

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. BVIHCV 2019/0256

IN THE MATTER OF THE VIRGIN ISLANDS CONSTITUTION ORDER 2007 (UK SI 2007 No. 1678)

And

IN THE MATTER OF AN APPLICATION BY KERRISON DEON SMITH, A PERSON ALLEGING A BREACH OF ARTICLES 9, 16(1) and 19(2) OF THE SAID CONSTITUTION, FOR DECLARATORY AND COMPENSATORY RELIEF PURSUANT TO SECTION 31 OF THE SAID CONSTITUTION.

BETWEEN:

KERRISON DEON SMITH

Claimant/Respondent

and

THE ATTORNEY GENERAL OF THE VIRGIN ISLANDS

Defendant/Applicant

Appearances: Mr. Jamal Smith for the Claimant/Respondent
Mr. Christopher Forde, Crown Counsel, for the Defendant/Applicant

2020: January 24
February 13

RULING

- [1] **WARD, J:** By Notice of Application dated 7th November, 2019, the Defendant applies to strike out the Claimant's Fixed Date Claim Form filed on 7th October 2019 on the grounds that there has been a failure to comply with relevant rules per **CPR 26.3(1)(a)**; that it does not disclose reasonable grounds for bringing a claim per **CPR 26.3(1)(b)**, that it amounts to an abuse of the process of the court per **CPR 26.3(1)(c)**. Alternatively, the Defendant seeks to have certain parts of the Claimant's affidavit in support struck out on the basis that they are irrelevant.

BACKGROUND

- [2] At about 2:00 a.m. on 4th July, 2016 the Claimant was intercepted while in a vehicle in the vicinity of Josiah's Bay, Tortola. He was found to be in possession of cannabis and cocaine. He was arrested and conveyed to the East End Police Station. There he was searched and the sum of US\$2,466.00 taken from his person. He was taken to the Road Town Police Station where he was detained before being charged for the unlawful possession of 0.8 grams of cannabis contrary to section 7(1) of the Drug (Prevention of Misuse) Act Cap.178 (hereafter, "the Drugs Act") and possession of cocaine with intent to supply to another contrary to section 7(2) of the Drugs Act. He was released on police bail at about 7:00 p.m., conditioned for his appearance at the Magistrate's Court on 16 September, 2016.
- [3] The matters were called on before the Magistrate's Court on diverse days between 16th September and 11th January, 2019. On 3rd March, 2017 the Claimant entered a guilty plea to the charge of possession of cannabis. The trial of the cocaine charge was then set for 29th and 30th May, 2017. That trial date was vacated on a number of occasions for various reasons. It eventually commenced on 12th December, 2018, was adjourned to 8th January, 2019 and again to 11th January when the prosecution withdrew the cocaine possession charge. On that day also, the Magistrate sentenced the claimant on the marijuana possession charge. He was reprimanded and discharged
- [4] The Claimant alleges that after the cocaine charge was withdrawn he made inquiries and wrote to the DPP on 10th May, to the Commissioner of Police on 16 May and again to the DPP on 20 May in an effort to secure the release of the money that had been taken from him. The police wrote to him on 23rd May and informed him that the money was available for collection. The Claimant avers that the detention of this sum of money resulted in him being unable to pay arrears on a parcel of land at Sea Cow's Bay for which he had made an initial payment to the Government in April, 2016 and in respect of which he was expected to make monthly payments thereafter. The unavailability of this money, together with the expenses associated with legal fees to defend the charges, to which he gave priority, resulted in him being unable to pay the mounting arrears on the property. By reason thereof, as at 22nd July, 2019 the Claimant says he no longer holds any interest in the said

parcel of land. He claims that as a result of the criminal case he has lost the opportunity to own land at an affordable price as he is now unable to purchase property at the usual market price.

[5] The Claimant further avers that because he was unable to purchase the property he decided for the first time to open a bank account. The compliance departments of two banks have declined his application to do so. While he has not been furnished with a reason and is in the processes of having those decisions "reviewed by the appropriate banking regulators" the Claimant attributes this to his conviction. He further claims an entitlement to use cannabis for his personal use in his private space.

[6] Accordingly the Claimant seeks:

- (i) Declarations that his rights under sections 9 of the Virgin Islands Constitution have been contravened; his right to a fair hearing within a reasonable time pursuant to section 16(1) of the Constitution have been contravened because the criminal proceedings against him took 921 days to be disposed of; and that his right to privacy under section 19(2) of the Constitution has been breached;
- (ii) Damages for breach of section 16(1) of the Constitution for the market value of the equivalent property lost as a result of the breach;
- (iii) An order for the removal from the record of the Magistrate's Court the guilty verdict (Sic) for the possession of cannabis;
- (iv) Statutory interests and costs.

The Defendant's submissions

[7] In relation to the application to strike pursuant to **CPR 26.3(1)(a)** the Defendant submitted that the Claimant's claim form did not include a short description of the nature of the claim; that the affidavit in support failed to state the grounds on which relief is sought; did not set out any grounds in support of the allegation that section 9 was breached; that in any event section 9 does not confer any rights; that the Claimant did not set out any grounds in support of the allegation that section 19(2) of the Constitution was breached; and that the original Fixed Date Claim Form did not contain a valid Certificate of Truth.

- [8] As it relates to **CPR 26.3(1)(b)** the Defendant submitted that the Claimant failed to indicate grounds upon which the Defendant can discern how the allegations pleaded relate to the orders and declarations with the result that the Defendant is not put on sufficient notice of the case he is called to answer. The Defendant therefore submitted that the statement of case fails to disclose reasonable grounds for bringing a claim.
- [9] As it relates to **CPR 26.3(1)(c)**, the Defendant submitted that it is an abuse of process for the Claimant to seek constitutional relief having failed during the currency of the case at the Magistrate's Court to raise the issue of delay having an adverse effect on his right to a fair hearing within a reasonable time and having failed to seek to stay the proceedings there in order to file an originating motion. It is further said that to date the Claimant has taken no steps to appeal his conviction. Accordingly, submitted the defendant, where a case is determined by a court of law and the party does not avail themselves of the existing right of appeal, the relevant law as interpreted by the judge in reaching the court's decision is the law so far as the entitlement of the parties to due process of law and the protection of the law are concerned. Where therefore a party is convicted in accordance with a law and does not appeal the decision in the ordinary course, they cannot attempt to overrule that decision by recourse to a subsequent claim that there was a breach of their constitutional rights. (Citing **Ramesh Lawrence Maharaj and Attorney General of Trinidad and Tobago (No. 2)**¹ and **Chokolingo v Attorney General**²) Basing itself on those authorities the Defendant submitted that the Claimant ought not to be permitted to pursue relief set out at (a) (b) and (c) of his originating motion as this would amount to an abuse of process.
- [10] Furthermore, submitted the Defendant, the Claimant has alternative remedies available to him in the form of common law actions for damages for false imprisonment, assault and battery.
- [11] Alternatively, the Defendant submitted that the Defendant's affidavit contains matters which are irrelevant to the claim. These matters were not specified.

¹ [1979] A.C. 385

² (1980) 32 WIR 354

The Claimant's submissions

- [12] On behalf of the Claimant, learned counsel, Mr. Jamal Smith, submitted that the Claimant does not contest his conviction for unlawful possession of cannabis. What he challenges is the validity of section 9(2) of the Drugs Act that permits the search of private property. This provision, he submitted, is not reasonably justified in a free and democratic society and is in violation of his Constitutional rights and incompatible with the rights guaranteed under section 19(2) of the Constitution. It was submitted that such an issue cannot be properly addressed and ventilated on an appeal, thus, an application for constitutional relief is the only relevant avenue to address this claim.
- [13] The Claimant further submitted that his right to a fair trial within a reasonable time was violated in that he had to wait 2½ years before the matter was concluded while having his cash confiscated throughout this period. This caused him to suffer significant damage. No parallel remedy exists to vindicate this right he submitted.
- [14] The Claimant further asserted that his statement of case does in fact disclose a reasonable cause of action which engages two issues: whether his rights under Section 19(2) of the Constitution are violated by Section 9(2) of the Drugs (Prevention of Misuse) Act Cap. 178; and whether there was a breach of his right to a fair hearing within a reasonable time.
- [15] The Claimant also denied that he is in violation of any Rules of Court but argued that if he were, the justice of the case could be met by allowing amendments as opposed to resorting to the drastic course of striking out the claim.

Issue

- [16] The core issues that arise for resolution in this case is whether the Claimant's resort to a constitutional motion is an abuse of process because alternative remedies are or were available to him; and whether the claim should be struck out because his statement of case discloses no reasonable cause of action.

Law and analysis

[17] Before turning to these issues it is convenient at this stage to address as a preliminary issue the Defendant's submission relating to Section 9 of the Constitution. It is said that Section 9 of the Constitution appears to be introductory in nature and does not appear to set out any rights or guarantees.

[18] Section 9 provides:

"Whereas every person in the Virgin Islands is entitled to the fundamental rights and freedoms of the individual;

Whereas those fundamental rights and freedoms are enjoyed without distinction of any kind, such as sex, race, colour, language, political or other opinion, national, ethnic, or social origin, association with a national minority, property, family relations, economic status, disability, age, birth, sexual orientation, marital or other status, subject only to prescribed limitations;

Whereas, it is recognized that those fundamental rights and freedoms apply, 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, equality, liberty, security of the person and protection of the law;
- (b) Freedom of conscience, expression, movement, assembly and association; and
- (c) Protection for private and family life, the privacy of the home and other property and from deprivation of property save in the public interest and on payment of compensation;

Now, therefore, it is declared that the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, and to related rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the protected rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

[19] In the case of **Jabari Sensimania Nervais and the Queen**³, the equivalent provision in the Barbados Constitution, section 11, was subjected to much the same criticism that it was merely a preamble and contained no separately justifiable rights. In a robust and thorough judgment which critically previous Privy Council authorities on the subject, Byron P at paragraphs 20 – 37 put to rest the notion that the section was merely a preamble and did not confer any enforceable rights.

³ [2018] CCJ 19 (AJ)

The CCJ adopted Halsbury's definition of "preamble" as meaning "a preliminary statement of the reasons which have made the passing of statute desirable, and its position is located immediately after the title and date of issuing the presidential assent." The Court considered that the location of the section within substantive portion of the Constitution in Chapter 111 headed "Protection of Fundamental Rights and Freedoms of the Individual" militated against it being characterized as a preamble; a point made more poignant by the presence in the Barbados Constitution of a preamble before section 1.....The Court held that the words of section 11 were not merely aspirational and found that it was the only place in the Constitution that declared the rights to which every person is entitled. In construing the second part of section 11 the Court held at paragraph 31:

"The second part of Section 11 provides that the following provisions, namely section 12 – 23 shall have effect for the purpose of affording protection to *those* (original emphasis) rights and freedoms subject to *such limitations* (original emphasis) of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the rights conferred in section 11 does not prejudice the rights and freedoms of others or the public interest. ...There is no need for linguistic finessing to conclude that the word "those" which precedes "rights", and the phrase "said rights" which are subjected to limitation, must refer to the rights declared in section 11 (a) – (d). This means that the provisions in sections 12 – 23 afford protection for those rights subject to the limitations they authorize. Without the foundation of those section 11 rights, sections 12 – 23 do not fulfill the aspirations and intentions of the constitutional provisions for the fundamental rights and freedoms."

[20] Those observations apply with equal force to the Virgin Islands Constitution as it relates to Section 9 and its relationship with sections 11 – 31. *Mutatis Mutandis*, therefore, I adopt entirely the CCJ's reasoning and apply it to the construction of section 9 of the Constitution. Accordingly, I hold that section 9 is not merely introductory but contains independent justiciable rights.

[21] The court therefore proceeds to consider whether the claims for constitutional relief for contraventions of sections 9, 16(1) and 19(2) are sustainable.

Alternative Remedy

[22] Chapter 2 of the Virgin Islands Constitution sets out the fundamental rights and freedoms of the individual protected under the Constitution.

[23] Section 31 provides:

(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction –

(a) to hear and determine any application made by any person under subsection (1); and

(b) to determine any question arising in the case of any person that is referred to it under subsection (7)

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled.

(3) The High Court may decline to exercise its powers under subsection (2) 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.”

[24] Assistance as to the meaning of this provision may be derived from the case of **Aubyn St. Price v Attorney General**⁴, where the Court of Appeal of the Eastern Caribbean Supreme Court, in construing the analogous St. Lucia Constitutional provision, summed up the position thus:

“The court’s power to hear a constitutional motion are contained in section 16 of the Constitution of St. Lucia and it is clear from the proviso to the section that the power is discretionary and the court may decline to hear the motion if adequate means of redress are or have been available to the applicant...Each case must be decided on its own facts.”

[25] A settled body of law has emerged to the effect that an application for constitutional relief should not be used as a general substitute for the normal procedures for invoking judicial control of administrative action and where there is a parallel remedy: **Kemrajh Harrikissoon v Attorney-General**⁵. In the context of analogous Trinidad & Tobago Constitutional provisions the Privy Council stated:

“The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under section 6 of the

⁴ SLUHC VAP2012/0027

⁵ (1979) 31 WIR 348

Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under section 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the section if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom."

- [26] The principle is aptly illustrated in **Jaroo v Attorney General (Trinidad and Tobago)**⁶. The appellant purchased a car in good faith. When he applied to the Licensing Authority for the re-classification of the vehicle, it was detained by the police who suspected that it was a stolen vehicle. On their instructions he took the motor car to the police so that they could examine it and conduct inquiries into its theft. After a suitable interval, having heard nothing from them, he asked the police to return the vehicle. Repeated requests met with no reply. The appellant therefore instituted proceedings by way of originating motion under section 14(1) of the Constitution of Trinidad and Tobago. The Privy Council held that it was an abuse of process to do so instead of instituting the common law remedy for the return of the vehicle. Lord Hope stated at paragraph 39:

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

- [27] Subsequently, the Privy Council in **Attorney General of Trinidad and Tobago v Ramanoop**⁷, somewhat qualified this principle in the following way:

"...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

⁶ [2000] UKPC 5

⁷ [2005] UKPC 15

adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse of the court's process."

- [28] In short it must be established that the true nature of the Claimant's case is one that engages a constitutional right and, either that he has no parallel remedies available to him, or, if a parallel remedy exists, that there is some special feature of the circumstances of the case that makes it appropriate to proceed by way of originating motion because the means of redress otherwise available would be inadequate.

Reasonable grounds for bringing a claim

- [29] As it relates to the second issue, a party alleging contraventions of the Constitution must plead and particularize the alleged violation of the constitution: **Baldwin Spencer v Attorney General of Antigua and Barbuda**⁸. It is therefore for the Claimant to establish at least a scintilla of a case that sections 9 and 16(1) of the Constitution have been infringed and that section 9(2) of the Drugs Act is incompatible with Section 19(2) of the Constitution.

- [30] I am mindful that the power to strike out is one that must be used sparingly and especially so where the litigant asserts breach of a constitutional right. The rationale for this cautious approach was explained by Mitchell, J.A. in **Tawney Assets Limited v East Pine Management**⁹:

"The exercise of this jurisdiction deprives a party of his right to a trial and of his ability to strengthen his case through the process of disclosure, and other procedures such as requests for further information. The court must therefore be persuaded either that a party is unable to prove the allegations made against the other party; or that the statement of case is incurably bad; or that it discloses no reasonable ground for bringing or defending the case; or that it has no real prospect of succeeding at trial."

- [31] It is uppermost in my mind also that I may not do so if there is even a scintilla of a cause of action: **Baldwin Spencer v Attorney General of Antigua and Barbuda**. Nonetheless it is recognized that a court may dispose of a claim for constitutional relief at an early stage if it is frivolous or vexatious or has no realistic prospect of success.

⁸ Civ. APP. No 20A of 1997

⁹ Civil Appeal No. 7 of 2012 (Unreported)

- [32] In considering whether to strike out a claim, the Court must be concerned only to test the particulars averred by the Claimant to see whether they are sufficient to establish a cause of action: **Lonhro Case**¹⁰.
- [33] Turning now to apply these principles to the facts, the first question for consideration is whether there are any reasonable grounds disclosed for bringing a claim that section 9 of the Constitution has been infringed. Section 9 contains a number of justifiable rights. There is no pleading to identify which of these the Claimant says has been infringed. A Claimant must identify the specific provision of the Constitution which he says has been breached. I therefore agree with the Defendant's submission that there are no grounds to support the allegation of a breach of section 9.
- [34] I next consider whether there are any reasonable grounds disclosed for bringing a claim that section 9(2) of the Drugs Act is incompatible with Section 19(2) of the Constitution.
- [35] Section 9(1) (a) of the Drugs Act empowers the relevant minister to make certain controlled drugs exempt from the operation of, *inter alia*, section 7(1) of the Drugs Act. By Section 9(1)(b), the Minister may make such other provision as he thinks fit for the purpose of making it lawful for persons to do things which under sections 6(1), 7(1) and 8(1) it would be otherwise unlawful for them to do. These sections are concerned respectively with the production, possession and cultivation of controlled drugs.
- [36] Section 9(2) provides:
- "Without prejudice to the generality of paragraph (b) of subsection (1), regulations under that subsection authorizing the doing of any such thing as is mentioned in that paragraph may in particular provide for the doing of that thing to be lawful."
- [37] Section 19(2) of the Constitution provides:
- "Except with his or her own consent, no person shall be subjected to the search of his or her person or property or the entry by others on his or her premises."
- [38] Notably, section 19 (3) (a) – (e) protects certain acts done under any law from the prohibition in section 19(2) to the extent that they can be said to be reasonably justifiable in a democratic society.

¹⁰ [1991] 4 ALL ER 965

- [39] In his written submissions (para.5), the Claimant posits that section 9(2) of the Drugs Act permits the search of private property. On that basis, the Claimant in his affidavit went to lengths to aver that section 9(2) was not reasonably justifiable in a democratic society by virtue of any of the requirements of section 19 (3) (a) – (d) of the Constitution. However, never does he establish any logical nexus or relevance between the powers that are vested in the Minister and his assertion that that section breaches his right not to have his person or property searched without his consent. There is no pleading that identifies any particular regulation made by the Minister pursuant to section 9(2) that is said to contravene section 19(2) of the Constitution. Indeed, there is not even a pleading that the Minister has in fact made any regulations under section 9(2). It is not apparent to the Court that section 9(2) of the Drugs Act is in anyway concerned with the authorization of searches of the person or property.
- [40] If the Claimant meant to contend that the search of his person or property for cannabis violates section 19(2) of the Constitution the short answer is that section 19(3)(e) of the Constitution permits a person or his property to be searched for the purpose of preventing or detecting offences against the criminal law. The Claimant has not even adverted to this constitutional provision in his originating motion or supporting affidavit and has not pleaded that a law authorizing a search conducted for that purpose is not reasonably justifiable in a democratic society.
- [41] Further, while the basis of the Claimant's complaint as framed in his originating motion is the violation of his privacy occasioned by him being searched in the vehicle and at the police station, and while he says in his amended originating motion that the charge of possession of cannabis is unconstitutional, his affidavit fails to state the basis for an assertion that being searched for drugs while in a vehicle in a public place is in contravention of section 19(2) of the Constitution. The Claimant's extensive pleading bear little connection to the reliefs sought at (a) to (c) of his originating motion
- [42] Where, as here, a statement of case or part thereof discloses no reasonable grounds for bringing or defending a claim the court is not powerless to prevent its process from abuse. **CPR 26.3(1)(b)** empowers the court to strike out a claim in such circumstances. I remind myself of the principles governing the exercise of this discretion as articulated above. Nonetheless, for the reasons articulated above, I am satisfied that this is an appropriate case for the exercise of my discretion as

I am driven to conclude that the Claimant's statement of case discloses no reasonable grounds for bringing a claim for breach of Section 19(2) of the Constitution and must be struck out.

- [43] This leads to a consideration of the other declaration sought, namely, that the Claimant's right to a fair hearing within a reasonable time guaranteed under section 16(1) of the Constitution has been breached. Section 16(1) provides:

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

- [44] The first observation to be made is that in relation to the charge of possession of cannabis the Claimant entered a guilty plea within 8 months of being charged. This he has not appealed. There can therefore be no question of the fairness of these proceedings.

- [45] As it relates to the charge of possession of cocaine with intent to supply, this matter took some 2½ years to be disposed of. It is clear that the right to a fair hearing within a reasonable time is a discreet right given by the Constitution. I do not accept the Defendant's submission that actions for false imprisonment, assault and battery are alternative remedies available to the Claimant. The Claimant has not pleaded facts to support such actions. He was on bail throughout and makes no complaint about the approximately 19 hours he spent in detention on 4th July. The complaint is directed at the 2½ years it took to dispose of the charges

- [46] I am satisfied that there is no alternative remedy where the contention is that the right to a fair hearing within a reasonable time has been infringed. Whether the facts pleaded will ultimately support the claim is a matter for trial but I am satisfied that this cannot be said to be a hopeless case.

- [47] That said however, there are absolutely no reasonable grounds disclosed for saying that that period of delay caused the Claimant to lose the opportunity to own the parcel of land on which he had made one payment. On his own evidence he was already in arrears before he was charged having received notice of this towards the end of June, 2016. He was released on bail the same day and remained on bail throughout the proceedings. All the while, he was employed as a heavy equipment operator by his father. According to his evidence, he ceased to have any interest in the parcel of land in July 2019. There is no basis for concluding that the seizure of his cash

(US\$2,466.00) was the cause of this predicament. The claim for damages equivalent to the market value of the property has no realistic prospect of success.

Abuse of Process

[48] Consistent with the dicta in **Jaroo**, the Court must assess the true nature of the Claimant's case. When distilled, the Claimant's case is that as a result of his arrest and prosecution for drug related offences, with the consequent seizure of his cash, he lost the opportunity to own a parcel of land because he was unable to settle arrears in payment towards ownership of it and to meet monthly instalments. This he attributes to the inordinate delay of just about 2½ years that it took to dispose of the matters. The Claimant's attempt to open a bank account thereafter has been rebuffed by two banks and he harbours the belief that this is in consequence of his conviction for possession of cannabis. Not having appealed, he seeks constitutional relief, purportedly challenging section 9(2) of the Drugs Act and the constitutionality of the charge of possession of cannabis which he says is incompatible with his right to privacy enshrined under Section 19(2) of the Constitution. By this challenge, the Claimant hopes to achieve the objective of having the conviction set aside – yet stating that he is not contesting the conviction. This tactic is adopted in the plain hope that this will solve his problems with the banks. Starkly put, that is the true nature of this aspect of his case.

[49] I consider it a patent abuse of the process of the court for the Claimant to seek to have his conviction removed under the pretext that some constitutional right has been infringed when he failed to avail himself of the ordinary process for seeking to challenge his conviction. "Bona fide resort to rights under the Constitution ought not to be discouraged" (per Lord Steyn in **Ahnee v Director of Public prosecutions**¹¹. However, frivolous, vexatious or contrived invocations of the facility of constitutional redress are certainly to be repelled. (Per Lord Cooke in **Observer Publications Ltd v The Attorney General et al**¹².

¹¹ [1999] 2A.C. 294 at 307.

¹² [2001] UKPC 11

Disposition

[50] Having regard to the foregoing findings and conclusions it is hereby ordered:

1. The Claimant's claim for constitutional relief for contravention of Section 9 of the Constitution is struck out;
2. The Claimant's claim for constitutional relief for contravention of Section 19(2) of the Constitution is struck out;
3. The Claimant's claim for an order for the removal of his conviction from the record of the Magistrate's Court is struck out;
4. The Claimant's claim for damages for the equivalent market value of the property described as Parcel 285, Block 2737B, Sea Cow's Bay Registration Section is struck out;
5. The claim in relation to section 16(1) of the Constitution shall proceed;
6. Unless the Claimant files and serves the necessary amendments to the application by way of originating motion and supporting affidavit to remove all matters not relevant to the claim in relation to Section 16(1) within 21 days of today's date the application by way of originating motion shall stand dismissed without further order of this court.
7. The claim shall thereafter proceed in accordance with CPR 2000;
8. No order as to costs.

Trevor M. Ward, QC
High Court Judge

By the Court


Benjamin
Registrar