney General pleaded that the claimant had filed a claim in constitutional law on substantially the same facts as alleged in the present proceedings. The claim for redress under the Constitution was struck out on 31st March 2021.⁴
- [86] The Court's order on the Constitutional Motion is found at paragraph [52] of the judgment and reads:

"Based on the foregoing discussion, I decline to exercise the constitutional jurisdiction of the Court in the circumstances of this case. The originating motion filed on 12th August 2020 is therefore struck out with no order as to costs."

- [87] Should the court find favour with any of the technical issues raised by the Attorney General, then it stands to reason that the claimant cannot succeed in the present claim even if the court were to find in favour of the claimant on the substantive issue of false imprisonment.

Prescription

- [88] The Attorney General also took the view that in the previous claim the claimant did not properly or at all allege bad faith on the part of the police; and that in any event at the time that the claim for relief under the Constitution had been dismissed, any

⁴ Claim No. SLUHCV2020/0344

private law claim which the claimant could have brought was prescribed by virtue of article 2124 of the Civil Code.

[89] In fine, the Attorney General's submission on this point was simply that at all material times the police officers were acting in the lawful execution of their duty as police officers and servants and or agents of the Crown and that there existed no bad faith relative to the claimant's arrest and detention. Therefore, in the absence of bad faith or the claimant's failure to establish bad faith, the claim is prescribed by virtue of the provisions of article 2124 of the Civil Code.

[90] The court finds the remarks of Cenac-Phulgence J at paragraph [45] of the judgment on the Constitutional Motion telling. The learned judge said in respect of the claimant's application to treat the public law claim as a private law claim that:

"Now that his constitutional claim cannot be maintained, he now faces the hurdle that he is outside the time prescribed for bringing the false imprisonment claim. To allow a claimant to continue his claim as an ordinary claim to seek the parallel relief is one thing. But to allow such to be done outside of the prescription period I think would be encouraging the abuse of the court's process. I am also of the view that the claimant's pleadings would have to be substantially amended not just in terms of the relief which now has to be sought but also substantively as it would be necessary to plead and particularize bad faith. There is no bad faith alleged on the claimant's pleadings. I would therefore decline to give leave to treat the claim as filed as an ordinary claim for false imprisonment. It would have been different if the claim was a mixed claim and the false imprisonment claim having been filed within time could have been saved by simply striking the constitutional claim."

Whether bad faith established

[91] The ultimate issue to be determined is whether the conduct of the police which the claimant alleged amounted to bad faith. The court has made a cumulative assessment of the facts relied on by the claimant in support of his contention that the police acted in bad faith.

[92] It appears from the allegations made by the claimant that the police had somehow deliberately continued his detention for the purpose of facilitating his re-arrest; and in so doing had acted in bad faith having ignored the relevant statutory provisions

that would have secured his release on bail of which they were well aware. Essentially, that the police authorities having acted otherwise than in accordance with their statutory remit and thereby acting unlawfully, and otherwise than in the execution of their duties, had acted in bad faith.

[93] To the contrary, the Attorney General took the view that the police had acted in good faith, having honestly held the belief that they were acting in the course of their duty; and that the allegations made by the claimant were insufficient to rebut the presumption that the police had acted in good faith.

[94] The Attorney General denied bad faith on the part of the police officers. The Attorney General contended in essence that a court is entitled to draw inferences from established facts; and bad faith should not be inferred from the facts if those facts are equally consistent with mere negligence. Further, the actions of the police officers did not constitute a deliberate effort to circumvent the claimant's right to personal liberty.

[95] An allegation of bad faith is a serious matter and is not to be lightly made. Bad faith must be clearly alleged and proved. Mere error or irrationality does not of itself demonstrate bad faith. Bad faith is not to be found simply because of poor decision making. Errors of fact or law and illogicality will not demonstrate bad faith in the absence of other circumstances which show capriciousness.⁵

[96] What then is considered bad faith under our law? In considering whether the conduct of the police officers amounted to bad faith, the court has examined the particulars of bad faith pleaded by the claimant. The court has formed the view that none of the allegations made by the claimant against the police could amount to bad faith. The claimant has failed to show demonstrably that the conduct on the part of the police was deliberate, capricious or otherwise actuated by some improper motive or purpose.

⁵ *SBBS v Minister for Immigration & Multicultural & Indigenous Affairs* [2002] FCAFC 361; *Elvis Daniel and others v Public Service Commission and another* [2019] ECSCJ No. 28

- [97] Article 2124 of the Civil Code provides that actions against public officers in respect of acts done by them in good faith and in respect of their public duties are prescribed by six months. Article 2129 of the Civil Code provides that in all the cases mentioned in articles 2111, 2121, 2122, 2123 and 2124, the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired.
- [98] The liability of the Crown is circumscribed by the requirement of bad faith where the action is commenced after six (6) months. In order to determine whether an act was done in good faith, one may look at the conduct not only at the time of the act amounting to the violation but also at the actions before and after as bad faith is usually to be inferred from a certain state of things which may include conduct not only at the specific point in time of the action complained of but also actions taken before and after, as all of these may be relevant in divining bad faith in respect of the act.
- [99] Bad faith must be clearly alleged and proved. Mere error or irrationality and poor decision making does not of itself demonstrate bad faith. Additionally, errors of fact or law and illogicality will not demonstrate bad faith in the absence of other circumstances which show capriciousness. In the circumstances, the grounds upon which the claimant seeks to rely on to ground his allegation of bad faith does not rise to the level or standard on which such an allegation can be founded.
- [100] In order to establish bad faith, the claimant is required to establish that the police officers had deliberately engaged in unlawful conduct in their capacity as public officials and that the police officers had been aware that the conduct had been unlawful and likely to harm the claimant. The allegations relied on by the claimant do not satisfy this requirement.
- [101] To put it another way, the bad faith which is required to be proved is subjective. However, in the absence of direct evidence thereof, such subjective knowledge or bad faith may be inferred from the conduct of the police interpreted objectively in light of the surrounding circumstances.

- [102] In the present case, the claimant's contention was that the proper inference to be drawn from the conduct of the police was that the police officers knew or ought to have known that they were acting unlawfully. Having considered the evidence presented at the trial it appears that this was hardly the case. It appeared from the tenor of the evidence given by the police officers in this case that they laboured under a misapprehension of the law and carried on their duties otherwise in keeping with the standard prescribed by the legal principles discussed in this judgment. However, there was nothing that the claimant alluded to which could evidentially point to the police officers having carried out their duties in bad faith.
- [103] The unlawful conduct anchoring the allegation of bad faith typically fell into one of three categories, namely an act in excess of the public official's powers, an exercise of a power for an improper purpose, or a breach of a statutory duty. The minimum requirement of subjective awareness had been described as 'subjective recklessness' or 'conscious disregard' for the lawfulness of the conduct and the consequences to the claimant.
- [104] Clearly, there can be no question of good faith when an act is done with an improper intent and for a purpose alien to the very statute under which the act is purported to be done. There would have been no need for giving a notice of action as required by Article 28 of the Code of Civil Procedure, if the acts allegedly done by the police officers were quite beyond the scope of any function or duty committed to them so far so that it was one done exclusively in a private capacity however much, in fact, the influence of public office and power may have carried over into it.
- [105] The court understands the claimant's position to be that the proper inference to be drawn from the evidence canvassed at the trial in relation to the period of his arrest and detention which encapsulated the surrounding circumstances, is that the police officers deliberately acted unlawfully with some capricious intent. This assertion has not been established by the evidence. The foregoing point raised by the claimant assumes that the conduct of the police amounted to bad faith even though in conducting themselves as they did they may not have personally intended the result.

- [106] Another connotation to be derived from the claimant's pleaded case is that the police officers having acted outside of their statutory function, the claimant suffered harm as a result of deliberate and unlawful acts meant that they were deprived of the protection afforded by article 2124. Again this assertion is betrayed by the dearth of evidence presented at the trial to support the court arriving at such a finding.
- [107] The court disagrees with the foregoing argument advanced by the claimant. This is the case for the simple reason that this argument would only avail the claimant had the claim been brought against the police officers in their personal capacities. The present claim sought to clothe the Crown with liability for the unlawful acts of the police officers as servants and or agents of the Crown. As is the case, no claim in private law could have been brought against the police officers in their personal capacity as any such claim would have in any event been proscribed by the provisions of article 28 of the Code of Civil Procedure.
- [108] The claimant's contentions seemed to have been premised on the proposition that a public officer is responsible for acts done by him without legal justification. The police officers were not entitled to avail themselves of the exceptional provision of article 28 of the Civil Code since the act complained of was not "done by them in the exercise of their functions" but was an act done when they had gone outside their functions to perform it.
- [109] In the court's estimation, before a public officer can be held to be acting in the exercise of his functions, it must be established that at the time he performed the act complained of such public officer had reasonable grounds for believing that such act was within his legal authority to perform. This situation is clearly established by the evidence presented at the trial.
- [110] In the exercise of the powers of a police officer there is no such thing as absolute and untrammelled discretion conferred by statute, that is, that action can be taken on any ground or for any reason that can be suggested to the mind of the police officer; no statute can, without express language, be taken to contemplate an

unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute.

- [111] Indeed discretion necessarily implies good faith in discharging a public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption. The ordinary language of the legislature cannot be so distorted.
- [112] The responsibility of the police as an organ of the State includes the obligation to act objectively, independently and fairly toward an offender. An offender has the constitutional right, as a principle of fundamental justice enshrined under the Constitution not to be deprived of his liberty otherwise than in keeping with the due process of law.
- [113] Admittedly, this is a fundamental principle of the rule of law. The underlying basis of the statutory provisions contained in the Criminal Code as they relate to the exercise of the power of arrest and detention exercisable by the police are the progeny of the Constitution and are intended to protect offenders from the arbitrary exercise of the power of arrest and detention for improper or oblique purposes.
- [114] However, the claimant has failed to show demonstrably that the police officers deliberately intended to subvert or abuse their office or the process of criminal justice or that they had blatantly ignored overarching principle of fairness to the person detained in police custody. The claimant has clearly failed to satisfy this criteria. The claimant has not shown that he has suffered harm as a result of the deliberate and unlawful conduct of the police officers in connection with his arrest and detention in the exercise of their functions as public officers.
- [115] The court accepts that the acts of the police officers without any doubt may have brought about a breach of an expressed public statutory duty toward the claimant; however, it was not a gross abuse of legal power expressly intended to punish him for an act wholly irrelevant to the statute. The claimant has failed to prove that there was any intention on the part of the police officers to deprive him of his freedom

actuated by any improper motive that resided outside of the Criminal Code or the Constitution. There was no deliberate, reckless and malicious intention to deprive the claimant of his liberty.

- [116] Good faith in this context, means carrying out the statute according to its intent and for its purpose; it means good faith in acting with a rational appreciation of that intent and purpose and not with an improper intent and for an alien purpose; it does not mean for the purposes of punishing a person for exercising an unchallengeable right; it does not mean arbitrarily and illegally attempting to divest a citizen of an incident of his civil liberties.
- [117] It does not appear from the record of the proceedings that notice of action had not been given as required by article 28 of the Code of Civil Procedure. This provides generally that, without such notice, no public officer or person fulfilling any public function or duty is liable in damages "by reason of any act done by him in the exercise of his functions.
- [118] Was the act here, then, done by the police officers in the course of that exercise? The basis of the claim, as the court understands it, is that the conduct of the police officers was quite beyond the scope of any function or duty committed to them, so far so that it was one done exclusively in a private capacity, however much in fact the influence of public office and power may have carried over into it. It would be only through an assumption of a general overriding power of executive direction in statutory administrative matters that any colour of propriety in the act could be found. Such a state of affairs would be in direct conflict with fundamental dictates of the exercise of statutory power; and in the actual circumstances there is not a shadow of justification for it in the statutory language. Unfortunately for the claimant, there isn't a scintilla of evidence to support the existence of such circumstances in the present case.

Abuse of process

[119] The position adopted by the Attorney General was that by alleging bad faith in the extant proceedings, the claimant is seeking to circumvent the limitation period which proscribes the private law claim; and, on that basis the present claim amounts to an abuse of process and ought to be struck out. In other words, the Attorney General appears to be contending that the claimant had an oblique motive pleading bad faith in the present proceedings which was opened to him previously relative to which he did not avail himself.

[120] Given the conclusions that the court has arrived at on the question of the limitation period, there appears to be no necessity to consider this point here in detail.

[121] By way of observation, the court notes that no claim was brought against the police officers in their personal capacity. It appears that the claimant would have been unable to do so because of the provisions of article 28 of the Code of Civil Procedure which provides that:

"No public officer, or other person fulfilling any public duty or function, can be sued for damages by reason of any act done by him or her in the exercise of his or her functions, nor can any judgment be rendered against him or her, unless notice of such suit has been given him or her at least one month before the issuing of the writ of summons.

Such notice must be in writing, it must specify the grounds of the action, must be served upon him or her personally, or at his or her domicile, and must state the name and residence of the plaintiff."

It does not appear from the record of proceedings that the claimant availed himself of the procedure set out in article 28 of the Civil Code. Therefore, the only option available to him was to bring a private claim against the Crown and to allege the absence of good faith.

[122] Taken within the context of the decision of the learned judge in the claim for relief under the constitution, it does not appear improbable that the claimant, having recognised the procedural shortcomings and missteps made in not initially issuing a private claim, may have thought it appropriate to file a claim alleging bad faith in order to avoid the procedural hurdle presented by article 28 of the Code of Civil

Procedure and article 2124 of the Civil Code. However, valiant, the claimant's attempt at circumventing these provisions, his attempt was thwarted by the unsupported allegations of bad faith.

- [123] The court having considered the substance of the allegations of bad faith made by the claimant in the context of the foregoing observation, feels inclined to adopt the Attorney General's argument that the present claim amounts to an abuse of process.

Res judicata

- [124] The Attorney General also pleaded that the present claim was res judicata; the claimant having brought a previous claim on substantially the same facts which was not decided in his favour and therefore is a further abuse of process.

- [125] The court declines to find that the issue of res judicata arises here. The issues arising on the private claim are clearly distinct from the administrative claim. In any event, the constitutional motion was not decided on its merits and none of the issues were specifically, discretely and distinctly determined. Needless to say that this point, given the findings already arrived at by the court, is not by itself dispositive of the present case.

Conclusion

- [126] For the reasons that the court has given in this judgment, the claimant's claim fails. Accordingly, the claimant's claim is dismissed. The court makes no order as to costs.

Shawn Innocent
High Court Judge

By the Court



Registrar