

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2023/0013

BETWEEN:

MARTINUS FRANCOIS

Claimant

And

THE ATTORNEY GENERAL OF SAINT LUCIA

Defendant

Appearances:

Mr. Martinus Francois a litigant in person

Mr. Renee Williams Senior Crown Counsel and Mrs. Rochelle John Charles Crown
Counsel Attorney General's Chambers of Counsel for the Respondent

2023: March 24;
November 14.

Constitutional law – Fundamental rights and freedoms – Right to a fair hearing within a reasonable time – judicial delay – Whether judicial delay amounted to a denial of the right to a fair hearing within a reasonable time – delay of 2 years in delivering judgment – Constitution of Saint Lucia, section 8(8)

JUDGMENT

[1] **INNOCENT, J.:** The claimant is a legal practitioner by profession. The claimant commenced legal proceedings by way of Constitutional Motion alleging certain breaches of the Constitution by the Parliament of Saint Lucia regarding the failure to appoint a Deputy Speaker of the House of Assembly during the term of the previous administration. Incidentally, since the present claim came before this court, the court has understood that provisions were made by the current governmental administration to cure the mischief by the appointment of a Deputy Speaker of the House of Assembly.

- [2] At the conclusion of the substantive hearing of the Constitutional Motion on 30th March 2021, the learned trial judge reserved his decision. At the time of hearing the present motion the learned trial judge had not yet delivered his judgment. Therefore, it appeared that there was a judicial delay of almost 2 years since the trial judge had reserved his decision.
- [3] The claimant in the present proceedings alleged that he is aggrieved by the trial judge's delay in delivering the judgment within a reasonable time. Being so aggrieved, the claimant on 18th January 2023 filed a Constitutional Motion seeking certain declaratory relief purportedly in relation to various breaches and infringements of his rights guaranteed under various provisions of the Constitution.
- [4] The claimant has relied on a plethora of grounds upon which he based his entitlement to redress under the Constitution. Several of these grounds, in the court's view, are superficial, fanciful and spurious and do not assist the court in adjudicating on the substantive issue which ultimately resolves the question of the alleged breach of the Constitution brought about by the alleged judicial delay. This statement is not intended to be disparaging in any way in respect of the importance of the other matters raised by the claimant. However, it is perhaps the most pragmatic way of disposing of what the court has determined to be the only salient issue arising for determination.
- [5] Therefore, the court will not deal with each of the alleged breaches of the Constitution advanced by the claimant in these proceedings save and except that which relates to the alleged breach of the provisions of section 8(8) of the Constitution. It appeared to the court that the question raised on the present application for relief under the Constitution can competently and conveniently be dealt with within the confines of section 8(8) of the Constitution.
- [6] There appeared to be no or no significant disparity with respect to the factual contentions relied on by the parties.

- [7] The claimant relied solely on the delay in the delivery of the judgment as the only factual basis for alleging a breach of his rights guaranteed under section 8(8) of the Constitution. The claimant did not present any evidence to show what effect, if any the delay in the delivery of the judgment would have on the outcome or the quality of the judgment itself and more precisely, the manner in which the delay would have ultimately affected the fairness of the trial itself.
- [8] The Attorney General adopted the position that notwithstanding any delay in the delivery of the judgment, any disadvantage or prejudice suffered by the claimant as a result of any such delay could be alleviated by the claimant advancing delay as a ground of appeal where such prejudice or unfairness can be attributed to such delay.
- [9] In addition, the Attorney General took the view that the claimant had failed to provide any evidence demonstrable of his having or being likely to suffer any unfairness, loss or damage attributable to the delay in delivery of the judgment. This argument seemed to have been premised also on the very nature of the proceedings which is the subject matter of the present claim. To that extent the Attorney General contended that the claimant's pursuance of constitutional redress would in all the circumstances of the case be purely academic and therefore the claimant would not be entitled to any form of relief for damages or exemplary damages. The court embraces this observation wholeheartedly.
- [10] In the circumstances, two discrete questions arise for the court's consideration: (1) whether the delay in the delivery of the judgment contravened the claimant's right to a fair hearing within a reasonable time guaranteed to him by the provisions of section 8(8) of the Constitution and (2) if the answer to the first question is in the affirmative what relief is the claimant entitled to as a result of the alleged breach of section 8(8) of the Constitution.
- [11] The Attorney General stood steadfast in the contention that the claimant had failed to show demonstrably that he had suffered or was likely to suffer any loss, damage or prejudice as a result of the delay in the delivery of the judgment. Therefore, the

Attorney General contended that on the foregoing basis the claimant was not entitled to an award of damages which he claimed.

- [12] Additionally, the Attorney General espoused the view that what amounts to a reasonable time must be considered within the context of there being no statutory regime by which a judge can be compelled to deliver a decision; and the State cannot exercise any coercive power to obtain delivery of a judgment in keeping with the principle of the separation of powers.
- [13] The position adopted by the Attorney General gave the court reason to pause and ponder the question of outside any statutory regime, what would be considered a reasonable time limit for the delivery of judgment upon adjudication by a judge. The Attorney General sought to answer this question by referring to the decision of the Caribbean Court of Justice ('CCJ') in **Yolande Reid v Jerome Reid**.¹
- [14] However, it was argued on behalf of the Attorney General that where the delivery of a judgment had gone past the general rule as set out by the CCJ in **Reid v Reid**, delay ought not to be immediately and automatically regarded as an infringement of a person's right to a fair trial within a reasonable time guaranteed by section 8(8) of the Constitution.
- [15] A convenient starting point in resolving the substantive issue raised in the present proceedings is the dicta of Lord Diplock in **Ramesh Lawrence Maharaj v The Attorney General of Trinidad and Tobago (No.2)**² when referring to erroneous judicial decisions, "That the fundamental human right is not a legal system that is infallible but one that is fair".
- [16] In **Boodhoo and another v Attorney General**³ the Judicial Committee of the Privy Council ('JCPC') decided the question of when judicial delay amounted to the denial of the right to the protection of the law guaranteed by section 4(b) of the Trinidad

¹ [2008] CCJ 8 (AJ)

² (1978) 30 WIR 300 at 321

³ [2004] UKPC 17

and Tobago Constitution. The Board held that delay by a court in producing judgment is capable of depriving an individual of his right to the protection of the law under section 4(b) of the Trinidad and Tobago Constitution but only in circumstances where by reason of delay the judge could no longer produce a proper judgment or the parties were unable to obtain from the decision the benefit which they should.

[17] In **Boodhoo**, their Lordships were astute not to define with any degree of peculiarity or precision, the circumstances in which the instances described may occur or to specify periods of delay which may bring about such a result. It is clear from the judgment of the JCPC that they accepted that cases varied infinitely and each was to be considered on its merits when applying the above-mentioned principle.

[18] In considering the question of the protection of the law under a provision such as section 4(b), their Lordship's held that the court's focus should be on the quality of justice provided rather than the reasonableness of the State's efforts to provide it.

[19] It is to be noted that a different treatment has been meted out to section 4(b) of the Trinidad and Tobago Constitution compared with the newly independent Caribbean Constitutions. In **Boodoo**, their Lordships paid regard to this fundamental difference where they accepted that the Constitution of Trinidad and Tobago, unlike those of many other jurisdictions, does not contain a constitutional right to a hearing or decision within a reasonable time.⁴

[20] For the foregoing reason, it will be necessary to examine the present claim for relief under the Constitution within the context of section 8(8) of the Constitution. Section 8(8) of the Constitution makes provision for securing the protection of the law. Section 8(8) provides that:

“Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.”

⁴ Director of Public Prosecutions v Jaikaran Tokai (1996) 48 WIR 376; Sieuraj Sookermany v Director of Public Prosecutions (1996) 48 WIR 346 at 352.

- [21] It is undeniably the case that judicial delay may in certain circumstances give rise to an infringement of an individual's right to a fair hearing within a reasonable time guaranteed by section 8(8) of the Constitution. Much of the case law recognises that what is inimical to obtaining a fair trial may not necessarily be the delay in and of itself. The principle of fairness seems to permeate the discourse on the question of judicial delay and finds its expression and embodiment not necessarily within the context of constitutional law per se.
- [22] To illustrate the point the court had cause to refer to the case of **Bond v Dunster Properties Ltd and others**⁵ where the English Court of Appeal had to decide whether a delay of 22 months in delivering a reserved judgment rendered the judgment unsafe. The court adopted the view that the judge's findings of fact were not affected by the delay.
- [23] In **David Forde and another v The Attorney General**⁶ the claimants sought a declaration that their constitutional right to a fair hearing within a reasonable time guaranteed to them under section 8(8) of the Constitution had been infringed owing to the delayed delivery of a judgment for a period of 3 years and 9 months. The Attorney General contended that the delay had to be assessed within the context of the available resources and that the failure of a judge to deliver a judgment fell outside of the remit of State control and that the State could not exercise its coercive powers to obtain the judgment in light of the separation of powers. The learned judge found that the claimants' constitutional right to a fair hearing within a reasonable time had been infringed. In arriving at the decision that she did, the learned judge relied substantially on the decision in **Yolande Reid v Jerome Reid**.⁷
- [24] In **Reid v Reid**, the Court of Appeal of Barbados had taken 5 years to deliver its judgment. Saunders P. delivery the judgment of the CCJ acknowledged this as being "astonishing". Such delays, the President stated, "deny parties the access to justice to which they are entitled and undermine public confidence in the

⁵ [2011] EWCA Civ. 455

⁶ SLUHCv2017/0276 (delivered 27th March 2018, unreported)

⁷ [2008] CCJ 8 (AJ)

administration of justice". The effectiveness of a judiciary is seriously compromised if it fails to monitor itself in respect of the time taken to deliver judgments and to arrest promptly any tendency to lapse in this aspect of its performance. The President expressed the view, that as a general rule no judgment should be outstanding for more than six months and unless a case is one of unusual difficulty or complexity, judgment should normally be delivered within three months at most.⁸

[25] It does not appear that the comments made by the President of the CCJ in **Reid v Reid** were intended to lay down any principle of general application as it relates to the question of the constitutional propriety of judicial delay in the delivery of judgments. In the court's view, these expressions were merely prescriptive. Indeed the CCJ was not dealing with any discrete constitutional point akin to that raised in the present proceedings. The view which the court has expressed in relation thereto, however, is not intended to downplay the profoundness of these pronouncements. It is to be noted also that section 18(8) of the Barbados Constitution is in pari materia with Saint Lucia's section 8(8).

[26] However, the principles espoused by the CCJ in **Reid** relative to judicial delay was not deployed in respect of any discrete constitutional law point arising these proceedings. Therefore, the decision in **Reid** is of limited assistance to resolving the issue of whether the claimant's rights under section 8(8) of the Constitution had been infringed and the interpretation and approach that the court ought to apply in dealing with cases where there is an alleged breach of section 8(8) on account of judicial delay. This leads inevitably to the question of by what yardstick should the court measure judicial delay as giving rise to an alleged breach of section 8(8).

[27] It the subsequent decision of the CCJ in **Knox v Deane and others**⁹ Saunders PCCJ had this to say:

"It would be remiss of this Court if we failed to comment on the serious delay in the delivery of judgment by the Court of Appeal. Section 18 of the Constitution requires that litigants should be afforded a fair hearing within a

⁸ At para [22]

⁹ (2021) 102 WIR 94

reasonable time. In *Reid v Reid*, commenting on a delay in the giving of judgment of almost five years, this Court stated that 'as a general rule no judgment should be outstanding for more than six months and unless a case is one of unusual difficulty or complexity, judgment should normally be delivered within three months at most.'³⁶

No suggestion has been made that the delay in this case prejudiced the ability of the Court of Appeal to render its decision in the manner in which it did. There is no evidence that the judgment contained errors that could possibly have been attributable to the excessive delay. It must be noted, however, that the delay here, of some four years, was unacceptable."¹⁰

[28] In **knox v Deane**, Jamadar JCCJ echoed the sentiments of the learned President but went on further to state in relation to the Barbados Constitutional provisions:

"Section 18 falls within Chapter III of the Constitution which deals with the protection of fundamental rights and freedoms. Section 18 itself secures the protection of the law and details the many ways in which this is to be achieved. And, s 18(1) addresses the duty and responsibility, the obligation, of the State to ensure that cases are determined fairly and 'within a reasonable time'. The Judiciary, as the third arm of the State, bears primary accountability for discharging this requirement. Placed as it is in Chapter III and given the supremacy clause in s 1 of the Constitution, laws, and State actions inconsistent with the imperatives of s 18(1) are deemed to be presumptively void; such is the import of the requirement."¹¹

[29] Now the following pronouncement by Jamadar JCCJ in **Knox v Deane** is instructive and illuminating although it does not discuss and shed any further light on the operation of section 18(8) of the Barbados Constitution in relation to the judicial delay which was found to be extant in that case. Jamadar JCCJ said:

"Thus, even as s 84(2) of the Constitution is permissive and facilitative of a retired judge or one who has resigned before retirement age being able, among other things, to subsequently deliver a judgment, since this section falls within Chapter VII of the Constitution (The Judicature), it is subject to the Chapter III rights and freedoms, and resulting duties and responsibilities, and in particular to the protection of the law standards of fairness and timeliness. Section 84(2), read in the context of the entire Constitution, is subject to ss 1 and 18 of the Constitution.

I agree with President Saunders (at [37]) that in this case: 'There is no evidence that the judgment contained errors that could possibly have been attributable to the excessive delay.' Yet based on an outer time standard of

¹⁰ At paras [36] and [37]

¹¹ At para [39]

reasonableness for the delivery of judgments of six months, this delay of four years is unacceptable. In cases such as this, the minimum that should be done is to offer an explanation to the parties for the delay and, as was done in this case, an appropriate apology, not that these could exempt the default, but maybe they could rescue in some small measure public trust and confidence in the administration of justice in Barbados. It is my sincerest hope that this case is an exception and not indicative of a pattern of delay in the delivery of judgments in Barbados. Section 18 suggests that any such patterns may be deemed inconsistent with proclaimed core values of Barbadian constitutionalism.”¹²

[30] It is worthy to note that in **Knox v Deane**, apart from the allusion to the likelihood of such delays amounting to a constitutional infringement, Jamadar JCCJ made no pronouncement in relation to the unconstitutionality of judicial delay in the delivery of judgments except for making reference to its potential unconstitutionality.

[31] The court having considered the nature of the right which the claimant in the present case alleged has been infringed adopted the reasoning on the Privy Council in **Boodoo** who in turn had affirmed the dicta of de la Bastide CJ in the Court of Appeal where he said:

“...it must mean that persons are entitled to have recourse to the appropriate court or tribunal prescribed by law for the purpose of enforcing or defending their rights against others or resolving disputes of one kind or another. It is axiomatic that such a right is meaningless without a decision by the court or tribunal to which the claim or dispute is referred for adjudication. In my view the right to a decision by the court or tribunal to which a claim has properly been referred, is one of the manifestations of the right to the protection of the law which is not expressly mentioned in s 5 of the Constitution. Since this right sits so comfortably within the ambit of the right to the protection of the law, it is unnecessary, I suggest, to strive to force it artificially into one of the other rights by straining the language in which they are expressed.”¹³

[32] In **Boodoo**, the Attorney General had presented evidence which highlighted the difficulties faced by the Courts in Trinidad and Tobago because of overcrowded lists and the lack of judicial resources and the efforts which had been made to reduce the consequent delays. It must be noted that in the present case there was no such

¹² At paras [40] and [41]

¹³ At para [9]

evidence presented before the Court to explain the reasons for the delay in delivering the judgment. This was indeed unfortunate.

[33] In the court's view, for there to be an infringement of the claimant's right under section 8(8) of the Constitution, the delay in delivery of the judgment must be of such a nature as would really make a mockery of a person's rights to have a determination of a matter by a competent court.

[34] It is clear from the case law that different considerations apply in cases of delay in the delivery of judgments as opposed to cases concerning a delay in affording a hearing. There was a clear allusion to this difference in **Boodoo**.

[35] What appears to be a common feature running through the cases dealing with judicial delay of this kind, is that the delay should have so adversely affected the quality of the decision that it cannot be allowed to stand. It may be established that the judge's ability to deal properly with the issues has been compromised by the passage of time, for example, if his recollection of important matters is no longer sufficiently clear. However, these examples given are emblematic of extreme cases ordinarily associated with inordinately long periods of delay.

[36] The Board in **Boodoo**¹⁴ were in basic agreement with the formulation given by de la Bastide CJ where he stated in his judgment in the Court of Appeal:

"I have in the past suggested that in the context of our conditions six months should be regarded as the maximum time which parties should reasonably be expected to wait for a judgment from the High Court or Court of Appeal. I do not think, however, that because the delay in giving judgment has gone past that marker it should immediately and automatically be regarded as an infringement of the litigants' constitutional rights. I think it is necessary to set the bar a good deal higher before that stage is reached, bearing in mind that our Constitution does not provide any right to trial within a reasonable time either in criminal or in civil cases. I have already suggested that it is only when the delay becomes so gross as to make a mockery of a party's right to the court's adjudication, that the infringement is established. When that occurs is, I think, better left to be established on a case-by-case basis."

¹⁴ At para [11]

- [37] The learning in **Boodoo** and the other cases cited in this judgment suggest that what is required is some prejudice or loss of benefit accrued to the aggrieved party as a result of the judicial delay which effectually would deprive them of the result that they may have expected when they commenced the litigation. The court is fortified in this view by what is contained at paragraphs [13] and [14] of the Boards' judgment in **Boodoo**.
- [38] In **Boodoo**, the JCPC found that the appellants were not deprived of their right to the protection of the law under section 4(b) of the Constitution or any other rights under the Constitution. Bearing in mind that the Saint Lucia Constitution does not contain a similar provision such as section 4(b) of the Trinidad and Tobago Constitution, it is necessary to transpose the aforementioned principles discussed in this judgment to the case of section 8(8) of the Constitution.
- [39] Chapter 1 of the Constitution deals with the protection of fundamental rights and freedoms. Section 1 of the Constitution provides:
- “Whereas every person in Saint Lucia is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his or her race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—
- (a) life, liberty, security of the person, equality before the law and the protection of the law;
- (b) ...; and
- (c) ...,
- the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.
- [40] Therefore, in interpreting the provisions of the Constitution in the exercise of the powers conferred by section 16 of the Constitution itself, the court is required to adhere to such interpretation that gives real meaning to those rights expressed in

sections 2 to 15 of the Constitution. In so doing the rights guaranteed by sections 2 to 15 ought to be given a generous and liberal interpretation to afford the protections thereby contemplated. It is intended that the court will adopt such an interpretation to give full force and effect to those provisions of the Constitution.

[41] On a proper interpretation of section 8(8) of the Constitution, it cannot be said that the claimant in this case can complain that he is deprived of his right to the protection of the law when in fact the same section 8(8) is part and parcel of one of the protections offered to him under the Constitution. Section 8(8) exist for the purpose of giving effect to the rights guaranteed under the Constitution which afford the claimant the protection of the law.

[42] Section 8(8) guarantees a “fair hearing within a reasonable time”. In the court’s view the concepts of a “fair hearing” and “a reasonable time” are conjunctive. It is undeniable that an individual who complains that his rights have been infringed under section 8(8) has recourse to the ordinary law to enforce this right by way of appeal without raising any constitutional challenge. To that extent his right to the protection of the law is secured. The court thinks that this approach is consistent with what is set out in the case law discussed in this judgment.

[43] In the present case, the claimant has not shown that he has suffered or is likely to suffer any material prejudice or disadvantage of a kind which would render the court’s decision unfair by virtue of the delay in the delivery of judgment. To that extent the claimant’s contentions are merely academic. The court can see no prejudice or material disadvantage accruing to the claimant as a result of the delay in the delivery of the judgment particularly in light of the subject matter of the previous constitutional motion. The claimant ought to be loath to argue that he is or is likely to be directly affected by the outcome of the proceedings which invariably involved the business of the Parliament.

[44] If it is that the claimant is aggrieved by the decision of the trial judge in the previous matter and such grievance arises on account of the judicial delay in the delivery of the judgment, it is clearly opened to the claimant to appeal on the ground that such

delay has affected the judge's decision. The availability of such a remedy is testimony of the fact that the claimant's right to the protection of the law which finds its embodiment in section 8(8) of the Constitution can be vindicated.

[45] In the court's judgment the claimant has not been deprived of his right to a fair hearing within a reasonable time under section 8(8) of the Constitution. Therefore, the claimant's case for relief under section 16 of the Constitution is dismissed. Given the nature of the subject matter of the proceedings the court makes no order as to costs.

Shawn Innocent
High Court Judge

By the Court



Dp. Registrar