

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2014/0121

IN THE MATTER OF THE GRENADA CONSTITUTION

AND

**IN THE MATTER OF THE SEIZURE OF A COMPUTER AND CELL PHONE BY POLICE OFFICERS
FROM THE RESIDENCE OF BIBI SHENEEZA ALI AT BELMONT IN THE PARISH OF ST. GEORGE**

AND

**IN THE MATTER OF A PERSON ALLEGING BREACHES OF HER RIGHTS GUARANTEED TO HER BY
SECTION 6 AND SECTION 7 OF THE CONSTITUTION OF GRENADA**

AND

**IN THE MATTER OF A PERSON SEEKING REDRESS PURSUANT TO SECTION 16 OF THE
GRENADA CONSTITUTION**

BETWEEN:

BIBI SHENEEZA ALLY

Claimant

AND

**THE COMMISSIONER OF POLICE
SIMON DICKSON
ATTORNEY GENERAL**

Defendants

Appearances:

Mr. Ruggles Fergusson with him Mr. Joshua John for the Claimant

Mr. Dwight Horsford with him Ms. Maurissa Johnson and Ms. Francine Foster for the Defendants

2015: December 9,
2018: March 26.

DECISION

- [1] **Adrien-Roberts, J.:** Police operations headed by the Second Defendant, Simon Dickson, led to the seizure of a quantity of cocaine and the detention of one Mahendra Singh and others. A search warrant was applied for and obtained from a Justice of the Peace to conduct a search of Mr. Singh's home for cannabis and cocaine. He lives with his wife, the claimant herein, and three (3) children.
- [2] During the search Mr. Dickson took and removed from the home two (2) cell phones and one (1) laptop computer. By way of Fixed Date Claim Form Ms. Ali seeks relief under the Constitution of Grenada, praying for:
- 1) A declaration that the search warrant dated 9th March 2014 signed by the Justice of peace Diana Gibbs is null and void and of no legal effect.
 - 2) A declaration that the First Defendant acting through his servants and agents including the Second Defendant on 9th March 2014 unlawfully removed and carried away from her home a DL 700 Android cell phone, a BLU cell phone and a laptop computer in breach of her fundamental right to privacy and to be protected from having property arbitrarily seized from her.
 - 3) A declaration that the taking and carrying away of the family computer and cell phones of Ms. Ali with the intention of conducting further searches thereafter amounts to an invasion of privacy and a breach of section 7 of the Constitution which protects citizens from arbitrary searches by agents of the State.
 - 4) A declaration that the unlawful taking and carrying away of the family computer and cell phones of Ms. Bibi S Ali hinders her enjoyment of freedom of expression as guaranteed by section 10 of the Constitution including the freedom to receive ideas and information

without interference, freedom to communicate ideas and information without interference and freedom from interference with her correspondence.

- 5) A declaration that in seizing and carrying away and retaining the seized items the First and Second Defendants acted and continue to act in abuse of their authority outside the scope of the law and in utter disregard for the fundamental and other rights of the claimant.
- 6) An injunction restraining the First and Second Defendants the servants and or agents from removing, adding to or altering information on the seized items or searching through or in any way interfering with the seized items.
- 7) Damages against the defendants for breach of the claimants constitutional rights; and
- 8) Costs

[3] The items which were taken by the police during the execution of the search were returned to Ms. Ali through her Counsel ten (10) days after the search was conducted by which time this claim had already been filed. At the trial, Ms. Ali withdrew her prayer for an order that the items be returned and a declaration that the retention of the items constituted a breach of her section 6 constitutional right not to be deprived of property.

[4] The issues which I must consider are:

- 1) Whether the search warrant issued by a Justice of the Peace and executed at the Claimant's residence was validly issued.
- 2) Whether the taking and carrying away of Ms. Ali's cell phones and laptop constituted a breach of her section 10 constitutional protection of freedom of expression.

- 3) Whether the taking and carrying away of Ms. Ali's cell phones and laptop with the intention to search same constituted an invasion of her privacy and a breach of her section 7 constitutional protection from arbitrary search or entry.
- 4) Whether the seizing and carrying away and retaining the seized items constituted an abuse of authority outside the scope of the law.

Issue # 1 - Validity of Search Warrant

- [5] Ms. Ali's Counsel relies on the application of sections 15(1) and 98 of the Criminal Procedure Code, Cap. 72 (hereinafter referred to as the CPC) and section 12 of the Magistrates Act, Cap 177 in seeking to impugn the validity of the search warrant issued under the hand of a Justice of the Peace.
- [6] Counsel for Ms. Ali submits that the statutory authority contained in section 12 of the Magistrates Act which bestows on a Justice of the Peace a like power as a Magistrate to issue a search warrant is subject to not only the provisions of the Magistrates Act itself but any other Act which includes the CPC. His submission continues, that by its section 98 the CPC circumscribes the exercise of the power of the Justice of the Peace to issue search warrants to circumstances where in the absence of a magistrate or for any other cause it is not practicable to apply to the magistrate and the ends of justice would be likely be defeated by the delay required for making the application to the magistrate.
- [7] I agree with Counsel's exposition of section 98 of the CPC and indeed, if it can be proved that the warrant was issued by the Justice of the Peace outside the prescribed circumstances in section 98 then Ms. Ali would be entitled to the declaration as prayed that "the search warrant ... signed by Justice of the Peace Diana Gibbs is null and void and no legal effect." Ms. Ali's affidavits do not disclose an iota of evidence to substantiate the grant of the declaration sought.
- [8] In her affidavit in support of the claim, the only statement remotely related to the challenge of the validity of the search warrant is:

“I have been informed by my attorney-at-law and I verily believe that the warrant which was used as the basis to search my home and to invade my privacy ought to have been signed by a Magistrate after he had satisfied himself that there were reasonable grounds to believe that cannabis or cocaine were to be found at my house and that the failure to comply with these requirements renders the warrant null and void and of no effect.”

No mention was made of the warrant being issued by the Justice of the Peace.

- [9] Counsel for Ms. Ali submits that the claimant's assertion that the search warrant issued by the Justice of the Peace was unlawful was not rebutted by the defence with any evidence that the preconditions imposed by section 98 of the CPC were satisfied. Ms. Ali made no such assertion. In my view, that case was not put forward by Ms. Ali to be answered by the defendants.
- [10] In the Fixed Date Claim Form, no reason was proffered in the prayer for the declaration why the search warrant issued by a Justice of the Peace is null and void. In her affidavit Ms. Ali's statement, reproduced above, given its broadest and most generous interpretation is simply that the search warrant ought to have been signed by a Magistrate after he had satisfied himself that there were reasonable grounds to believe that cannabis or cocaine were to be found in the claimant's house and that the failure to comply with these requirements renders the warrant null and void and of no effect. Ms. Ali makes no assertion in her affidavits that the search warrant was issued by the Justice of the Peace or that it was issued outside the circumstances of section 98 of the CPC.
- [11] In light of this the defendants' denial that the search warrant is invalid and their maintenance that it was lawfully, validly and properly issued by a Justice of the Peace after having satisfied herself that the necessary requirements were met is a fitting response.
- [12] In cross-examination, counsel for Ms. Ali elicited from Mr. Dickson on the issue of the procurement of a search warrant from the Justice of the Peace that, the search warrant was issued between 9:00 and 12:00 in the morning, the Magistrate can be called seven (7) days a week, and in response to counsel's question, "Before going to the Justice of the Peace did you seek to obtain

the search warrant from Magistrate or went straight to the Justice of the Peace?” Dickson replied “I went straight to the justice of the peace.” These responses add nothing to the evidence for Ms. Ali since they do not prove the presence of a Magistrate or whether there was any other cause why it was not practicable to apply to the Magistrate and the ends of justice would likely be defeated by the delay required for making the application to the Magistrate.

- [13] My research led me to the case of **R v IRC, ex parte Rossminister** [1980] AC 952 at 1000 wherein Lord Justice Wilberforce had this to say:

“There is no mystery about the word ‘warrant’: it simply means a document issued by a person in authority under power conferred in that behalf authorizing the doing of an act which would otherwise be unlawful. The person affected, of course, has the right to be satisfied that the power to issue it exists: therefore the warrant should contain a reference to that power. It would be wise to add to it a statement of satisfaction on the part of the judicial authority as to the matters on which he must be satisfied but this is not a requirement and its absence does not go to validity. “(Emphasis mine)

- [14] I agree with Counsel for the defendants that as a matter of law there is a rebuttable presumption that the warrant was validly or regularly issued unless shown otherwise. This precept as it were is summed up in the Latin phrase ‘*omniapresumuntur rite esse*’ which means that in law all things are presumed to be done correctly and properly. The burden of proof lies on Ms. Ali and that burden was not discharged on the affidavit evidence of Ms. Bibi S Ali and evidence adduced from her on cross-examination. It is Ms. Bibi S Ali who must advance evidence that the preconditions in section 98 were not satisfied. Attorney General of Grenada vs **Salisbury Merchant Bank Limited**, GDA Civil Appeal No. 20 of 2002.

- [15] In the absence of any evidence to suggest that the Justice of the Peace disregarded the preconditions stipulated in Section 98 of the CPC the claim for a declaration that the search warrant is null, void and of no effect fails and I am bound to hold that the search warrant was validly issued by the Justice of the Peace.

- [16] Ms. Ali seeks a declaration that “The First Defendant acting through his servants and agents including the Second Defendant on 9th March 2014 unlawfully removed and carried away from her

home a DL 700 Android cell phone, a BLU cell phone and a laptop computer in breach of her fundamental right to privacy and to be protected from having property arbitrarily seized from her.”

[17] I find no legal or factual basis to support this claim. There is no evidence that the First Defendant, the Commissioner of Police was involved in the removing and carrying away anything from the home of Ms. Ali or that it was done upon his direction. There is no plea that the Commissioner of Police acted vicariously through the Second Defendant.

[18] Declaratory relief for breaches of the Constitution is granted against the State, in this case the State of Grenada and not private individuals.

Issues # 2, 3 and 4 - Constitutionality of taking and carrying away and searching of cell phones and computer

[19] It is undisputed that during the execution of the search warrant at the home of Ms. Ali, two cell phones and one laptop computer were taken by the police. Ms. Ali claims that the taking and carrying away and searching of the devices constitute an invasion of her privacy and breaches of her constitutional rights and protections guaranteed under Sections 6, 7 and 10 of the Constitution.

Breach of Section 10 of the Constitution

[20] I deal firstly with the alleged breach of her rights under Section 10 of the Constitution. Ms. Ali's claim for a declaration that the unlawful taking and carrying away of the family computer and cell phones hindered her enjoyment of freedom of expression as guaranteed by Section 10 of the Constitution including the freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with her correspondence is unsubstantiated by evidence. In her evidence Ms. Ali neither asserts her constitutional right to receive ideas and information and or the protection of her freedom of expression nor does she allege that these rights or either of them was breached.

[21] In her affidavit Ms. Ali states:

“During the period that the police retained possession of my cell phone I was unable to communicate”, and

“... during the period that the police retained my computer, I did not have access to a computer...”.

[22] This is the extent of her evidence in support of her prayer for relief. This evidence lacks specificity and is insufficient to support the claim for a breach of her section 10 rights. In the premises Ms. Ali’s prayer recited above (from paragraph III of her Fixed Date Claim) for declaratory relief for breach of section 10 of the Constitution is refused.

Section 6 Deprivation of Property and Section 7 Protection for privacy and from arbitrary search or entry

[23] No reference was made to the law outside the scope of which the Second Defendant acted, however in so far as that law preserves the fundamental rights of Ms. Ali it is reasonable to conclude that the law is section 6 of the Constitution.

[24] The Constitution of Grenada does not expressly declare or provide for the protection for privacy, however it is taken as a given that by virtue of Section 1 of the Constitution every person in Grenada is entitled to “protection for the privacy of his or her home and other property”. To enable the enforcement of that protection there is an acceptance and recognition that is implicitly woven into Section 7 of the Constitution is that constitutional protection for privacy. Section 7 (1) provides that “Except with his or her own consent, no person shall be subjected to the search of his or her person or his or her property or the entry by others on his or her premises.”

[25] The factual footing for Ms. Ali’s claim for relief for the alleged violation of her rights guaranteed in Section 7 of the Constitution is that the search warrant did not authorize the seizure, removal and detention or search of her cell phones and computer.

- [26] The search warrant authorizing the search of Mr. Singh's residence, commanded Mr. Dickinson to *"enter ...into the said premises and to search for the said things and to bring them ...before [him] or some other justice."* The things listed in the search warrant are drugs to wit cannabis and cocaine which according to the search warrant were stolen and *"there is reason to suspect that the said thing is concealed in your premises"* The search is very specific. It does not authorize the seizure, removal and detention or search of cell phones or laptop computer.
- [27] The defence mounted by the defendants in response to Ms. Ali's claim is a denial of any violation of Ms. Ali's rights "occasioned by the removal of the items concerned and which were taken into the custody of the police." It is stated in the defence that "...if ever the removal of the said items constituted an infringement of any guaranteed rights to which the claimant is entitled, the defendants will contend that the said items taken from the claimant's house were removed pursuant to the search warrant obtained and their removal was ... necessary for the purposes of examination and investigation in aid of an ongoing police inquiry into a criminal offence, and was therefore lawful."
- [28] The defendants did not tender any evidence in support of their proposed contention that it was necessary for the investigation. The witness statements filed on behalf of the Defendants are mute as regards the necessity of taking the cell phones and laptop in aid of ongoing investigation. No nexus is drawn between the devices and the offence for which Mr. Singh was being investigated or any other offence.
- [29] Citing **Ghani v. Jones** [1970] 1 QB 693, Counsel for the defendants submitted that police officers conducting a search of premises on the strength of a search warrant may take other items, not listed in the search warrant which may be necessary for ongoing investigation.
- [30] This, Counsel argued further, was codified in section 6 (6) (a)(vii) of the Constitution which section provides that:
- “(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right—

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out), and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.”

[31] Counsel for the Defendants invoked the authority of **AG vs Salisbury Merchant Bank**, Civil Appeal No. GDA 20 of 2002 to submit further that not specifically stating on the search warrant the items to be removed does not affect the seizure in any way.

[32] I agree with Counsel for the defendants. Strictly speaking, the police may only search the particular area and seize the specific items called for in the search warrant. It is however well established that a search can exceed the purpose for which the warrant was sought, albeit in limited circumstances. Thus, the police may search outside the scope of the warrant if the initial search reveals anything that may constitute additional evidence of the offence being investigated or the commission of any other offence. The police may also take any item which may constitute evidence if it is in plain view during the course of the search.

[33] Since the cell phones and the laptop were not listed on the search warrant the taking away of these items must fall within one of the exceptional circumstances within which the police can exceed the terms of the search warrant. In the instant case I can only determine whether the taking and removal of the devices fell within one of the exceptions from the evidence.

- [34] There is no evidence on behalf of the defendants to draw the taking and removal of the cell phones and laptop under any of the recognized exceptions to the requirement for a warrant. Furthermore, cell phones and computers are generically lawful goods and are not by their nature illegal. The taking and removal of the cell phones and laptops are therefore unlawful.
- [35] With respect to searching of the electronic items, Counsel for the defence conceded that that law was that a search of the cell phones and the laptop constitutes a search for which another search warrant would have had to be applied for and obtained. The search warrant which Mr. Dickson had obtained does not cover a search of the cell phones and computers. He argued though that Ms. Ali had to establish that a search was conducted before any constitutional challenge could arise and stated that there is no specific allegation that there was an intrusion upon the cell phones and laptop.
- [36] I am not persuaded by Counsel's argument. In so far as Ms. Ali does not seek redress for the search of her cell phones and laptop and that relief sought is for the taking away of the electronic items "*with the intention*" of conducting further searches which amounts to the likelihood of an invasion of her privacy, the absence of a specific allegation of a search or supporting evidence does not diminish her claim.
- [37] The right of access to the High Court for redress for constitutional breaches avails anyone who in the words of section 16 of the Constitution:
- "16.- (1) ... 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...."
- (Emphasis mine)
- [38] Ms. Ali's evidence is that she was told by Mr. Dickson that he was taking the cell phones and laptop because he "*needed the I. T. guys to check them out*" to see what or how much she knew. This evidence is supportive of her claim for relief on account of the taking and carrying away of the items with the intention of conducting further searches.

- [39] Her evidence regarding the intention to search her cell phone and laptop is corroborated by Mr. Dickson himself who stated in his evidence that later that day, meaning the day on which the search was conducted, he handed the phones and computer to an officer at the IT Department for forensic analysis. He stated further that “on completion of the forensic investigation...” he handed over the phones and laptop computer to counsel at his office. The intention was realised according to the admission of Mr. Dickson.
- [40] Forensic investigation is the gathering, examination, analysis and reporting of information or data. The only means of retrieving information and data from a cell phone and a computer for a forensic investigation is to search the device. The evidence in this case which I must consider consists not only of that given by the claimant but also that of the defendants.
- [41] In light of this I hold that the protection for privacy and from arbitrary search afforded Ms. Ali’s under section 7 of the Constitution were breached and that she is entitled to the declaration sought and recited at paragraph [2] (3) above.

Claim for Injunctive Relief

- [42] The claim for injunctive relief was not actively pursued evidentially or on submissions.

Damages

- [43] In determining the quantum of damages that I should award to Ms. Ali for the infringements of her constitutional protections from deprivation of property, for privacy and from arbitrary search I must consider the extent to which damages could vindicate her right, the gravity of the breach, her distress and hurt feeling, loss of dignity and public outrage. There is no evidence averring to these considerations. On the evidence the breaches do not appear to be grave but the breaches justify an award of damages to compensate the Claimant properly and fairly for the wrong that he/she has sustained. I award Ms. Ali damages in the sum of \$5,000.00.

Conclusion

[44] Accordingly, it is hereby ordered and declared as follows:

1. The prayer for a declaration that the search warrant dated 9th March 2014 signed by the Justice of Peace Diana Gibbs is null and void and of no legal effect is refused and dismissed.
2. The prayer for a declaration that “the First Defendant acting through his servants and agents including the Second Defendant on 9th March 2014 unlawfully removed and carried away from her home a DL 700 Android cell phone, a BLU cell phone and a laptop computer in breach of her fundamental right to privacy and to be protected from having property arbitrarily seized from her” is therefore refused and dismissed.
3. The prayer for a declaration that the unlawful taking and carrying away of the family computer and cell phones of Ms. Ali hinders her enjoyment of freedom of expression as guaranteed by section 10 of the Constitution including the freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference and freedom from interference with her correspondence is refused and dismissed.
4. The prayer for an injunction restraining the First and Second Defendants the servants and or agents from removing, adding to or altering information on the seized items or searching through or in any way interfering with the seized items is refused and dismissed.
5. It is declared that the taking and carrying away of the family computer and cell phones of Ms. Ali with the intention of conducting further searches thereafter amounted to an invasion of privacy and a breach of section 7 of the Constitution which protects citizens from arbitrary searches by agents of the State.

6. It is declared that in seizing and carrying away and retaining the seized items the Second Defendant acted and continue to act in abuse of his authority outside the scope of the law and in utter disregard for the fundamental and other rights of the claimant.

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7. I award Ms. Ali damages against the defendants for breach of the claimant's constitutional rights in the sum of \$5,000.00
8. I award costs in the sum of \$1,000.00.

WYNANTE M. ADRIEN-ROBERTS

High Court Judge

By the Court


REGISTRAR
SUPREME COURT
GRENADA
WEST INDIES

