

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

GRENADA

CLAIM NO.GDAHCV2020/0191

**IN THE MATTER OF SECTIONS 1, 8 AND 16 OF THE CONSTITUTION OF GRENADA, SCHEDULE
1 TO THE GRENADA CONSTITUTION ORDER 1973, CHAPTER 128A OF THE CONTINUOUS
REVISED EDITION OF THE LAWS OF GRENADA**

AND

**IN THE MATTER OF AN APPLICATION BY GEMMA BAIN-THOMAS FOR A DECLARATION AS TO
THE CONTRAVENTION IN RELATION TO HER OF SECTIONS 1 AND 8 OF THE CONSTITUTION
OF GRENADA AND FOR RELIEF PURSUANT TO SECTION 16 THEREOF**

BETWEEN:

GEMMA BAIN-THOMAS

CLAIMANT

AND

THE ATTORNEY GENERAL OF GRENADA

DEFENDANT

Appearances:

Mr. V. Nazim Burke for the Claimant

Ms. Dia C. Forrester, Solicitor General for the Defendant

2021: January 28

March 2nd

JUDGMENT

- [1] **ACTIE, J.:** This is an application by way of an originating motion seeking declaratory and other reliefs pursuant to sections 1, 8 and 16 of the Constitution of Grenada. The originating motion concerns whether the claimant can maintain an originating motion against the State of Grenada with respect to the State's failure to satisfy its judgment debt pursuant to sections 1 (a) and (c) and 8 (8) of the Constitution. Further, whether there are alternative remedies available to the claimant to enforce the said judgment debt against the State and as such the court should decline to exercise its jurisdiction to hear the motion pursuant to section 16 of the Constitution.

Background

[2] The originating motion filed by the claimant on 16th June 2020 against the Attorney General of Grenada seeks the following reliefs:

(1) A declaration that the failure and or refusal of the Government of Grenada to satisfy the judgment in Claim No. GDAHCV2014/0082-Gemma Bain-Thomas v The Attorney General of Grenada against the Government of Grenada to pay damages plus interest and costs to the Claimant for her unconstitutional removal from the office of Secretary to the Cabinet ("the judgment debt") is contrary to or in contravention of sections 1(a) and (c), and 8(8) of the Constitution of Grenada.

(2) An order that:

(a) Within fourteen (14) days of the date of this order the Government of Grenada do satisfy the judgment debt or, in the alternative, enter into an acceptable payment schedule or arrangement with the claimant for the satisfaction of the judgment debt.

(b) Should the Government of Grenada fail or refuse to enter into an acceptable payment schedule or arrangement as ordered in paragraph (1) above or having entered into such schedule or arrangement, fail or refuse to comply with same, the Registrar of the Supreme Court, upon a written request of the claimant, shall issue a writ of execution against specified moveable property of the State of Grenada.

(c) Pursuant to the writ of execution, the marshal/bailiff of the court shall attach, but not remove, the specified movable property of the State for thirty (30) days from the date of attachment during which time the marshal/bailiff and the accounting officer with responsibility for the attached movable property of the State may, in writing, agree on which of the attached movable property of the State may not be removed and sold in execution for the judgment debt, on the grounds that to remove or sell such attached movable property will enter: (a) severely disrupt delivery of service to the public; (b) threaten life; or (c) put the security of the public at risk. Provided that should no agreement be reached, the marshal/bailiff may, after the expiration of thirty (30) days from the date of attachment, remove

and sell any of the attached movable property of the State, the proceeds from the sale of which in his or her opinion will be required to satisfy the judgment debt.

- (d) Notwithstanding paragraph above, the Government of Grenada, may, before the attached movable property is sold in execution of the judgment debt and, upon payment into court of such sum as is necessary to fully satisfy the judgment as at the date of such application, apply to the court for a stay, on grounds that the sale of the attached movable property would: (a) severely disrupt delivery of service to the public; (b) threaten life; (c) put the security of the public at risk; or (d) not be in the interests of justice.
- (3) Special damages for loss rebates on property taxes, loss of NIS benefits and loss of interest or earnings on the claimant's various accounts that had to be liquidated prematurely because of non-payment of the judgment debt, namely:
 - (a) Transactional Savings account, Retirement savings account and lifetime savings account with the Ariza Credit Union, each earning 3.25% interest per annum; and
 - (b) Regular savings (Timesaver) account with the Republic Bank (Grenada) Limited, earning 2.0% interest per annum.
- (4) Damages, including vindicatory damages awarded against the State of Grenada for the various breaches of the claimant's constitutional rights.

Affidavit in support of the Originating Motion

[3] The claimant's affidavit in support of the originating motion gives a salient background of this claim as follows:

- (1) By consent order dated 9th October 2018, the Government of Grenada was ordered to pay to her in the sum of \$656,108.00 by way of special damages and costs in the sum of \$16,000.00.

- (2) By judgment of the Honourable Master Ermin Moise, as he then was, in the said claim dated 12th March 2019 it was ordered that the Government pay the claimant the sum of \$75,000.00 in vindictory damages; interest at the statutory rate from the date of delivery of the judgment and \$1,000.00 in costs on the assessment of damages.
- (3) Despite her best efforts to reach an amicable settlement with the Government for the payment of the monies awarded under the consent order and the said judgment, the Government has failed and or refused to pay the judgment debt or any part thereof.
- (4) On 5th December 2018, her legal counsel wrote to the Attorney General inviting the Government to make its proposal for the settlement of the monies owed pursuant to the consent order. Mrs. Kinna Marrast-Victor, Crown Counsel, responded by letter dated 11th and 12th February 2019 with a proposal to settle the matter. However, this proposal by Government was refused and deemed unacceptable.
- (5) That her counsel, again wrote to Mrs. Marrast-Victor again by letter dated 1st April 2019 and a follow up letter on 8th August 2019 setting out her position. However, to date, there has been no response to the letters.
- (6) The Government removed her from its payroll on 1st August 2018, without any notice to her. Her monthly salary at the end of July 2018 was \$7,364.00 and as a result of this she was no longer able to meet her monthly obligations and therefore had to rely on her life's savings.
- (7) On 1st August 2018, she wrote a letter to the Chief Personnel Officer requesting a retraction of its letter dated 24th July 2018. She states that there was communication between herself, Chief Personnel Officer and some correspondence to the Accountant General. However, to date, she has not received any payments and continues to deplete her savings, as she has no source of income. She states that she has three interest bearing accounts at the Ariza Credit Union and one interest bearing account at the Republic Bank (Grenada) Limited which she was forced to utilise her savings at these financial institutions to meet her expenses. Therefore, she was put to loss of interest earnings.

(8) She is of the view that had the Government satisfied its judgment debt to her whether in full or in part, or at least continued to pay her regular salary, she would not have found herself in that predicament and exhausted her funds. Further, as a result of her unemployment, she states that she is unable to make contributions to the National Insurance Scheme.

(9) On or about 4th October 2018, she states that the Government publicly announced that it had raised funds to pay its judgment debts. She states that the Prime Minister and Minister of Finance confirmed that the Cabinet of Grenada approved payment of salary in lieu of vacation pay and other allowances of his personal security. She states that the Prime Minister obtained a special dispensation for the payment of these security officers, but blatantly refuses to make any payments towards her judgment debt. She states that the refusal by the Government to pay the judgment debt was a deliberate act for an improper purpose. She states that she was informed by her counsel and verily believes that this act is a violation of her constitutional rights.

[4] In her second affidavit filed on 9th November 2020, the claimant alleges that on 22nd July 2020, the Prime Minister appeared as a guest on the Grenada Broadcasting Network programme "***To the Point***", with Host, Ms. Blossom Alexis-Welch where he was questioned about outstanding debts obtained against the Government. The claimant refers to the Prime Minister's response to a question about her judgment debt. She is of the view that the Prime Minister's remarks that her appointment to the post of Secretary to the Cabinet was immoral, dishonest and not fair, meant that she was not deserving of her award of judgment by the court. Further, she is of the view that the Prime Minister is attempting to deny her the fruits of her judgment, so as to "*financially embarrass*", "*humiliate*" and "*punish her*" for challenging the decision to remove her from office as Secretary to the Cabinet.¹

The Defendant's Defence

[5] On 15th September 2020, the defendant filed a defence to the originating motion. With regard to the statement that the claimant's rights under section 1(a) and (c) of the Constitution have been breached, the defendant asserts that the above section is not actionable and that the high court has no jurisdiction to adjudicate on a constitutional challenge premised on the section.

¹ Affidavit of Gemma Bain-Thomas filed 9th November 2020 at paras. 8 to 10.

- [6] In relation to the claimant's statement that there has been a breach of her constitutional rights as provided in Chapter 1 section 8(8) of the Constitution, which is premised on section 16 of the Constitution, the defendant states that the claimant has an alternative remedy available that may be pursued in relations to the failure of a public authority to act other than seeking constitutional redress. The attempt to pursue constitutional redress amounts to an abuse of process of the court. Further, the defendant states that there has been no violation of section 8(8) of the claimant's constitutional right. Moreover, the defendant states that the claimant has failed to plead any particulars of unreasonableness, lack of good faith or failure to act with reasonableness.
- [7] The defendant states that the claimant has failed to take any steps to mitigate her damages that she may have suffered as a result of her unemployment and has not pleaded any attempts to do the same. The claimant has failed to follow the provisions of the Crown Proceedings Act in order to commence enforcement against the State. Therefore, the defendant states that the court has no jurisdiction to order the defendant into a payment schedule with the claimant based on the claimant's pleadings in the claim wherein constitutional redress is sought.
- [8] With respect to the claimant's request for a writ of execution against State, the defendant states that this request is expressly prohibited by section 71 of the Civil Procedure Act². Further, there is no common law right for a writ of execution against property owned by the State. The loss asserted by the claimant is too remote to establish that the defendant caused that loss and no particulars for that allegation have been pleaded by the claimant which warrants those aspects of the claimant's claim being struck out.
- [9] The defendant states that the claimant has failed to particularise and or otherwise substantiate the assertion that the non-payment of the judgment debt as agreed between the claimant and the Government of Grenada was calculated to and did affect the claimant's interest and or that it was the deliberate act for an improper purpose and expediency in breach of the claimant's constitutional rights. Further, the defendant states that the claimant has not sustained damages and or has no legal basis to claim vindictory damages or interest and other relief sought in the claim and accordingly the claim should be dismissed.

² Cap. 55 of the 2010 Continuous Revised Edition of the Laws of Grenada

[10] The defence is supported by the affidavit of Mr. Mike Sylvester, Acting Permanent Secretary in the Ministry of Finance, Economic Developments, Physical Development, Public Utilities and Energy. Mr. Sylvester repeats much of the procedural history of the claim and states further that:

- (1) Despite the complaints of the claimant that she was removed from the payroll of the government without notice, the claimant was deemed by the Court of Appeal to have been unconstitutionally removed from office. Therefore, he avers that the claimant was no longer an employee of the State and was not entitled to a monthly salary.
- (2) He is advised by the legal practitioners for the defendant and verily believes that the office of the Attorney General was engaged in verbal without prejudice discussions with previous counsel for the claimant, Mr. Rohan Phillip, with a view to negotiating a payment. In relation to the break in discussion he avers that this was a result of the claimant's former counsel migrating from the jurisdiction which brought her matter to a standstill. He states that the State has a duty to pay the outstanding judgment and denies the claimant's allegations or assertions of intentional and deliberate efforts to deprive her of the fruits of her judgment.
- (3) In relation to the amount of the judgment debt, Mr. Sylvester states that having regard to the size of the judgment, large sum payments were not feasible for the state at the material time. He states that it was the claimant who rejected the government's proposed payment plan. He said that when considering a payment plan several matters must be considered, in particular, the budgetary allocations of the State. He says that there is no truth to the claimant's assertions that the State has been unreasonable or lacked good faith in addressing the judgment debt.
- (4) With respect to the claimant's allegations that the Prime Minister and former Minister of Finance has blatantly failed or refused to settle the judgment debt and is financially humiliating and punishing her, he states that there is no evidence to substantiate that the Prime Minister seeks to humiliate and or embarrass the claimant. Further, he states that the court has confirmed that it was the Public Service Commission that removed the claimant from her post.
- (5) Concerning the Prime Minister's statements on the Grenada Broadcasting Network programme, "*To the Point*", Mr. Sylvester states that in fact the Prime Minister expressly

stated that even if the State disagrees with a decision of the court it must accept the decision and do as the court has ordered. Mr Sylvester gave an explanation of how the Ministry of Finance formulates its payment procedures, which is presented for Cabinet's approval and further states that he relies on the full transcript of the said programme to give context to the Prime Minister's statements.

- (6) He states that he has seen several representations by the claimant on social or print media in relation to her outstanding judgment and opines that he believes the claimant has a personal issue with the Prime Minister of Grenada.
- (7) In relation to the order of vindictory damages, Mr. Sylvester states that the State, at no stage, has refused to address the debt. He states that the State's attention was refocused in March 2020 at the beginning of the global covid-19 pandemic. The State is now grappling with an ongoing public health crisis and severe economic impact the virus has caused, including its obligations to payment of judgment debts and providing public services. He acknowledges that there are great consequences for failing to pay judgment debts, since it escalates the amount payable where interest may be accruing. In closing, Mr. Sylvester agrees to the relief for payment being sought by the defendant and states that the State continues to be ready to amicably address payment of the claimant's judgment debt. He requests that the claim be dismissed with costs to the defendant.

Issues

[11] The main issues emerging from this case are:

- (1) Whether section 1 subsections (a) and (c) of the Constitution of Grenada are enforceable or actionable.
- (2) Whether there are adequate alternative remedies available under law to the claimant to enforce said judgment debt against the State.
- (3) If yes, whether the court should decline to exercise its jurisdiction pursuant to the proviso in section 16 of the Constitution.

Issue 1. whether Section 1 (a) and (c) of the Constitution of Grenada are enforceable or actionable.

Claimant's submissions

[12] On 9th November 2020, Mr. V. Nazim Burke counsel for the claimant, in written submissions on behalf of the claimant submits that: -

- (1) The defendant's argument that sections 1 subsections (a) and (c) of the Constitution are not actionable, in that the Constitution expressly states that any person who alleges violations of the provisions of sections 2 to 15 may apply to the high court for redress, is fundamentally flawed. Counsel submits that the failure or refusal of the defendant to satisfy the judgment debt contravene sections 1(a) and (c) and 8(8) of the Constitution of Grenada.
- (2) Counsel relies on the Privy Council case of **Société United Docks and Others v Government of Mauritius and Others**³ which considered section 3 and 8 of the Constitution of Mauritius. He states that the appellants in that case contended that they were entitled to redress under the Constitution as the effect of the Sugar Terminal Act was to deprive them of their business in breach of their rights under section 3 of the Mauritius Constitution. The respondents argued that the appellants were not entitled to redress as they cannot prove that their property was compulsory taken or compulsory acquired pursuant to section 8 of the said Constitution. However, Lord Templeman rejected the respondents' arguments and opined that the wording of section 8 must be construed in light of the provisions of section 3. His Lordship continued that "section 8 sets forth the circumstances in which the right to deprivation of property can be set aside but it is not to curtail the ambit of section 3"⁴.
- (3) The wording of section 1 of the Grenada Constitution is virtually identical to section 3 of the Mauritius Constitution; sections 6 of the Grenada Constitution is identical to section 8 of the Mauritius Constitution and section 16 of the Grenada Constitution is almost identical to section 17 of the Mauritius Constitution. Counsel submits that the reasoning of the Privy Council in the **Société United Docks** case applies and should be adopted. Therefore, he submits that failure or refusal of the defendant to satisfy the judgment debt pursuant to section 1(a) and (c) of the Constitution, is an actionable one.

³ [1985] AC 585

⁴ Ibid at page 7

(4) In relation to the jurisdiction of the court to adjudicate a constitutional challenge premised on section 1 (a) and (c) of the Constitution, counsel submits that the **Société United Docks** case and the Privy Council case of **Jamaicans for Justice v Police Service Commission and another**⁵ demonstrate this jurisdiction. Counsel also relies on the reasoning in **Minister of Home Affairs and Minister of Education (Bermuda) v Collins MacDonald Fisher and Eunice Carmeta Fisher**, that the court must be guided by the principles of constitutional interpretation and those of ordinary statutory interpretation. He notes that the Lords in that case opined that Chapter 1 of the Bermuda Constitution called for a generous interpretation. Moreover, section 16 of the Grenada Constitution does not deprive the high court of its inherent jurisdiction to adjudicate matters in which a person alleges that their right guaranteed by sections 2 to 15 of the Constitution have been, is being or is likely to be violated.

[13] **Section 8(8) of the Constitution** provides where proceedings for determination of a civil rights are instituted by any person before any court or other authority prescribed by law for determination of the existence or extent of any such right the case shall be given a fair hearing, before an independent and impartial tribunal within a reasonable time. Both CCJ and Privy Council have rendered several seminal judgments addressing the nature and extent of the constitutional right to protection of the law. Counsel submits that in the case at bar, the failure or refusal by the defendant to satisfy the judgment debt is irrational, unreasonable, and fundamentally unfair and amounts to an arbitrary exercise of power.

[14] It is a generally accepted principle of constitutional interpretation that if the applicant establishes that the law in question prima facie infringes a guaranteed right, he is deemed to have met the burden of establishing a clear transgression of constitutional principles. The burden then shifts to the State to demonstrate that the limits on the right is constitutionally justified. Counsel cites the judgment of Smith J in **Shorn Braveboy and Another v Richard Daniel and Others**⁶. Counsel states that the claimant having established that the conduct of the defendant infringes sub-sections 1(a) and (c) of the Constitution, it is for the Defendant to prove that the infringement is constitutionally justified. Further, counsel states that the defendant has offered no reason for its failure or refusal to pay the claimant's judgment.

⁵ [2019] UKPC 12

⁶ GDAHCV2019/0247

[15] Counsel further posits that the principle established by the Privy Council at paragraph 23 in **Gairy** should be adopted in the case at bar. Counsel submits that it is conceded that in fashioning a remedy a balance must be struck between the rights of the individual to obtain the fruits of the judgment and the public interest in ensuring that the business of the State is not interrupted to the detriment of the wider public.

Defendant's submissions

[16] In her written submissions filed on 7th December 2020, Ms. Dia Forrester, the Hon. Attorney General, in her position of Solicitor General (as she then was) submits that the claimant's claim seeking declarations for the contravention of Sections 1(a) and (c) are not actionable and therefore non-justiciable. Ms. Forrester states that sections 1(a) and (c) of the Constitution are broad statements of principles with no provision being made for enforcement of those principles as a standalone concept. Enforcement of rights in Chapter 1 of the Constitution arises in relation to sections 2 to 15 of the provisions of section 16 of the Constitution.

[17] To support her submissions, counsel commends to the court the learning of our Court of Appeal in **The Attorney General of Anguilla and others v Bernice Lake, QC and others**⁷, where Chief Justice Saunders (Ag)⁸ considered the provisions of the Anguillan Constitution which counsel states are identical to that of Grenada.

[18] Ms. Forrester submits that the Privy Council in **Société United Docks**, which the claimant relies, clearly states that section 3 of the Mauritius Constitution is not a preamble and is expressly stated to be actionable. Ms. Forrester states that sections 3 and 17 of the Constitution of Mauritius are not identical to sections 1 and 16 of the Grenada Constitution. She further states that the language of the Mauritius Constitution does not contain language as identified by Chief Justice Saunders that one expects to find in a preamble. She further states that the claimant has omitted to reference section 17 of the Mauritius Constitution which expressly provides that:

"Where any person alleges that any of the sections 3 to 16 has been, is being, [sic] likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress".

⁷ AXAHCVP2004/004

⁸ at paragraphs 39 to 44 of the judgment

[19] Ms. Forrester refers to The Privy Council authority of **Grape Bay Ltd v Attorney General**⁹ where Lord Hoffman considered whether section 1(c) of the Bermuda Constitution is actionable in like manner to the claimant in the case at bar. She states that section 1(c) of the Bermuda Constitution is identical to that of Grenada. The Privy Council in **Société United Docks**¹⁰ confirmed that section 3 of the Mauritius Constitution and section 1 of the Bermuda Constitution, by extension Grenada, is not the same and noted that section 3 of the Mauritius Constitution is actionable.

[20] Ms. Forrester contends that the claimant seeks to use Privy Council case of **Jamaicans for Justice v Police Service Commissions and another**¹¹ and in passing the Caribbean Court of Justice cases in **Maya Leaders Alliance v A-G**¹² and **Nervais v R, Severin v R**¹³ to argue that the court has an inherent jurisdiction to make sections 1 (a) and (c) of the Grenada Constitution actionable. However, counsel notes that paras 3 and 4 of the claimant's first affidavit where she states that she seeks relief pursuant to section 16 of the Constitution and that the defendant has violated section 1(a) and (c) of the Constitution. Ms Forrester is of the view that the claimant cannot now change her case as that is improper and impermissible. In any event, she submits that the claimant's case still falls short of the required threshold base on the case law relied upon to contend that sections 1 (a) and (c) of the Grenada Constitution are actionable. She states that the pleadings and evidence on affidavit of the claimant contain nothing more than bare assertions that should be struck out.

[21] With reference to **Section 8(8) of the constitution**, Ms. Forrester submits that it appears that the claimant has abandoned her pleadings and assertions in relation to the section. Ms. Forrester states that she fails to see how the delayed payment of the judgment debt has resulted in a breach of section 8(8) of the Constitution in the circumstances. Ms Forrester adopts the judgment of her Ladyship Blenman J in the authority of **Indra Williams** where Her Ladyship states at paragraph 59 that section 8(8) addresses the right to a fair trial and does not clothe the court with jurisdiction to hear matters. Counsel cites the decision in **Case of Postnova v Russia**¹⁴ and notes that the European Human Rights Court decisions are not legally binding in

⁹ (1999) 57 WIR 62

¹⁰ At paras. 145-146

¹¹ [2019] 4 LRC 117

¹² [2015] CCJ 15

¹³ [2018] CCJ 19

¹⁴ Application No.50113/07

this jurisdiction and no case from the Eastern Caribbean has been presented by the claimant in adopting those principles. Further, counsel states that the **Case of Postnova v Russia** line of cases are of no assistance to the claimant in this claim.

[22] In relation to the claim for damages as a result of the delay of the State to pay the judgment debt, Ms Forrester contends that the damages claimed are too remote. Further, any loss sustained by the claimant as a consequence of being removed from the State's payroll is res judicata. Each and every alleged loss that claimant alleges that has arisen as a consequence of being removed from the payroll was a matter that should have been raised and advanced on the assessment of damages claim in GDAHCV2014/0082. Moreover, counsel states that the claimant has a duty to mitigate her loss and has advanced no evidence of any such efforts being extended.

[23] In closing, Ms Forrester submits that in relation to the pleaded case that sections 1(a) and (c) are actionable to section 16 of the Constitution, both the Court of Appeal in **Bernice Lake** and Privy Council in **Grape Bay Ltd** confirm that is an incorrect submission. Secondly, it is not reasonably foreseeable that the defendant is liable for losses sustained by the claimant on being removed from the payroll of the government which matter is res judicata. Also, the claimant has neither presented any evidence to substantiate the losses she alleges nor sought to mitigate the alleged losses.

Alternative remedies

[24] Mr. Burke, for the claimant, in his submissions states that the principles that must guide the court in determining whether the decision by the claimant to seek constitutional redress is appropriate can be gleaned from the Privy Council case of **Attorney General of Trinidad and Tobago v Ramanoop**¹⁵ namely:

- (a) An originating motion is a summary procedure, save matters with substantial factual disputes.
- (b) An allegation of contravention of a human right does not of itself entitle an applicant to invoke the section 14 procedure if it is apparent this allegation is an abuse of process.
- (c) 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

¹⁵ [2005] UKPC 15

appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal address 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 courts process.

- (d) A special feature would be a case where there has been an arbitrary use of state power.
- (e) The need for the courts to be vigilant in preventing abuse of constitutional proceedings is not intended to deter citizens from seeking constitutional redress where, acting in good faith, they believe the circumstances of their case contain a feature which render it appropriate for them to seek such redress rather than rely simply on alternative remedies available to them.

[25] Mr. Burke states that it cannot be said that the claimant has an alternative to seeking constitutional redress. He says that Section 71 of the Civil Procedure Act expressly prohibits the issuance of a writ of execution against the government in pursuance of a judgment debt and deprives the claimant of an alternative to constitutional redress.

[26] Mr Burkes says even if it can be said that there exists an alternative remedy to constitutional redress the facts of this case fall within the ambit of the case in **Ramanoop**. Counsel submits that the case at bar does not involve substantial factual disputes; this action by the claimant was not brought solely to avoid necessity of applying the normal way; even if it could be said there is a parallel remedy, the circumstances of which is made includes some feature which makes it appropriate and that power being the arbitrary use of the state's power by the Prime Minister. Counse submits that the claimant is acting in good faith and believes that the circumstances of her case contain a feature which renders it appropriate for her to seek such redress rather than rely simply on any alternative remedies that may be available to her.

[27] Further, Mr. Burke states that Section 21 of the Crown Proceedings Act that purports to be a full proof method of satisfying a judgment against the Crown, is not effective in ensuring that payment is actually realized by the judgment creditor. He said in **Gairy v Attorney General of Grenada (No.2)**¹⁶ Lord Bingham opined that: "*if the appellant pursued his rights under section 21 he*

¹⁶ (1999) 59 WIR 174

might be denied enforcement in reliance on section 21(4), an obstacle he could not overcome (if at all) only be relying on his rights under the Constitution¹⁷."

[28] Mr Burke states that the approach to be taken by the court in determining whether and to what extent section 1(a) and (c) of the constitution has been infringed is provided by the Privy Council case of **La Compagnie Sucriere de Bel Ombre Ltee and Others v Government of Mauritius**¹⁸. In the present case the government has been failing or refusing for years to comply with the enforceable judgment in the claimant's favour which has prevented her from receiving the money she could reasonably have expected to receive.

[29] In response, Ms. Forrester for the defendant submits that the high court has a discretion to dismiss any claim for constitutional redress where a litigant has available to him or her an alternative remedy. The court, in exercising its discretion, must consider whether having regard to the circumstances of the case, some other procedure either under the common law or statute is available. Where another procedure is available, a claim for constitutional redress will not be appropriate and will amount to an abuse of process of the court.

[30] Ms Forrester states that the claimant has alternative remedies available via the provisions of the Crown Proceedings Act and the Civil Procedure Act to enforce her judgment debt against the State. Ms. Forrester submits that there is a legislated scheme for enforcement of judgments against the State that is an adequate alternative remedy available for the claimant to pursue in the matter. Counsel explains that **Section 21(1) of the Crown Proceedings Act** states that the proper officer of the court issues a certificate to the person who has obtained the benefit of the judgment setting out particulars of the order. Further, **Section 71 of the Civil Procedure Act** states that the court shall transmit a copy of any order made against the Government to the Minister of Finance who, if the order is for payment of money, shall direct the amount awarded in the judgment to be paid by the Permanent Secretary in the Ministry of Finance.

[31] Ms Forrester relies on **section 16 of the Constitution of Grenada** to support her arguments that where the constitution provides that the high court may decline to exercise its powers if it is satisfied that adequate means of redress for the contravention alleged are or have been available. Counsel also states that the court may also act under its inherent jurisdiction and states

¹⁷ Ibid at para 21

¹⁸ [1995] UKPC 53

that there is provision for enforcement of judgments against the States under section 71 of the Civil Procedure Act¹⁹ and section 21 of the Crown Proceedings Act²⁰. She also refers the court to the learning in the Privy Council authority of **Attorney General of Trinidad and Tobago v Ramanooop**²¹.

[32] Ms Forrester states that the duty imposed on the Permanent Secretaries is a mandatory one and they are at risk if they fail to perform their duty. If there is no payment, the Permanent Secretary can face contempt proceedings by the judgment creditor to show cause why he or she is not wilfully disobeying an order of the court.

[33] Further, Ms Forrester submits that the claimant has not utilised any of the legislative provisions to enforce the judgment debt against the State. Counsel relies on the court of appeal decision in **The Permanent Secretary of the Ministry of Finance v Financial Investment and Consultancy Services Limited**²² where His Lordship Webster JA adopted the former Chief Justice Sir Dennis Byron's interpretation of the section 21 of the Crown Proceedings Act and states that the provisions of the said section impose a specific statutory duty enforceable by mandamus on a public official. Counsel states that the court of appeal has expressly confirmed that the procedure provided for in Section 21 of the Crown Proceedings Act is a comprehensive and specialised procedure for a judgment creditor to obtain payment from the State of his or her judgment debt.

[34] Ms Forrester in relation to the claimant's complaint concerning Section 71 of the Civil Procedure Act, states that the claimant is contending that she wants the option to be granted a writ of execution against the State despite same being prohibited by statute and is seeking to have the court to utilise its inherent jurisdiction to grant such relief. She submits that this request is contrary to the separation of powers principles. To support her submissions, counsel relies on the Court of Appeal decision in **Indra Williams v Casepak Company (Grenada) Ltd**²³ where Her Ladyship Blenman JA expressed that the court must exercise judicial restraint to desist from legislating from the bench if there is a void in the statute. At paragraph 39 of the judgment Her ladyship

¹⁹ Cap 55 of the 2010 Continuous Revised Edition of the Laws of Grenada

²⁰ Cap 74 of the 2010 Continuous Revised Edition of the Laws of Grenada

²¹ [2006] 1 AC 323 at paras. 25-26 and 28-30

²² GDAHCVAP2016/0001 at paras. 15-16 and 33

²³ GDAHCVAP2018/0008 at paras. 36, 39- 40

stated: *"it cannot be said enough that the duty to enact legislation devolves upon the Legislature, and not on the court"*.

[35] Further, Ms Forrester notes that the ability to obtain a writ of execution against the State does not exist at common law. It is statute that created the ability of citizens to execute against the State. Counsel provides the court with a historic overview of how the Crown Proceedings Act came to being and that prior to statutory intervention it would not be possible for a citizen to enforce against State. Counsel relies on the authorities of **Bradford Noel v First Caribbean International Bank (Barbados) Ltd**,²⁴ and **Broad Idea International Limited v Convoys Collateral Limited**²⁵ to support her contentions. Therefore, counsel is of the view that the claimant cannot be granted the reliefs she sought. Insofar as she has requested a writ of execution against the State, counsel submits that this is a prime example of the types of case that should not engage the constitutional jurisdiction of the court. She submits that there is no evidence presented by the claimant to substantiate her position that the constitutional jurisdiction of this court has been properly invoked in the circumstances. She states that the claimant's claim is frivolous and vexatious and should be dismissed.

Analysis

Whether section 1 subsections (a) and (c) of the Constitution of Grenada are enforceable or actionable.

[36] **Section 1 of the Constitution of Grenada** provides:

"Whereas every person in Grenada is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association;
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation; and
- (d) the right to work,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in these provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest."

²⁴ GDAHCVP2004/0109

²⁵ BVIHCP2015/0026

[37] Counsel for the Claimant, Mr. Burke, contends that section 1 of the Constitution is actionable and relies on the Privy Council case of **Société United Docks** where the court considered sections 3 and 8 of the Mauritius Constitution and opined that section 3 is not a mere preamble or introduction. He avers that section 3 of the Mauritius Constitution is identical to section 1 of the Constitution of Grenada. Further, he avers that section 8 of the Mauritius Constitution is almost identical to section 6 of the Grenada Constitution.

[38] Counsel for the Defendant, Ms. Forrester, does not share this view and states that section 16 of the Constitution expressly states that a person who alleges that his or her rights have been contravened under sections 2 to 15 of the Constitution may apply to the High Court for redress.

Section 16 of the Grenada Constitution provides:

“(1) If any person alleges that any of the provisions of sections 2 to 15 (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 which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction-

- a. to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
- b. to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section and may make such declarations or orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive) 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.

(3) If in any proceedings in any court (other than the Court of Appeal, the High Court or a court martial) any question arises as to the contravention of any of the provisions of sections 2 to 15 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of subsection (3) of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Court of Appeal or to Her Majesty in Council, in accordance with the decision of the Court of Appeal or, as the case may be, of Her Majesty in Council.

(5) Parliament may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(6) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by or under this section (including rules with respect to the time within which applications may be brought and references shall be made to the High Court)."

[39] Ms. Forester contends that **section 17 of the Mauritius Constitution** expressly provides that a person whose rights are violated under sections 3 to 16 of the Mauritius Constitution may apply to the Supreme Court for redress. Ms. Forester relies on the judgment of Saunders JA in the Court of Appeal decision in **The Attorney General of Anguilla and others v Bernice Lake, QC and others**²⁶ in relation to the interpretation of section 1 of the Anguillan Constitution which is identical to section 1 of the Grenada Constitution. The court states at paragraph 41 of the said judgment that:

"...the rights declared in section 1 are incapable of being enforced save insofar as they are contained in some section lying between sections 2 and 15 (inclusive) and then, only to the extent that the relevant section permits."

[40] The learning from the Privy Council in the **Société United Docks** can be distinguished on the facts. The court agrees with Ms. Forester's arguments and adopts the learning of Saunders JA from the **AG v Bernice Lake, QC** case. There is no provision for redress under section 1 of the Grenada Constitution as contained in section 17 of the Mauritius Constitution. **Section 16 of the Grenada Constitution** does not expressly provide redress for enforcement of the rights stated in section 1 of the Grenada Constitution. As Saunders JA states in **AG v Bernice Lake, QC**²⁷ *"Section 1 is a mere statement of the broad principles...[and] any purported breach of section 1 is not justiciable."* Therefore, section 1 of the Grenada Constitution is not justiciable or actionable for the enforcement of breaches to fundamental rights and freedoms.

²⁶ at paragraphs 39 to 44

²⁷ paragraph 41

Section 8(8) of the Constitution

[41] In relation to the section 8(8) of the Constitution, Mr. Burke claims that the right to a fair hearing within a reasonable time as provided by the said section sums up the right to protection of the law. **Section 8(8) of the Constitution** provides:

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

[42] Mr. Burke submits that where a citizen commences proceedings to determine that existent right under Section 8, the case shall be given a fair hearing within a reasonable time. This court does not see how these arguments are applicable to the facts in the case at bar. The facts of this claim surround the delay in payment or satisfaction of the claimant's judgment debt. Further, the court does not see how a delay in the satisfaction of the judgment debt against the State can amount to a breach of the right to a fair hearing within a reasonable time under section 8(8). The court is not of the view that the failure of the State to satisfy the judgment debt contravenes or can amount to a contravention of the right to a fair hearing within a reasonable time as provided by section 8(8) of the Constitution.

Whether there are adequate alternative remedies available under law to the claimant to enforce said judgment debt against the State.

[43] Ms. Forrester in her submissions states that the high court has a discretion to dismiss any claim for constitutional redress where a litigant has available to him or her an alternative remedy. She states that section 16 of the Constitution confirms this and further the court also has an inherent jurisdiction to do what is right. Judgment creditors can enforce judgments against the State under the provisions of section 71 of the Civil Procedure Act and Section 21 of the Crown Proceedings Act.

[44] Mr. Burke disagrees with this view and states that section 71 of the Civil Procedure Act expressly prohibits the issuance of a writ of execution against the State in pursuance of a judgment debt. He states further that section deprives the claimant of an alternative to constitutional redress. In any event, he states that, even if it can be said that there exists an alternative remedy to constitutional redress, the facts of this case warrant constitutional redress. Moreover, he states

that section 21 of the Crown Proceedings Act is not an effective or fool proof method in ensuring that payment is materialised by the judgment creditor. He relies on the dicta of Lord Bingham in **Gairy v AG (No.2)**, where His Lordship opined that section 21(4) of the Crown Proceedings Act might be an "**obstacle**" to enforcement.

[45] Both Mr. Burke and Ms. Forrester, have aptly discussed the learning of the Privy Council in **Ramanoop** in support of their arguments. At paragraph 25 of **Ramanoop**, the court opined:

"In other words, 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." (Bold emphasis mine)

[46] In relation to the adequacy of the remedy, Ms. Forrester submits that there is a legislated scheme for enforcement of judgments against the State that is an adequate alternative remedy available for claimant to pursue. She states that section 71 of the Civil Procedure Act imposes a duty on the Permanent Secretary in the Ministry of Finance. If the Permanent Secretary fails to perform their duty, they run the risk of contempt proceedings being filed against them to justify their neglect to refusal to abide by the court's order. Counsel relies on the decision of **Re Maharaj and the Constitution of Trinidad and Tobago**²⁸ to support her argument that the existence of a debt creates a duty to pay. The claimant is required to take the legislative steps provided for in section 21 of the Crown Proceedings Act and section 71 of the Civil Procedure Act to enforce and obtain payment. If the State fails to meet its obligations, then there may be a case to assert that there has been a violation of a right.

[47] Ms Forrester says that the claimant has not led any evidence that she has invoked section 71 of the Civil Procedure Act nor led evidence that the Permanent Secretary has refused to make payments. What the claimant has led is that on 22nd July 2020, the Prime Minister appeared as a guest on the Grenada Broadcasting Network programme "To the Point", where he made remarks that her appointment to the post of Secretary to the Cabinet was immoral, dishonest and not fair, which she interpreted to mean she was not deserving of her award of judgment by the court. The claimant further states that the Prime Minister is attempting to deny her the fruits of her judgment, so as to "financially embarrass", "humiliate" and "punish her". Ms Forrester is of the view that the claimant has taken the statements made by the Prime Minister out of context.

²⁸ (1996) 10 WIR 149

Ms Forrester said that while the claimant is entitled to her view, section 71 is pellucid that it is the responsibility of the Permanent Secretary to make the payment towards the judgment and not the Prime Minister. Moreover, apart from the claimant's bald assertions that the State, through the Head of the Executive, the Prime Minister, is refusing to satisfy her award of judgment, there is no evidence before this court to show that the State has unequivocally refused to satisfy the judgment. The claimant herself indicated that there were negotiations for payment which fell through, as she deemed the payment proposal by the Government to be unsatisfactory. The court accepts the evidence that a proposal was made to the claimant for periodic payments. The claimant's former counsel on record encouraged her to "give it some thought as a good way to start off the payments and to work towards full satisfaction going forward, but it was always your decision"

[48]. In **The Permanent Secretary of the Ministry of Finance v Financial Investment and Consultancy Services Limited** Webster JA at paragraph 37 said;

".....where the Government is not financially able to satisfy a judgment debt forthwith. In this situation, the Government's recourse is as stated by Lord Bingham of Cornhill in the **Jennifer Gairy** case when His Lordship said at paragraph 31: "If the exigencies of public finance should prohibit immediate payment to the appellant of the full sum outstanding, the Attorney-General, representing the Minister of Finance, may apply to the judge for approval of payment by instalments."

[49] The learning from former Chief Justice Sir Dennis Byron, which was adopted by the Court of Appeal in **the Permanent Secretary in the Ministry of Finance v Financial Investments and Consultancy Services Limited**,²⁹ is apt in the circumstances. Sir Byron stated:

"It has become commonplace for counsel to complain about the difficulty of collecting money judgments against the Government. In my view, these complaints are based on a misinterpretation of the statutory provisions. **There is sufficient statutory protection for the constitutional principle of separation of powers to ensure that the executive does not refuse to comply with court orders for money payments with impunity. The relevant statutory duty is not placed on any Minister of Government but on a senior civil servant, in the person of the Permanent Secretary (Finance).** The Crown Proceedings Act makes provision for the enforcement of money judgments against the Crown. These provisions impose a specific statutory duty enforceable by mandamus on a public official³⁰." (Bold emphasis mine)

²⁹ GDAHCVAP2C16/0001

³⁰ Ibid at paragraph 15

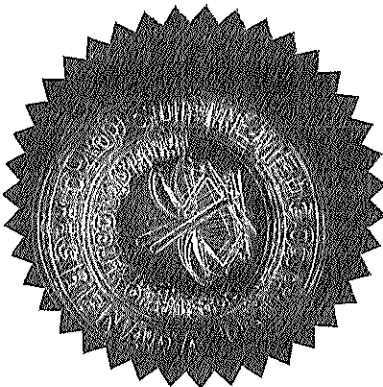
[50] The court is not convinced that the claimant has made out an arguable case that the State, through its servants, has failed, refused or neglected to satisfy judgment. The claimant has failed to establish an arguable cause of action for redress for the contravention of her rights under sections 1(a) and (c) and 8 of the Constitution. Moreover, she has failed to show that the remedy, which was raised by the Defendant, is wholly inadequate or ineffective for the enforcement of her judgment. Further, there is no evidence or assertion of an unequivocal refusal by the Permanent Secretary in the Ministry of Finance or any other relevant servant or body of the State, to honour her judgment.

[51] While the court will not trivialise the claimant's plight, her bald assertions of the State's refusal or neglect to satisfy the judgment, without more, do not amount to breaches of sections 1 and 8 of the Constitution. In the circumstances and in light of the facts of this case and the authorities, the court is of the view that it should decline to exercise its jurisdiction to hear the claim, since there are adequate alternative remedies available for the Claimant to pursue the enforcement of her judgment debt against the State.

Order

[52] In summary and for the foregoing reasons, it is ordered as follows:

- (1) The claimant's originating motion filed on 18th June 2020 is dismissed and accordingly, the reliefs claimed are refused.
- (2) No order as to costs as the court is satisfied that the claimant did not act unreasonably in pursuing the motion pursuant to Rule 56.13(6).



Agnes Actie
High Court Judge

By the Court


Registrar
Deputy Registrar
Supreme court
Grenada West Indies