

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2023/0115

BETWEEN:

DERRECK DANIEL

Claimant

And

THE ATTORNEY GENERAL

Defendant

Appearances:

Ms. Jadia Jn Pierre of Counsel for the Claimant

Ms. Antonia Charlemagne, Crown Counsel, Attorney General's Chambers of
Counsel for the Defendant

2023: July 27;
: November 13.

RULING

- [1] **INNOCENT, J.:** The claimant in the present proceedings is aggrieved by forfeiture orders made by judges of the Criminal Division of the High Court in respect of a vessel which the claimant alleges is owned by him. The vessel in question was intercepted and seized by the police authorities during a drug interdiction operation. The claimant was not a party to the subsequent criminal proceedings brought pursuant to the Drugs (Prevention of Misuse) Act¹ ('DPMA').
- [2] The claimant filed a Constitutional Motion wherein he challenged the forfeiture orders on ostensibly on the ground that before making the forfeiture orders under section 38 of the DPMA, the Court failed to summon him as the owner of the vessel to show cause why the vessel boat should not be forfeited.

¹ Cap. 3.02

- [3] On the foregoing basis the claimant alleged that he was deprived of his fundamental right to the protection of the law guaranteed to him by section 1(a) of the Constitution² and the right guaranteed to him by section 6(1) of the Constitution not to be deprived of property except upon the payment of compensation and otherwise than in conformity with the provisions of section 6 of the Constitution.
- [4] There appeared to be no dispute between the parties with respect to the facts giving rise to the present proceedings save and except in some instances which do not have any relevance at this stage of the proceedings. When the matter came before the court on 15th June 2023, the court discerned having regard to the affidavit in response filed by the defendant on the previous day found that a preliminary point has arisen which ought to be dealt with prior to considering the substantive claim.
- [5] The parties agreed that the preliminary issue of whether the claimant had an alternative means of redress which prevented him from seeking redress under section 16 of the Constitution arose from the pleadings. The parties were therefore invited to make written submissions to the court on this discrete preliminary point.
- [6] In a nutshell, the claimant's submitted that he was bereft of any alternative remedy. According to his submissions, the claimant the legislative scheme under the DPMA clothed him with no right of appeal to the Court of Appeal. In support of this argument, the claimant relied on the fact that he was not a defendant or party to the substantive proceedings in which the forfeiture orders were made and relied on the decision of the Court of Appeal in **David Pilgrim v PC 24 Luncheon**³ to buttress his argument. The claimant also relied on the provisions of section 33 and 34 of the Supreme Court Act⁴ which he submitted prevented him from appealing the forfeiture orders made in the criminal proceedings.

² Cap. 1.01

³ [2013] ECSCJ No. 198

⁴ Cap. 2.01

- [7] In the premises, the claimant contended that in the absence of a right of appeal and the availability of any other form of redress, he was entitled to seek redress under the Constitution. Therefore, the claimant maintained that the court ought not to decline to exercise the powers conferred on it by section 16 of the Constitution.
- [8] The defendant conceded that the alleged omission to hear the claimant in the substantive proceedings giving rise to the forfeiture orders amounted to an error of law and was indeed a procedural misstep. To that extent the defendant took the view that the proceedings which lead to the forfeiture were conducted otherwise than in conformity with the provisions of section 38(6) of the DPMA.
- [9] It also appeared in the defendant's written submissions that they conceded that the claimant not having been a party to the criminal proceedings was not entitled to appeal the forfeiture orders. However, the defendant took the view that the claimant could have somehow availed himself of CPR 43.8. This latter submission is unfortunate. The substantive proceedings were not civil proceedings and therefore could interrogate nothing germane to the CPR.
- [10] The defendant also took the position that the claimant could have intervened in the proceedings brought pursuant to the Proceeds of Crime Act⁵ ('POCA') and thereby obtain redress.
- [11] For obvious reasons, this submission cannot stand. The proceedings under the POCA involved the process of civil forfeiture whereas the proceedings under the DPMA were criminal in nature. In any case, the prosecution already having pursued forfeiture under the DPMA were prevented from pursuing civil forfeiture. Therefore, the subsequent civil forfeiture proceedings was a nullity. In the premises, the court found no merit in the defendant's argument.

⁵ Cap. 3:04

[12] Section 16(1) of the Constitution provides:

(1) If any person alleges that any of the provisions of sections 2 to 15 inclusive has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

(a) to hear and determine any application made by any person in pursuance of subsection (1); and

(b) to determine any question arising in the case of any person which 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 2 to 15 (inclusive):

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

[13] The proviso to section 16(1) has been the subject of many judicial pronouncements and its meaning is now properly etched in our jurisprudence that there is no need for the court to expound on it here.⁶

[14] Section 38 of the DPMA creates no constitutional impropriety. Section 38(1) of the DPMA empowers the court subject to subsection (6), where a person is convicted of an offence under the DPMA other than a drug trafficking offence, to order forfeiture to the Government of Saint Lucia of any ship, vessel, boat, aircraft, vehicle or other means of conveyance of any description, proved to have contained the controlled drug or anything shown to the satisfaction of the court to relate to the offence.

⁶ Jaroo v Attorney General [2002] UKPC 5; Attorney General v Ramanoop [2005] UKPC 15; Attorney General v Harrikissoon [1981] AC 265

- [15] By virtue of section 38(6) of the DPMA, the court, before making an order for forfeiture under shall summon any person who is the owner or agent of any article, vehicle or other means of conveyance to show cause why the article, ship, vessel boat, aircraft, vehicle, or other means of conveyance should not be forfeited.
- [16] The provisions of section 38(6) are in harmony with the provisions of section 6 of the Constitution which guarantees protection from arbitrary deprivation of property. Section 6(1) provides that no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except for a public purpose and except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation. Section 38 of the DPMA is without a doubt a provision made by law applicable to the taking of possession.
- [17] Section 6(2) of the Constitution provides that every person having an interest in or right over property that is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for (a) determining the nature and extent of that interest or right; (b) determining whether that taking of possession or acquisition was duly carried out in accordance with a law authorising the taking of possession or acquisition; (c) determining what compensation he or she is entitled to under the law applicable to that taking of possession or acquisition; (d) obtaining that compensation; Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) or (c) the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.
- [18] The words “other than the High Court” bears significance for the purposes of the present case. It follows therefore, from a reading of the proviso to section 6(2) that the right of access by way of appeal arises only in the case where a statute provides such access in the case of a tribunal or authority. It is to be noted that section 6(2)

does not grant access by way of appeal from a decision of the High Court having jurisdiction under any law to determine the matters contemplated by section 6(2) (a) to (c) where Parliament has enacted a law to that effect. To that extent, section 6(2) creates a statutory bar as it were to the claimant obtaining redress by way of appeal. It is to be noted that section 38 of the DPMA and no other provision of the same statute or any other statute grants a right of appeal to a third party such as the claimant where a procedural irregularity in respect of section 38(6) has occurred.

[19] However, what is interesting is that the proviso to section 6(2) suggest that a person aggrieved can apply to the High Court to determine any of the matters contained at section 6(2) (a) to (d) where Parliament does not by enactment provide a right of appeal. The DPMA makes no provision for an appeal where the forfeiture order was made otherwise than in accordance with the provisions of section 38 of the DPMA.

[20] The procedural bar to an appeal as of right also operates in other ways. Section 33 et seq. of the Supreme Court Act which deals with criminal appeals from the High Court defines “appeal” as an appeal by a person convicted upon indictment. The same provision defines “appellant” as including a person who has been convicted and desires to appeal under that part of the Act. Therefore, the claimant not having been indicted and convicted of any criminal offence under the DPMA in the proceedings giving rise to the forfeiture orders is not an appellant for the purposes of section 33 of the Supreme Court Act. Therefore, the claimant cannot obtain redress by way of appeal against the forfeiture orders.

[21] In **David Pilgrim v PC 24 Luncheon**, the Court of Appeal held that the Drugs (Prevention of Misuse) Act gives no right of appeal to the Court of Appeal on a forfeiture order made in respect of a person who was not a party to the criminal proceedings before the Magistrate. The Eastern Caribbean Supreme Court (St. Lucia) Act provides a right of appeal from the Magistrate's courts to the Court of Appeal, but this is expressly made subject to the provisions of the Criminal Code or any other enactment regulating appeals from such courts. Therefore the appellant who is not a party in any respect to the criminal proceedings from which the forfeiture

order followed, may not properly be regarded as a complainant or a defendant. Consequently, the appellant may not take advantage of the right of appeal to the Court of Appeal given in section 720 of the Criminal Code.

- [22] Although the above-cited case dealt with a magisterial appeal, the same principle would apply in the case of a forfeiture order made by a judge of the High Court. In delivering the judgment of the Court of Appeal, Pereira CJ said:

“The right of appeal to the Court of Appeal does not arise by way of equitable notions of fairness or to a desire to find a remedy by way of appealing to the Court of Appeal where, as here, the appellant seeks to quash the forfeiture order as being made contrary to principle. The right of appeal to the Court of Appeal must find expression in an enactment be it the Constitution or some other law.”⁷

- [23] The Court of Appeal found that the appellant in **Pilgrim v Luncheon** was not without a remedy. Pereira CJ stated:

“Does this mean that a person in the appellant's position, where property belonging to him has been forfeited and where such an order was wrongly made, is without a remedy? Clearly not. Such a complaint can most appropriately be the subject of judicial review proceedings, where the remedy being sought is the quashing of the forfeiture order along with any concomitant right to compensation if applicable and/or sustainable. This is all the more so particularly where, as here, one of the main planks of the complaint is procedural irregularity or breach of natural justice principles.”⁸

- [24] However, the present case is distinguishable from the position in **Pilgrim v Luncheon** where in the latter case the forfeiture order was made by a magistrate and not a judge of the High Court from whose decision there can be no judicial review.

- [25] In light of the foregoing discussion, the court is compelled to find that the claimant has no alternative remedy and is entitled to seek redress under the Constitution. Without venturing to say too much about the substantive matter, the court thinks that it is necessary to point out that it appears that there is a factual issue to be resolved concerning whether the claimant had in fact been notified of the hearing

⁷ At para 12

⁸ At para 13

and whether he is indeed the owner of the vessel in question. These two issues can better be resolved by evidence lead at the substantive hearing.

[26] In the circumstances, the matter shall to be fixed for case management before a judge of the High Court on a date to be fixed by the Court Office. The court makes no order as to costs.

Shawn Innocent
High Court Judge

By the Court

A handwritten signature in black ink, appearing to be 'J. M.', written in a cursive style.

Dp. Registrar