

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. SLUHCV 2009/0972

BETWEEN

Anthony Walcott

Claimant

And

- 1. Attorney General of Saint Lucia**
- 2. The Director of Public Prosecutions**
- 3. WPC. 671 Lesporis**

Defendants

Appearances:

**Mr. Marcus-Peter Foster for the Claimant
Mrs. V. Georgis Taylor-Alexander together with Mr. Leslie Prospere
for the Defendants**

2010: January 19th, 22nd

2010: March 4th

JUDGMENT

- [1]. **WILKINSON, J:** The Claimant by a fixed date claim form and statement of claim filed November 30th 2009, sought the following relief:

- (1) A declaration that rule 9.4(4) read together with rule 11.2 of the Criminal Procedure Rules 2008 are null, void and of no effect to the extent that it essentially destroys a defendant's right to a fair hearing through not being able to adequately cross-examine, or cross-examine at all, a witness accusing him of committing a crime.
- (2) That the said proceedings before the High Court referred to as a Sufficiency Hearing before Justice Kenneth Benjamin in case No.271 of 2009 WPC. *Lesporis v. Anthony Walcott* be stayed indefinitely until the inconsistency with the Constitution is rectified.
- (3) A declaration that Chapter 3 Part 5 of the Criminal Code 2004 is the procedure to be followed as the path to indictment, it having not been repealed for the purposes of Criminal Procedure Rules 2008.
- (4) Any other order that the Court deems just.
- (5) Costs

[2] At the hearing of the suit the third prayer was abandoned as Counsel for the Claimant admitted to not being aware that Chapter 3 Part 5 of the Criminal Code 2004 (hereinafter "CC 2004") had been amended to accommodate the Criminal Procedure Rules 2008 (hereinafter "CPR 2008").

[3] In his statement of claim, the Claimant states that on 4th February 2009, he was arrested and charged with having maimed Leona Edward (hereinafter "the Virtual Complainant") on the 3rd February 2009, contrary to section 99(1) of the CC

2004. He further states that upon the passage into law of CPR 2008, he is being processed pursuant to the said legislation which purports to replace inter alia Chapter 3 Part 5 of CC 2004 which dealt with preliminary inquiries and committal proceedings. That, in accordance with the CPR 2008 Part 9, he has appeared on 2 occasions before the High Court for what was described as a Sufficiency Hearing.

[4] The Claimant also states that his counsel informed him that, prior to his first appearance on 19th June 2009, at the Sufficiency Hearing, his counsel had been served a copy of case file No.271/09. This he was told by counsel occurred after counsel had written to the Director of Public Prosecutions on 18th March 2009, requesting disclosure, and specifically of medical reports of the virtual complainant's examination at Martinique. That upon the matter coming on for Sufficiency Hearing on 19th June 2009, the Crown informed the Court that disclosure was not complete, and as a result the said hearing was adjourned to 23rd October 2009. On 23rd October 2009, the Crown stated that it was prepared to proceed with the Sufficiency Hearing and that it would be relying on all of the statements served on the Claimant except the most recent statement of Dr. Harley Moseley III, whose report had only been served on the Claimant 2 or 3 days prior. Counsel for the Claimant at that juncture informed the Court that he required time to peruse the said report with an expert and the hearing was adjourned to 23rd November 2009.

[5] The Claimant further stated that he had reason to believe that the Director of Public Prosecutions had access to a medical report from Martinique by virtue of

statements made via television by the Chief Medical Officer, Dr. Josiah Rambally. The court did not sit on the 23rd November 2009, but did so on 30th November, 2009. The Claimant again complained on 30th November 2009, of not having received any medical report from Martinique on the virtual complainant. The Learned Judge in response to the complaint stated that the Crown was entitled to rely on anything they believed sufficient to commit the Claimant.

- [6] The Director of Public Prosecutions filed an affidavit on 8th January 2010, and it was described as being in response to the fixed date claim form. Therein she sought to give a brief account of the CPR 2008, and, in particular, the Sufficiency Hearing. She says that the Sufficiency Hearing is a novel concept and it has replaced the Preliminary Inquiry which was found to be a protracted, repetitive and unwieldy committal procedure. The Sufficiency Hearing is intended to streamline and abridge criminal committals. She deposes that neither the Crown nor the virtual complainant was, or is, in possession of a medical report from Martinique. Further, on 30th March 2009, she had written to Superintendent Joseph Eugene of the Royal Saint Lucia Police Force (hereinafter "the RSLPF") requesting his department's assistance in obtaining any additional medical reports relating to the virtual complainant. The Third-named Defendant in response to her inquiry informed her that the RSLPF had not to date been able to obtain any additional medical reports on the virtual complainant. She deposed that the Crown has been ready to proceed with the Sufficiency Hearing since 23rd

October 2009, and that the continued delay has been brought about by the Claimant.

[7] The Claimant in his affidavit in response filed 19th January 2010 deposed:

- "2. That despite the vague denial that there was a medical report from Martinique in paragraph 14 of the DPP's Affidavit, I have very strong evidence that not only is there a medical report from Martinique but that it is of a strongly exculpatory nature based on the following:
 - a. Dr. Moseley's reference to the Virtual Complainant's Leona Edward's stay in a Martinique Hospital.
 - b. I was served with Civil Claim SLUHCV2009/0998 filed on behalf of said Leona Edward a copy of which is hereto attached whereupon Miss Edward speaks of being attended to by medical professionals in Martinique (at paragraph 7 of the Statement of Claim,).
 - c. That sometime in 2009 I received a package at my office with no name or address which said package was delivered to my office with what appeared to be medical findings after examination of Leona Edward in Martinique addressed to the then Chief Medical Officer Doctor Rambally of St. Lucia (a copy of which is attached hereto and marked AW2).
3. That the only way I can prove this to be authentic is if the DPP disclosed on me the medical as being a legitimate and authentic document received from Doctor Rambally or in possession of the present Chief Medical Officer of St. Lucia.
4. That upon instructions from my lawyer Mr. Foster and based on the fact that neither myself nor my lawyer can request information about a patient at a foreign hospital I called Dr. Rambally on the telephone yesterday the 18th January 2010. I asked him whether he was in possession of a medical report from Martinique for Leona Edward and he informed me and I verily believed that this is in the possession of the present Chief Medical Officer, Dr. Frederick. I further asked whether any police had made enquiries of him of said report and he replied in the negative."

[8] As I understand counsel for the Claimant, his submissions are that the Claimant's constitutional right at section 8(1) of the Constitution to a fair hearing, is being separately, and conjunctively, infringed because (a) the CPR 2008 and in particular rule 9.3, rule 9.4, and rule 11.2 do not provide for full and timeous disclosure at committal proceedings, (b) the Director of Public Prosecutions is covertly assisted by the legislation in not providing full and timeous disclosure since she need only provide so much as is necessary to make a prima facie case at the Sufficiency Hearing to get a committal, and further she could actually wait

until the day of trial to disclose material, including exculpatory material, (c) while there is the ability of the Claimant to cross-examine, he can only do so at the discretion of the judge, and for whom there are no criteria, and or considerations set out upon which he must base the exercise of his discretion, and (d) there exists the possibility that a witness statement could be used at the Sufficiency Hearing to influence the determination of whether a prima facie case has been made out, and thereafter, the witness could disappear and her witness statement, nevertheless could be used at the trial.

[9] Before proceeding to deal with the issue of infringement of the Claimant's right under section 8(1) of the Constitution, there is need to address a number of evidential procedural issues.

[10] I refer to paragraph 4 of the Claimant's affidavit wherein he sought to relate a conversation between a Dr. Rambally and himself. The statement is only to be allowed if it is in compliance with the Civil Procedure Rules 2000 Part 30.3 (1), or Part 30.3(2). Part 30.3.provides:

"30.3(1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.

(2) An affidavit may contain statements of information and belief-

(a) if any of these Rules so allows; and

(b) if the affidavit is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application, provided that the affidavits indicate –

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and

(ii) the source of any matters of information and belief.

(3) The court may order that any scandalous, irrelevant or other oppressive matter be struck out of any affidavit."

Nothing in the Claimant's affidavit has led me, firstly, to believe that he is able to prove the facts from his own knowledge, and secondly, that the statement can be accepted pursuant to Part 30.3(2) since the hearing before the Court is not an application for summary judgment, or a procedural or interlocutory application . I will, therefore pay no further regard to that statement.

[11] The Claimant at paragraph 2(c) of his affidavit has exhibited a letter as "AW2" and which it is alleged to have been issued out of a medical facility at Martinique. The Evidence Act, 2002 section 149 specifically provides how foreign documents are to be proved for use in the court. Section 149 states:

"149. Notwithstanding anything in this Act to the contrary, all deeds, wills, declarations and affidavits and other writings purporting to be executed, acknowledged, proved, declared or deposed to in a country or State outside of Saint Lucia and verified on oath before –

- (i) a diplomatic or consular representative for Saint Lucia; or
- (ii) a judge of any Superior Court, certified as such by a diplomatic or consular representative for Saint Lucia; or
- (iii) a Notary Public certified as such by a diplomatic or consular representative for Saint Lucia;

shall be deemed to have been sufficiently executed, acknowledged, proved, declared or deposed to and shall be received as evidence in any court, and judicial notice shall be taken of such deeds, wills and other writings, declarations and affidavits and of any seal or signature, as the case may be, of any person mentioned in this subsection attached, appended or subscribed thereto."

The exhibit "AW2" fails to comply with the requirements of section 149 as it has not been verified pursuant thereto. I will, therefore, pay no further regard to it. Even if I am wrong, there would have been a burden on the Claimant to prove the authenticity of document by other means and this he has not done in any event.

[12] The net effect of my decision on paragraph 4, and of exhibit "AW2" is that what the Claimant had thought was cogent evidence with which to persuade the Court, is no longer available before the Court.

[13] Notwithstanding that there is no cogent evidence before the court I believed that I can still proceed to look at the legal issues raised by the Claimant since the matter is before me.

[14] I first start with the issue of use of witness statements in criminal proceedings. The Evidence Act 2002, section 153 deals with proof of written statements in criminal proceedings. It states:

“153. – (1) In any criminal proceedings, a written statement by any person is, if such of the conditions mentioned in subsection (2) as are applicable are satisfied, admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The conditions referred to in subsection (1) are –

- (a) the statement purports to be signed by the person who made it;
 - (b) the statement contains a declaration by that person to the effect that it is true the best of his or her knowledge and belief and that he or she made the statement knowing that, if it were tendered in evidence, he or she would be liable to prosecution if he or she willfully stated in it anything which he or she knew to be false or did not believe to be true;
 - (c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it on each of the other parties to the proceedings; and
 - (d) none of the other parties or their attorneys-at-law, within seven days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section.
- (3) The conditions mentioned in paragraphs (c) and (d) of subsection (2) do not apply if the parties agree before or during the hearing that the statement shall be so tendered

In light of the conjoint effect of the sections 153(2) (c) and (d), the Claimant's submission that his constitutional right to a fair hearing could be infringed by a witness who disappears is ill-founded.

[15] The other submissions of the Claimant on CPR 2008 are taken as one since they are based on the same premise, namely, that they through failing to provide for full disclosure or limiting full disclosure at the Sufficiency Hearing in some way either separately or jointly deny the Claimant of his right to a fair hearing. Section 8 (1) the Constitution states:

“8.(1) 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.”

[16] One reality we must all face is that nothing in life remains constant, and this reality certainly applies no less to legislation. The CC 2004 at sections 797 to 808 provided for “Committal Proceedings”. By the Criminal Code (Amendment) Act, 2008 the sections were largely amended and a new procedure was introduced. The role of the magistrate in the process was diminished, and that of the high court judge was expanded. The net result is, that it is, the high court judge who, at a Sufficiency Hearing, makes the determination as to whether the Crown has met its burden of a *prima facie* case, or not, and who commits the defendant to trial for an indictable offence or discharges him. The procedure at the Sufficiency Hearing is unlike the previous committal proceedings so that, whereas before witnesses were required to be present at the process, under CPR 2008, witness statements are used under certain safeguards set out in the legislation.

[17] For ease of following, I cite a substantial section of the rules about which complaint has been made. CPR 2008 Part 9 is titled “INDICTABLE CASE MANAGEMENT: FROM INITIAL HEARING TO TRIAL”. It provides:

“ Sufficiency Hearing

9.3(1) Within 35 days of the Initial Hearing, or such other reasonable time fixed by order of the court, a Sufficiency Hearing shall be held before a judge to determine if the prosecution has disclosed sufficient evidence to meet the burden going forward with the criminal prosecution and thereby to require the defendant to stand trial before a judge and jury.

- (2) At the Sufficiency Hearing a Judge shall examine only such documentary evidence as the prosecutor may submit including, but not limited to, the complaint, police investigation reports, and victim and witness statements.
- (3) The prosecutor shall provide to the defendant, not less than 7 days before the date of the Sufficiency Hearing, copies of all documents he or she intends to use at the Sufficiency Hearing.
- (4) The documentary evidence submitted by the prosecution must disclose *prima facie* evidence that an indictable offence has been committed and that the defendant has committed it.
- (5) The probative value of the documentary evidence submitted by the prosecutor must be sufficient for the court to find as a matter of law that a jury, taking the evidence in the light most favourable to the prosecution, could return a verdict of guilty against the defendant.

- (6) Where a defendant is not represented by counsel at a Sufficiency Hearing, the court shall cause all documentary evidence submitted by the prosecutor to be tendered by reading out aloud, except where the court directs otherwise.
- (7) If the court finds that the prosecution has met its burden, it shall commit the defendant to stand trial, and if it finds that the prosecution has not met its burden, it shall discharge the defendant.
- (8) The Sufficiency Hearing shall be attended by the prosecutor, the defendant, and defence counsel, if any.
- (9) At the conclusion of Sufficiency Hearing counsel for the parties may make submissions.
- (10) Sufficiency Hearings shall be held in open court

Written statements at Sufficiency Hearing

- 9.4(1) Witness statements submitted to the Court and used in Sufficiency Hearing shall, if the conditions mentioned in subsection (2) are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person but the judge may exclude such evidence if he or she is of the opinion that such evidence ought to be excluded in the interest of justice.
- (2) The conditions referred in subrule (1) are that –
 - (a) the statement purports to be signed by the person who made it;
 - (b) the statement contains a declaration by that person to the effect that it is true to the best of his or her knowledge and belief and that he or she made the statement knowing that, if it were tendered in evidence, he or she would be liable to prosecution if he or she willfully stated in it anything which he or she knew to be false or did not believe to be true;
 - (c) before the statement is tendered in evidence a copy of the statement is given by or on behalf of the prosecutor, to each of the other parties to the proceedings; and
 - (d) prior to the Sufficiency Hearing the court and other parties to the proceedings were informed of the intention to seek to have the witness statements submitted in evidence at the trial and none of the other parties, before the statement is tendered in evidence at the Sufficiency Hearing, objects to the statement being tendered under this rule.
- (3) Any document or object referred to as an exhibit
- (4) The parties to the proceedings shall have the right to cross examine witnesses during the Sufficiency Hearing only where the judge so determines”.

CASE MANAGEMENT CONFERENCE

“Disclosure by prosecution

- 11.2 (1) The prosecutor must disclose to the defendant evidence on which the charge or charges are based within 14 days of the preferment of the indictment.
- (2) The prosecution must disclose material not proposed to be used but which may be exculpatory, unless the Judge excludes such material in the public interest.
- (3) A defendant or defence counsel may make application to the court to permit the defendant to inspect and copy relevant prosecution material if not made available under paragraph (1) or (2).”

[18] Amongst the cases cited and relied upon by Counsel for the Claimant were *Berry v. R* Privy Council Appeal 15th June 1992, *Herbert Ferguson v. The Attorney General of Trinidad and Tobago* Privy Council Appeal No. 11 of 2000, and *Winston Solomon v. The State* [1999] 57 WIR 432. Whilst these cases are clear on the common law position on disclosure in criminal proceedings, under CPR 2008 there is a statutory regime for disclosure.

[19] The Privy Council has made it clear, time and again that the whole context and circumstances must be looked at in which the allegation has been made of an accused not receiving a fair hearing. In *Herbert Ferguson v. The Attorney General of Trinidad and Tobago* Lord Steyn stated:

“20. ... Their Lordships certainly accept Mr. Mendes’ submission that just justice in criminal proceedings necessarily requires timeous and fair disclosure of documentary and other material relevant to the charge. In this sense such disclosure is inseparably connected with the guarantees of due process, protection of the law, and fair hearing. A failure to provide disclosure may therefore, depending on the context and circumstances, be evidence tending to establish a breach of such constitutional guarantees.

21. It does not follow, however, that there is a guarantee of disclosure under the Constitution. It is clear that there is no express guarantee of this under the Constitution. Mr. Mendes submitted that a guarantee timeous and fair disclosure must be implied into the Constitution in order to give practical effect to the general guarantees. He drew their Lordships’ attention to the decision of the Privy Council in *Attorney-General of Trinidad and Tobago v. Whiteman* [1991] 2 A.C. 240. In that case a question arose whether from an express guarantee under section 5(2)(c)(ii) of the Constitution, viz the right of a person arrested or detained to communicate with a legal adviser, there could be implied a right to be informed. The Attorney-General argued that there was no such implied right. Giving the judgment of the Judicial Committee Lord Keith of Kinkel observed at page 247E:-

“The language of a Constitution falls to be construed, not in a narrow and legalistic way, but broadly and purposively, so as to give effect to its spirit, and this is particularly true of those provisions which are concerned with the protection of human rights. In this case the right conferred by section 5(2)(c)(ii) upon a person who has been arrested and detained, namely the right to communicate with a legal adviser, is capable in some situations of being of little value if the person is not informed of the right. Many persons might be quite ignorant that they had this constitutional right or, if they did know, might in the circumstances of their arrest be too confused to bring it to mind.”

22. Accordingly, it was one of the grounds of the decision of the Privy Council that "by necessary implication" the accused was entitled to be informed of his right. Lord Keith observed at page 248A: "A procedure which exists only on paper, and is not put into practice, does not give practical protection." The implication was based on the view that without it the express guarantee would be worthless. This decision certainly shows, that where truly necessary, constitutional guarantees may be fleshed out by implication. But *Whiteman* was a much stronger case for an implication. Here there is no obvious gap.
23. The common law duty of timeous and fair disclosure as explained by the Chief Justice ensures fairness to the accused. And there are in principle effective remedies for breaches inasmuch as appropriate orders can be sought from trial judges and in the High Court. If, despite this safety net, cases of demonstrable unfairness in failure to disclose relevant material appear they can be corrected on appeal or, where appropriate, by invoking a remedy under the general guarantees of due process, protection of the law, and fair hearing under the Constitution.
24. Both counsel for the appellant referred their Lordships to observations of the European Court of Human Rights that the European Convention must be approached as a living instrument in the conditions of today. They invited their Lordships to approach the Constitution of Trinidad and Tobago in the same way. Their Lordships accept this general proposition. But it does not warrant an implication of the kind contended for where none is needed. And their Lordships emphasise again that the Court of Appeal has accepted fairness as the guiding principle. In this context "the great principle is that of open justice": see *Reg. v. Brown (Winston)* [1998]A.C. 367, at 374G, per Lord Hope of Craighead. Any substantial unfairness in the application of the common law duty of disclosure, which is revealed in particular cases, is therefore capable of being corrected where necessary...."

[20] Counsel for the Defendants relied solely on *Hilroy Humphreys v. The Attorney General of Antigua and Barbuda* Privy Council Appeal No. 8 of 2008. Counsel for the Claimant sought to distinguish *Humphreys' case* from the Claimant's case by submitting that the Privy Council never dealt with the issue of disclosure. I am surprised that Counsel for the Claimant would try to pull apart, in this manner, what I see as the single general principle emanating from this case, and which is, that one is required to look at the system as a whole, to see if it satisfies the constitutional right of a "fair hearing within a reasonable time". The Sufficiency Hearing under CPR 2008, is but one step in the process leading to a trial.

[21] In *Humphreys' case* the Commissioner of Police had laid a number of criminal complaints against Mr. Humphreys in relation to allegations of fraud. The offences were triable on indictment. Under the law in force at the time, the

Magistrate's Code of Procedure Act Cap 255, provided that a preliminary inquiry was to be conducted by a magistrate and at which the accused was entitled to cross-examine the prosecution witnesses, call witnesses and give evidence in his defence. At the end of the proceedings, the magistrate would decide whether there was enough evidence upon which a jury could reasonably convict, commit for trial or discharge an accused. Before Humphreys' preliminary inquiry could be commenced, there was brought into force the Magistrate's Code of Procedure Amendment Act, No. 13 of 2004. This Act abolished the preliminary inquiry and instituted committal proceedings in which the magistrate made the decision to commit the accused for trial or discharge entirely on the basis of written statements and exhibits submitted by the prosecution and, if he chooses to submit them, by the accused. There is no right to cross-examine or call or give oral evidence. There was no dispute that the new procedure applied to Mr. Humphreys. Mr. Humphreys brought judicial proceedings claiming that the abolition of the preliminary inquiry had infringed his constitutional rights, firstly, by retrospectively depriving him of the procedural protection to which he was entitled at the time he was charged, and secondly, by depriving him of the right to a fair trial.

- [22] There is a similarity between CPR 2008 and Magistrate's Code of Procedure (Amendment) Act, 2004 of Antigua and Barbuda in that both call for written witness statements and it is upon the basis of the said witness statements that the decision is made as to whether or not the prosecution has made out a prima facie case. It is noted that whereas under CPR 2008 the Claimant would have a

right with leave of the Judge presiding to cross-examine a witness, there is no such provision under the Antigua and Barbuda legislation.

- [23] Lord Hoffman at paragraph 4 dealt swiftly with the first ground of appeal by stating that:

“4. Prospective litigants (or defendants in criminal proceedings) do not have a vested right to any particular procedure and there will generally be nothing unfair in applying whatever procedure is in force when the case comes to court. ...it is a principle of construction which must yield to the express language of the statute. ...”

- [24] In relation to the second and alternative ground, the Privy Council made it clear, that while systems may differ widely, and change occurred in a system, it was a mistake to believe that there could not be a fair hearing. Systems had to be taken as a whole to satisfy the constitutional right to a fair hearing. Lord Hoffman stated:

“9. The basic premise, that a preliminary inquiry under the old system had to be conducted fairly, seems to the Board uncontroversial and is supported by the judgment of Peterkin JA in *Halstead v. Commissioner of Police* (1978) 25 WIR 522. But even allowing the widest effect to this proposition, the conclusion simply does not follow. It is one thing to say that if the procedure for bringing someone accused of an indictable offence to trial includes a preliminary inquiry that must be conducted fairly, by an impartial court and so forth. It is another thing altogether to say that one cannot have a fair hearing without a preliminary inquiry. In the Board's opinion it is a mistake to argue that because the old system provided a fair hearing, the change or abolition of some element of that system results in the new system being unfair. Systems of criminal procedure may differ widely without being unfair. The question is not the extent to which the new committal proceedings differ from the old preliminary inquires but whether the new system of committal proceedings and trial taken as a whole, satisfy the requirements of section 15(1).

10.It is unlikely that the framers of the Constitution intended to introduce such rigidity into the law. The question in each case is whether the requirements of a fair hearing are satisfied.

11. The Board agrees with the Court of Appeal that they are. The committal proceedings are not determinative of guilt but act as a filter to enable the magistrate to screen out those cases in which there appears insufficient evidence to justify a trial. They are conducted by an independent magistrate to whom both sides may submit evidence and make submissions. The restriction of written evidence applies to both the prosecution and defence. The specific requirements of section 15(2) of the Constitution are all satisfied by

the composite procedure of charge, committal proceedings, indictment and trial. In particular, the accused is entitled at the trial to cross-examine the prosecution witnesses and give oral evidence in accordance with section 15 (2) (e). Although it is possible for all the requirements of section 15(2) to be satisfied but the trial nevertheless to be in some way unfair, the Board sees no grounds upon which this can be said of the new procedure."

[25] Being guided by the decisions cited as to the general principle which is to be applied in all cases and which is that one must have regard to the system as a whole before alleging infringement of section 8(1) of the Constitution, and taking into consideration what I would describe as the safety net provisions which assure the Claimant's full participation in the process, such provisions being for example CPR 2008 rules 9.3.(3), 9.3 (4), 9.3(9), 9.4(2)(d), 11.2(1) and 11.2(2), and the fact that the trial has not occurred as yet, and from which there is also the possibility of appeal, I find that the Claimant's case against the Defendants is not made out.

[26] The Declarations and other relief sought are denied.

[27] The Constitutional Motion is therefore dismissed.


Rosalyn B. Wilkinson
High Court Judge