

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 751 of 2023

**IN THE MATTER of an Application under Section 20 of the Constitution of Belize and
Part 56 of the Supreme Court (Civil Procedure Rules) 2005**

AND

**IN THE MATTER of an Application under Sections 3 (a), 6 (1) and 17 of the
Constitution of Belize.**

BETWEEN:

[1] SAULUS PENNER

[2] ERIKA PENNER

Claimants

And

[1] THE ATTORNEY GENERAL OF BELIZE

[2] THE BELIZE POLICE DEPARTMENT

Defendants

Appearances:

Mr. Leeroy Banner for the Claimants

Ms. Imani Burgess, Crown Counsel with Mr. Stanley Grinage, Crown Counsel for
the Defendants

2024: May 31;

June 12.

DECISION ON STRIKE-OUT APPLICATION

Constitutional Claim – Detention of Property – Misuse of Drugs Act

- [1] **GOONETILLEKE, J.:** The claimants, husband and wife, Saulus and Erika Penner (**the Penners**), filed a constitutional claim on 24th November 2023, alleging unlawful detention of their vehicles by the Belize Police Department (**BPD**). They also alleged that in any event the continued detention of their vehicles was illegal after the relevant Magistrate to whom the BPD had made application for forfeiture of their vehicles under **Section 29(4) of the Misuse of Drugs Act¹ (MDA)** had denied and dismissed that application.
- [2] The Penners allege that the actions of the **BPD** violate their rights under **Section 3 (a) of the Constitution** (“*Life, liberty, security of the person, and the protection of the law*”), read with **Section 6(1) of the Constitution** (“*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law*”) and **Section 17 of the Constitution** (“*No property shall be compulsorily taken possession of and no interest in or any right over property of any description shall be compulsorily acquired except by or under a law...*”).
- [3] The defendants on the 5th of March 2024, filed an Application to strike out the claim on the grounds set out in **Rule 26.3 (1) (b) of the Supreme Court (Civil Procedure Rules) 2005 (CPR)** stating that the claimants’ application is an abuse of the process of court as the claimants have an alternate private law remedy of ‘Detinue’ and ‘Conversion’. The defendants state further that the claim is also liable to be struck out in terms of **Rule 26.3 (1) (c) of the CPR** as the claim does not disclose any reasonable ground for bringing the claim as the Penners’ vehicles had been lawfully detained and were required as productions in a case to be instituted in court against several accused including Mr. Penner, the 1st claimant.
- [4] Consequent to filing written submissions, the Application to strike out the claim was heard in open court on 31st May 2024. The court was informed by counsel for both parties that the case in the Magistrates’ court in regard to the charges against Mr. Penner and the other accused, in connection with which the vehicles were detained,

¹ Cap.103 of the Substantive Laws of Belize, Revised Edition (2020)

was to be taken up on 3rd June 2024. Therefore, on the suggestion of the court, the claimants' counsel was asked to obtain instructions as to whether the claimants would be satisfied to await the outcome of the lower court in regard to those charges, if the defendants would give an undertaking that they would release the vehicles on the conclusion of that case in the event that the claimant was found not guilty. The claimants were not agreeable and wanted to proceed with this constitutional claim. The defendants also indicated that they would not be able to give such an undertaking. The counsel for both parties thereafter made submissions in regard to the application to strike out the claim.

- [5] Having heard counsel for both parties and having considered the material available to the court, for the reasons set out below, I hold that the claim should be struck out as it discloses no reasonable ground for bringing the claim and also because it is an abuse of the process of court as an alternative remedy is available to the claimants.

Background

- [6] As stated in the first affidavit of Deputy Commissioner of Police (**DCP**) Bartholomew Jones, on or about the 28th of November 2021, the Narcotics Unit of the Belize Police Department had received information that an airplane carrying illegal drugs (narcotics) had landed at the Hidden Valley airstrip in the Mountain Pine Ridge area in Cayo District. The police on arrival found the charred remains of an aircraft at the airstrip and inquiries revealed that no permission was granted for any aircraft to land at the Hidden Valley airstrip on 28th November 2021.
- [7] According to DCP Jones' witness statements revealed that a white and black Toyota Hilux with license plate CYC 4198 was seen at the airstrip and that police officers stated that the same pickup truck had evaded them in the Mountain Pine Ridge area upon an attempt to intercept it. Upon tracing the vehicle, it was revealed that it was registered to Mr. Saulus Penner, the 1st claimant. Upon questioning by the court,

Mr. Banner, referring to the affidavit of Saulus Penner informed that the vehicle was seized and detained by the police when it was parked in the premises of the 1st claimant and that the 1st claimant was also arrested.

[8] The narration in relation to the detention of Mrs. Erika Penner's pickup truck is more dramatic. According to DCP Jones, on or about the 30th of November 2021, when the police were searching the Mountain Pine Ridge area, they came across an abandoned grey colour pickup truck without any licence plates. A trace of the vehicle identification number (VIN) revealed that it belonged to Erika Penner, the 2nd claimant. On the same date, on a search of the Mountain Pine Ridge area, the police had recovered **fifty-two (52) sacks** with leaves containing rectangular shapes suspected to be cocaine which upon analysis by the Forensic Lab, tested positive as cocaine. The abandoned motor vehicle of Mrs. Penner was thus seized and detained. The court questioned Mr. Banner, counsel for the claimants, whether there had been any complaint lodged by Mrs. Penner that her vehicle was lost or stolen. There was no material placed before the court to demonstrate such a complaint and Mr. Banner answered in the negative. Mrs. Erika Penner, the 2nd claimant was neither charged nor arrested. A third vehicle not belonging to either of the Penners was also seized and detained by police at a checkpoint in the Mountain Pine Ridge area on the 28th of November 2021.

[9] According to the affidavit of DCP Jones, Saulus Penner, the 1st claimant, together with five (5) others (who had been in the third pickup truck) had been arrested and formally charged with the offences of:

(a) "*Conspiracy to land an aircraft without permission of the Minister responsible for Civil Aviation*" and

(b) "*Abetment of the importation of controlled drugs*".

DCP Jones in his affidavit states further that the matter in relation to these charges is to be taken up in the Magistrates' Court on 3rd June 2024.

[10] The claimants in their statement of claim and DCP Jones in his affidavit state that in terms of **Section 29(4) of the Misuse of Drugs Act**, the police had made an application in the Magistrates' Court at San Ignacio Town, to forfeit all three (3) vehicles that had been seized. That section reads as follows:

"29(4) Where any substance, article, vehicle, vessel, boat, aircraft or any other means of conveyance of whatever description is seized and detained by a member of the Belize Police Department under section 25(2)(c), a magistrate shall, upon the written application by the Commissioner of Police, made after the expiry of 30 days, inquire into the circumstances in which such substance, article, vehicle, vessel, boat, aircraft or other means of conveyance of whatever description was seized and detained and the Magistrate shall determine whether or not an offence against this Act has been committed in respect of it and whether or not it was used or employed in the commission of any such offence; and if the magistrate so determines, such substance, article, vehicle, vessel, aircraft or any other means of conveyance of whatever description shall be forfeited". [Emphasis added]

The Magistrate by Order dated 23rd January 2021, denied and dismissed that application by the BPD for forfeiture of the vehicles. The vehicles continued to be detained as productions in the case against the five (5) persons and Mr. Penner, referred to above.

Submissions of Parties

[11] Learned counsel for the claimants, Mr. Banner, in his submissions seized upon the fact that the Magistrate had declined to make an order under **Section 29(4)** of the **MDA** to forfeit the vehicles and therefore argued that if there was no forfeiture it

followed that the vehicles were not used or employed in respect of the offence and therefore should be released.

- [12] Mr. Banner stated that there was no nexus between the detention of the vehicles and the charges against Saulus Penner and the five (5) others, which charges related to the abetment of the landing of an aircraft without permission and abetment of the importation of controlled drugs. He submitted that the vehicles were not necessary for those charges as the Magistrate had declined to order the forfeiture.
- [13] Mr. Banner also submitted that the seizure and detention of the vehicles were unlawful in the first instance as there was no court order for such seizure and detention and that the continued detention of the vehicles was unlawful, after the Magistrate had dismissed the application for forfeiture under **Section 29(4)** of the **MDA**. In support of his argument, he cited the cases of *Shelly Bryan v. The Attorney General of Guyana*,² *Porter and another v. Chief Constable of Merseyside Police*,³ *Costello v. Chief Constable Derbyshire Constabulary*,⁴ and *Gough and another v. Chief Constable West Midland Police*.⁵
- [14] In regard to the strikeout application, Mr. Banner submitted that for the foregoing reasons of unlawful detention, the application for constitutional relief was not an abuse of court. He also submitted that in terms of the judgments of the Caribbean Court of Justice (CCJ) in *Hillaire Sears v. Parole Board et al*,⁶ it was not always necessary to pursue an alternate remedy if the constitutional claim was filed with no intention to avoid filing a claim under an alternate remedy. The claimants also cited the Trinidad and Tobago Court of Appeal case of *Belfonte (Damien) v. Attorney General*,⁷ to support the argument that where there is a matter for constitutional

² 92002) 66 WIR 214

³ [2000] 1 All ER 209

⁴ [2001] 3 All ER 150

⁵ [2004] All ER 45

⁶ [2022] CCJ 13 (AJ) BZ

⁷ [2005] 68 WIR 413

redress mixed with a regular claim, it was possible to pursue the constitutional claim even though there were alternate remedies.

[15] Mr. Banner finally submitted that a strike-out application is a “nuclear option” which the court should be slow to use and adopt a “cautious approach” when such orders, as matters of constitutional redress were serious matters that required to be considered after the parties had fully ventilated their positions. In support of his argument, he cited the CCJ case of *Barbados Rediffusion Services Limited v. Asha Mirchandani*.⁸

[16] Ms. Burgess, learned crown counsel for the defendants submitted that in terms of **Section 25 (2) (c)** of the **MDA**, the police had the power to seize and detain anything including vehicles in the course of a search, for proceedings under the **MDA**, without an order of court.

[17] She also submitted that forfeiture could take place before the conclusion of the prosecution of the charges and that such forfeiture had to be applied for under **Section 29(4)** of the **MDA**. It was argued that regardless of the outcome of proceedings under **Section 29(4)** of the **MDA**, prosecution could take place thereafter. It was further argues that upon prosecution, forfeiture of the vehicles was mandatory in terms of **Sections 29(1)** and **29(2)** of the **MDA** if the person was found guilty. It was therefore argued that continued detention of the vehicles was not unlawful.

[18] Ms. Burgess also argued that even in terms of the general powers of the police under **Section 49** of the **Police Act**,⁹ the police had the power to take charge of all property which has been made an exhibit in any criminal matter and could therefore hold the vehicles for the purposes of the criminal case. In support of their position, the defendants cited the cases of *Malone v. Commissioner of Police of the*

⁸ CCJ Appeal No. CV 1 of 2005, Judgment delivered 16th March 2006.

⁹ CAP 138, Substantive Laws of Belize, Revised Edition (2020)

Metropolis¹⁰ and **Holding v. Chief Constable Essex Police**.¹¹ These cases related to applications for the return of property detained by the police for criminal proceedings. **Holding** was a case for the return of property and damages for wrongful retention of property, in which it was held that the plaintiff had not made out a case as the items detained were necessary as productions in the criminal case.

[19] As regards the constitutional claim it was submitted by Ms. Burgess, that the claimants had not disclosed any reasonable ground for bringing the claim. It was further argued that there were no special circumstances that required filing a constitutional claim when the alternate remedies of 'Detinue' and 'Conversion' were available to the claimants. The defendants cited the cases of **George and Branday Ltd. v Lee**¹² and **General and Finance Facilities Ltd. v Cooks Car (Romford) Ltd.**¹³ as instances in which those remedies had been used for properties detained.

[20] In support of the position that a constitutional remedy was an abuse of process when there was an alternate remedy, the defendants cited the cases of **Lucas and another v. Chief Education Officer and others**¹⁴, **Harriksoon v. AG of Trinidad and Tobago**¹⁵, **Thakur Prasad Jaroo v. AG**¹⁶ and **AG v. Luciano Vue Hotel Ltd.**¹⁷ Ms. Burgess submitted therefore that the claimants had not disclosed a reasonable ground for bringing the claim and that there were alternate legal remedies available for recovery of the vehicles. She there moved that the claim should be dismissed as there were no special circumstances demonstrated to proceed with a constitutional claim.

¹⁰ [1979] 1 All ER 256

¹¹ [2005] EWCH 3091 (QB)

¹² (1964) 7 WIR 265

¹³ [1963] 2 All ER 314

¹⁴ (2015) 86 WIR 100

¹⁵ [1980] AC 265

¹⁶ [2002] 1 AC 871

¹⁷ (2001) 61 WIR 406

Analysis

[21] For their strike-out application to succeed, the defendants would have to demonstrate to the satisfaction of the court that either (a) the claimants' case discloses no reasonable ground for bringing the claim (**Rule 26.3 (b) of the CPR**) or (b) that the availability of an alternate remedy makes the constitutional claim an abuse of the process of court (**Rule 26.3 (c) of the CPR**).

[22] Three issues arise therefore to be determined on an either-or basis, for the strike-out application to succeed:

- (i) Does the statement of case disclose a reasonable ground for bringing the claim? Stated more precisely, do the police have the power to seize and detain the vehicles and continue to detain the vehicles even after the magistrate has dismissed the application for forfeiture made under **Section 29(4) of the Misuse of Drugs Act**?
- (ii) Are there adequate alternate legal remedies available to the claimants to recover their vehicles?
- (iii) If so, is the filing of a constitutional claim an abuse of the process of court?

[23] The issue of the reasonable grounds for bringing the claim will be discussed first. In order to do so, it is necessary to set out the powers granted to the police in terms of **Section 25** of the **MDA** which is reproduced below:

“25.–(1) A member of the Belize Police Department or other person authorised in that behalf by a general or special Order of the Commissioner of Police shall for the purposes of the execution of this Act, have power to enter the premises of a person carrying on business as a producer or supplier of any controlled drugs and to demand the production of, and

to inspect, any books or documents relating to dealings in any such drugs and to inspect any stocks of any such drugs.

(2) *If a member of the Belize Police Department has reasonable grounds to suspect that any person is in possession of a controlled drug in contravention of this Act, or of any regulations made thereunder, the member of the Belize Police Department may, subject to subsection (3)–*

(a) *search that person, and detain him for the purpose of searching him;*

(b) *search any ship, vessel, boat, aircraft, vehicle or other means of conveyance of any description in which the member of the Belize Police Department suspects that the drug may be found, **or which has been used or employed in the commission or attempted commission of any such offence**, and for that purpose require the person in control of the ship, vessel, boat, aircraft, vehicle or other means of conveyance of any description to stop it;*

(c) ***seize and detain for the purpose of proceedings under this Act–***

(i) ***anything found in the course of the search which appears to the member of the Belize Police Department to be***

**evidence of an offence
under this Act; and**

(ii) **any ship, vessel, boat,
aircraft, vehicle or other
means of conveyance,
stopped under
paragraph (b) in
pursuance of his search.**

(3) **Nothing in sub-section (2), shall derogate from any
power of search or any power to seize or detain
property which is otherwise exercisable by a member
of the Belize Police Department.” [Emphasis added]**

[24] On a plain reading of the above section it is clear that the police have the power without an order of court to seize and detain their vehicles in terms of the law. Therefore, in the circumstances set out above, I reject the argument made on behalf of the claimants that the initial seizure and detention of the Penners’ vehicles by the police is unlawful.

[25] Next, it is necessary to consider whether it is lawful for the police to continue to detain the vehicles after the Magistrate had dismissed an application under **Section 29 (4)** of the **MDA** to forfeit the vehicles.

[26] **Section 29** of the **MDA** comes under **Part VI of that Act** which has the heading “*Forfeiture and Disposal of Aircrafts, Vehicles, Vessels, Proceeds and Other Articles Involved in Drug Trafficking*”. In order to understand the scheme of **Section 29** and the rationale behind forfeiture, **Section 29** is reproduced in full below:

“29.–(1) *Where a person is convicted of an offence or of an attempt to commit an offence or of soliciting or inciting the*

commission of an offence under this Act **and the court** by which such person is convicted **finds** that any aircraft, vessel, vehicle or any other means of conveyance of whatever description **was used or employed by such person** in the commission **or to facilitate the commission of the offence** of which he is convicted, such aircraft, vessel, vehicle or other means of conveyance of whatever description **shall be forfeited.**

(2) Without prejudice to sub-section (1), where a person is convicted of an offence under this Act, the court **shall, in passing sentence, order forfeiture to the Government, of any article, money or other valuable consideration relating to the offence.**

(3) The owner of any aircraft, vessel, vehicle or any other means of conveyance of whatever description in respect of which an order of forfeiture has been made under subsection (1), shall have the right of appeal of an accused person and may appeal to the court to which the appeals normally lie from the decisions of the court which made the order of forfeiture.

(4) Where any substance, article, vehicle, vessel, boat, aircraft or any other means of conveyance of whatever description **is seized and detained** by a member of the Belize Police Department **under section 25(2)(c)**, a magistrate shall, upon the written application by the Commissioner of Police, made after the expiry of 30 days, inquire into the circumstances in which such substance, article, vehicle, vessel, boat, aircraft or other means of conveyance of whatever description was seized and detained and the

Magistrate shall determine whether or not an offence against this Act has been committed in respect of it and whether or not it was used or employed in the commission of any such offence; and if the magistrate so determines, such substance, article, vehicle, vessel, aircraft or any other means of conveyance of whatever description shall be forfeited.

- (5) For the purposes of this section, “aircraft”, “vessel” and “vehicle” respectively include everything contained in, being on or attached to any aircraft, vessel or vehicle as the case may be, which, in the opinion of the court, forms part of the equipment of such aircraft, vessel or vehicle.
- (6) The proceeds of forfeitures made under this section and under section 30, other than controlled drugs, may be— (a) applied to the treatment and rehabilitation of persons addicted, within the meaning of the regulations, to controlled drugs of any description; (b) applied to the use of the National Drug Abuse Control Council for the performance of its functions under this Act; and (c) made available to the Belize Police Department for the prevention and detection of offences under this Act, Provided that not less than 25% of such proceeds in any year shall be applied for the purpose mentioned in (c) of this subsection.
- (7) Subject to any regulations made under this Act, controlled drugs under this section shall be destroyed or disposed of in accordance with the directions of the court, provided that a senior police officer designated by the Commissioner of

Police shall be present at the time of the destruction or disposal.

- (8) **Where any person is discharged or acquitted of an offence against this Act, the court which tried the case may thereafter make such order as it thinks fit for the forfeiture and destruction or other disposal of all drugs, substances and articles in respect of which the said person was charged.**
- (9) *At any stage of a criminal proceeding pending against an accused person, the court hearing the case may, on the written application of a police officer of or above the rank of assistant inspector, order the destruction or other disposal of all or any of the substances in respect of which the said person had been charged, if it is a controlled drug and if the court is of the opinion that this can be done consistently with the interests of justice.*
- (10) **If, upon the application of any person, other than the accused person, prejudiced by a forfeiture order made under this Part, the court is satisfied that neither he nor his agent or servant knew or believed or had reasonable grounds to believe that any such vehicle, vessel, boat, aircraft or any other means of conveyance, was used or employed in the commission of any offence, the court may, upon such terms and conditions, as it deems fit, revoke that forfeiture order.**
- (11) *An application under sub-section (10), shall be made either at the time when such order is made or within thirty days of the date of the order.”*

- [27] A reading of **Section 29** of the **MDA** indicates that in terms of **Section 29(1)**, where a person is convicted and the court finds that a vehicle was used by that person in the commission of that offence, or to facilitate the commission of the offence, the vehicle is forfeited by operation of law.
- [28] Likewise, **Section 29(2)** makes it possible without prejudice to **Section 29(1)**, for the court to order forfeiture of any article relating to the offence when sentencing takes place.
- [29] Forfeiture under **Sections 29(1)** and **29(2)** can take place only after the charge against the accused person has been heard. It is also possible for forfeiture to take place under **Section 29(8)** even where a person has been discharged or acquitted. Such forfeiture does not take place by operation of law. The court has a discretion in the disposal of such items, or to forfeit the articles in respect of which the person was charged.
- [30] Forfeiture under **Section 29(4)** is made at a preliminary stage prior to the charges being inquired into. Yet, for the forfeiture under **Section 29(4)** to bite, the magistrate has to be satisfied that an offence against the Act has been committed in respect of the articles or vessels or vehicles to be forfeited. **Section 29 (10)** enables a person not charged with an offence prejudiced by forfeiture to apply to the court to have the order of forfeiture revoked.
- [31] It is thus seen that forfeiture can take place in three instances: *firstly*, independent of and before any charge is inquired into; *secondly*, after an inquiry into the charge and the person being found guilty; *thirdly*, even after an inquiry into the charge, if the person is found not guilty or discharged, the articles in respect of which the person was charged could still be forfeited.
- [32] I hold therefore that the dismissal by the Magistrate of an application under **Section 29(4)**, does not automatically release the vehicles to the owners. If the items

detained are productions or required as evidence for any inquiry in regard to any other charge, they would and could, in the absence of forfeiture continue to be detained based on the original lawful detention made under **Section 25 (2)(c)** of the **MDA**.

[33] The case of ***Holding v. Chief Constable of Essex Police***¹⁸ referred to by the counsel for defendants dealt with a similar issue. In that case, an owner of an aircraft had flown banners containing offensive words, towed by his aircraft. The aircraft logbook and the banners were seized and detained by the police. The owner of the aircraft, Mr. Holding, sued the police for the return of the logbook and the banners. The court in the case of ***Holding*** considered and decided not to follow the cases of ***Gogh v Chief Constable of West Midlands Police***¹⁹ as well as the case of ***Costello v. Chief Constable of Derbyshire Constabulary***.²⁰ The cases of ***Gough*** and ***Costello*** were cited by Mr. Banner, counsel for the claimants, as being in his favour. However, as the case of ***Holding*** is from a later point in time to ***Gough*** and ***Costello***, and has decided not to follow them, those cases cited by Mr. Banner would not be persuasive.

[34] In the case of ***Holding***, the court cited with approval, the dicta of Roskill LJ in ***Malone v. Metropolitan Police Commissioner***.²¹ The case of ***Malone*** involved the seizure and detention of money (currency notes) in a charge of stolen property. No specific charges were made in relation to the money and the owner of the money (currency notes) sued for its return before the trial. Roskill LJ, in his judgment, refused the return of the currency notes till the end of the trial and stated:

“It is not difficult to envisage circumstances in which it might become highly material for that money to be produced, either on behalf of the prosecution or the defence, even though the prosecution do not seek

¹⁸ [2005] EWCH 3091 (QB)

¹⁹ [2004] All ER 45

²⁰ [2001] 3 All ER 150

²¹ [1980] 1 QB 49

to say that the money itself was stolen and have not so far exhibited it as part of the police officer's evidence. I think therefore on this narrow ground, the defendant is entitled to retain this money until the conclusion of the criminal proceedings... [Emphasis added]

[35] Citing the above passage in **Malone**, McCahill J, in the case of **Holding**, came to the same conclusion and refused to order the release of the items detained by the police, stating:

“Those observations of Roskill LJ are equally pertinent in the case which I have to decide and provide support for the proposition that it is impossible to predict every turn which a trial might take and how it might become material for items to be produced at trial.”

[36] In that judgment, McCahill J. also stated in the following terms that when forfeiture is possible in terms of the law at the end of the trial, it would be right to retain those items:

“In relation to the banners, there is the additional ground for making their retention until trial necessary. This additional ground is that, if a conviction had ensued, the sentencing court could have deprived the Claimant of the banners as part of, or as the actual, sentence in the case...”

[37] I find that the situations faced in the cases of **Malone** and **Holding** above are very similar to the circumstances of this case. The 1st claimant has been charged, the matter is due to go to court, and even though the magistrate did not order forfeiture under **Section 29(4)** of the **MDA**, the vehicles were lawfully seized and detained and are to be used or may be used in evidence in the case against the 1st claimant and others charged with him. It is not possible for this court to speculate on the manner in which the vehicles may or may not be produced in evidence. It is quite possible that if the vehicles are used as productions it may be of assistance to the

court hearing the criminal matter. Further, in terms of the **MDA**, if there is a conviction, it is possible that the vehicles would be forfeited – a circumstance similar to that referred to in the case of *Holding*.

[38] For these compelling reasons set out above, I hold that the continued detention of the vehicles by the police for the purpose of using the vehicles as evidence in the inquiry into the criminal charges against the 1st claimant and others, is lawful, even though there has been an order by the Magistrate dismissing an application under **Section 29(4)** of the **MDA**, for forfeiture of the same.

[39] Having arrived at the finding that the detention of the vehicles is lawful, it is clear that the claimants have no reasonable grounds for bringing this claim. The respondents are therefore entitled to succeed in their application to strike out the claim on the basis of **Rule 26 (3) (1) (c)** of the **CPR**.

[40] As the strike-out application can succeed in terms of **Rule 26(3)(1)(c)** of the **CPR**, it would not be necessary to further consider the other issues of the availability of alternate remedies and whether the existence of such alternate remedies makes the application for constitutional relief an abuse of the process of court. However, as Mr. Banner in his submission emphasised that the court should adopt a “cautious approach” to strike out applications and be slow to order them, particularly in constitutional claims, it behoves the court to consider that argument.

[41] Applications for judicial review, require the leave of court.²² The rationale of this process is to filter out frivolous and vexatious cases and to conserve the time of the court.²³ Constitutional claims, however, do not require the leave of court,²⁴ presumably as it involves the rights of persons, and should not be lightly turned away.²⁵ However, the courts have consistently held that not every violation of a

²² Rule 56.3(1) of the CPR

²³ Wade, Administrative Law, 11th ed. (2014), p.602

²⁴ Rule 56.7 (2) read with Rule 56.7 (7) of the CPR

²⁵ Belfonte (Damien) v. AG (2005) 68 WIR 413

right will lead to a constitutional claim²⁶ and that constitutional claims should only be pursued if there is no alternate and effective remedy.²⁷ The reasoning for this approach is very similar to the approach adopted by the court in regard to judicial review, which is to filter out frivolous cases and conserve judicial time by not allowing a flood of applications for constitutional relief in matters that can be dealt with conveniently by other means. This rationale, is evident in the dicta of De La Bastide CJ, in the case of **AG v. Luciano Vue Hotel Ltd.**²⁸ wherein he stated:

“It is time in my view that this abuse of using constitutional motions for the purpose of complaining of breaches of common law rights should be stopped. The only effective way of doing so is for the court at first instance to dismiss summarily any process which on the face seeks to force into the mould of a constitutional motion, a complaint of some tort or other unlawful act for which the normal remedy is an action at common law for damages or injunctive relief.”

Though the above dicta is from a case in Trinidad and Tobago, it was cited in this jurisdiction, in the case of **Belize International Services Ltd. V. AG**,²⁹ reflecting the validity of that approach.

[42] In this regard therefore, an application to strike out a claim on the basis of **Rule 26(3) (1) (c)** of the **CPR** (that the claim does not disclose a reasonable ground for bringing it), is itself a process of filtration by which the court can separate the frivolous claims from the more serious ones it ought to consider as constitutional claims.

[43] In fact, though the process of obtaining leave for applications of judicial review is now statutorily imposed by the **CPR**,³⁰ that was the position at common law before.

²⁶ Lucas and another v. Chief Education Officer and others (2015) 86 WIR 100,

²⁷ Thakur Prasad Jaroo v. AG [2002] UKPC 5

²⁸ (2001) 61 WIR 406

²⁹ Claim 698 of 2013, Judgement dated 12th March 2015 per Arana, J.

³⁰ Rule 56.3(1) of the CPR

Therefore, the courts have always adopted practices to filter out frivolous or weak claims at an initial stage which not only conserves the court's resources, but the time and expense of the parties.

- [44] For these reasons, the court while taking constitutional claims seriously, is entitled to use the process afforded by **Rule 26 (3) (1) (c)** of the **CPR** to filter out cases that ought not to be considered as constitutional claims. While a court may be cautious in doing so it need not be timorous to exercise its power to do so merely because the claim is a constitutional claim. Where no reasonable grounds exist for bringing a constitutional claim, the claim should go thus far and no further.

Second and Third Issues

- [45] In passing, I now turn to whether the claimants have an alternate remedy. As stated in the claim, the Penners are the owners of two out the three vehicles seized and detained by the police. They have demanded the release of the vehicles and such demand has been refused. The Penners, therefore, do have a common law remedy of a claim for damages for wrongful detention of property and restitution thereof.³¹

- [46] As in the case of *Thakur Prasad Jaroo v. Attorney General*³² when there is an alternate remedy available that remedy should be pursued unless the constitutional remedy is more appropriate. Coincidentally, the case of *Jaroo* also concerned the detention of a motor vehicle by the police and the claimant sought to pursue a constitutional claim rather than an ordinary claim. The Privy Council upholding the decision of the Court of Appeal of Trinidad and Tobago held the claim to be an abuse of the process of court.

³¹ General and Finance Facilities Ltd. v. Cooks Cars (Romford) Ltd. [1932] 2 All ER 314, Jaroo v. AG [2002] UKPC 5, Paragraph [32]

³² [2002] UKPC 5

[47] In *Lucas v. Chief Education Officer*,³³ Saunders JCCJ reaffirmed this principle in regard to the use of parallel and alternate remedies and observed that; “few would doubt that Belizean courts were still expected to disapprove needless resort to the redress provision of that Constitution (i.e. s.20)...At an early stage the court may dismiss a claim for constitutional relief if it is vexatious or has no realistic prospects of success”.³⁴ In a similar vein, the Privy Council in *AG v. Siewchand Ramanoop*³⁵ held that:

“...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 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”. [Emphasis added]

In the circumstances of this case, the detention of the Penners’ vehicles by the police is not an arbitrary use of State power. The claimants have therefore failed to demonstrate any special feature justifying why “means of legal redress otherwise available would not be adequate”.

[48] On a survey of the legal authorities cited above, there does not appear to be any legal ground or special circumstances exhibited by the Penners to escalate their claim to a constitutional claim. Therefore, the second and third issues raised at paragraph [22] above would also be answered in the affirmative and in favour of the

³³ (2006) CCJ 6 (AJ) (BZ)

³⁴ (2006) CCJ 6 (AJ) (BZ) paragraph [132] and [135]

³⁵ [2006] UKPC 15, 66 WIR 334

defendants. Consequently, in terms of **Rule 26 3. (1) (b)** of the **CPR**, the claim is also liable to be struck out as an abuse of the process of court.

Costs

[49] The party that is unsuccessful, as a rule, should pay the costs of the successful party. In this instance, the claimants have not been successful, and there has been no part of the claim that has been considered favourably.

[50] Hence, the claimants would have to pay the costs of the defendants.

Disposition

- (a) I hold that detention of the claimants' vehicles by the police for the purpose of using the vehicles as evidence in the criminal case against the 1st claimant and others, is lawful.
- (b) The claimants have no reasonable grounds for bringing this claim. The defendants are therefore entitled to succeed in their application to strike out the claim on the basis of **Rule 26 (3) (1) (c)** of the **CPR**.
- (c) The claimants have available to them a parallel and alternate remedy of a claim for damages for wrongful detention of property and restitution thereof.
- (d) The claimants have not demonstrated any special circumstances to escalate their claim to a constitutional claim.
- (e) The defendants are therefore also entitled to succeed in their application to strike out the claim in terms of **Rule 26 3. (1) (b)** of the **CPR**, as an abuse of the process of the court.

IT IS HEREBY ORDERED THAT:

- (1) The claim is stuck out.
- (2) The claimants shall pay the costs of the defendants as agreed or assessed.

Rajiv Goonetilleke
High Court Judge