

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANGUILLA

AXAHCVAP2022/0002

BETWEEN:

JOSEPH BRICE

Appellant

and

THE ATTORNEY GENERAL

Respondent

Before:

The Hon. Mde. Margaret Price Findlay
The Hon. Mde. Vicki Ann Ellis
The Hon. Mde. Esco L. Henry

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Joseph Brice, the appellant appearing in person
Mr. Anthony Bullock and Mr. Theon Tross for the Respondent

2024: November 26;
2025: September 18.

Constitutional motion – Allegations of unlawful arrest – Section 16 of the Anguilla Constitution Order, 1982 – Abuse of process - Whether the learned trial judge erred in not striking out or dismissing the appellant’s constitutional motion as an abuse of process – Whether there were collateral remedies in private law which the appellant could have availed himself of - Exercise of powers by the Court of Appeal pursuant to section 30(2) of the Eastern Caribbean Supreme Court (Anguilla) Act

This is an appeal against the judgment delivered on 2nd June 2022, wherein the learned judge dismissed the appellant’s claim for a declaration that his arrests and subsequent detention on 7th January 2009 and 18th September 2009 by Detective Constable Edward Marsden, deceased, of the Royal Anguilla Police Force were unlawful.

On 3rd October 2014, the appellant filed an originating motion in the lower court. The appellant alleged that his arrests and detention were unlawful due to want of compliance with common law and statutory procedures concerning the power of arrest conferred on police officers in Anguilla, and in particular as it relates to the statutory requirement of

necessity as a relevant consideration in the exercise of the discretion to execute an arrest. The appellant sought various reliefs in the form of, inter alia, interim relief in the form of a stay of the trial and re-trial of his indictments pending the determination of the motion; declaratory relief under the Anguilla Constitution Order, 1982 ("the Constitution") that his arrests were unlawful for want of necessity for such arrests; declaratory relief that his rights guaranteed under the Constitution were infringed by reason of such unlawful arrests; an order that the indictments be quashed by virtue of the infringement of his rights under the Constitution; and compensation for the breach of said rights. The motion was summarily dismissed. On appeal, the Court of Appeal determined that there was no hearing of the claim for relief under the Constitution on its merits and remitted the matter to the High Court for hearing. Upon the matter coming on for re-hearing in the High Court as ordered by the Court of Appeal, the appellant sought leave to amend his motion in light of the fact that there had been a substantial change in circumstances since filing the original motion. Leave was granted to amend the motion and to file additional affidavit evidence. The appellant thereafter filed the amended motion, which now included claims for aggravated and vindictory damages.

In his judgment, the learned judge identified the gravamen of the appellant's claim as being the unlawfulness of his arrests in that in neither instance was it demonstrated that there were any reasonable grounds for believing that the arrests were necessary contrary to the provisions of section 24(5) of the Police and Criminal Evidence Act ('PACE'). Ultimately, the trial judge dismissed the appellant's claim for redress under the Constitution since PACE was the basis for the claim. The appellant appealed.

Upon the matter coming on for hearing before the Court of Appeal, the Court made an order for the parties to consider the judgment in *Timothy Abbott v The Attorney General of St. Christopher and Nevis* and to file and exchange submissions addressing the questions of: (1) whether the learned trial judge erred in not striking out or dismissing the appellant's constitutional motion as an abuse of process, because the appellant had not successfully availed himself of the collateral remedies in the private law or in the context of criminal proceedings; and (2) if the answer to question 1 is yes, whether the Court of Appeal should exercise its power under section 30(2) of the Eastern Caribbean Supreme Court (Anguilla) Act in respect of the decision of the learned trial judge. These are the issues that were determined in this judgment.

Held: Dismissing the motion as an abuse of process and ordering costs to the respondent to be assessed by a judge of the High Court if not agreed within 21 days of the date of this judgment, that:

1. Where a person alleges that his or her constitutional rights have been or are being contravened, he or she may apply to the High Court for redress. However, the court is empowered to decline the grant of any relief for any alleged contravention of the fundamental rights and freedoms provisions in the Constitution if that person has available to him or her adequate means of redress for that contravention under any other law. Generally, recourse to constitutional relief should not be sought where there is an appropriate remedy available in private law unless the court is satisfied that even where other avenues for redress are available to the claimant, there is

some special circumstance of the complaint which makes it appropriate to adopt such a course.

Section 16 of the **Anguilla Constitution Order, 1982** S.I. No. 334 of 1982 of the laws of Anguilla applied; **Jaroo v The Attorney General** [2002] UKPC 5 followed; **Kemrajh Harrikissoon v Attorney General of Trinidad and Tobago** [1979] 31 W.I.R. 348 followed; **Timothy Abbott v The Attorney General of St. Christopher and Nevis** SKBHCVAP2018/0023 (delivered 5th June 2024, unreported) followed; **The Attorney General of Trinidad and Tobago v Ramanoop** [2005] UKPC 15 followed.

2. Barring some special feature, if an originating motion is filed then the claim amounts to an abuse of power, where some other procedure is available and is appropriate. The applicant cannot argue that he or she was not aware that other remedies or reliefs existed in law, since prior to filing the motion, the exercise of determining whether such other avenues existed must have been done. Even where this is not done, the applicant must take the appropriate steps to withdraw the motion since any continued use would also amount to an abuse of process. Additionally, if the allegation or claim is made for the sole purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy, the applicant will not be allowed to invoke the jurisdiction of the court.

Jaroo v The Attorney General [2002] UKPC 5 followed; **Johnatty v The Attorney General of Trinidad and Tobago** [2008] UKPC 55 followed.

3. Once the court has made a finding that there existed an abuse of process, the originating motion must be dismissed for that reason. There must be no determination of the substantial issues in the claim. Even where the result would be the same, that is, if the motion was to be dismissed on the merits, the judge may be deemed to have erred.

Timothy Abbott v The Attorney General of St. Christopher and Nevis SKBHCVAP2018/0023 (delivered 5th June 2024, unreported) followed.

4. In the case at bar, the matters raised in the appellant's pleaded case do not give rise to some special feature which made it appropriate to seek recourse via constitutional motion. The appellant's claim alleged loss of assets, financial distress and descent into penury and poverty. These are matters that could be adequately dealt with in damages and could inform a court's decision in a private law claim to provide relief for false imprisonment and/or wrongful arrest. The learned trial judge therefore erred in not finding that the appellant's originating motion amounted to an abuse of process. To go further and determine the appeal on the merits would be inappropriate in these circumstances. Accordingly, pursuant to the Court's exercise of its powers under section 30 (2) of the **Eastern Caribbean Supreme Court (Anguilla) Act**, the motion is dismissed as an abuse of process.

JUDGMENT

- [1] **PRICE FINDLAY JA:** This is an appeal against the judgment delivered on 2nd June 2022, where the learned judge dismissed the appellant's claim for a declaration that his arrests and subsequent detention on 7th January 2009 and 18th September 2009 by Detective Constable Edward Marsden, deceased, of the Royal Anguilla Police Force, were unlawful. The appellant alleges that his arrests and detention were unlawful due to want of compliance with common law and statutory procedures concerning the power of arrest conferred on police officers in Anguilla, and in particular as it relates to the statutory requirement of necessity as a relevant consideration in the exercise of the discretion to execute an arrest.

Chronology of proceedings in the lower court

- [2] On 3rd October 2014, the appellant filed an originating motion in the lower court seeking interim relief that the retrial of Indictment No. 4 of 2011 be stayed pending the determination of the motion. He also sought relief that the trial of Indictment No. 5 of 2013 be stayed pending the determination of the motion. The appellant further sought declaratory relief under the **Anguilla Constitution Order, 1982** ("the **Constitution**")¹ that his arrests on 7th January and 18th September 2009 were unlawful for want of necessity for such arrests; that his rights guaranteed under the **Constitution** were infringed by reason of such unlawful arrests; that the abovementioned indictments be quashed by virtue of the infringement of his rights under the **Constitution**; and compensation for the breach of said rights.
- [3] On 20th October 2014, Mathurin J summarily dismissed the motion. There was no hearing of the claim for relief under the **Constitution** on its merits, and after an appeal to the Court of Appeal, the matter was remitted to the High Court for hearing.

¹ Statutory Instrument No. 334 of 1982 of the Laws of Anguilla.

Upon the matter coming on for re-hearing in the High Court as ordered by the Court of Appeal, the appellant sought leave to amend his motion in light of the fact that there had been a substantial change in circumstance since filing the original motion. The appellant had already been convicted on both indictments. Additionally, he had been re-tried on one of the indictments and convicted thereon and sentenced to a term of imprisonment.

- [4] Leave was granted to amend the motion and to file additional affidavit evidence.² Pursuant to said leave, the appellant filed the amended motion, which now included claims for aggravated and vindictory damages.

Decision in the court below

- [5] The learned trial judge identified that the gravamen of the appellant's claim was the unlawfulness of his arrests in that in neither instance was it demonstrated that there were any reasonable grounds for believing that the arrests were necessary contrary to the provisions of section 24(5) of the Police and Criminal Evidence Act³ ('PACE'). The learned trial judge, therefore, identified the following issues for determination:
- (a) Whether the provisions of section 24(5) of PACE have been received as part of the law of Anguilla and by extension whether the legislative guide set out in PACE is dispositive of the issue regarding the appellant's arrests.
 - (b) What are the appropriate legal principles upon which the court must rely in determining the lawfulness of the appellant's arrest.
 - (c) Whether there has been an infringement of the appellant's rights guaranteed under section 3(1)(f) of the **Constitution** and whether the appellant is entitled to redress under section 16(1) of the **Constitution**; and

² By order of the court dated 27th September 2021.

³ Chap. 60 of 1984 of the Laws of England.

- (d) Whether the appellant is entitled to compensation by way of damages, if at all, in the manner and on the basis upon which he claims such entitlement.

- [6] The learned trial judge determined the first and second issues as preliminary issues on the basis that the substantive issues raised in the appellant's motion would not stand if it was found that PACE did not form part of the laws of Anguilla.
- [7] On that point the learned trial judge found at paragraph 52 of the judgment that the provisions of PACE have not been received, imported, extended or incorporated as part of the law of Anguilla and that the provisions of section 24(5) of PACE could not provide the appellant any basis for challenging the lawfulness and constitutionality of his arrests. Further, the learned judge found that section 47 of the **Criminal Procedure Act**⁴ of Anguilla which states that '[a]ll other matters of procedure not herein nor in any other Act expressly provided for shall be regulated, as to the admission thereof, by the law of England, and the practice of the Superior Courts of criminal law in England' dealt specifically with matters of practice and procedure in criminal courts. It does not extend to matters related to substantive law.
- [8] The learned trial judge also held that the provisions of the **Interpretation Act**⁵ of Anguilla reinforced the point that in order for the provisions of any law passed by an Act of the United Kingdom Parliament to be considered as received or incorporated into the laws of Anguilla there must be in existence an Order in Council or Act of the United Kingdom Parliament which specifically extends that legislation to Anguilla. This was not the case in relation to the PACE legislation. Consequently, the judge found that the reliance on PACE to support the claim for constitutional redress was misplaced. The learned trial judge's ultimate decision was to dismiss the appellant's claim for redress under the **Constitution** since PACE was the basis for the claim.

⁴ Chap. 150 of the Revised Laws of Anguilla.

⁵ Chap. 125 of the Revised Laws of Anguilla.

The appeal

[9] The appellant's amended notice of appeal filed on 19th February 2024 set out the following grounds of appeal:

"a. The learned judge erred in law in failing to address adequately or at all the essential elements of the appellant's claim of unlawful arrest and the associated issues raised in the authorities proffered and relied on by the appellant in his claim, namely, that the arrests and subsequent detention of the appellant on 7th January 2009 and 18th September 2009 by Detective Constable Edward Marsden of the Royal Anguilla Police Force were unlawful for non-compliance with:

- (i) requirements at common law, notably the principles set out by Woolf LJ in **Castorina v Chief Constable of Surrey** (CA 10th Jun 1988) (*the Castorina principles*); and
 - (ii) the standards of reasonableness consistent with the principles established in **Associated Provincial Picture Houses Ltd v Wednesbury Corporation** (1948) 1 KV 223.
- b. The learned judge erred in law in failing to address adequately or at all the essential elements of the appellant's claim of unlawful arrest and the associated issues raised in the authorities proffered and relied on by the appellant in his claim, namely, that the arrests and subsequent detention of the appellant on 7th January 2009 and 18th September 2009 by Detective Constable Edward Marsden of the Royal Anguilla Police Force were unlawful for non-compliance with statutory requirements contained in **Section 24 of PACE** as applied to the law of Anguilla, and in particular for want of the requirement of necessity regarding the exercise of the discretion of police officers concerning the power of arrest.
- c. The learned judge erred in law or otherwise misdirected himself in his findings by concluding that the *U.K. Police and Criminal Evidence Act 1984, (as amended) (PACE)* was not received, imported, extended or incorporated in the law of Anguilla for the limited purpose of determining what amounts to an unlawful arrest in Anguilla, and therefore section 24(5) of PACE cannot provide any basis for challenging the lawfulness of the arrest of the Appellant.
- d. The learned judge erred in law or otherwise misdirected himself in his findings by concluding that the lawfulness of an arrest in Anguilla is governed solely by section 365 of the Criminal Code and the common law and that the court ought not to concern itself with the question of necessity for the arrest.

- e. The learned judge erred in law or otherwise misdirected himself in his findings by concluding that the appellant is not entitled to compensation or damages for unlawful arrest or for breach of section 3 of the Constitution.
- f. The learned judge erred in law or otherwise misdirected himself in his findings by concluding that the appellant was advancing a new case with a claim for new remedies not permitted by the orders of the court granting permission to the appellant to amend the original claim.”

[10] The matter first came on for hearing on 18th September 2024. At the conclusion of that hearing the Court made an order for the parties to consider the judgment of this Court in **Timothy Abbott v The Attorney General of St. Christopher and Nevis**⁶ and file and exchange submissions addressing the questions of: (1) whether the learned trial judge erred in not striking out or dismissing the appellant’s constitutional motion as an abuse of process, because the appellant had not successfully availed himself of the collateral remedies in the private law or in the context of criminal proceedings; and (2) if the answer to question 1 is yes, whether the Court of Appeal should exercise its power under section 30(2) of the **Eastern Caribbean Supreme Court (Anguilla) Act**⁷ in respect of the decision of the learned trial judge. I will first consider the preliminary point as if the Court is of the view that the application was an abuse of process, that would dispose of the appeal.

Preliminary point Appellant’s submissions

[11] In response to the question posed by this Court, the appellant submitted that the learned trial judge was not entitled in law to strike out or dismiss as an abuse of process the appellant’s constitutional motion that launched the challenge of the appellant. As a result, the appellant argued that there was no legal basis upon which the Court might reasonably exercise its powers under section 30(2) of the **Eastern Caribbean Supreme Court (Anguilla) Act** to dismiss the said constitutional motion of the appellant.

⁶ SKBHC VAP2018/0023 (delivered 5th June 2024, unreported).

⁷ R.S.A 2000 c. E15.

- [12] The appellant submitted that an abuse of process in this context translated to whether alternative means of redress were available to the appellant to bring his claim and whether the claim ought more properly to have been brought as a private law claim. The appellant continued that it is inferable that the existence of alternate remedies available to the appellant does not, in and of itself, engender in the court, without more, a default duty to dismiss a relevant constitutional motion as an abuse of process or otherwise for want of validity.
- [13] The appellant contended that the discretionary nature of the provisions of section 16 of the **Constitution** of Anguilla requires the court to fully examine all the relevant circumstances of the events that led to the appellant's challenge in order to determine whether such circumstances fall within the exceptions in the case of **The Attorney General of Trinidad and Tobago v Ramanooop**⁸ that renders constitutional redress appropriate.
- [14] The appellant submitted that once the arrest of the appellant is shown to have been unlawful and the litany of prolonged catalogue of abuse on the part of the authorities is revealed, the Court will exercise its discretion in favour of deeming the appellant's constitutional motion to be appropriately filed.

Respondent's submissions

- [15] On the preliminary point, the respondent submitted that the learned judge indeed found that the constitutional proceedings were an abuse of process. The respondent pointed the Court to paragraph 50 of the judgment in the court below which states:

"In answering this question the court is guided by the decision in **Jaroo v The Attorney General**⁹ where the Privy Council found, applying the reasoning in **Kemrajh Harrikissoon v Attorney General of Trinidad and Tobago**¹⁰ 'that the mere allegation of constitutional breach was insufficient to entitle the applicant to invoke the jurisdiction of the court under (what is now) s14(1) of the Constitution if it was apparent that the allegation was frivolous or vexatious, or an abuse of the process of the court as being made solely for

⁸ [2005] UKPC 15.

⁹ [2002] UKPC 5.

¹⁰ [1979] 31 W.I.R. 348.

the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy. He said that in his opinion the appellant's motion was inescapably doomed to failure on the merits. But he also said that it connoted a resort to proceedings under the Constitution which lacked bona fides and was so clearly inappropriate as to constitute an abuse of process.”

- [16] The respondent suggested that the language in paragraph 50 together with paragraphs 48 and 49 which they suggested identified the issue, is a clear affirmative response to the question of whether the constitutional proceedings were an abuse of process.
- [17] The respondent averred that the learned trial judge could have dismissed the motion on that basis alone. Instead, he considered the merits of the motion and concluded that the appellant could not succeed in his claim for redress under the **Constitution** on the basis that any provision of PACE had been breached in relation to him. The respondent submitted that this finding cannot be divorced from the learned judge's decision to dismiss the proceedings and that it actually formed part of his reasoning.
- [18] The respondent further submitted that if it is not held by this Court that the judgment contained no finding by the learned judge that the proceedings were an abuse of process and therefore it was not a reason for the learned judge dismissing the claim, the learned judge would have to be deemed wrong as the appellant had not availed himself of collateral remedies in private law: **Timothy Abbott v The Attorney General of St. Christopher and Nevis**. Ordinarily, the legality of an arrest can be challenged in an action in tort with a wide array of remedies available to the claimant.
- [19] The respondent submitted, on the authorities of **Jaroo** and **Ramanoop**, which suggest that a special feature of the particular case may make it appropriate for constitutional redress, that the appellant failed to provide any evidence of any special feature, nor was there any arbitrary use of state power. Therefore, the respondent submits, the learned trial judge erred in not striking out/dismissing the appellant's constitutional motion as an abuse of process.

- [20] As a result, the respondent urged the Court to exercise its power under section 30(2) of the **Eastern Caribbean Supreme Court (Anguilla) Act** in respect of the decision of the learned trial judge and dismiss the motion as an abuse of process.

Discussion on the preliminary point

- [21] I will start by examining the relevant statutory provisions. Section 16 of the **Constitution** states as follows:

“Enforcement of protective provisions

16.(1) If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, or is being, 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 may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs, and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any provisions of the said sections 2 to 15 (inclusive) to the protection of which the person concerned is entitled:

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.”

- [22] The proviso in section 16 empowers the High Court to decline the grant of any relief for any alleged contravention of the fundamental rights and freedoms provisions in the **Constitution** if that person has available to him or her adequate means of redress for that contravention under any other law.

- [23] In **Harrikissoon v Attorney General of Trinidad and Tobago**, Lord Diplock found that:

“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 I of the Constitution is fallacious. The

right to apply to the High Court under section 6 of the 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 origination 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 subsection 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.”¹¹

- [24] One of the principles emanating from **Harrikissoon** is that if the allegation or claim is made for the sole purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy, the applicant will not be allowed to invoke the jurisdiction of the court. This principle was examined in the Privy Council case of **Jaroo**, which concerned the confiscation of the appellant’s vehicle. The appellant sought redress *inter alia* under section 4(a) of the Constitution of Trinidad and Tobago that he had been deprived of the enjoyment of his property without due process of law. The Board found that:

“[29] Nevertheless, it has been made clear more than once by their Lordships’ Board that the right to apply to the High Court which section 14(1) of the Constitution provides should be exercised only in exceptional circumstances where there is a parallel remedy.

...

[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.”¹²

¹¹ (1979) 31 W.I.R. 348 at 349.

¹² [2002] UKPC 5 at paragraphs 29 and 39.

[25] The Privy Council's decision in **Jaroo** demonstrates that an applicant who alleges that his or her fundamental rights have been infringed must, first, before filing an originating motion under section 16 of the **Constitution** of Anguilla, determine whether some other procedure is available and appropriate in the circumstances. If that is not done and an originating motion is filed, then the claim amounts to an abuse of power. The applicant cannot argue that he or she was not aware that other remedies or reliefs existed in law, since prior to filing the motion, the exercise of determining whether such other avenues existed must have been done. Even where this is not done, the applicant must take the appropriate steps to withdraw the motion since any continued use would also amount to an abuse of process.

[26] These principles governing abuse of process in constitutional claims have been considered by this Court in **Timothy Abbott v The Attorney General of St. Christopher and Nevis**. In that case, Ventose JA with reference to the identical constitutional provision in St. Christopher and Nevis, found 'if a person has an alternative remedy under any other law, he or she cannot invoke the powers of the High Court under the enforcement section in the Constitution.'¹³ Ventose JA continued that:

"[17] In **McMillan v Carty et al**, I stated (at paragraph [10]) that **Jaroo**, therefore, confirms that: (1) the procedure by way of originating motion should be exercised only in exceptional circumstances where there is a parallel remedy; (2) before resorting to this procedure an applicant must first examine the nature of his claim to determine if there is a parallel remedy at common law or statute; (3) if there is a parallel remedy, resort to the procedure by way of originating motion will be inappropriate and an abuse of process; and (4) if, after the claim is filed, resort to that procedure becomes inappropriate, steps should immediately be taken by the applicant to withdraw the motion, and if it not withdrawn that will also be an abuse.

[18] The defining feature of the principle recognised in **Harrikissoon** and its progeny is that it applies where the High Court refuses to hear the application by way of originating motion for constitutional redress where there is an adequate remedy available to the person at common law or statute. Where constitutional proceedings are brought and circumstances change to make resort to the originating procedure inappropriate, and there is a parallel remedy, the constitution proceedings will be struck out as an

¹³ SKBHCVP2018/0023 (delivered 5th June 2024, unreported) at paragraph 13.

abuse of process. **In such cases there will be no determination by the High Court of the merits of the constitutional issues raised in the application by way of originating motion.**" (Emphasis added)

[27] **Timothy Abbott** makes clear that once the court has made a finding that there existed an abuse of process, the originating motion must be dismissed for that reason. There must be no determination of the substantial issues in the claim. Even where the result is the same, that is, if the motion was to be dismissed on the merits, the High Court judge may be deemed to have erred.

[28] Further, in **Johnatty v The Attorney General of Trinidad and Tobago**¹⁴ the Board of the Privy Council dealt with a claim for constitutional relief and determined that there had been an abuse of the court's process due to the appellant's failure to pursue alternate remedies which were available to him in that matter. Lord Hope of Craighead stated:

"The courts below were agreed that the appellant's constitutional motion was an abuse of process, although for different reasons. Narine J. said that he had an alternative remedy in the form of an action for damages against his employer for breach of contract. The Court of Appeal said that he had a parallel remedy in proceedings for judicial review. Their Lordships agree with them both. It would have been open to the appellant to seek a private law remedy against his employer for non-payment of his salary...

The fact that these alternative remedies were available is fatal to the appellant's argument that he ought to be allowed to seek a constitutional remedy. In **Harrikissoon v. Attorney General of Trinidad and Tobago**, ... Lord Diplock warned against the misuse of the right to apply for constitutional redress when other procedures were available. He said that its value would be seriously diminished if it was allowed to be used as a general substitute for the normal procedures for invoking judicial control of administrative action. This warning has been repeated many times..."¹⁵

[29] It follows that the relevant party (before they seek to bring a constitutional motion) must consider the nature of the right which they claim has been contravened and

¹⁴ [2008] UKPC 55.

¹⁵ Ibid at paragraphs 20 and 21.

must have regard to all the attendant circumstances of the case and consider whether some alternate procedure might be invoked.

[30] I now turn to the paragraphs of the learned trial judge's decision where the respondent claims that the learned judge found that an abuse of process existed.

The relevant paragraphs are set out below:

"[49] Notwithstanding the fact that Mr. Brice exceeded the ambit of the court's grant of leave to amend the Motion and supporting affidavit in light of the events that occurred prior and subsequent to the remittal of the Motion to the High Court for rehearing; and thereby, in the court's view, transforming the original Motion into something entirely novel by the inclusion of substantially new relief to that originally claimed, the pursuance of redress under the Constitution in the existing state of affairs as previously described is not only untenable but misguided. This raises the question of whether Mr. Brice's choice to pursue constitutional redress was appropriate in the circumstances.

[50] In answering this question the court is guided by the decision in **Jaroo v The Attorney General** where the Privy Council found, applying the reasoning in **Kemrajh Harrikissoon v Attorney General of Trinidad and Tobago** 'that the mere allegation of constitutional breach was insufficient to entitle the applicant to invoke the jurisdiction of the court under (what is now) s14(1) of the Constitution if it was apparent that the allegation was 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. He said that in his opinion, the appellant's motion was inescapably doomed to failure on the merits. But he also said that it connoted a resort to proceedings under the Constitution which lacked bona fides and was so clearly inappropriate as to constitute an abuse of process."

[31] After this, the learned trial judge proceeded to make determinations on the merits of the case.

[32] The respondent suggested that this 'is clearly an affirmative response to the question of whether the constitutional proceedings were an abuse of process'. I am not as certain. In my view, the learned trial judge simply stated the correct guiding principles that should have informed his decision when applied to the present case. However, he did not then proceed to actually or definitively apply those principles to the

particular facts of the case before him. Had this been done, neither party would have had to rely on the 'language' of the preceding paragraphs to draw an inference in one way or the other as to the learned judge's findings.

[33] Absent this clear and definitive ruling, it is therefore incumbent upon this Court to consider and determine whether the claim amounted to an abuse of process. A critical factor in arriving at this determination is whether the relief sought by the appellant could have been granted in private law proceedings.

[34] The pleadings in the court below reveal that the reliefs sought by the appellant include declarations that the appellant's arrests were unlawful and that his constitutional rights were breached for said unlawful arrests; compensatory relief under section 3(4) of the **Constitution**; damages; interest on loss or damage found; and costs.

[35] The case of **Caldre Chapman v The Attorney General of Saint Christopher and Nevis**¹⁶ provides useful guidance. That case concerned a claim for declarations and damages for wrongful arrest and/or false imprisonment. The claimant alleged that he was arrested and detained for a period of 7 days by agents of the state who did so with malice and/or without reasonable or probable cause. After reviewing the evidence and the submissions, the court determined that the claimant's case was made out and that he was entitled to the remedies which he sought. At paragraph 21, Moise J stated that '...the common law has long recognized the torts of wrongful arrest and detention and provided remedies to citizens where these have been committed by agents of the state.'

[36] The court in that case made the declarations sought by the claimant as well as awarded him general and aggravated damages with interest to be paid from the date of the judgment until the debt was paid in full. The court also awarded prescribed costs to be paid to the claimant in accordance with the Civil Procedure Rules. This

¹⁶ NEVHCV2018/0086 (delivered 1st December 2020, unreported).

case demonstrates that damages, declarations, costs, and interest are within the court's relief arsenal in private law proceedings.¹⁷ Further, it follows that damages would have essentially achieved the same goal that the relief of compensation under the Constitution sought to achieve. I therefore find that on the particular facts of the present case, the reliefs sought by the appellant could have been achieved through a claim in private law.

[37] Following the principles of **Jaroo**, **Harrikissoon** and **Timothy Abbott**, I am further satisfied that the act of filing an originating motion for constitutional relief where other avenues for relief existed amounted to an abuse of process and the appellant's claim should have been dismissed for that reason, barring any special circumstances why the court should not have done so.

[38] In my view, the appellant's submission that the court has complete discretion to permit a constitutional claim to proceed and not apply the proviso in section 16 remains the correct position in light of the dicta in **Timothy Abbott**. I am of the view that the decision in **Timothy Abbott** does not place a fetter on the court's discretion. It guides the Court in the approach to be adopted where an abuse of process has been made out.

[39] It is clear from the authorities however that recourse to constitutional relief ought not to be sought where there is a remedy available in private law unless there is some feature which makes it appropriate to adopt such a course. This was made clear by the Court in the decision in **Ramanoop**, where Lord Nicholls opined that:

“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. To seek constitutional relief in the absence of such a feature

¹⁷ See also NEVHCV2021/0167 - Shivraj Somwaru v The Attorney General of St. Christopher and Nevis (delivered 4th December 2023, unreported) for the availability of vindicatory damages as a possible relief for wrongful arrest and/or false imprisonment. Note that the claimant in that case did not meet the threshold for such a grant.

would be a misuse, or abuse, of the court's process. A typical, but by no means exclusive, example of a special feature would be a case where there has been an arbitrary use of state power.”¹⁸ (Emphasis added)

- [40] It is pellucid that the High Court is still able to hear a motion for constitutional relief even where other avenues for redress are available to the claimant. There however, must be some special circumstances to move the court to do so. In **Ramanoop**, Lord Nicholls stated that it is understandable why an applicant may seek constitutional relief since it may be less costly or lead to a speedier hearing, but this does not in itself furnish a sufficient ground for invoking the constitutional jurisdiction. It does not constitute a reason why the parallel remedy at law is to be regarded as inadequate and not pursued.
- [41] Therefore, having found that parallel remedies existed in the present case, the Court must determine whether any special circumstances exist which would remove the motion from the realm of an abuse of process.
- [42] The appellant averred that there is no reason why his case should not be treated as the same as in **Ramanoop**. I disagree. **Ramanoop** demonstrated a clear abuse of the power by the police and an arbitrary use of such power. **Ramanoop** was also subject to a level of brutality that I do not find to be synonymous with the present case. The appellant in the case at bar described shock, humiliation, brutishness, and heavy-handedness that does not amount to the severity of the facts stated in **Ramanoop**. The appellant also set out 32 items which, according to him, when taken together, exemplify and constitute arbitrary, egregious, and coercive state power beyond the **Ramanoop** standard and marks a special feature that the court ought to exercise its discretion to allow the constitutional motion to stand.
- [43] Having considered the facts alleged in the proceedings below, I am satisfied that the factors above do not meet this threshold. The matters raised in the appellant's pleaded case alleged loss of assets, financial distress and descent into penury and

¹⁸ [2005] UKPC 15 at paragraph 25.

poverty. In my judgment these are matters that could be adequately dealt with in damages and could inform a court's decision in a private law claim to provide relief for false imprisonment and/or wrongful arrest. In my view there exists no special feature of this case analogous to the factual matrix in **Ramanoop** sufficient to ground a finding that the originating motion did not amount to an abuse of process as found in that case. Therefore the learned trial judge erred in not finding that the appellant's originating motion amounted to an abuse of process. To go further and determine the appeal on the merits would be inappropriate in these circumstances following the guidance of **Timothy Abbott** and its predecessors.

[44] Finally, on this point, I wish to address the appellant's submission on the case of **Naidike & Others v The Attorney General of Trinidad and Tobago**.¹⁹ The appellant cited that case to argue that a jurisdictional issue should not be raised this late in the proceedings/on appeal. The case states at paragraph 57 that 'in any event it is now far too late for the respondent to assert abuse of process. If such a point is to be taken, it must be taken at the outset of proceedings, not as here at a comparatively late stage.'

[45] In my opinion, **Naidike** is distinguishable from the present case. In that case, the issue of abuse of process was only raised on appeal. In the present case, the challenge to jurisdiction was raised in the court below and the principles were considered by the learned trial judge. The question of jurisdiction is indeed a live issue in this appeal. The appellant asserted that the matter had already been heard and appealed to the Court of Appeal before it was sent back to the learned trial judge for re-hearing, and therefore, the issue of jurisdiction should have been raised then. In my view, when the matter was sent back to the High Court for a re-hearing, every issue or challenge or aspect of the claim could be determined at that hearing including that of abuse of process.

¹⁹ [2004] UKPC 49.

[46] It is now for the Court to consider whether to exercise its power under section 30(2) of the **Eastern Caribbean Supreme Court (Anguilla) Act** in respect of the learned trial judge's decision. Section 30 states:

“Powers of the Court of Appeal on hearing appeals in civil matters:

30. (1) On the hearing of an appeal from any order of the High Court in any civil cause or matters, the Court of Appeal shall have power to-

- (a) Confirm, vary, amend or set aside the order or make such order as the High Court might have made, or to make any order which ought to have been made, and to make such further or other order as the nature of the cause may require;
- (b) Draw inferences of fact; and
- (c) Direct the High Court to enquire into and certify its findings on any question which the Court of Appeal thinks fit to be determined before final judgment in the appeal.

(2). The powers of the Court of Appeal under the foregoing provisions of this section may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the High Court or by any particular party to the proceedings in that Court or that any ground for allowing the appeal or for affirming or varying the decision of that Court is not specified in such a notice, and the Court of Appeal may make any order, on such terms as the Court of Appeal thinks just, to ensure the determination of the merits of the real question in controversy between the parties.”

[47] This provision was applied in **Timothy Abbott** for a similar finding of abuse of process relative to a constitutional motion where such a motion was filed but other avenues of redress were available. In that case, the motion was dismissed and, I would similarly invoke section 30(2) of the **Eastern Caribbean Supreme Court (Anguilla) Act** and dismiss the appeal as an abuse of the Court's process by reason that the appellant had alternative avenues for redress that he should have pursued. In light of this finding, there is no need to consider the other substantive issues raised in the appeal.

Disposition

[48] Based on the foregoing, it is my view that the learned trial judge erred in not dismissing the appellant's notice of motion application as an abuse/misuse of the

court's process. As a result, this Court will exercise the powers under section 30 (2) of the **Eastern Caribbean Supreme Court (Anguilla) Act** and will dismiss the motion as an abuse of process.

- [49] The appellant will pay the respondent's costs to be assessed by a judge of the High Court if not agreed within 21 days of the date of this judgment.

I concur.
Vicki Ann Ellis
Justice of Appeal

I concur.
Esco L. Henry
Justice of Appeal

By the Court

Chief Registrar