

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2019/0506

In the Matter of the Antigua and Barbuda Constitution Order 1981 Cap.23

In the Matter of an Application by Dante Tagliaventi alleging a breach of his rights under section 3 and 9 of the Antigua and Barbuda Constitution Order 1981 Cap. 23 and for redress pursuant to section 18 of the Antigua and Barbuda Constitution Order 1981 Cap. 23

BETWEEN:

DANTE TAGLIAVENTI

CLAIMANT

AND

**THE DIRECTOR OF THE OFFICE OF NATIONAL DRUG AND MONEY LAUNDERING
CONTROL POLICY**

DEFENDANT

Appearances:

Mr. Hugh Marshall Jr. for the Claimant
Mr. Wesley George for the Defendant

2022: May 17th
2023: June 9th
October 27th (Reissued)

DECISION

- [1] **DRYSDALE, J:** The Claimant is seeking to challenge the validity of a Forfeiture Order obtained by the Defendant on the 18th July 2016 in Claim No. ANUHCV2016/0359. In this regard the Claimant has filed a constitutional claim seeking redress for breach of certain fundamental rights particularly the rights enshrined in sections 3 and 9 of the Constitution.

Background

- [2] On the 3rd of April 2012, the Claimant, along with five other persons, was charged on an indictment issued in the United States District Court for the District of Puerto Rico, with two counts and a forfeiture allegation. Count One of the indictment being Conspiracy to import narcotics into the Customs Territory of the United States and Count Two being Conspiracy to possess with intent to distribute narcotics.
- [3] On 2nd September 2013, per an Order of the Court, the Claimant's property outlined in suit number ANUHCv2013/0538 and as outlined in the Originating Motion commencing these proceedings, was upon the application of the Defendant made subject to a Freeze Order.
- [4] Thereafter, on 1st September 2015, the Claimant who was in the physical custody of the Government of the United States of America entered into a Plea Agreement with United States authorities in criminal suit number 12-256 GAG which was issued in the United States District Court for the District of Puerto Rico. In accordance with his Plea Agreement, the Claimant pleaded guilty to Count One of the Indictment.
- [5] On 7th March 2016, the Claimant was sentenced in the United States District Court for the District of Puerto Rico to eighty-seven months imprisonment at the Metropolitan Detention Centre ("MDC") in Guaynabo, Puerto Rico. Subsequently, the Claimant completed his sentence and was released upon his own recognizance.
- [6] On 13th July 2016, the Defendant in their capacity as the Supervisory Authority, filed a claim pursuant to section 20 of the Money Laundering Prevention Act¹ ("MLPA") to have the frozen properties which were subject to the Freeze Order dated 2nd September 2013 be forfeited to the Crown. This claim was denoted by suit number ANUHCv2016/0359. At the time of the filing of the Authority's forfeiture claim, the Claimant was incarcerated at the MDC. By Order of the

¹ No. 6 of 2001

Court dated 18th July 2016, the Claimant's property as outlined in the claim filed on 13th July 2016 was forfeited to the Crown.

[7] The Claimant says that he authorised Attorney-at-Law, Mr. Lawrence Daniels to represent him in respect of claim number ANUHCV2013/0538, being the Freeze Order Proceedings. However, the Claimant denies authorising Mr. Daniels to act on his behalf in respect of claim number ANUHCV2016/0359 being the Forfeiture Proceedings. Moreover, the Claimant maintains that he had no notice of the Forfeiture Proceedings as he was not served with the Claim Form commencing those proceedings.

[8] By Originating Motion filed on the 18th September 2019 the Claimant sought the following relief from the court:

1. 'A Declaration pursuant to Section 18 of the Antigua and Barbuda Constitution Order 1981 ("the Constitution") that the Claimant's rights to the enjoyment of property and the protection of the law under Section 3(a) of the Antigua and Barbuda Constitution Order 1981 Cap. 23 has been breached.
2. A Declaration pursuant to Section 18 of the Antigua and Barbuda Constitution Order 1981 ("the Constitution") that the Claimant's right to the continued protection of his property as guaranteed by Section 9(1) of the Antigua and Barbuda Constitution Order 1981 Cap. 23 has been unjustly denied.
3. A Declaration pursuant to Section 18 of the Antigua and Barbuda Constitution Order 1981 ("the Constitution") that the Claimant's right not to be deprived of property without the right of access to the High Court as guaranteed by Section 9(2) of the Antigua and Barbuda Constitution Order 1981 Cap. 23 has been infringed.
4. An Order for restitution and or compensation in respect of the property taken from the Claimant and forfeited to the Crown as outlined in Claim No.

ANUHCv2016/0359, which is the Order of Forfeiture dated the 18th day of July 2016, as well as the full restoration of the Claimant's rights to his property listed below:

a) Real property registered at the Land Registry as:

Registration Section	Block #	Parcel #
Mckinnons	45 1696B	685
Cedar Grove & Crosbies	44 1897B	538
Cedar Grove & Crosbies	44 1897B	539
Cedar Grove & Crosbies	44 1897B	540
Cedar Grove & Crosbies	44 1897B	541
Cassada Gardens & New Winthropes	42 1894A	676

b) Motor Vehicles at the Transport Board as:

Type of Vehicle	Model	Registration #
Nissan	Patrol	A 31766
Nissan	Teana	A 32120
Smart	For-Two	A 22475

c) All accounts belonging to the Claimant, Dante Taglianventi (born: 26 May 1959; place of birth: Italy) in any Bank, Credit Union or Financial Institution which though not explicitly in the Order of Forfeiture dated the 18th day of July 2016 was made subject to the before mentioned Order of Forfeiture.

d) All stock of the Claimant's store which was known as Luxury Brands, including but not limited to all jewellery and other items that form part of the stock and fixtures of the business.

e) All property that was taken which was the subject of a gift given by the Claimant within the period of 6 years prior to the granting of the Freeze Order in Claim. No. ANUHCV2013/0538.

5. Compensation for breach of the Claimant's constitutional rights;

6. Cost;

7. Any further relief that this Honourable Court deems just.'

[9] The Originating Motion was supported by an Affidavit of the Claimant, which was filed on 18th September 2019. In response, the Defendant filed Affidavits of Marcia Edwards and Rono Christopher on 25th October 2019 and 28th November 2019 respectively. The Claimant filed an Affidavit in Reply on 12th December 2019 and the Defendant filed another Affidavit in Response, this time by Timothy R. Henwood on 18th October 2021. A summary of their evidence will be explored below.

The Claimant's Affidavit Evidence – The First Affidavit

[10] The Claimant says that the forfeiture of his assets being properties, chattels and businesses by Order of the Court dated the 18th day of July 2016 was unlawful as it was done without due process as no proceedings were at any time prior to the forfeiture, served on him in accordance with the provisions of the Civil Procedure Rules 2000.

[11] He says that at the time the application for forfeiture was filed he was incarcerated in Puerto Rico and that he was not served with the application for forfeiture or any of the supporting documents and further that he did not authorise anyone to represent him in the forfeiture proceedings.

[12] He also says that he is of the firm belief that the Defendant knew where he was at the relevant time but took no steps to serve him with the proceedings.

The Defendant's Affidavit Evidence

Marcia Edwards

- [13] Ms. Edwards is an officer of the Defendant. It is her evidence that the Claimant's attorney Lawrence Daniels acted for and on behalf of the Claimant with respect to criminal proceedings commenced against him in the United States.
- [14] She says that prior to being served with the freeze order, inquiries were made of Mr. Daniels as to whether he still represented the interests of the Claimant and that Mr. Daniels indicated that he did and accepted service of the freeze order. An affidavit of service² confirming service of the application for freeze order was exhibited with her affidavit.
- [15] Ms. Edwards states that at the time of obtaining the freeze order several of the Claimant's properties never came into the possession or control of the Defendant as these properties could not be ascertained or located.
- [16] According to Ms. Edwards, the Claimant participated whether directly or through his Attorney at Law in all proceedings related to the freeze order including his application for the payment out of the property frozen for legal expenses and also the forfeiture application.
- [17] She says that Mr. Daniels, on 2nd October 2013 (eleven days after the Freeze Order was served on him) filed a Notice of Application under section 19(5) of the MLPA and an Affidavit in Support deposed by the Claimant on 14th September 2013. The application sought several reliefs, including payment of living expenses, defending the proceedings under the MLPA and discharge of the freeze order. The Defendant opposed this application.
- [18] On 8th August 2014, counsel filed a Further Notice of Application for reasonable legal expenses, an Affidavit in Support and an Affidavit in Reply.

² Page 59 of the Trial Bundle

- [19] The applications of 2nd October 2013 and 8th August 2014 did not result in a discharge of the Freeze Order and thereafter, on 1st September 2015, the Claimant signed the Plea Agreement with the U.S. authorities and agreed not to oppose the forfeiture proceedings in Antigua, being fully aware of the contents of the Freeze Order.
- [20] She says that the Claimant was given notice of the forfeiture proceedings in accordance with the MLPA regime. Subsequently, the Court granted the formal forfeiture order on 18th July 2016. The Attorney for the Claimant was present³ and represented the Claimant and raised no objections and subsequently filed no appeal against the order on the Claimant's behalf.
- [21] As it relates to the Plea Agreement that the Claimant entered into Ms. Edwards notes that at paragraph 8 of the Plea Agreement, the Claimant in order to receive a lower sentence in the criminal proceedings in the United States waived any interest or claim he may have had in the properties listed in the freeze order granted to the Supervisory Authority by the High Court in Antigua. She says that the commencing of the present proceedings is in direct breach of the Plea Agreement and puts the Claimant at risk of receiving a higher sentence.

Rono Christopher

- [22] Mr. Christopher is an Officer of the Defendant who served the application for forfeiture order on attorney-at-law Lawrence Daniels. He says that on 13th July 2016 he received instructions from attorney Curtis Bird of the Legal Department of the Defendant who informed him that an application for forfeiture order against the property of the Claimant needed to be filed and served. The documents to be filed included a Claim Form with Statement of Claim, a Notice of Application, an Affidavit in Support and a Draft Order. Mr. Christopher says he was given special instructions on how to serve the said documents by Mr. Bird.

³ The Claimant's attorney Mr. Daniels is noted as having entered an appearance in the forfeiture proceedings in the court order dated 18th July 2016.

- [23] Mr. Christopher says that in keeping with the instructions he took the application and supporting documents to the High Court office to be filed. Thereafter he went to the Chambers of Lawrence Daniels and requested to speak to Mr. Daniels.
- [24] Mr. Daniels was not in office however Mr. Christopher was able to speak with him via telephone and explained that he had a claim form and application for forfeiture against the Claimant. Mr. Christopher says that he inquired whether Mr. Daniels represented the Claimant and was authorized to accept service on behalf of the Claimant. In response Mr. Daniels indicated that he was duly authorised to accept service and told Mr. Christopher to leave the documents with Ms. Nasha Bonnie, a secretary in Mr. Daniels' Chambers.
- [25] The witness acknowledged that the Defendant is not a party to the Claimant's plea agreement with the United States but it relied on the Claimant's undertaken therein not to interfere with forfeiture proceedings not to file a claim for a Proceeds Assessment Order which would have allowed the Defendant to obtain a money judgment against the Claimant on an assessment of his benefits from his criminal conduct which as assessed by a US Prosecutor was the sum of \$64,000,000.00.

The Second Affidavit of the Claimant

- [26] In his second affidavit the Claimant states that he believes that the proceedings with respect to the Freeze Order obtained on the 2nd September 2013 and the Order of Forfeiture obtained on the 18th July 2016 are separate and distinct. He says that he is not seeking to challenge the proceedings in respect of the Freeze Order but rather he is challenging the proceedings in respect of Claim No. ANUHCv2013/0538 regarding the Order of Forfeiture.
- [27] He also states that for Mr. Daniels to have accepted service of the forfeiture proceedings on his behalf he would have had to expressly authorised him to do so and further Mr. Daniels would have had to notify the Defendant in writing that

he was so authorised to accept service of the forfeiture proceedings on his behalf.

- [28] He says that he did not authorise Mr. Daniels orally or in writing to accept service of any originating proceedings from the Defendant and in particular the forfeiture proceedings. However, that he did he authorise Mr. Daniels to represent him in the Freezing Proceedings. That he had no other discussion with him on any other matter and was not aware of the forfeiture proceedings.

The Defendant's Further Affidavit Evidence

Timothy R. Henwood

- [29] Mr. Henwood, is an Assistant United States Attorney in the District of Puerto Rico employed by the United States Department of Justice.
- [30] As an Assistant United States Attorney, his duties include the prosecution of persons charged with violations of the criminal laws of the United States including federal narcotics violations. Based on his training and experience, he is an expert in the criminal laws and procedures of the United States.
- [31] In the course of his duties as an Assistant United States Attorney for the District of Puerto Rico, Mr. Henwood became familiar with the charges and the evidence against the Claimant, in Case No. 12-256 (GAG), which arose out of an investigation by the Drug Enforcement Administration (DEA). He says that he was also involved in the prosecution of the indictment charging the Claimant in the United States District Court for the District of Puerto Rico.
- [32] In his affidavit Mr. Henwood states that the Claimant was charged with a criminal indictment alleging two violations of federal criminal law as well as a forfeiture allegation. Count One of the Indictment returned by a Federal Grand Jury on 3rd April 2012 charged the Claimant and five others with conspiracy to import cocaine into the customs territory of the United States.

- [33] Mr. Henwood says that the penalties for the offense charged in Count One is a term of imprisonment of not less than ten years or more than life; a fine not to exceed \$4,000,000.00, and a term of supervised release of at least five years.
- [34] According to Mr. Henwood the type of Plea Agreement reached between the Claimant and the United States was binding only on those parties and therefore once entered neither the United States nor the Claimant could seek to avoid the recommendations contained therein. The U.S Court, however, could ignore the recommendations contained in the Plea Agreement and impose 'a sentence up to the statutory maximum penalty of life imprisonment' meaning that the Plea Agreement, in the Claimant's case, was not binding on the Court of the United States.
- [35] According to the terms of the Plea Agreement, the Claimant was exposed to a sentencing range of between 87 to 108 months of imprisonment. The parties agreed that the Claimant could request a sentence at the lower end of the applicable guideline range as calculated in the Plea Agreement. The United States reserved its right to request a sentence at the higher end of the applicable guideline range as calculated in the Plea Agreement. Any request for a sentence outside of the agreed upon terms by either the Claimant or the United States could be considered a breach of the Plea Agreement, thereby allowing for a sentencing request by the non-breaching party in excess of the agreed upon terms.
- [36] Mr. Henwood notes that as part of the Plea Agreement, the Claimant agreed to waive any interest or claim he may have in the properties listed in Claim No. ANUHCV2013/0358 filed in the Eastern Caribbean Supreme Court in the High Court of Justice Antigua and Barbuda, filed on 2nd September, 2013.⁴ the Claimant also further agreed to the entry of an order of forfeiture for all properties listed in Claim No. ANUHCV 2013/0358 and agreed that he would not contest or oppose the forfeiture of the described properties in that proceeding or any other proceeding, be it administrative, civil, or criminal.

⁴ Paragraph 8 of the Plea Agreement

- [37] On 7th May, 2016, the Claimant was sentenced to a term of imprisonment of 87 months. Additionally, Mr. Henwood recalls that during the sentencing hearing, the Judge noted that the Claimant had agreed as follows: “And you're waiving as part of the Plea Agreement the interest you have in properties listed at Claim No. ANUHCV 2013/0358 filed in the Eastern Caribbean Supreme Court in the High Court of Justice Antigua and Barbuda filed on 2nd September 2013.”⁵
- [38] Mr. Henwood says he is of the opinion that the Claimant's actions in challenging the forfeiture in the Eastern Caribbean Supreme Court in the High Court of Justice of Antigua and Barbuda, despite his express agreement not to do so by way of his Plea Agreement in Puerto Rico, constitutes an extreme example of bad faith and unfair dealing. That does not however, mean that the United States would not have a remedy against the Claimant. If the Claimant had refused to abide by the terms of his Plea Agreement involving the forfeiture of the properties, the United States would have requested the Court to intervene in the proceedings. He says that a mechanism available to the United States is a request for the issuance of a preliminary, and subsequently a final order of forfeiture. A final order of forfeiture is a judgment of a court entered in writing declaring the subject property forfeited to the U.S. and disposed of in accordance with the law of the United States.
- [39] In other words, the United States can take steps to forfeit the former properties of the Claimant based in Antigua and Barbuda to the United States and such a decision would be considered final and conclusive under U.S. law.
- [40] Mr. Henwood concludes his evidence by stating that the United States, although not a party to the proceedings herein, believe that the Claimant's attempt to renege on the promise he made pursuant to his knowing and voluntary plea should be denied by this Honourable Court.

The Issues

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[41] At the behest of the Court the parties were invited to file submissions on what effect if any does section 18 of the Constitution have on these proceedings. Thus, the following issues have been distilled for consideration:

1. Whether the constitutional claim is an abuse of the process of the court
2. If no whether Claimant's constitutional rights under sections 3(a) and 9(1) of the Constitution have been breached

Analysis and Law

Whether the constitutional claim is an abuse of the process of the court

[42] Section 18 of the Constitution commonly known as the proviso provision speaks to the Court's discretion to limit a party seeking constitutional redress where there is or was a suitable alternative remedy. Section 18 reads:

(1) 'If any person alleges that any of the provisions of sections 3 to 17 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (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 that 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) of this section; and
- b) to determine any question arising, in the case of any person that is referred to it in pursuance of subsection (3) of this section, and may make such declaration 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) of this Constitution:

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.' (Emphasis mine)

- [43] The Claimant submits that he was not afforded due process of the law in that the proceedings under suit number ANUHCV2016/0359 which resulted in the Order of forfeiture were never served upon him. The failure to afford the Claimant due process rendered the proceedings void ab initio and there is no other remedy available to the Claimant than that sought by the present action before the Constitutional Court.
- [44] The Claimant argues further that the Defendant understood the forfeiture proceedings were to be served personally upon him. Yet the Defendant has offered no evidence of an application for service of the filed documents in relation to the Application for Forfeiture outside of the jurisdiction. Further, the Rules of Court mandate that where a Legal Practitioner has been authorised to accept service of a Claim Form on behalf of a party, that Legal Practitioner is notified by the Claimant in writing that he is authorised to accept service of the Claim Form. There is no evidence before this Court that written notice of any authorization to accept service on the Claimant's behalf in the Forfeiture proceedings, which is in further violation of the Rules of Court and the Claimant's right to due process of law.
- [45] The Defendant counters that the Claimant has not challenged the constitutionality of section 20 of the Money Laundering (Prevention) Act which the Defendant argues would have crystalized the appropriateness of seeking constitutional relief. The Defendant also submits that the Claimant has several reliefs in tort which he can explore to obtain redress. Specifically, the Defendant submits that the Claimant may have a claim in conversion and or detainue.

[46] Additionally, the Defendant submits that the Claimant can appeal the decision after obtaining leave on the grounds raised by the Claimant in the substantive matter being specifically that the Leaned Judge made the decision to forfeit the property without considering the merits of any arguments the Claimant could have raised.

[47] As regards the applicability of section 18 of the Constitution the seminal case of **Harrikisoon v The Attorney General of Trinidad and Tobago**⁶ clarifies that a constitutional motion cannot be used as a substitute for invoking the legal process established for challenging an unlawful administrative action. Lord Diplock in a lengthy and carefully reasoned judgment also provided useful guidance on the parameters of proviso and how the court should exercise its discretion. In a much often quoted dicta he stated:

‘The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter Page 13 of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under section 6 (1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate

⁶ [1980] AC 265

judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom.”

[48] The approach to be taken in making such a determination is outlined in the case of **The Attorney General v Ramnaroop**.⁷ In that case Lord Nicholls of Birkenhead expressed that where a parallel remedy exists the right to apply for constitutional relief should only be exercised in exceptional cases. Lord Birkenhead stipulated that the case under consideration should contain some additional feature which ‘at least arguably, indicates that the means of legal redress otherwise available would not be adequate. He continued by saying that ‘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.’

[49] Further in the regional case of **Brandt v The Commissioner of Police**⁸, which was ultimately determined by the Privy Council, the Court reiterated that position expressed by Lord Diplock in **Hunter v Chief Constable of the West Midlands Police**⁹ and stated “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.” Extrapolated from these legal authorities is that the Courts will frown on a party seeking constitutional redress as a means of collateral attack on a judgment where there are no exceptional circumstances and where adequate alternative remedies existed which an aggrieved party had to option to pursue.

[50] Considering the legal authorities and the guidance distilled therefrom, the assessment of this Court is as follows: the Claimant’s case is premised on improper service on a legal practitioner which he suggests has rendered the

⁷ [2005] 4 LRD 301

⁸ [2021] UKPC at para 35

⁹ [1982] AC 529

matter void ab initio. A matter which is void ab initio has no legal effect from the beginning. However, a mere argument such as this one does not by itself defeat the efficacy of an order of the court. Clearly there must be a legal pronouncement to that effect as a court order is valid until set aside. This argument would give rise to the Claimant in launching an appeal to challenge the forfeiture order. As there is a leave procedure for a party seeking to appeal outside of the remit of the 42 days' timeline, the Claimant was clearly not shut out of the doors of justice in this regard. Further given that an appeal is a rehearing on the merits if that process had been invoked the Claimant would have been afforded an opportunity to be heard and the forfeiture order rightly tested to determine its validity. This would to my mind been a complete a suitable remedy for what the Claimant is attempting to do by virtue of these proceedings. In addition to the remedy of an appeal I find that the Claimant also had the option of applying to set aside the order which he alleges was made in his absence and without his knowledge. Clearly the court has jurisdiction to set aside an order where the facts so prove would render that order unjust in the circumstances.

[51] The Claimant in the instant proceeding is seeking restitution and or compensation in respect of property taken from him and forfeited to the Crown by virtue of the forfeiture order in Claim Number ANUHCv2016/0359. The Defendant argues that the Claimant has alternative remedies in the form of either conversion or detinue. I agree with the submission of there being alternative common law remedies although I am of the considered opinion that of this claim fails more within the remit of detinue. The tort of detinue lies where a party has the immediate right to possession of the goods against a party who is in possession of the goods and who on proper demand, fails or refuses to deliver them up.¹⁰ **Gerard Mootoo v The Attorney General**¹¹ expressed that:

'Detinue is more in the nature of an action in rem because the Plaintiff seeks the return of the item or payment of its value assessed at the date

¹⁰ *Hosiery v Brown Shipley and Co. Ltd.* [1969] 2 All E R 504 at 510

¹¹ HCA CV 431 of 1997

of judgment, together with damages for its detention. This effectively gives a defendant a choice of whether to return or pay for the item. It is immaterial whether a defendant obtained the item by lawful means because the injurious act is the wrongful detention, not the original taking or obtaining of possession. Detinue is usually evidenced by a failure to deliver an item when demanded. Damages or Detinue are intended to compensate a plaintiff for his loss, not to punish a defendant.'

[52] I am further buttressed that a claim in detinue would be an apt alternative judicial process than constitutional proceedings regard given to the authority of **Jaroo v The Attorney General**¹² which similarly concerned the forfeiture of a motor vehicle and the claimant's assertion of breach of his rights for due process and deprivation of property. In a judgment delivered by Lord Hope of Craighead, the court found that the claimant ought to have pursued the common law remedy in detinue to enable him to enforce his right to the return of the vehicle.

[53] Considering the above, it is clear that the Claimant had several options to seek redress other than by way of constitutional motion. The efficacy of the Constitutional Court would be diminished if a party is allowed to simply bypass the alternative options to provide relief. As aptly stated by Lord Craighead in the case of **Jaroo** above:

'The applicant must consider the true nature of the right allegedly contravened. He must also consider whether, having regard to all the circumstances of the case, some other procedure either under the common law or pursuant to statute might not more conveniently be invoked. If another such procedure is available, resort to the procedure by way of originating motion will be inappropriate and it will be an abuse of the process to resort to it. If, as in this case, it becomes clear after the motion has been filed that the use of the procedure is no longer appropriate, steps should be taken without delay to withdraw the motion

¹² [2002] UKPC 5

from the High Court as its continued use in such circumstances will also be an abuse.'

[54] In addition to the Claimant having adequate alternative remedies thereby making these proceedings inappropriate and an abuse of the court I find also that this claim is not suited for constitution relief as there is a dispute of fact. The Claimant's claim is premised on the court lacking jurisdiction to hear the forfeiture action, there being a failure of the Defendant to effect service in accordance with CPR 5.6. The Defendant although admitting that there was not strict compliance with this procedural rule has disputed whether this has rendered the Court as having no jurisdiction to hear and determine the matter. The Defendant deposed that the attorney gave his assurance of having the requisite authority and capacity to represent the Claimant and subsequently attended the forfeiture proceedings and thus submitted to the jurisdiction of the Court. The Claimant has not challenged this assertion. From the evidence it is clear therefore that there is a bona fide dispute of fact concerning whether counsel purporting to represent the Claimant had the requisite authority and further had submitted to the jurisdiction of the Court. Once the Claimant became aware of this factual issue being raised by the Defendant, he was obligated to reconsider the appropriateness of these proceedings and accordingly amend his case to pursue other remedies. As enunciated by the case of **Jaroo** above:

'the originating motion procedure under section 14(1) is appropriate for use in cases where the facts are not in dispute and questions of law only are in issue. It is wholly unsuitable in cases which depend for their decision on the resolution of disputes as to fact. Disputes of that kind must be resolved by using the procedures which are available in the ordinary courts under the common law. As Lord Mustill indicated in *Boodram v Attorney General of Trinidad and Tobago* [1996] AC 842, 854, in the context of a complaint that adverse publicity would prejudice the applicant's right to a fair trial, the question whether the applicant's complaint that the police were detaining his vehicle was well founded was a matter for decision and, if necessary, remedy by the use of the

ordinary and well-established procedures which exist independently of the Constitution. But instead of amending his pleadings to enable him to pursue the common law remedy that had always been available to him, the applicant chose to adhere to what had now become an unsuitable and inappropriate procedure.'

- [55] Considering the above, it is evident that this claim is a clear and patent abuse of process. By virtue of this the Claimant is not entitled a declaration in these proceedings that his constitutional rights have been infringed.

Order

- [56] The Claimant's claim for breach of fundamental rights pursuant to sections 3 and 9 of the Antigua Constitution Order is dismissed with no order as to costs.

PS: The judgment was delivered on the 9th June 2023 with reasons to be given on the said day. Due to administrative issues, the court's reasons were not sent to counsel on the day the court's order was pronounced. In the interest of fairness and preserving both parties' right of appeal, and in keeping with the original intention of the court, the judgment takes effect from the date of reissue, that is on the 27th October 2023

Jan Drysdale

High Court Judge

By The Court

Registrar