

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

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHCV2020/0206

**IN THE MATTER of Sections 5(1)(f), 5(1)e, 5(2), 5(5), 5(3),
and 5(6) of the Constitution of St. Christopher and Nevis**

And

**IN THE MATTER of an Application for Declaratory and
Compensatory relief by PETER OKE pursuant to
Sections 18(1) & (2) of the Constitution of St. Christopher
and Nevis**

BETWEEN:

PETER OKE

Claimant

and

THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND NEVIS

Defendant

Appearances:

Mr. Glenford Hamilton, Ms. Sharina Laws and Ms. Zoie Hamilton for the Claimant
Ms. Violet Williams and Ms. Liandra Edwards for the Defendant

2023: July 3;

September 22.

JUDGMENT

[1] **GILL, J.:** An accused man acquitted on a robbery indictment seeks constitutional redress.

Background facts

- [2] The claimant Peter Oke was arrested on 28th May 2015 and formally charged on 30th May 2015 for the offence of robbery. The claimant was charged that on 22nd May 2015 at Basseterre in the Parish of St. George in St. Christopher being armed with an offensive weapon to wit a gun, together with one other person, he did rob Mohan Kumar Balvadi of EC\$26,534.42 in cash, the property of Rams Trading Limited.
- [3] The arrest was based on information received from the main prosecution witness Shakeem Thomas who identified the claimant as having the same features of the perpetrator, being the same body size, height, facial features and wearing the same black bucket hat.
- [4] After being formally charged, on 1st June 2015, the claimant was brought before a magistrate and remanded to prison.
- [5] Subsequently, the claimant, through his then lawyer, Mr. Hesketh Benjamin, applied to the Magistrate's Court for bail. The presiding magistrate set bail in the sum of EC\$500,000.00 with 2 sureties. The claimant did not satisfy those conditions and remained on remand.
- [6] The preliminary inquiry commenced on 14th December 2015 and concluded on 25th April 2016 when the claimant was committed to stand trial at the September 2016 assizes. The learned magistrate then granted bail in the sum of \$50,000.00. Even at this reduced figure, the claimant did not meet the criteria.
- [7] The criminal trial began on 8th May 2017 and concluded on 9th May 2017. The jury returned a verdict of not guilty and the claimant was released.
- [8] On 9th November 2020, the claimant initiated a fixed date claim with supporting affidavit against the defendant, the Attorney General of St. Kitts & Nevis for, inter alia, declarations that his arrest and detention for the offence of robbery were unreasonable and unlawful and violated his constitutional rights to personal liberty,

contrary to sections 5(1)(e), 5(1)(f), 5(2), 5(5), 5(3), and 5(6) of the Saint Christopher and Nevis Constitution ("the Constitution").

[9] The claimant claimed compensatory relief and vindicatory damages for deprivation of his right to liberty, unreasonable arrest, charge, prosecution and incarceration pursuant to sections 5(6) and 18 of the Constitution. He also claimed exemplary damages.

[10] The trial took place on 3rd July 2023.

Issues

[11] The court did not entertain supplemental submissions which amounted to an application to strike out the claim, filed by the defendant on the morning of the trial. However, during preliminary discussions facilitated by the court in chambers, the parties agreed and narrowed the issues in this case to three (3), namely:

- a. whether the claimant's right to an attorney pursuant to section 5(2) of the Constitution was infringed by the lead investigator;
- b. whether the decision of the learned magistrate to set bail at EC\$500,000.00 with 2 sureties violated Section 5(5) of the Constitution thereby infringing the claimant's right to liberty; and
- c. whether the claimant's constitutional right to be afforded a fair trial within a reasonable time was infringed, having regard to the delay involved before he was acquitted.

[12] This position was based on the constitutional provision that the court may decline to exercise its powers where a person applies for constitutional redress if the court is satisfied that adequate means of redress are otherwise available,¹ and the well-established principles emanating from the case law.

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

¹ Section 18 of the Constitution of Saint Christopher and Nevis

² [2021]UKPC 12 at paragraph 35

“ 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.”

- [14] The narrowing of the issues was an attempt to exclude those of the claimant’s claims for which he clearly had alternative means of redress, and to allow the matter to proceed on those claims arguably properly before the constitutional court. However, the defendant, in closing submissions, maintained that the claim was an abuse of the process of the court. The claimant’s closing submissions also addressed the issue, although briefly. The defendant accepts that the claimant is not precluded from bringing the issue of delay as it relates to section 10(1) of the Constitution in this claim.

Whether the claimant’s constitutional right to an attorney was infringed

- [15] At paragraph 4 of the fixed date claim, the claimant seeks the following:

A declaration that his constitutional right to have a lawyer was violated when Policewoman Hyacinth Taylor ignored his request to have a lawyer present at his interrogation, failed to assist him with obtaining a list of names of lawyers in the Federation and continued to interrogate him despite his request to have a lawyer present.

[16] Section 5(2) of the Constitution reads:

Any person who is arrested or detained shall with reasonable promptitude and in any case not later than forty-eight hours after such arrest or detention be informed in a language that he or she understands of the reasons for his or her arrest or detention and be afforded reasonable facilities for private communication and consultation with a legal practitioner of his or her own choice and, in the case of a person under the age of eighteen years, with his or her parents or guardian.

[17] The claimant's affidavit sets out his evidence-in-chief on this issue. At paragraph 15, he states:

"The next day, the 30th May 2015, they again brought me to the interrogation room. They began interrogating me about the robbery. This time it was Policewoman Taylor who was asking the questions. I said to her, "You people are trying to frame me. I want a lawyer." The police officers began to talk amongst themselves. Policewoman Taylor said, "You are not allowed to have a lawyer here." She then said she just want me to make a statement about the robbery. I then said to her, "I can see that you are trying to falsely accuse me of a crime I know nothing about." I again asked for a lawyer and Officer Taylor refused. She asked me what I know about lawyers and which lawyers do I know. I told her I don't know any, but it is my right to have access to a lawyer. From there, they took me from the room. When I was leaving the room, she said, "You will see what will happen to you." I never got the names of any lawyers despite my repeated requests."

[18] His evidence is that he had only recently moved to St. Kitts from Ireland, being a citizen of the Federation of St. Kitts and Nevis by descent. Under cross-examination, the claimant admitted that Officer Taylor told him he had a right to consult a lawyer, family member or friend. He maintained that he asked her for a lawyer but did not have access to a lawyer while he was detained. About a month later, he gained access to attorney Hesketh Benjamin through a fellow inmate in prison.

[19] The police investigator in question, retired Corporal Hyacinth Taylor, at the material

time attached to the Criminal Investigation Department of the Royal St. Christopher and Nevis Police Force, in her affidavit at paragraph 13, states that she cautioned the claimant and informed him of his right to consult his lawyer, a family member or friend before he said anything, that he then said he wanted a lawyer. She asked him who his lawyer was and he said that he did not have one. She further stated that based on what her supervisor told her, she requested the presence of Major Roxroy Campbell of the Salvation Army who was also a Probation Officer in the Ministry of Social Services. The claimant did not request Major Campbell's presence and no lawyer was contacted.

[20] The claimant submits that all persons, when faced with a matter that affects their reputation and livelihood, must, in the interests of justice, be afforded the right to counsel.³ Therefore, the refusal to allow him to have legal counsel violated his fundamental right to have representation during the interrogation process.

[21] The defendant acknowledges that a person in police custody has a right to have access to and communicate with a legal adviser, and that such denial can amount to a constitutional infringement.⁴ However, the defendant draws the court's attention to the case of **Jahree v The State (Mauritius)**⁵ where Lord Carswell highlighted the principles laid down in **Robinson v The Queen**⁶ as follows:

“Their Lordships do not for one moment underrate the crucial importance of legal representation for those who require it. **But their Lordships cannot construe the relevant provisions of the Constitution in such a way as to give rise to an absolute right to legal representation which if exercised to the full could all too easily lead to manipulation and abuse ... If a defendant ... does not take reasonable steps to ensure that he is represented at the trial, whether on legal aid or otherwise, he cannot reasonably claim that the lack of legal representation resulted from a deprivation of his constitutional rights.**” (Emphasis added)

³ See *Pett v Greyhound Racing Association Ltd* [1969] 2 WLR 1471; *R v Secretary of State for the Home Department ex parte Tarrant* [1985] QB 251

⁴ *Thornhill v Attorney General* (1976) 31 WIR 498

⁵ [2005] UKPC 7 at paragraph 16

⁶ [1985] AC 956

[22] Given the claimant's admission at the trial that Officer Taylor told him he had a right to consult a lawyer, and bearing in mind that a case is not suitable for constitutional relief where there are facts in dispute,⁷ I find that he was not so denied. I agree with the submission of the defendant that Officer Taylor was under no obligation to find an attorney for the claimant, nor to refer him to one, nor to provide him with a list from which he could choose. The claimant had the opportunity to contact someone who could assist him in that regard. It was his duty, if he so desired, to take reasonable steps to ensure that he had representation at the station. He failed to do so. Therefore, I conclude that there was no breach of section 5(2) of the Constitution to afford the claimant reasonable facilities for private communication and consultation with a legal practitioner of his choice.

Whether the claimant's right to liberty was infringed as it relates to bail

[23] Section 5(5) of the Constitution states:

If any person arrested or detained as mentioned in subsection (3)(b) **is not tried within a reasonable time**, then, without prejudice to any further proceedings that may be brought against him or her, he or she shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial, and **such conditions may include bail so long as it is not excessive.** *(Emphasis added)*

[24] The claimant, through his then attorney Hesketh Benjamin, applied to the Magistrates' Court for bail.

[25] The learned magistrate granted bail in the sum of \$500,000.00 with 2 sureties. As a condition of the bail, the claimant was required to surrender all travel documents.

[26] The claimant submits that bail was excessive in breach of section 5(5) of the Constitution. He claims that he was placed at a disadvantage in that he could not meet the requirements of the bail having regard to the sum ordered. He acknowledges that bail was decreased to EC \$50,000.00 upon completion of the

⁷ See *Jaroo v Attorney General of Trinidad and Tobago* [2002] 1 AC 871 at paragraph 36

preliminary inquiry. He submits that the sum of EC\$500,000.00 was wholly excessive and disproportionate to the charge before the court, and taking all of the facts and circumstances of the case into consideration, the decision of the learned magistrate can properly be deemed to be a constructive denial.

[27] The defendant admits that bail in the amount of EC\$500,000.00 in the claimant's case may appear to be excessive. However, the defendant submits that the claimant had other remedies available to him which he did not pursue.

[28] The defendant highlights the fact that bail was varied by the learned magistrate himself, and submits that it is an abuse of the court's process for the claimant, having had opportunities to apply for variation or to appeal his bail order, and having sat on his rights for almost 5 years, now to invoke the constitutional jurisdiction for a declaration that the conditions of his bail were excessive.

[29] The defendant maintains that the claimant had alternative remedies available to him which he did not pursue before his bail was varied. Therefore, he is not entitled to any declaration that his bail was excessive.

[30] The Bail Act⁸ in section 3(1) provides that a court may grant bail to any person charged with an offence. Further, section 10(1) reads:

Where a Magistrate's Court grants or refuses bail in criminal proceedings or imposes conditions in granting bail in criminal proceedings, the High Court may, on application by an accused person or the prosecution, grant or refuse bail or vary the conditions.

[31] Section 11(1) of the Bail Act (not applicable here) provides a right of appeal as follows:

Where an application is made to the High Court under section 10 and the High Court refuses or grants the application or varies the conditions, the accused person or the prosecution, as the case may be, may appeal that decision to the Court of Appeal.

⁸ Cap. 3:24 of the Laws of Saint Christopher and Nevis

- [32] The authorities are clear as to the fundamental principles for the granting or the refusal to grant bail, including the factors to be taken into consideration in relation to the amount set.
- [33] It is startling that if the claimant was of the view that the initial bail set by the learned magistrate was excessive, at that time being represented by counsel, no steps were taken under the provisions of the Bail Act to vary or reduce the bail conditions. There is no explanation as to why this was not done and though not speculating, I note the claimant's affidavit evidence that Mr. Hesketh Benjamin, who represented him at the Magistrate's Court and High Court, filed a judgment summons against him for outstanding legal fees.
- [34] To my mind, this late-stage invocation of the Constitution to allege breach of section 5(5) is a flagrant abuse of the process of the court. The mere setting of a high bail sum does not afford an accused person an automatic path to constitutional redress. The law provides for immediate action in a case where bail conditions are considered excessive, and it does not behoove an aggrieved accused to sit back and then bypass the legal opportunities granted by the legislature to deal with this issue.
- [35] Further, the evidence reveals that the period of incarceration for which the sum of \$500,000.00 applied was 1st June 2015 to 25th April 2016, the date of committal (approximately 11 months) when the sum was reduced to \$50,000.00. This sum of \$50,000.00 for the indictable offence of robbery, in my view, is by no means excessive in the circumstances of the claimant's charge.
- [36] Moreover and fundamentally, in my respectful view, the claimant's resort to section 5(5) of the Constitution is a misuse of that provision. Section 5(5) comes into play where a person in custody on a charge can establish that his or her trial has not taken place within a reasonable time, that is, there has been unreasonable or inordinate delay in getting to trial. In such a case, bail is one condition by which an accused will be released to await trial. Where bail is granted in those

circumstances, the bail conditions must not be excessive. Section 5(5) does not apply where an application for bail is made in the preliminary stages of the criminal process where an accused is brought before the court after being charged, as is the case here. This situation is governed by the Bail Act.

- [37] Therefore, I hold that Mr. Oke is not entitled to a declaration that his constitutional right to liberty was infringed by the setting of excessive bail conditions.

Whether the claimant's constitutional right to a fair hearing within a reasonable time was infringed

- [38] The claimant was incarcerated from 1st June 2015 to 9th May 2017, just under 2 years, before he was acquitted and released from custody. The evidence shows a chronology of the period in issue as follows:

- 28th May 2015 – Claimant arrested.
- 30th May 2015 – Claimant charged.
- 1st June 2015 – Claimant remanded.
- 14th December 2015 – commencement of the preliminary inquiry.
- 25th April 2016 – Conclusion of the preliminary inquiry. Claimant committed to stand trial at the September 2016 assizes.
- 21st September 2016 – Matter adjourned as counsel for the claimant was not in receipt of the depositions.
- 7th November 2016 – Matter adjourned to 10th January 2017 for arraignment. Neither party states the reason for the adjournment.
- 10th January 2016 – Matter adjourned to 17th January 2017 for arraignment as counsel for the claimant was on sick leave until 5th January 2017.
- 17th January 2017 – the claimant was arraigned, he pleaded not guilty and the matter was adjourned to 20th March 2017 for trial.
- 20th March 2017 – Matter adjourned to 8th May 2017 on an application by the Director of Public Prosecutions on the basis that the virtual complainant was in India. (His deposition was eventually read at the trial in his absence)

- 8th May 2017 – Trial commenced.
- 9th May 2017 – Trial concluded. Claimant found not guilty and released.

[39] Section 10(1) of the Constitution states:

If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by the law.

[40] In **Jermaine Browne v The Attorney General**,⁹ Ventose J opined:

“Unreasonable delay before trial cannot become so commonplace that it is accepted as orthodoxy contrary to the provisions of the Constitution. The constitutional rights guaranteed by section 5(5) (or even section 10(1)) will become a thing writ in water if those conditions become the norm and constitutional infringements go unchecked.”

[41] Thom JA (Ag.), (as she then was), gave guidance on the approach the court ought to take in ruling on a constitutional challenge involving delay in the case of **Rashid A. Pigott v The Queen**.¹⁰ Her Ladyship stated:

“In determining whether there was inordinate delay such as would constitute an infringement of Section 15 (1) [*of the Constitution of Antigua and Barbuda, identical to section 10(1) of the Constitution of Saint Christopher and Nevis*], the legal authorities such as **Boolell v The State**; and **Joseph Stewart Celine v The State of Mauritius**, have identified the following as factors to be considered being (i) the complexity of the case, (ii) the conduct of the appellant and (iii) the conduct of the administrative and judicial authorities.”

[42] There is no evidence to suggest that this was a complicated prosecution. It appears that the outcome turned on the identification of the perpetrator. The entire trial was completed within 2 days.

[43] It is unclear whether the September 2016 adjournment occasioned by the claimant’s counsel’s non-receipt of the depositions lay at the feet of the prosecution or the claimant himself. The defendant alleges that the claimant received the depositions

⁹ SKBHCV2016/0074 at paragraph 32

¹⁰ ANUHCRA2009/0009 at paragraph 37; see also *Gibson v The Attorney General of Barbados* [2010] CCJ 3 at paragraph 58

and did not hand them over to his counsel. In cross-examination, the claimant said he did not recall, but that the matter was adjourned because the prosecution was not ready to proceed. The affidavit evidence of Greatess Gordon, Crown Counsel in the Office of the Director of Public Prosecutions, simply states that counsel for the claimant was not in receipt of the depositions. Crown Counsel was not asked to amplify her evidence in this regard on the stand.

[44] The only adjournment of the proceedings clearly attributable to the claimant's side was that of 10th January 2017 when counsel holding papers for the claimant's attorney, Mr. Benjamin, made the request on the ground of Mr. Benjamin's medical leave. That resulted in a short delay of 7 days.

[45] The responsibility to set timelines for the progression of the matter lay with the administrative and judicial authorities. There is an unexplained delay of 6 months and 2 weeks for the start of the preliminary inquiry. The inquiry itself took about 4 months and the claimant was committed to stand trial at the assizes beginning in September 2016. The trial commenced 8 months after the September adjournment.

[46] Whereas there was some delay in getting this matter to trial, and bearing in mind the court's reluctance to encourage or excuse avoidable delays, in all the circumstances of this case, I am of the view that there was no breach of the claimant's constitutional right under section 10 (1) to a fair trial within a reasonable time. Given the exigencies of the criminal court system, I cannot conclude that there was undue or inordinate or unreasonable delay necessitating a constitutional action. The claimant's allegations of delay are linked to his incarceration owing to his assertion that his bail conditions were excessive.

Costs

[47] While noting the general rule not to order costs in these matters unless they are unreasonably brought, I have seriously considered awarding costs against the claimant in this case. I have observed the trend in this jurisdiction to seek

constitutional redress when there is an acquittal of persons charged with serious offences and who have been held in custody for lengthy periods. Insistence on this practice in the face of the numerous authorities emanating from the highest levels of our court decrying it must be discouraged. However, I will stay my hand in light of the incredulously late submissions of the defendant on the point, and considering that the issue of delay was not without some merit.

Order

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

- 1) The claimant's claim is dismissed.
- 2) There is no order as to costs.

Tamara Gill
High Court Judge

By the Court

Registrar