

**IN THE SUPREME COURT
CONSTITUTIONAL LAW DIVISION
BEWTEEN**

**IN THE MATTER OF Articles 17, 19, 20 and 28 of the Constitution of
the Commonwealth of the Bahamas**

ALEXANDER BENEBY

Applicant

AND

THE COMMISSIONER OF POLICE

AND

THE ATTORNEY GENERAL

Respondents

Before: His Lordship Mr. Justice Andrew Forbes

**Appearances: Mr. Simeon Brown, Counsel for the Applicant
Mrs. Anishka Missick, Counsel for the Respondents**

Dates: 20th December 2021 & 14th April 2022

DECISION

Constitution – Fundamental rights and freedoms – Constitutional Motion seeking redress for breach of fundamental rights – Whether contravention of Fundamental Rights – Inhuman and degrading treatment – Protection from inhuman treatment, Article 17 – Right to protection from arbitrary arrest and detention, Article 19 – Right to the protection of the law – Right to fair hearing within reasonable time – Right to fair hearing by independent and impartial court, Article 20 – Adequate means of redress, Article 28

FORBES, J

Introduction

1. The Court heard legal arguments offered by Counsel for the Applicant and Respondents and indicated that it would provide a written decision and do so now.
2. The Applicant filed a Notice of Motion on the 27th August 2021 alleging that his rights pursuant to Articles 17(1), 19(1) & 20(1) of the Constitution of The Bahamas were violated.

In support of the Application, the Applicant filed his Affidavit on the 27th August, 2021 and two Supplemental Affidavits on the 13th September, 2021 and the 4th February, 2022, respectively.

The Applicant also relies on Skeleton Arguments filed on the 13th December, 2021 and Revised Skeleton Arguments filed on the 17th December, 2021.

3. The Respondents filed an Affidavit in Response sworn by John Trevor Kemp on the 2nd September, 2021 and relies on the Respondents' Submissions filed on the 16th December, 2021.

The Notice of Motion

4. The Applicant in his filed "Constitutional Motion" seeks the determination of the following issues:-
 - i. *Whether the prosecution of the Applicant for the offence charged was in all the circumstances of the case "inhuman or degrading treatment" in contravention of Article 17(1) of the Constitution of the Bahamas ("the Constitution");*
 - ii. *Whether in the circumstances the remand and detention of the Applicant by the Stipendiary and Circuit Magistrate was unlawful and in contravention of Article 19 of the Constitution;*
 - iii. *Whether there was inordinate delay in the trial of the Applicant in breach of Article 20(1) of the Constitution and the Applicant's right to a fair hearing within a reasonable time;*

- iv. *If so, whether the Applicant is entitled to compensation and/or damages for the aforesaid respective contravention of Articles 17, 19 and 20 of the Constitution;*
 - v. *If so, whether such compensation or damages should include any loss suffered by the Applicant as a result of the contravention of his Constitutional rights.*
5. The Applicant subsequently filed a Notice of Adjourned Hearing of Motion on December 17, 2021 which states that the issues previously stated in the “Constitutional Motion” had been amended to now include:-
 - a. *as to ground 3 whether the Applicant was granted a fair hearing of his case in compliance with Article 20 of the Constitution;*
 - b. *a declaration that the Respondents contravened the Applicants constitutional rights provided by Articles 17, 19, and 20;*
 - c. *compensation and/or damages for the same breaches including interest; and*
 - d. *Costs.*
6. It is noted that the “Notice of Adjourned Hearing” seeking to amend the Constitutional Motion filed on the 27th August, 2021 was filed on the 17th December, 2021 a few days before the parties appeared before this Court.

However, during the hearing on the 20th December, 2021 Counsel for the Applicant, Mr. Simeon Brown sought the leave of the Court to amend the “Constitutional Motion” in the same manner as provided for in the “Notice of Adjourned Hearing”.

Counsel for the Respondents, Mrs. Anishka Missick advised the Court that she did not object to the “proposed” amendments and the Court subsequently granted leave to amend.

Issues

7. The issues to be determined by this Court is whether the Applicant’s rights pursuant to Articles 17, 19 and 20 of the Constitution have been or are likely to be violated and whether the Applicant is entitled to declaratory and compensatory relief as a result of the alleged violation.

Grounds 1 and 2-Breach of Articles 17(1) and 19 of the Constitution

8. The Applicant alleges that the right conferred to him under Article 17(1) of the Constitution was breached as the prosecution for the offence he was charged for constituted as “inhuman or degrading treatment”.

Further that his remand and detention by the Magistrate was unlawful and in contravention of Article 19 of the Constitution.

9. The Applicant’s evidence in support of the two grounds is found in his Affidavit in Support and he avers in part the following:-

- a. *That he was arrested on the 20th April, 2015 by police officers, the servants or agents of the Respondents and detained for questioning in relation to alleged sexual intercourse with his step-daughters;*
- b. *That he was formally charged on the 27th April, 2015 by the same parties with two counts of unlawful sexual intercourse with a dependent contrary to section 14(1)(A) of the Sexual Offences Act and arraigned before Stipendiary and Circuit Magistrate, Rengin Johnson;*
- c. *That he plead not guilty to the said charges and was remanded in custody until the commencement of his trial;*
- d. *That at the time of being charged with the said offences he was a police officer employed by the Commissioner of Police, one of the named Respondents and that the Respondents knew that there was no medical evidence to prove that the “girls” had sexual intercourse with any person;*
- e. *That after he was remanded in custody by the Magistrate he was taken by police officers to Police Headquarters in Nassau where he was officially discharged and terminated from his employment as a police officer due to his being charged;*
- f. *That he was detained for three weeks at Fox Hill prison until he was granted bail by the Supreme Court on or about the 19th May, 2015;*
- g. *That the Respondents knew at the time he was charged with the offences that there was no evidence that the girls had sexual intercourse with anyone;*
- h. *That the Respondents knew that the charges were unjustifiable in law and that the same was oppressive and malicious and that the said prosecution was inhumane and degrading treatment;*
- i. *That as a result of being unlawfully charged he was dismissed from his employment as a police officer and he is degraded and viewed ever since by the general public and prospective employers with contempt, shame, scorn and continues to be so viewed;*
- j. *That as a result his marriage and family has been destroyed, it has been impossible to live a peaceful and fulfilling life and now suffer mental instability in his daily life.*

10. The Respondents' Affidavit in Response purports to read as a defence to a Statement of Claim instead of providing the evidence in response to the Applicant's application.

The sum total of the Respondents' Affidavit is either admissions to several paragraphs of the Applicant's Affidavit or denials and putting the Applicant to strict proof of his averment.

Therefore, the Court is of the view that the only evidence before the Court is that of the Applicant.

11. Mr. Brown on behalf of the Applicant makes the following submissions and observations in part in support of the application:-

- a. *That the Respondents had a duty to exercise its discretion to prosecute "reasonably" and were duty bound to gather admissible, credible and cogent evidence to justify any charge levelled against the Applicant;*
- b. *That in assessing the potential evidence due consideration had to be given to the legal ingredients of the proposed charge against the Applicant;*
- c. *That the decision to charge the Applicant in the circumstances was "degrading treatment" and that "degrading treatment" as defined by the Equality and Human Rights Commission is "treatment that is extremely humiliating and undignified"; that Webster's College Dictionary defines degrade as "to lower in dignity, character or quality";*
- d. *That the Respondents were reckless in charging the Applicant with the offence charged and exposed him to humiliation and degradation in the eyes of the general public;*
- e. *That after being formally charged, the Applicant was discharged from his employment as a police officer;*
- f. *That as a result of being unfairly charged, he lost his mental serenity, his dignity and mental peace and continues to suffer loss and permanently stricken with mental stress and disorder;*
- g. *That the incarceration and imprisonment of the Applicant was unlawful and unjustifiable;*
- h. *That discrepancies relative to the evidence of the complainants were known to the Respondents prior to charging the Applicant and that the decision to charge him with the offences was improper and arbitrary;*

- i. *That the unlawfulness of the decision to charge the Applicant affects the legitimacy of the detention and imprisonment and that period of detention should be deemed unlawful.*

12. Mrs. Missick in response makes the following submissions and observations in part:-

- a. *That the prosecution of the Applicant was not inhuman or degrading and as such there was no contravention of Article 17(1);*
- b. *That the Applicant has neither factually or legally established that the same has been done to him;*
- c. *That in accordance with Article 19, the Applicant was lawfully remanded and detained and referred the Court to Article 19(1)(d) of the Constitution which states "upon reasonable suspicion of his having committed...a criminal offence";*
- d. *That the Applicant has neither factually nor legally established a contravention of the said Article in respect of his remand and or detention.*

The Law

13. Article 17(1) of the Constitution states:-

"17. (1) No person shall be subjected to torture or to inhuman or degrading treatment or punishment."

14. Article 19 of the Constitution states:-

"(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases —

(a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;

(b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court;

(d) Upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;

(e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(f) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph, provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.”(Court’s emphasis)

Discussion and Analysis

15. The Applicant has submitted that the Respondents’ prosecution for the alleged sexual offences and his subsequent time on remand resulted in the said breaches of his constitutional rights.

16. The Applicant in his Affidavit in Support at paragraphs 10 to 14 speaks to the evidence that was adduced before the Magistrate and that the said evidence could not have reasonably justified the Respondents to charge him.

The Respondents did not provide any evidence to rebut the Applicant’s evidence under grounds one and two.

17. In essence, the Applicant’s contention as stated above is that the Respondents had a duty to exercise its discretion to prosecute “reasonably”.

The Applicant in his submissions challenged the sufficiency of the evidence and/or lack of evidence to support the charge as alleged prior to charging the Applicant and such the Respondents were obliged to release the Applicant from custody.

Additionally, that the decision to charge and prosecute the Applicant in the face of what he alleges was insufficient evidence amounted to inhumane and degrading treatment.

18. Mr. Brown and Mrs. Missick in their written submissions identified and relied upon numerous authorities in support of their respective assertions and contentions regarding the sufficiency and/or lack of evidence following the criminal complaint being made and the subsequent trial.

However, the Court on an application for what is being alleged as a breach of a fundamental right of the Applicant does not find these authorities to be relevant or applicable.

Further, no authority was provided to the Court on behalf of the Applicant or the Respondents that speak to what constitutes as inhuman and degrading treatment.

There have been many cases before the Bahamians Courts where a Plaintiff/Applicant alleges that he/she was subject to inhumane and degrading treatment at the hands of members of the state.

Usually, in those cases the inhumane and degrading treatment suffered by persons are variations of prison conditions while being in custody, physical assault and battery of their person and even the sentencing of the death penalty and not simply being charged following a complaint and the subsequent prosecution.

The Applicant has not adduced any evidence before the Court that shows or has shown the actions done by the Respondents that constitute as inhumane and degrading treatment.

19. As the Court understands the Applicant's contention, the Respondents' unjustifiable arrest and prosecution in the absence of admissible evidence led to the Applicant suffering a breach of his fundamental rights and ultimately suffering the damages alleged in his "Constitutional Motion."

However, after a careful analysis of the Applicant's submissions, the Court finds that the Applicant's claim that his fundamental rights under Article 17(1) of the Constitution has not been breached.

The challenge to the sufficiency and/or lack of evidence to support the filing of the criminal charge and subsequent prosecution of the Applicant the Court also finds cannot amount to inhumane and degrading treatment.

The Court is of the view that the Court itself determines the sufficiency and/or lack of evidence that is placed before it and whether the same supports the charges laid.

20. Moreover, the Court is of the view that the Applicant's challenge to what he alleges was the Respondents' duty to exercise its discretion to prosecute "reasonably" due to the sufficiency and/or lack of evidence to support the charge is a challenge that would arise in an action for malicious prosecution and not a breach of a fundamental right.

Therefore, the Court finds that ground 1 has no merit.

21. The Applicant also alleges that he was detained/remanded for three weeks until he was granted bail by the Supreme Court on or about the 19th May, 2015 and as such his incarceration and imprisonment was unlawful and unjustifiable in law pursuant to Article 19 of the Constitution.

Additionally, it was submitted that the unlawfulness of the decision to charge the Applicant affects the legitimacy of the detention and imprisonment thereafter.

As the Court understands the submissions of the Applicant, the finding of any breach of Article 19 of the Constitution is contingent on a finding of any breach of Article 17(1) of the Constitution.

22. As stated above, Article 19(1)(d) of the Constitution provides that no person shall be deprived of their liberty save for **upon reasonable suspicion of committing or of being about to commit a criminal offence (Court's emphasis)**. It has not been disputed by the parties that a criminal complaint was made and as a result of such complaint the Applicant was arrested and subsequently charged.

In the circumstances, the Court is of the view that given a criminal complaint was made, the Applicant was arrested and brought before a Magistrate and subsequently remanded, the proviso found at Article 19(1)(d) was invoked as the Respondents had reasonable suspicion (by way of the criminal complaint) of the commission of a criminal offence.

Additionally, as this ground was contingent on a finding in the affirmative for the first ground and that ground having no merit, the Court accepts the submissions of Mrs. Missick relative to this ground and in the circumstances, makes a finding that ground two is also without merit relation.

23. Therefore, the Court dismisses grounds one and two of the Applicant's Constitutional motion.

Ground Three-Fair Hearing

24. The Applicant alleges that the right conferred under Article 20(1) of the Constitution was breached as there was inordinate delay between the taking of the evidence and the Magistrate's oral decision.

25. The Applicant's evidence in support of this ground is found in his Affidavit in Support and his two Supplemental Affidavits. He avers in part the following:-

- a. *That his trial commenced on the 27 August, 2015; the prosecution closed their case on the 20th October, 2015; he gave evidence on the 14th March, 2016; on the 16th May, 2016 the Magistrate permitted the Respondents to call two additional witnesses to give evidence;*
- b. *That at the time of his criminal case he was represented by Mr. Wendell Smith and the prosecution was represented by Mrs. Erica Kemp of the Attorney General's Office;*
- c. *That after the conclusion of the evidence in 2016 the case was adjourned on multiple occasions for the delivery of the Magistrate's judgment;*
- d. *That upon completion of the evidence the Magistrate failed to pass judgment for a period of three years; sometime in 2019 he and his Counsel were called into the Magistrate's office and was informed orally that she was acquitting him of the charges which was later done in writing a year later sometime in 2020 in an undated written judgment (as stated in the Affidavit in Support) and that in October 2019 he attended a hearing of the case at the library in the Supreme Court building*

where Magistrate's Court was convened allegedly due to the damage to the Court building by Hurricane Dorian, the month before and at that time the Magistrate informed them of her intention to acquit him of the charges against him and put the same in writing at a later date (as stated in Supplemental Affidavit filed February 4, 2022);

- e. That the written judgment was not given by the Magistrate until sometimes between the months of May and October, 2020;*
- f. That he continued to report to Central Police Station in compliance with his condition of bail until thereafter in 2020 he was given a copy of the written judgment by his attorney;*
- g. That the delay between the taking of evidence in 2016 and the oral pronouncement of the acquittal in 2019 was inordinate and unjustified in law and exposed him to an extended period of suffering and mental disorder caused by his persecution (as stated in the Affidavit in Support) and that the delay in the Magistrate giving her judgment approximately four years extended the mental distress and ridicule from the general public he suffered since being charged with the criminal offences in 2015 (Supplemental Affidavit filed February 4, 2022);*
- h. That the inordinate delay was in contravention of his constitutional right to a fair hearing within a reasonable time;*

26. The Respondents Affidavit in Response did not address or rebut any of the evidence contained in the Applicant's Affidavits.

27. Mr. Brown makes the following submissions and observations in part in support of this ground:-

- a. Whether the Applicant received a 'fair hearing' of his case as mandated by Article 20 of the Constitution having regard to the inordinate delay between the taking of evidence and the Magistrate's oral decision and the Magistrate's admission and consideration of hearsay, prejudicial and scandalous evidence;*
- b. That the failure of the Respondent(s) to produce and disclose the results of the forensic examination of the clothing, swabs and other items sent to the Forensic Laboratory, prejudiced the Applicant as such information may have supported the Applicant's innocence of the offence charged and thus this too contravened the Applicant's right to a fair hearing and his right to be afforded "adequate facilities" for the preparation of his defense provided in Article 20(2)(c) of the Constitution;*
- c. That the delay of 3 to 4 years between the completion of the evidence and decision of the Magistrate was inordinate and unreasonable and thus prejudiced the Applicant in receiving a fair hearing of his case;*
- d. That the delay is significant and is an unreasonable period as the Magistrate in making the decision in assessing the evidence of the witnesses would have to assess their demeanor and the Magistrate's recall of a witness' demeanor fades with time;*

- e. *That the unlawfulness of such delays was addressed in the case of **Forde v The Attorney General of St. Lucia (2018) SLUHCV2017/0276** from the Eastern Caribbean Supreme Court and in paragraph 9 of the Forde judgment the Court referred to the case of **Yoland Reid v Jerome Reid CCJ Appeal No. CV9 of 2007**;*
- f. *That the fact that the Applicant was acquitted of the offences charged does not negate the fact that the Applicant was exposed to an unfair hearing of his case and such breach of Article 20 of the Constitution resulting in the prolonged trial prolonged the mental stress, anxiety, scorn and ridicule suffered by the Applicant and such delay extended his pain and suffering.*

28. Mrs. Missick makes the following submissions and observations in part in response:-

- a. *That the Applicant was afforded a "fair hearing within a reasonable time";*
- b. *That there has been no contravention of Article 20(1) and neither has the same been factually or legally established on behalf of the Applicant;*
- c. *That the Applicant was acquitted of the charges in respect of both dependents.*

29. During the hearing on the 20th December, 2021 after being asked by the Court the Respondents position as to whether a case before a court hears its last witness three years prior to rendering a decision, is that a reasonable time for a decision to be rendered, Mrs. Missick responded that she did not see where it is reasonable in the circumstances.

Mrs. Missick also submitted to the Court that the Applicant did not provide any evidence as to what steps were taken to mitigate what he now considers to be a breach.

Mr. Brown in response stated in part to the Court that it was not incumbent on his client to try to "ruffle" the water because the Magistrate could have come back and found him guilty because he was "pressuring" her.

30. Given that the Respondents have conceded on the issue of delay caused by the Magistrate's decision being rendered some three years after the parties closed their respective cases, the Court is left to consider what damages, if any, flow from such delay and whether the award of compensation for the same is justified.

Discussion/Analysis

31. The Applicant has submitted that as a result of the delay from the time the last witnesses' evidence was taken to the rendering of the Magistrate's decision he has suffered loss and damage. The loss and damage he alleges is an extended period of suffering and mental disorder, aggravated the loss of his family, employment, career and its retirement and ancillary benefits and personal integrity while defending the charges.

32. Mr. Brown in his submissions referred to **Daniel Forde and Ian Forde v The Attorney General (supra)**, a case from the Eastern Caribbean Supreme Court, St. Lucia.

33. In that case the Claimants filed a claim seeking constitutional relief as a result of the seizure and detention of their monies.

They alleged that at the date of filing their constitutional claim, the judge had yet to render the judgment following when the matter was last heard on October 1, 2013.

The time between the last hearing and the time of the filing of the constitutional claim was some three years and six months later. The Claimants through their Counsel wrote to the Registrar of the High Court on two occasions inquiring and seeking assistance in getting the judgment delivered.

The Attorney General contended that the delay was not gross or unreasonable and was therefore not sufficient to invoke the Court's constitutional jurisdiction and that the delay had to be assessed in the context of available resources.

Further that the failure of a judge to deliver a judgment fell outside of the remit of state control and as such state liability ought not to be founded on an omission, particularly since the State cannot exercise the coercive powers of the State to obtain judgment.

The judgment was finally delivered on the 3rd July, 2017, three years and nine months after the trial and the Claimants were not successful.

It was noted that on the face of the judgment the delay and reasons for the same were not addressed by the judge.

During the case management hearing in the matter with the Court and the parties, it was concluded that the constitutional right of the claimants to a fair hearing within a reasonable time had been infringed by the delay in the delivery of the judgment of three years and nine months.

The parties were then to discuss what relief a part from the declaration should flow from that finding, if any.

The Court in its ruling also considered the cases of **Citco Banking Corporation v Pusser's Limited (2007) 69 WIP 308**; **Yoland Reid v Jerome Reid CCJ Appeal No. CV 9 of 2007** and the article titled "**Justice Delayed is Justice Denied: Jamaica's Duty to Deliver Timely Reserved Judgments and Written Reasons for Judgment**" in concluding that such delay constituted an infringement.

34. As to consideration of the additional relief sought such as damages in public law, the Court analyzed the cases of **Merson v Cartwright [2005] UKPC 38** and the **Attorney General of Trinidad and Tobago v Ramanoop [2006] 1 AC 328** and stated that it is clear that not all public law cases where it has been found there was infringement of a constitutional right which will justify the award of vindicatory damages.

The Court at paragraph 18 took seven factors into consideration. These were:-

(a) The claimants never sought to engage the Chief Justice as head of the judiciary to secure delivery of the judgment after not having had any response from the Registrar after December 2017. That course of action would perhaps have averted the need to file a claim.

(b) The State was also a party in this matter and was itself subjected to the delay in the delivery of the judgment.

(c) There was nothing that the State could have done to compel delivery of the judgment on its own because of the principle of judicial independence and the doctrine of separation of powers.

(d) The fiscal burden that an award of substantial damages would place on the tax payer when it has not been shown that the State did not provide the necessary facilities, or resources and this impacted on the judicial officer's ability to deliver his/her decision and this could not have been the intention.

(e) The claimants have appealed against the judgment and have asked the Court of Appeal among other grounds of appeal to consider the effect of the delay on the quality of the judgment. That to my mind provides an opportunity to obtain vindication of the claimants' rights.

(f) There is no public outrage which has been identified in this case.

(g) The importance of the timely delivery of judgments especially in constitutional cases, which will prompt at least an award of nominal damages."

35. The Claimants were awarded their declaration that the delay in the delivery of the judgment infringed their rights to a fair trial within a reasonable time and nominal damages in the sum of \$5,000.00.

36. It is worth noting that the above mentioned case and the instant case have several similarities such as the parties' concession as to the delay and therefore a finding by the Court of the infringement of the Claimants' breach of their constitutional rights.

However, where they differ is that in Forde, the Claimants by their Counsel made a concerted effort to contact the Registrar to have the matter brought forward for delivery.

The Court noted in Forde that the Claimants in their pleadings failed to plead what distress and inconvenience they suffered. Likewise in the instant case, the Applicant fails to plead any specifics as it relates to the damage allegedly suffered and in his evidence repeatedly speaks to being exposed to an extended period of suffering and mental disorder, loss of family, employment career and its retirement and ancillary benefits.

However, the only evidence in support of his claim as it relates to loss of employment is a Discharge Certificate from the Royal Bahamas Police dated the 27th April, 2015.

The Discharge Certificate states that he was discharged from the Royal Bahamas Police Force in accordance with Section 21(c) of the Police Force Act 2009 and that during his period of service in the Royal Bahamas Police Force his conduct and general character has been unsatisfactory.

37. Additionally, there is no other evidence before the Court on behalf of the Applicant that supports his assertions as to a mental disorder, what the outcome of his extended period of suffering resulted in, and any loss of potential employment.

The Court can only make a determination when there is evidence before it and not from mere assertions.

38. The Court also notes that the Applicant in his submissions further asserted that his rights to a fair hearing was infringed and referred the Court to Article 20(2)(c).

His submission was that the Respondent's failure to produce and disclose the results of the forensic examination of clothing, swabs and other items prejudiced the Applicant as it may have supported his innocence of the offence and infringed his right to be afforded "adequate facilities" for the preparation of his defence.

39. Mr. Brown in his Written Submissions did not provide any authorities in support of this submission.

Additionally, the Applicant did not plead this specific breach nor in his evidence did he assert that he was not afforded "adequate facilities" for the preparation of his defence or that his Counsel of Record during the matter did not adequately act on his behalf.

The Court therefore makes its finding that there was no infringement of the Applicant's rights under Article 20(2) (c).

Alternative Means of Redress

40. Article 28 of the Constitution provides:-

“(1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction —

(a) To hear and determine any application made by any person in pursuance of paragraph (1) of this Article; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of paragraph (3) of this Article, 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 of the provisions of the said Articles 16 to 27 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.”

41. The Applicant has brought his application for what he alleges were the infringement of his fundamental rights.

However, on careful consideration of Article 28 of the Constitution, the evidence adduced before the Court and the submissions of Counsel during the hearing the Court is satisfied that this Applicant had adequate means of redress available.

42. The Applicant advanced that as a result of the investigation (which he submits should not have occurred) and being charged of the offence he was terminated from his employment.

Further, he alleged that the Respondents knew that the evidence received prior to his arrest and subsequent charging of the offence was not sufficient but they still proceeded with his prosecution.

43. During the hearing the Court made several inquiries of Counsel regarding the nature of the Applicant's Constitutional Motion and whether the Applicant had adequate alternative means of redress.

Mr. Brown conceded that the Applicant would have been barred from commencing proceedings against the Crown as such actions must be commenced no later than one year after the alleged action, inaction or breach.

44. Considering the above, the Court is of the opinion that the bulk of the Applicant's contentions are allegations that would be better addressed in a tortious claim.

These would include a claim for malicious prosecution as he was acquitted of the charges, unlawful detention or imprisonment and possibly wrongful dismissal as a result of his termination from employment.

Further, as a member of the Royal Bahamas Police Force, the Police Act makes provisions for the procedure to be taken by an officer who believes he/she has been wrongfully discharged.

Conclusion

45. Considering the evidence before it, the relevant submissions of Counsel and the concession from the Respondents that there was delay in the rendering of the Magistrate's decision, the Court makes the following findings:-

- a. *That there was delay in the rendering of the Magistrate's decision;*
- b. *That the Applicant has not adduced any evidence to support his claims of emotional distress, ridicule and loss of family as a result of the charged offences;*
- c. *That while he has provided evidence of his termination from the Royal Bahamas Police Force, there has been no further evidence before the Court that establishes such termination was a result of him being charged with the said offences.*

46. Therefore, the Court hereby orders:-

- a. *a declaration that the delay in the delivery of the judgment of three years infringed the Applicant's right to a fair trial within a reasonable time as guaranteed by Article 20(1) of the Constitution but makes no award as to damages and/or compensation and;*
- b. *That in the circumstances, the Applicant's claims are all hereby dismissed.*

Costs

47. The Court makes no order as to costs.

Dated the 23rd Day of September 2022



Justice Andrew Forbes