

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

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

IN THE MATTER of an Application by T'Quan Murray for Constitutional Relief.

AND

IN THE MATTER of the Saint Christopher and Nevis Constitution and in particular Section 5(1), 5(5), 5(6), and Section 10(1) of the said Constitution.

AND

IN THE MATTER of an Application for Declaration that the Applicant's rights under Sections 5(1) and 5(5) have been and are being contravened by a Committal Proceedings for the same offences quashed on the 24th day of June 2019 in District 'B', Sandy Point.

AND

IN THE MATTER of Application for an Order that the Applicant be unconditionally discharged on the Warrant in First Instance for charges proffered on the 19th day of December 2020.

SKBHCV2023/0089

BETWEEN:

T'QUAN MURRAY

Claimant

and

THE ATTORNEY GENERAL OF SAINT CHRISTOPHER AND NEVIS

Defendant

Appearances:

Dr. Henry Browne KC with him Mr. O'Grenville Browne for the Claimant
Mr. Edwin Roopnarine Jr. with him Ms. Sasha Lloyd instructed by Ms.
LaShaun Smart for the Defendant

2023: November 2;
December 11.

DECISION

- [1] **GILL, J.:** The Attorney General of Saint Christopher and Nevis seeks to strike out a constitutional motion brought by the claimant, who faces serious criminal charges, on the basis that the claimant has wrongly invoked the civil constitutional jurisdiction of the court instead of engaging the criminal court.
- [2] The events that have brought us to this point are set out in the following paragraphs in chronological order.
- [3] 7th June 2017 - The claimant, T'Quan Murray, was arrested and held at the Basseterre Police Station.
- [4] 8th June 2017 – The claimant was charged with the offence of murder of Jahma James on 6th June 2017 contrary to common law. He was subsequently charged with the following offences, all allegedly occurring on the said 6th June 2017:-
- i. Unlawful killing of the said Jahma James;
 - ii. Wounding of Akio Benjamin with intent to inflict grievous bodily harm; and
 - iii. Wounding of Ajah Jules with intent to inflict grievous bodily harm.
- [5] 1st June 2018 – The preliminary inquiry was held. On the evidence of then Detective Corporal Vivian Caesar and tendered documents, the learned magistrate, with the agreement of the prosecution and the defence, committed the claimant to stand trial in the High Court.
- [6] 30th August 2018 – The Director of Public Prosecutions (DPP) filed an indictment against the claimant for the following offences:
- i. Murder of Jahma James;
 - ii. Manslaughter of Jahma James
 - iii. Wounding of Akio Benjamin with intent to inflict grievous bodily harm; and
 - iv. Wounding of Ajah Jules with intent to inflict grievous bodily harm.

[7] 8th February 2019 – The DPP filed an indictment against the claimant for the following offences:

- i. Murder of Jahma James;
- ii. Manslaughter of Jahma James
- iii. Unlawful wounding of Ajar Jules;
- iv. Unlawful wounding of Akio Benjamin; and
- v. Possession of a firearm with intent to endanger life.

[8] 11th February 2019 – In the High Court, the claimant pleaded guilty to the following offences:

- i. Manslaughter of Jahma James
- ii. Unlawful wounding of Ajar Jules;
- iii. Unlawful wounding of Akio Benjamin; and
- iv. Possession of a firearm with intent to endanger life.

The murder charge was withdrawn and the matter was adjourned to 15th March 2019 for sentencing.

[9] 15th March 2019 – The matter was further adjourned by Ward J (as he then was) who ordered written submissions on whether His Lordship was duty bound to accept the guilty plea for the offence of manslaughter, having regard to the facts given by the prosecution, or to proceed to trial on the charge of murder brought in the indictment.

[10] 24th June 2019 – Ward J quashed the indictment and the claimant was released.

[11] 19th December 2019 – The claimant was again formally arrested and charged for the same offences save and except the offence of murder. The claimant was remanded to prison on that day.

[12] 21st February 2020 – The claimant was released on bail and remains on bail to date.

- [13] 27th January 2022 - The prosecution filed a paper committal bundle at the Magistrate's Court Office and served the claimant with a bundle in respect of the four charges.
- [14] 24th January 2023 – The paper committal proceedings came on for hearing before the learned magistrate. The prosecution was ready to proceed. However, the matter was adjourned at the request of counsel for the claimant to allow him to bring a constitutional motion in respect of the proceedings against him. The learned magistrate awaits the determination of the constitutional motion before proceeding with the paper committal hearing.
- [15] 15th May 2023 – The claimant filed the instant fixed date claim seeking the following declarations as set out in the fixed date claim form:
- 1) *A declaration that the claimant's right to a speedy trial after the commission of the alleged offences was and is being contravened in breach of section 10(1) of the St. Kitts-Nevis Constitution.*
 - 2) *A declaration that the delay of 4 years and 7 months before the claimant was tried was unreasonable in breach of section 5(5) of the St. Kitts-Nevis Constitution.*
 - 3) *An order that the claimant is entitled to compensation within the meaning of sections 5(6) and/or 18(2)(b) of the St. Kitts-Nevis Constitution.*
 - 4) *A declaration that the quashing of the indictment dated the 18th day of January 2019 by the Honourable Mr. Justice Ward KC at the High Court of Justice, Basseterre, St. Kitts, constituted a bar to subsequent criminal proceedings for the said offences or kindred offences against the applicant.*
 - 5) *A declaration that the hearing before the said Mr. Justice Ward KC on the 7th day of June 2019 and upon which the said indictment was quashed after hearing both sides constituted in law a trial.*

- 6) *A declaration that the aforesaid quashing order by Mr. Justice Ward KC amounted to and was in fact an acquittal of the offences charged in the indictment.*

ALTERNATIVELY

- 7) *A declaration that the renewal of the same charges which had been previously quashed after an unexplained lapse of time constituted an abuse of the process of the court.*

[16] The claimant further seeks orders that he be unconditionally discharged, and that he be awarded damages and/or compensation within the meaning of section 5(6) of the Constitution, costs and interest.

[17] 12th June 2023 – The defendant filed the instant notice of application to strike out the claim.

The strike out application

[18] The main thrust of the defendant's application and submissions is that this is a classic "alternative remedy" case where the claimant's redress, if any, lies in the criminal justice system, for the determination of the declarations and orders sought by the claimant. The defendant submits that the issues raised in the claimant's case are best suited and ought to be dealt with by a court acting in its criminal jurisdiction as opposed to its civil jurisdiction. In the circumstances, the defendant urges the court under its inherent jurisdiction and pursuant to the Constitution of Saint Christopher and Nevis and Rule 26.3.(1)(c) of the Civil Procedure Rules to decline to exercise its jurisdiction to hear this matter as a constitutional claim, and to strike out the claim as an abuse of the process of the court.

The claimant's opposition

[19] While the claimant concedes that the court has a discretion to entertain this application, he reminds the court that the discretion must be judicially exercised. The claimant submits that the fact of an existing common law parallel remedy does not *ipso facto* render the claim incompetent. He

contends that features in this case, on a *prima facie* basis, indicate that the means of legal redress otherwise available, if any, would not be adequate.

[20] The essence of the claimant's submissions is that the refile of the committal proceedings by the DPP on 19th December 2019, is "wrong in principle" because:

- i. His pleas of guilty to four offences including manslaughter, unlawful wounding and possession of a firearm were "quashed or not accepted" by Ward J;
- ii. Ward J did not direct a re-trial;
- iii. This court cannot review a decision of Ward J.

[21] The claimant submits that the DPP is not empowered to indict the claimant a second time on the same charges to which he had pleaded guilty, as they had been "quashed or set aside". He argues that the DPP acted as a superior court and ignored or overruled the decisions and orders of Ward J, and that the conduct of the DPP injects unpredictability into the criminal justice system. He alleges that the DPP did not and could not appeal, seek judicial review or proffer a voluntary bill. The DPP cannot act as the decisions and orders on the indictment quashed by Ward J still exist.

[22] The claimant maintains that the criminal court is not the appropriate forum to address these issues for the following reasons:

- i. It cannot try issues, only indictments, as there is no procedure in the Federation of St. Kitts and Nevis for the criminal court to try an issue;
- ii. The withdrawal of the murder charge on the indictment meant that the claimant could not have been convicted of manslaughter; and
- iii. It is an abuse of the process of the court of his right not to be tried twice vexed by the arbitrary conduct of the DPP, and a breach of his right to a trial within a reasonable time.

- [23] The claimant submits that such arbitrary and oppressive conduct is not cognisable in its totality before the criminal court on an indictment nor the common civil court, but palpably amenable for redress before the constitutional court, which may make such orders in its wide discretion to grant compensatory relief to the claimant.

The law on striking out

- [24] Rule 26.3(1)(c) of the Criminal Procedure Rules (Revised Edition) 2023 (CPR 2023) empowers the court to strike out a statement of case or a part of a statement of case if it appears to the court that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the case.
- [25] The power to strike out is a draconian step and should be used sparingly. It should be used only in clear and obvious cases, for example, where the claim is obviously unsustainable, cannot proceed or in some other way is an abuse of the process of the court.¹

Alternative remedies

- [26] There are numerous authorities for the principle that a constitutional claim ought not to be brought where there are adequate alternative remedies available to a claimant.
- [27] Section 18(2) of the Constitution provides:

The High Court shall have original jurisdiction-

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and
- (b) to determine any question arising in the case of any person that is referred to it in pursuance of subsection (3)

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

¹ See ANUHC VAP2016/0009 *Cedar Valley Springs Homeowners Association Incorporated v Hyacinth Pestaina*, consolidated with ANUHC VAP2016/0010 *Cedar Valley Springs Homeowners Association Incorporated v Kenneth Meade and another*; ANUHC VAP1997/0020A *Baldwin Spencer v The Attorney-General of Antigua and Barbuda et al*; BVIHC VAP2012/0007 *Tawney Assets Limited v East Pine Management Limited et al*; and BVIHC VAP2008/0022 *Citco Global Custody NV v Y2K Finance Inc*.

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

[28] In the relatively recent Privy Council judgment in **Brandt v Commissioner of Police & others (Montserrat)**,² Lord Stephens stated:

“First, to seek constitutional relief where there is a parallel legal remedy will be an abuse of the court’s process in the absence of some feature “which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate”. The correct approach to determining whether a claim for constitutional relief is an abuse of process because the applicant has an alternative means of legal redress was explained by Lord Nicholls, delivering the judgment of the Board in *Attorney General of Trinidad and Tobago v Ramanoop* [2006] 1 AC 328 at para 25, as follows:

“...where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court’s process. A typical, but by no means exclusive, example of a special feature would be a case where there has been an arbitrary use of state power.”

There are examples of the application of that approach in cases such as *Harrikissoon v Attorney General of Trinidad and Tobago* [1980] AC 265 at 68, *Jaroo v Attorney General of Trinidad and Tobago* [2002] 1 AC 871 at para 39 and most recently, in *Warren v The State (Pitcairn Islands)* [2018] UKPC 20 at para 11. This approach prevents unacceptable interruptions in the normal court process, avoids encouraging technical points which have the tendency to divert attention from the real or central issues, and prevents the waste and dissipation of public funds in the pursuit of issues which may well turn out to be of little or no practical relevance in a case when properly viewed at the end of the

² [2021] UKPC 12 at paragraph 35; see also *Johnatty v The Attorney General of Trinidad and Tobago* [2008] UKPC 55 at paragraph 21

process. This approach also promotes the rule of law and the finality of litigation by preventing a claim for constitutional relief from being used to mount a collateral attack on, for example, a judge's exercise of discretion or a criminal conviction, in order to bypass restrictions in the appellate process (see eg *Chokolingo v Attorney General of Trinidad and Tobago* [1981] 1 WLR 106 at 111–112)."

[29] The claimant seeks declarations on the issue of delay pursuant to sections 10(1) and 5(5) of the Constitution. Other declarations sought relate to the quashing of the indictment of Ward J on 24th June 2019. The alternative declaration sought asks the court to find that it is an abuse of the process of the court for the same quashed charges to be brought against the claimant "after an unexplained lapse of time". By the claim itself, there is an implied acknowledgment of a parallel remedy as the alternative relief claimed is not pursuant to the Constitution.

[30] I disagree with the claimant's submission that "the criminal court is to try indictments, not issues". This argument is easily debunked by the judgment of Thom JA [Ag], as she then was, in **Rashid A. Pigott v The Queen**.³ At paragraph 26, in dealing with the issue of delay, Her Ladyship stated:

"Where there is inordinate delay in the trial of an accused person, the issue of infringement of his/her constitutional right to a fair hearing within a reasonable time guaranteed under section 15(1) of the [Antigua] Constitution may be raised at the criminal trial. Similarly, where there is inordinate delay between conviction and the hearing of the appeal it may be raised in the Court of Appeal as a ground of appeal against both conviction and sentence. Indeed section 18(3) embraces this approach."

[31] At paragraph 28, Her Ladyship went on:

"The issue of whether delay in the trial of accused persons and/or post-conviction delay constitute an infringement of the constitutional right provisions of section 15(1) and similar provisions in the constitutions of other Commonwealth countries has been considered and determined by the Privy Council on a number of occasions including the cases of **Alfred Flowers v**

³ ANUHCRA2009/0009, delivered April 13, 2015

The Queen;⁴ Prakash Boolell v The State;⁵ Haroon Rashid Elaheebocus v The State of Mauritius;⁶ Gangasing Aubeeluck v The State of Mauritius;⁷ Melanie Tapper v Director of Public Prosecutions;⁸ and Hassen Eid-En Rummun v The State of Mauritius.⁹ In these cases the issue was raised either at the trial, as a ground of appeal, or in some instances for the first time before the Privy Council.”

[32] These statements by the Court of Appeal are in relation to issues raised in proceedings that are before the particular court. Thom JA [AG.] made the distinction where those issues arise in proceedings in other courts such as the Magistrate’s Court. In such a case, the magistrate is required to refer the matter to the High Court unless the magistrate is of the view that the issue is frivolous or vexatious.¹⁰

[33] This matter is still before the Magistrate’s Court for committal proceedings. At the hearing, this court sought clarification as to whether the learned magistrate had referred the matter to the High Court. The claimant, at paragraph 15 of his affidavit in support of the originating motion, stated, “The matter was adjourned to permit my legal Counsel to file a Constitutional claim on my behalf.” It appears that there was no formal referral of the matter to the High Court as envisaged by section 18(3) of the Constitution. Section 18(3) reads:

If in any proceedings in any court (other than the Court of Appeal or the High Court or a court martial) any question arises as to the contravention of any of the provisions of sections 3 to 7 (inclusive), the person presiding in that court may and, if any party to the proceedings so requests, shall refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

[34] My understanding is that the learned magistrate granted an adjournment pending the determination of the intended constitutional

⁴ [2000] UKPC 41

⁵ [2006] UKPC 46

⁶ [2009] UKPC 7

⁷ [2010] UKPC 13

⁸ [2012] UKPC 26

⁹ [2013] UKPC 6

¹⁰ ANUHCRA2009/0009 at paragraph 27

motion by the claimant. In any event, the claimant filed his motion in the High Court on 15th May 2023, notably almost three and a half years after he was re-arrested and charged on 19th December 2019.

[35] The defendant's position is that based on the rationale for the quashing of the indictment by Ward J, which was that the original proceedings before the learned magistrate were technically flawed, the parties were to return to the Magistrate's Court to do a paper committal to bring the parties back before the criminal court. The following sub-paragraphs from paragraph 25 of the affidavit of Assistant Director of Public Prosecutions, Teshawn Vasquez, explain how the quashing of the indictment came about.

- “(iii) Then Justice Ward KC did not make a ruling on whether he had refused to accept the plea. The Prosecution was advised by Justice Ward KC that there was a prosecutorial convention that a plea of guilty to manslaughter by reason of provocation should only be accepted by the Prosecution in the clearest circumstances.*
- (iv) Following the intimation of Justice Ward KC, Counsel for the Respondent/Claimant then for the first time challenged the decision of the then Magistrate Mallalieu to commit the Respondent/Claimant to stand Trial in the High Court.*
- (v) The basis of the challenge was that at the Preliminary Inquiry, the Prosecution had only called then Detective Constable Caesar to give evidence, whose evidence on its own did not make out a prima facie case.*
- (vi) The Prosecution tendered the Witness Statements of Akio Benjamin and Ajah Jules which contained direct evidence of the circumstances of the killing of Jahma James through the said Detective Constable Caesar.*
- (vii) The Respondent/Claimant had expressed an intention to plead guilty to the offence of Manslaughter during the proceedings in the Magistrate's Court, and the Witness Statements of Mr. Benjamin and Mr. Jules were tendered through Detective Constable by agreement by both Parties to facilitate the matter moving through to the High Court expeditiously. Mr. Benjamin and Mr. Jules did not give evidence at the Preliminary Inquiry before the Magistrate.*

- (viii) *Further, the issue as it related to the challenge to the committal was the basis on which the Witness Statements of Mr. Benjamin and Mr. Jules were tendered. As it was done by agreement between the Parties, the Prosecution had not sought to establish the existence of any of the grounds under Section 67(3), now 68(3), of the Evidence Act 2011, which Section provides for the admissibility of Hearsay Evidence.*
- (ix) *Justice Ward KC ruled that none of the grounds under Section 67(3) had been established at the Preliminary Inquiry in the Magistrate's Court and the requirements of the Section could not be dispensed with on the basis of agreement.*
- (x) *Justice Ward KC ruled that there was insufficient evidence on which the then Magistrate Mallalieu could have committed the Respondent/Claimant; that the Respondent/Claimant was wrongly committed; and quashed the Indictment.*
- (xi) *There was no Trial of the facts and evidence."*

[36] The defendant's argument in effect is that the pending paper committal proceedings are a mere formality to send the matter to the criminal court where the claimant would have recourse to raise the issues he has done in his constitutional claim. Therefore, the defendant submits that the claim is premature.

[37] This begs the question as to whether it would be proper for this court to decline its jurisdiction to entertain the originating motion when there has been no adjudication on the committal proceedings in the Magistrate's Court. Is it a foregone conclusion that the matter will proceed to the High Court in its criminal jurisdiction? I find some guidance in the Privy Council case of **Sharma v Antoine and others**.¹¹ In that case, the Chief Justice of Trinidad and Tobago was granted leave to seek judicial review of an alleged decision by the Deputy Director of Public Prosecutions to prosecute him on a charge of attempting to pervert the course of justice. He further sought an

¹¹ [2006] UKPC 57

order staying all action consequential on that decision. The Court of Appeal did not consider judicial review to be appropriate and set aside the grant of leave to seek judicial review of that decision. The Chief Justice's appeal to the Privy Council was dismissed with costs.

[38] The central issue for the Board to determine was whether the decision to prosecute the Chief Justice should be examined by way of judicial review, or whether the criminal process should be allowed to take its course.¹² In the circumstances of that case, Their Lordships (Lord Bingham and Lord Walker) were of the view that the situation "was indeed one in which a decision by the prosecuting authorities not to prosecute could well have been vulnerable to challenge", and were not persuaded that the Chief Justice had any complaint which could not be fairly resolved within the criminal process.¹³

[39] The other members of the Board (Baroness Hale, Lord Carswell and Lord Mance) were of a similar view. Paragraph 31 of the judgment reads:

"The possibility of a challenge to the prosecutorial decision, and the apparent inevitability of full investigation in the course of any criminal proceedings into the background to the decision to prosecute, are in our view, features central to the resolution of the present appeal. They could properly be raised in criminal proceedings, either in the course of an application to stay those proceedings on the ground of abuse of process or in any substantive trial. Like Lord Bingham and Lord Walker, we are not persuaded that the Chief Justice's complaint could not properly be resolved within the criminal process. It is clear that the criminal courts would have the power to restrain the further pursuit of any criminal proceedings against the Chief Justice if he could on the balance of probabilities show that their pursuit constitutes an abuse of the process of the court:..."

[40] At paragraph 34 of the judgment, Their Lordships further stated:

"Viewing the matter generally, the present is clearly a case where all issues should if possible be resolved in one set of proceedings. There are potential disadvantages for all concerned, including the public, in a scenario of which one

¹² Ibid at paragraph 2

¹³ Ibid at paragraph 28

outcome might be long and quite probably public judicial review proceedings followed by criminal proceedings. We add that, in our view, it will in a single set of criminal proceedings be easier to identify and address in the appropriate way the different issues likely to arise.”

[41] The claimant faces imminent committal for trial in the High Court on the charges currently before the Magistrate’s Court. Section 52 of the Magistrate’s Code of Procedure Act¹⁴ empowers a magistrate to commit an accused person for trial by jury if the magistrate is satisfied that a charge of an indictable offence is supported by documents filed which establish or are likely to establish the indictable offence charged. The defendant previously pleaded guilty in the High Court before Ward J (as he then was) to the same charges he now faces. The paper committal bundle contains the same evidence previously filed. In contrast to a preliminary inquiry, witnesses are not required to attend a paper committal hearing. It is in this context that it is reasonable to conclude that the committal of the claimant in this matter is imminent. So too was the charge of attempting to pervert the course of public justice in **Sharma v Antoine and others**.

[42] The claimant’s originating motion alleges abuse of process and malicious prosecution by the DPP. It raises a plea of autrefois acquit and double jeopardy. The claimant’s categorisation of the conduct of the DPP as arbitrary and oppressive seeks to establish conduct that would constitute a typical example of a special feature which would make it appropriate for the claimant to engage the constitutional court. This is an attempt to place the matter squarely within the dictum of Lord Nicholls in **Attorney General of Trinidad and Tobago v Ramanooop**.¹⁵

[43] The conduct of the DPP complained of, being the allegations of acting as a superior court in ignoring and overruling the decisions and orders

¹⁴ Cap. 3:17 of the Laws of Saint Christopher and Nevis 2020 (Revised)

¹⁵ [2006] 1 AC 328 at paragraph 25; quoted by Lord Stephens in *Brandt v Commissioner of Police & others (Montserrat)* [2021] UKPC 12 at paragraph 35 (see paragraph 28 above)

of Ward J, showing no regard for the orders of Ward J, and violating the separation of powers, are all based on the re-arresting and re-charging of the claimant on the same charges quashed on indictment by Ward J. Therefore, in my respectful view, the crux of the claimant's submissions on this aspect of his claim, can be adequately dealt with on an allegation of abuse of process in the criminal court.

[44] On the authorities, it is clear that the issues of delay raised in the claimant's constitutional claim can be raised at the criminal trial. All the allegations of abuse of process in relation to the renewal of the charges against the claimant after the quashing of the indictment, *autrefois*, double jeopardy and the conduct of the DPP, are matters that can be adequately resolved within the criminal process. All these matters should be left to the criminal court, the appropriate forum to address these issues. I am not persuaded otherwise.

[45] Therefore, I decline to exercise my jurisdiction to determine the claimant's originating motion on the basis that the claimant has alternative remedies available to him in the criminal court system. For the avoidance of doubt, I wish to make it clear that the claim is not being struck out on its merits, but on the procedural issue of the appropriate forum. The matter should take its course and the claimant will not be deprived of the opportunity to put forward his claims in one set of proceedings.

Order

[46] Based on the foregoing, it is hereby ordered as follows:

- 1) The claimant's fixed date claim filed on 15th May 2023 is struck out.
- 2) There is no order as to costs.

Tamara Gill
High Court Judge

By the Court

Registrar