

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2013/0325

BETWEEN:

ALLIE BAPTISTE

Claimant

and

ATTORNEY-GENERAL OF GRENADA

Defendant

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Dr. Francis Alexis for the Claimant

Mr. Adebayo Oluwu, Senior Crown Counsel, for the Defendant

2022: June 29;
July 31; (Closing submissions)
August 29 .

JUDGMENT

[1] **GLASGOW, J.:** There is an interesting question to be answered on this claim and it is this: can a person who has been extradited file a private claim for damages against the Minister who issued a surrender order pursuant to the Extradition Act¹ (the Act)? On this claim the claimant (Mr. Baptiste) charges that his extradition to the United Kingdom (UK) was “caused by the negligence of the Minister.”

¹ Cap. 98 of the 2010 Continuous Revised Edition of the Laws of Grenada

Background

- [2] Mr. Baptiste was arrested on 25th February 2009 by police officers on a charge of conspiracy to import illicit drugs into the United Kingdom (the UK). On 26th February 2009, he was taken before Chief Magistrate, Her Honour Tamara Gill (as she then was) for a preliminary hearing. The Chief Magistrate then transferred the case to another Magistrate, Her Honour Karen Noel (the committing Magistrate) who on 27th March 2009 granted bail to Mr. Baptiste.
- [3] On or about 16th April 2009, the State commenced the extradition proceedings before the committing Magistrate on the ground that Mr. Baptiste committed an extradition offence against the law of the UK, namely, “*conspiracy to evade the prohibition on the importation of a controlled drug of class A, namely cocaine*”. Upon completion of the extradition proceedings, Her Honour Noel committed Mr. Baptiste on 15th October 2009 to be extradited to the UK.
- [4] Thereafter, Mr. Baptiste applied to the high court for bail and for an order asking the court to, among other things, set aside the extradition order. The high court granted bail on 21st December 2009 pending the hearing of the application to set aside the extradition order. On 2nd May 2012, Price Findlay J (as she then was) ruled that the committal order against Mr. Baptiste was lawful and as such upheld the decision made by the committing Magistrate. On 17th May 2012, the Minister issued a warrant ordering Mr. Baptiste to be extradited to the UK with respect to the alleged charge of conspiracy to import drugs into the UK.

Mr. Baptiste’s case

- [5] It is Mr. Baptiste’s case that prior to his extradition to the UK he was in the business of blending alcohol for export to markets in Grenada and overseas, especially Tobago and the UK since about the year 2004. He pleads that he was also in the business of shipping blended rums and seafood, particularly lobster, to overseas markets. Between the periods 2004 to 2007 Mr. Baptiste ventured into business relationships with one Delroy Gibson, a UK resident and, one, Oswin Moore, a resident of Republic of Trinidad and Tobago. Mr. Baptiste says he agreed to supply Mr. Gibson and Mr. Moore with shipments of seafood, namely lobster.

- [6] With respect to the commencement of the extradition proceedings, Mr. Baptiste pleads that on 19th February 2009 the Minister issued an “authority to proceed” pursuant to the Act. Further to the authority to proceed, proceedings before the committing Magistrate culminated with the magistrate signing a committal warrant. Mr. Baptiste alleges that he was thereafter delivered by police officers into the custody of Her Majesty’s Prisons at Richmond Hill. He applied to the High Court to set aside that committal order. However, that application was refused by Price Findlay J on 2nd May 2012.
- [7] According to Mr. Baptiste, the next steps in his extradition story occurred when on 17 May 2012 he and his then Attorney, Ms. Sabina Gibbs, made representations to the Minister that he should not be extradited to the UK. Mr. Baptiste claims that notwithstanding those representations, the Minister, on even date, issued a “warrant of extradition” (hereinafter referred to as the surrender order) ordering him to be surrendered to the UK to face the charges of conspiracy to import illicit drugs into that country. His assessment is that the Minister ruled that the magistrate’s decision to extradite Mr. Baptiste was not unjust or oppressive. On 11th June 2012, Mr. Baptiste was taken into custody by Grenadian police officers and was handed over to four UK police officers who held him in custody and transported him to the UK.
- [8] Mr. Baptiste’s main disquiet is that the Minister was negligent, in that he failed to “*make proper enquiries and/or have proper inquiries*” made about :
- (1) The details of monies sent by Mr. Gibson to Mr. Baptiste’s accounts at Grenada Co-operative Bank; Communal Co-operative Credit Union and Grenada Building and Loan;
 - (2) The fact that Mr. Baptiste spent the monies in those accounts by using cheques issued to individuals and business places who were not engaged in a conspiracy;
 - (3) The business conducted by Mr. Baptiste with Mr. Gibson and Mr. Moore were all bona fide and legitimate business transactions; and
 - (4) Mr. Baptiste had never been convicted of any drug related offences.
- [9] At trial Mr. Baptiste maintained his case that the Minister did not consider his representations prior to issuing the surrender order and as such breached a duty of care that was owed to him by the Minister in the exercise of the discretion to order his surrender. Mr. Baptiste pleads that as a consequence of the breach, the Minister caused him to sustain injury, damages, deprivation of liberty,

loss of reputation and character, psychological hurt, embarrassment and financial loss. Mr. Baptiste also claims that –

- (1) he lost his Toyota Noah valued at \$35,000.00, rum flavour stock valued at \$45,000.00, and a lot of land situate at Mardigras, St. George's valued at \$40,000.00;
- (2) he was unable to service his debts valued at \$80,000.00;
- (3) he suffered losses in the sum of \$41,695.86 as a result of his detention;
- (4) Caribbean Microfinance (Grenada) Limited obtained judgment against him in the sum of \$30,700.19; and
- (5) Communal Co-operative Credit Union Ltd. sold his property and he was called upon to pay the balance owed on the mortgage in the sum of \$10,995.67.

Attorney-General's case

[10] The Attorney-General's (AG) answer to Mr. Baptiste's claim is that –

- (1) the Minister did not owe Mr. Baptiste any duty of care;
- (2) if a duty of care exists, the AG denies that the Minister owed a duty of care of the kind and scope as alleged by Mr. Baptiste in his claim;
- (3) if such a duty exists, it does not extend beyond that created in respect of the powers given to the Minister pursuant to the Act; and
- (4) Mr. Baptiste did not suffer the injury, loss or damage set out at paragraph 35.1 of his statement of claim.

[11] Mr. Alva Browne, the then Permanent Secretary in the Ministry of Foreign Affairs, (PS Browne) testified that on 16th May 2012, Mr. Baptiste indicated through his counsel that he desired to make representations to the Minister both orally and in writing as to why he should not be surrendered to the UK pursuant to its extradition request. PS Browne further testified that among the representations made by Mr. Baptiste was that he was not involved in any drug trade and that he was innocent of the charges laid against him. The Minister advised Mr. Baptiste that this is an undertaking that can only be considered by a court of law and not one which he could undertake. PS Browne stated at paragraph 18 of his witness statement that the Minister took into account the oral representations made by Mr. Baptiste along with the following matters when he made the order authorising Mr. Baptiste's extradition :

- (1) The fact that the committal court which was seized of the facts and evidence presented for the extradition order had already examined those facts before making a pronouncement of committal;
- (2) A habeas corpus application made by Mr. Baptiste was refused by the High Court;
- (3) The duty and power bestowed on the Minister under the Extradition Act does not permit the Minister to embark on the sort of examination being contended in this claim;
- (4) When he is exercising powers of surrender under the Extradition Act, the Minister is not required in all cases to examine the quality of evidence on which committal was based;
- (5) No fresh evidence was adduced before the Minister to show that the Minister's decision ought to differ from the Magistrate's committal decision;
- (6) No case was presented by Mr. Baptiste during the representation before the Minister to demonstrate that the extradition was tainted by any bad faith.

[12] However, at trial and under cross-examination by Queen's Counsel Dr. Francis Alexis, PS Browne was not able to say for certain whether the representations by Mr. Baptiste were made orally or in writing. Further, PS Browne was unable to state with certainty whether the representations on behalf of Mr. Baptiste were made on 16th May 2012 or 17th May 2012 when the Minister issued the surrender order.

Issues

[13] The discourse in this case requires this court to determine (1) whether the Minister owed Mr. Baptiste a duty of care; (2) the extent of that duty and whether the Minister breached the duty. In particular, Mr. Baptiste contends that the Minister's duty of care in this case enjoined him to "make proper enquiries and/or have proper inquiries made" into the several matters stated above regarding his financial dealings. Had the Minister conducted those investigations, Mr. Baptiste asserts, he would have found that there was no basis for the surrender order. The Minister's failure to conduct those specific investigations means that, in Mr. Baptiste's view, the Minister acted negligently and as such breached the duty of care owed to him by the Minister.

Discussion and Analysis

Whether a duty of care exists

- [14] Mr. Baptiste's claim, in essence, is that in exercising his statutory discretion under the Act, the Minister had a duty to consider his representations regarding his innocence. Mr. Baptiste's complaint is that the Minister acted negligently and as a consequence, he breached that duty when he failed to make proper enquiries or to have enquiries made regarding Mr. Baptiste's claims of innocence. As noted above, the central issue in this claim is whether a claimant is permitted to bring a claim in those circumstances.
- [15] In **X and others (Minors) v Bedfordshire County Council et al**², Lord Wilkinson recounted the well accepted principle that "*The breach of a public law right by itself gives rise to no claim for damages. A claim for damages must be based on a private law cause of action.*"³ His Lordship outlined the categories or instances, where "private law claims for damages" could be said to arise in this context. These categories or instances His Lordship instructed are :-
- “(A) actions for breach of statutory duty simpliciter (i.e. irrespective of carelessness); (B) actions based solely on the careless performance of a statutory duty in the absence of any other common law right of action; (C) actions based on a common law duty of care arising either from the imposition of the statutory duty or from the performance of it; (D) misfeasance in public office, i.e. the failure to exercise, or the exercise of, statutory powers either with the intention to injure the plaintiff or in the knowledge that the conduct is unlawful.”⁴
- [16] Mr. Baptiste's claim does not fall within category (D) since he has not alleged that the Minister set out to intentionally cause him harm or that the Minister acted with the knowledge that he was acting improperly and that Mr. Baptiste would suffer harm. With respect to categories (A) or (B), it does not appear that Mr. Baptiste is claiming that – (a) there was a breach of the Minister's statutory duties simpliciter; or (b) that, without more (and in this context, without asserting a common law right of action), the Minister acted carelessly in the exercise of his statutory responsibility. Rather, Mr.

² [1995] 3 All ER 353

³ Ibid at page 363

⁴ Ibid

Baptiste has frontally proclaimed that in the exercise of his functions, a common law duty of care was imposed on the Minister. In particular, Mr. Baptiste pleads that the Minister was granted the power or discretion whether to issue the surrender order and that in the exercise of that power or discretion, the Minister was required to “make proper enquiries and/or have proper enquires made” into the several matters that Mr. Baptiste alleges would have militated against the exercise of the Minister’s power to order his surrender.

- [17] With respect to “*actions based on a common law duty of care arising either from the imposition of the statutory duty or from the performance of it*”⁵, Lord Browne Wilkinson observed that:

“It is clear that a common law duty of care may arise in the performance of statutory functions. But a broad distinction has to be drawn between: (a) cases in which it is alleged that the authority owes a duty of care in the manner in which it exercises a statutory discretion; (b) cases in which a duty of care is alleged to arise from the manner in which the statutory duty has been implemented in practice⁶.”

- [18] More specifically, His Lordship Browne Wilkinson explained that “[*T*he distinction is between (a) taking care in exercising a statutory discretion whether or not to do an act and (b) having decided to do that act, taking care in the manner in which you do it⁷.” As I have noted above, Mr. Baptiste’s complaint is that the Minister was negligent in the manner in which he exercised the discretion to issue the surrender order.

- [19] In respect of a claimant’s ability to seek damages for alleged negligence as a consequence of the exercise of a discretion granted to an authority by statute, I find several helpful passages in the speech of His Lordship Browne Wilkinson. His Lordship opined that –

“Most statutes which impose a statutory duty on local authorities confer on the authority a discretion as to the extent to which, and the methods by which, such statutory duty is to be performed. It is clear both in principle and from the decided cases that the local authority cannot be liable in damages for doing that which Parliament has authorised. Therefore if the decisions complained of fall within the ambit of such statutory discretion they cannot be actionable in common law. However if the decision complained of is so unreasonable that it falls outside the ambit of the discretion conferred upon the local authority, there is no a priori reason for excluding all common law liability⁸.”

⁵ X and others (Minors) v Bedfordshire County Council et al at [1995] 3 All ER 353 page 364

⁶ Ibid at page 368

⁷ Ibid at page 368

⁸ X and others (Minors) v Bedfordshire County Council et al at [1995] 3 All ER 353 page 364
Ibid at page 368

[20] His Lordship further elucidated that –

“in seeking to establish that a local authority is liable at common law for negligence in the exercise of a discretion conferred by statute, the first requirement is to show that the decision was outside the ambit of the discretion altogether: if it was not, a local authority cannot itself be in breach of any duty of care owed to the plaintiff. In deciding whether or not this requirement is satisfied, **the court has to assess the relevant factors taken into account by the authority in exercising the discretion**⁹. (Bold emphasis mine).

[21] After considering a number of cases on the issue and in particular the impact of policy matters on the court’s determination of whether the discretion was properly exercised¹⁰, His Lordship concluded at page 371 that –

“I understand the applicable principles to be as follows. Where Parliament has conferred a statutory discretion on a public authority, it is for that authority, not for the courts, to exercise the discretion: nothing which the authority does within the ambit of the discretion can be actionable at common law. If the decision complained of falls outside the statutory discretion, it can (but not necessarily will) give rise to common law liability.”

[22] Based on this learning, it is therefore incumbent on the court to (1) examine the extent of the statutory discretion in question to determine its ambit and (2) assess the manner in which the discretion was exercised to ascertain whether the exercise was conducted within the scope and extent of the discretion. If the discretion was exercised within the scope and extent of the discretion, then there can be no claim of negligence. If, however, the exercise of the discretion was outside of the ambit of the discretion, then the court will have to determine whether the impugned actions amount to a claim sustainable in common law liability. On the latter score, the question whether a common law duty of care arises “ *falls to be decided by applying the usual principles i.e. those laid down in Caparo Industries Plc. v. Dickman [1990] 2 A.C. 605, 617-618. Was the damage to the plaintiff reasonably foreseeable? Was the relationship between the plaintiff and the defendant sufficiently proximate? Is*

⁹ Ibid at page 369

¹⁰ In recent cases, the courts have seemingly shifted from the posture that “*if the factors relevant to the exercise of the discretion include matters of policy, the court cannot adjudicate on such policy matters and therefore cannot reach the conclusion that the decision was outside the ambit of the statutory discretion. Therefore a common law duty of care in relation to the taking of decisions involving policy matters cannot exist.*” Lord Browne Wilkinson in *X and others (Minors) v Bedfordshire County Council [1995] 3 All ER 353* at page 371. See Lord Reed in *Poole Borough Council v GN and another [2019] UKSC 25*.

it just and reasonable to impose a duty of care?”¹¹ These questions will largely be determined or more aptly stated, these questions “must be profoundly influenced by the statutory framework within which the acts complained of were done”.¹²

The statutory scheme and the ambit of the discretion imposed therein

[23] In view of the foregoing, the statutory scheme with respect to extraditions in Grenada comes into focus and must be examined. Of significance to this discourse are the provisions of section 9 et seq of the Act wherein the procedure for extraditions is set out. I recite a synopsis of the relevant parts:

- (1) Section 9 - Where a request is made by Commonwealth country or a foreign state, the Minister is authorised to issue an Order called the “authority to proceed” with the request in accordance with the provisions of the Act. The request must be made by the requisite official (section 9(1) and accompanied by the stipulated documents (section 9(2).

The Minister is empowered to issue the authority to proceed “*unless it appears to him or her that an order for the surrender of the person concerned could not lawfully be made, or could not in fact be made, in accordance with the provisions of the Act*” (section 9(5));

- (2) Section 10 deals with the process for the arrest of a person against whom the Minister has issued an authority to proceed;
- (3) Section 11 – this section outlines the steps to be taken where a person is arrested under a warrant issued further to the authority to proceed.
- (4) The arrested person is to be brought “*as soon as practicable before a Magistrate ...*” (section 11(1));
- (5) The magistrate will hear representations in support of the extradition and on behalf of the arrested. Where the magistrate is satisfied of the several matters set out at section 11(7), he or she may commit the arrested person to custody or admit the person to await the Minister’s decision on surrender (11(7) to (9);
- (6) Section 12 – deals with procedures where a Magistrate refuses to commit the arrested person. The section offers the Commonwealth country or foreign state the option to question the proceedings before the High Court;

¹¹ X and others (Minors) v Bedfordshire County Council [1995] 3 All ER 353 at page 371

¹² Ibid

- (7) Section 13 – The person who is committed further to the hearing before the Magistrate (the committed person) may make a habeas corpus application to the High Court. Of particular significance to this present discourse is section 13(4) which permits the High Court to *“receive additional evidence relevant to the exercise of its jurisdiction...”*;
- (8) Section 14 outlines what is happen where a person consents to be extradited;
- (9) Sections 15 and 16 are of particular relevance to this discussion and will be recited in full –
- “15. Order for surrender**
- (1) Where a person is committed under section 11 and is not discharged by order of the High Court, the Minister may by warrant order him or her to be surrendered unless his or her surrender is prohibited by this Act.
- (2) Without prejudice to his or her general discretion to issue a warrant for the surrender of a person to a foreign State or Commonwealth country—
- (a) the Minister shall not issue a warrant for the surrender of any person if it appears to the Minister in relation to the offence in respect of which that person’s surrender is sought, that—
- (i) by reason of its trivial nature,
- (ii) by reason of the passage of time since he or she is alleged to have committed it or to have become unlawfully at large, as the case may be, or
- (iii) because the accusation against him or her is not made in good faith in the interests of justice, it would having regard to all the circumstances, be unjust or oppressive to surrender him or her; and
- (b) the Minister may decide not to issue a warrant for the surrender of a person accused or convicted of an offence not punishable with death in Grenada if the person could be or has been sentenced to death for that offence in the country by which the request for his or her surrender is made.
- (3) A warrant for surrender shall not be issued in the case of a person who is serving a sentence of imprisonment or detention, or is charged with an offence in Grenada—
- (a) in the case of a person serving such a sentence, until the sentence has been served; and
- (b) in the case of a person charged with an offence, until the charge is disposed of or withdrawn or unless an order is made for it to lie on the file and, if it results in his or her serving a term of imprisonment or detention, until the sentence has been served.
- (4) The Minister may decide not to issue a warrant for surrender under this section for the surrender of a person committed in consequence of an extradition request, if another extradition request has been made in respect of that person and it appears to the Minister, having regard to all the circumstances of the case and in particular—
- (a) the relative seriousness of the offences in question;
- (b) the date on which each such request was made;

- (c) the nationality or citizenship of the person concerned and his or her ordinary place of residence, that preference should be given to that other request.
- (5) Notice of the issue of a warrant under this section for the surrender of a person to a Commonwealth country shall forthwith be given to the person to be surrendered.

(10) 16. Surrender to foreign State

- (1) The Minister shall give to the person to whom an order under section 15 for the surrender to a foreign State would relate, notice in writing that he or she is contemplating making such an order.
- (2) The person to whom such an order would relate shall have a right to make representations, at any time before the expiration of the period of fifteen days commencing with the date on which the notice is given, as to why he or she should not be surrendered to the foreign State, and unless he or she waives that right, no such order shall be made in relation to him or her before the end of that period.
- (3) A notice under subsection (1) shall explain in simple and ordinary language the right conferred by subsection (2).
- (4) It shall be the duty of the Minister to consider any representations made in the exercise of that right.
- (5) Unless the person to whom it relates waives the right conferred on him or her by subsection (6), he or she shall not be surrendered to the foreign State until the expiration of the period of seven days commencing with the date on which the warrant is issued or such longer period as rules of court may specify.
- (6) At any time within the period mentioned in subsection (5), the person may apply for leave to seek judicial review of the Minister's decision to make the order.
- (7) If the person applies for judicial review, he or she may not be surrendered so long as the proceedings for judicial review are pending.
- (8) Proceedings for judicial review shall be treated for the purposes of this section as pending until, disregarding any power of the court to grant leave to appeal out of time, there is no further possibility of an appeal.
- (9) A warrant under section 15—
 - (a) shall state in simple and ordinary language that the Minister has considered any representations made in the exercise of the right conferred by subsection (2); and
 - (b) shall explain in simple and ordinary language the rights conferred by this section on a person whose surrender to a foreign State has been ordered under section 15, and a copy shall be given to the person to whom it relates as soon as the order for his or her surrender is made.”

[24] It is immediately apparent that section 15(1) gives the Minister a general discretion whether or not to issue an order for the surrender of a committed person. I observe that while the Minister is clothed with the general discretion to issue the surrender order, the exercise of the discretion is largely circumscribed by the matters set out in section 15(2) et seq and by the procedure stipulated by section 16. This is significant since the ambit of the Minister's discretion is in sharp focus on this

discourse. Specifically, Mr. Baptiste wants this court to find that the exercise of the Minister's discretion required him to conduct or have instigated a number of enquiries that would have established Mr. Baptiste's innocence of the claims made by the requesting State. Mr. Baptiste claims that he placed these matters before the Minister when he met with the Minister pursuant to section 16(4). Mr. Baptiste insists that the Minister should have enquired or have investigated these matters placed before him and in particular –

- (1) The details of monies sent by Mr. Gibson to Mr. Baptiste's accounts at Grenada Co-operative Bank; Communal Co-operative Credit Union and Grenada Building and Loan;
- (2) Mr. Baptiste spent the monies in those accounts by using cheques issued to individuals and business places who were not engaged in a conspiracy;
- (3) The business conducted by Mr. Baptiste with Mr. Gibson and Mr. Moore were all bona fide and legitimate business transactions; and
- (4) Mr. Baptiste had never been convicted of any drug related offences.

[25] Interestingly and significantly, Mr. Baptiste indicated that the representation and evidence he gave to the Minister were also considered by the committal court. I have recited above the evidence given by PS Browne as to the matters which the Minister considered before he issued the surrender order.

The contours of the discretion

[26] It may be somewhat difficult for the court to outline the precise contours of the Minister's general discretion to issue a surrender order pursuant to section 15(1). But as I have stated above, the exercise of this general discretion is largely circumscribed by the matters set out in section 15(2) et seq and by the procedure stipulated by section 16. But was the Minister, in addition, enjoined to have regard to the evidence that Mr. Baptiste placed before him? Admittedly, the committal court had this material before it when the committal order was made.

[27] The question of whether the Minister, in the exercise of his general jurisdiction to issue a surrender order, may consider afresh material placed before the committal court is not without judicial comment and pronouncement by our courts in the Eastern Caribbean. I would also remind myself that further to the committal court's order, Mr. Baptiste applied to the high court pursuant to section 13 for a writ of habeas corpus. At that court, he had another occasion to canvass the same issues placed before

the committal court. He could have also placed additional evidence before the court hearing the habeas corpus application. See section 13(4) recited above. See also the judgment of Price Findlay J delivered 12th May 2012 refusing the habeas corpus application.

[28] In **Leroy King v The Attorney General of Antigua and Barbuda and another**¹³, Mr. King argued, among other things, that the Minister failed to conduct a “full and detailed forensic analysis of the accusatory instruments, including the indictment.” The court was of the view that the Minister was not wholly obliged to consider afresh the quality of the material already scrutinised by the committing Magistrate and the High Court or as his Lordship Ramdhani J elucidated, there is no obligation placed on the Minister to reconsider “*afresh in all cases the very evidence upon which the Magistrate had found a prima facie case*¹⁴”. Ramdhani J extracted useful guidance for this posture from **R v Secretary of State for the Home Department ex p. Susan Hagan and Sally Anne Croft**¹⁵. The law is recited thusly there in respect of the role of the Secretary of State for the Home Department (UK) regarding the similar powers to order extradition –

“[The Secretary of State] is not a rubber stamp for the Magistrate. He should take into account matters such as delay and compassionate considerations and any additional evidence that emerges after the Magistrate has considered the case...But, and Miss Montgomery [Counsel for the Respondent in that case] emphasises this, there is no obligation on the part of the Home Secretary to reconsider the facts presented to the Magistrate and it is no part of his function to review the decision of the Magistrate, or for that matter in this case the Divisional Court. On the contrary, the Secretary of State is entitled to have regard to the fact that the Magistrate and the Divisional Court have found a prima facie case to exist. They are relevant factors in his decision making process. If, on the other hand, the existence of a prima facie case is outweighed by other considerations the Secretary of State may refuse his warrant, but in doing so he is in no sense reviewing the Magistrate's decision. He is taking his own decision bearing in mind the findings of the Magistrate...

... I add that perhaps only in an extreme case the Home Secretary will look at the quality of the evidence but I am satisfied that whether he does so remains a matter for his discretion as opposed to an obligation.¹⁶”

[29] The exercise of the discretion in these circumstances was also assessed by Silber J in **R (on the application of Allison) v Secretary of State for the Home Department**¹⁷ thusly –

¹³ ANUHCv2012/0220

¹⁴ Ibid at para 135

¹⁵ (unreported 15 December 1993)

¹⁶ R v Secretary of State for the Home Department ex p. Susan Hagan and Sally Anne Croft (unreported 15 December 1993) at pages 11-12E

¹⁷ [2001] EWHC Admin 506 at paras. 16-18

“Blofeld J said that he accepted that the Secretary of State, “in his discretion should decide in each case what he should consider in the light of representations made by the applicant and where appropriate the fresh evidence admitted on that applicant’s behalf. I do not accept that it is as a matter of law or requirement upon him to consider the evidence afresh in every case.

Thus, the Secretary of State has a wide and unstructured discretion to take into account such matters as he regards as suitable in deciding how to react to representations on defences to charges in respect of which the Magistrate has found a prima facie case. The width of this discretion means that the Secretary of State is entitled to consider the representations of an applicant on the basis that the Magistrate has satisfied himself that, as a matter of law, there is a prima facie case made out against the person, whose case he is considering. In this case, the Secretary of State decided that his starting point should be the decision of the Divisional Court that the offences in charges 2 and 3 were extradition offences on which the Magistrate had been entitled to find a prima facie case established in respect of each of them. He regarded that decision as being something, which enabled him to conclude that the representation, made by the applicant was “Not a reason not to order to surrender”. In the light of his broad discretion, we do not think that he can be criticised for this as he obviously appreciated and was entitled to appreciate that the decision of the Divisional Court had been made after thorough legal argument, including a submission as to the effect of s23A of the 1986 Act (see 851G – 852A).

By the same token, he was quite entitled to take the view that it was not open to him to come to a different conclusion from that of the Divisional Court because, as, Russell LJ said “it is no part of his function to review... the decision of the Divisional Court”. In other words, it was reasonable for him to proceed, in the exercise of his discretion, on the findings in the Divisional Court that the matters complained of were extradition grounds. (See *R v Bow Street Metropolitan Stipendiary Magistrates, ex parte Government of the United States of American and another*; *R v Governor of Brixton Prison and another ex parte Allison* [1998] QB 847, [1998] 3 WLR 1156 at 859 -861 of the former report per Kennedy LJ). The thrust of the judgment of the Divisional Court was that the applicant’s submissions had been rejected. So far as it is suggested that the Divisional Court failed to deal with relevant questions in their judgment, the proper course for the applicant to have adopted would have been to have sought clarification from that Court or permission to appeal to the House of Lords. Neither of those steps was pursued here and the Secretary of State was entitled to consider that the Divisional Court had determined all matters relating to the existence of a prima facie case in respect of the extraditable offences.”

- [30] The foregoing reiterates that in the exercise of his general discretion, the Minister has a “wide and unstructured discretion”. As I have stated before and as indicated by Blofeld J in ***R v Secretary of State for the Home Department ex p. Susan Hagan and Sally Anne Croft***, the discretion is indeed circumscribed by the matters outlined in the Act including such matters as delay etc. The wide and unstructured discretion also permits the Minister, as explained in ***R v Secretary of State for the Home Department ex p. Susan Hagan and Sally Anne Croft*** and ***R (on the application of***

Allison) v Secretary of State for the Home Department to take into account “*compassionate considerations and any additional evidence that emerges after the Magistrate has considered the case*¹⁸.”

[31] With respect to materials canvassed previously before the committal court, it is not suggested in any of the cases (and I do agree that this is a correct view of the ambit of the discretion), that the Minister could not advert to the material previously placed before the committing Magistrate and/or the High Court. In fact it is said that “[T]he width of this discretion means that the Secretary of State is entitled to consider the representations of an applicant on the basis that the Magistrate has satisfied himself that, as a matter of law, there is a *prima facie* case made out against the person, whose case he is considering.”¹⁹ Additionally, the Minister is “quite entitled to take the view that it was not open to him to come to a different conclusion from that of the...”²⁰ committing Magistrate or the High Court since it is absolutely clear that the Minister has no business sitting as a review or appellate court, so to speak, from the assessment and decisions made by the committal court and/or the High Court. As Ramdhani J pithily opined “*In considering whether a request was made in good faith, a second defendant (**The Minister**) does not superimpose himself into the judicial process which leads to a committal. He has no business reviewing the decision of the committing court.*”²¹ (My insert in bold).

[32] Our Court of Appeal examined the law in this regard when **Leroy King**²² appealed Ramdhani J’s decision to that court. In refusing the appellant’s request that the court depart from Ramdhani J’s assessment, the Court of Appeal succinctly articulated the law on this issue to be that –

“A minister exercising powers of return under section 14(2)(a) of the Extradition Act is not required in all cases to examine the quality of evidence on which committal for extradition was based and that such examination should only be in rare cases and for good cause. The learned judge in the case at bar accordingly held that having regard to the conclusions of the magistrate and the High Court judge, there was no arguable case that the Minister ought to, in the exercise of his judgment, personally examine afresh the quality of the evidence. The learned judge committed no error in so holding based on the evidence which was before him.”²³

¹⁸ Ex parte Susan Hagan and Sally Anne Croft at pages 11-12E

¹⁹ Ibid

²⁰ Ibid

²¹ Leroy King v The Attorney General of Antigua and Barbuda and another ANUHCv2012/0220 at para 139

²² ANUHCv2017/0011

²³ Ibid at para 2 of the Headnote

[33] It seems therefore from the foregoing that while it is accurate to define the ambit of the Minister's discretion as being "wide and unstructured"²⁴ and even though it is within his discretion to so do, it would be indeed a rare case (on good cause) where he is obliged to consider afresh the quality of the evidence placed before the committing Magistrate and/or the High Court and indeed an even rarer case that the exercise of the ambit would permit him to take a view that is different from the committal court. Therefore, in order to ground a private claim for damages on the grounds that the Minister acted negligently in such circumstances, a claimant would have to show on the pleadings and by evidence that his or her case falls within that fairly rare instance where the exercise of the Minister's discretion obligated him or her to consider afresh the quality of evidence placed before the committing Magistrate and/or the High Court and that the Minister so failed to act.

My thoughts on the application of the law in this case

[34] Mr. Baptiste was afforded the opportunity to revisit the basis on which the committing Magistrate acted by applying pursuant to section 13 of the Act for a writ of habeas corpus. He adopted this route by applying before Price Findlay J for a writ of habeas corpus. Mr. Baptiste could have also taken the opportunity to place fresh evidence before Price Findlay J on the habeas corpus application (see section 13(4) of the Act.) He has not indicated to me on this case whether he laid further evidence before the learned judge hearing the habeas corpus application. The habeas corpus application was refused by Price Findlay J. All these antecedents were before the Minister when he was exercising the discretion to issue the surrender order. The Minister formed the view that he could not take a position any different from the committing Magistrate or the High Court. This is since, as is correctly stated in the authorities, it is not part of the Minister's remit to act as a review or an appellate body from either the decision of the committing Magistrate or the High Court. The Minister, rightly in my view, accepted that the matters canvassed before him by Mr. Baptiste were fully investigated by and adjudicated on by both the committing Magistrate and the High Court.

[35] Curiously, Mr. Baptiste has not indicated to this court why he did not utilise the process recited at section 16(6) of the Act. That section afforded him another occasion to apply to the high court for a

²⁴ R (on the application of Allison) v Secretary of State for the Home Department [2001] EWHC 506 at para. 17

judicial review of the Minister's decision to issue the surrender order within 15 days of the decision to extradite him. Rather, he has applied by ordinary action on a claim alleging negligence. I have above set out the matters considered by the Minister when he sought to exercise the general discretion to order Mr. Baptiste's surrender to the UK. It was incumbent on Mr. Baptiste to demonstrate on the facts that the Minister was obliged to consider afresh the quality of the evidence assessed by the committal court and that by his failure to do so, he exceeded the ambit of this discretion. Mr. Baptiste has asserted that had the Minister further investigated the matter or instigated an investigation into the material he would have formed a view that was different from the committal court. However, Mr. Baptiste has not presented to me any evidence that what he presented to the Minister falls within the category of those rare cases where one can say that the exercise of the Minister may have obliged him to consider afresh the quality of the evidence placed before the Magistrate. In the circumstances, I do not agree that the Minister was obliged to investigate or have the material further interrogated. The Minister acted well within the limits of the ambit of his discretion when he concluded that the material and indeed the contentions as to Mr. Baptiste's innocence were already examined before the courts and as such he could not form any different view or was obligated to conduct further enquiries or have them conducted.

Conclusion

- [36] Based on the above assessment of matters in this case, I find that Mr. Baptiste has failed to show that when the Minister decided to issue the order to surrender him to the UK, the Minister exceeded the ambit of the general discretion given to him by section 15(1) of the Act and that as a consequence, Mr. Baptiste was entitled to file a private claim for damages. The claim therefore fails. Mr. Baptiste is to pay costs to the defendant in the assessed sum of \$2,500.00

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar