

IN THE COURT OF APPEAL OF BELIZE A.D. 2024  
CIVIL APPEAL NO. 6 OF 2021

**BETWEEN:**

**ATTORNEY GENERAL OF BELIZE**

Appellant

and

**SHELLY WHITNEY SCOTT**

Respondent

**Before:**

The Hon. Mde Justice Hafiz Bertram  
The Hon. Mde Justice Woodstock Riley  
The Hon. Mde Justice Minott-Phillips

President  
Justice of Appeal  
Justice of Appeal

**Appearances:**

Imani Burgess for the Appellant  
Leeroy Banner for the Respondent

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2024: June 21  
October 23

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**MAJORITY JUDGMENT**

[1] **Minott-Phillips, J.A.:** On 15<sup>th</sup> May 2019 the Respondent, Shelly Whitney Scott ("**Ms. Scott**") was charged with various offences under the Firearms Act as a consequence (on the account of the police) of:

- a. her Belize Social Security Card being found in the bedroom of the house where illegal firearms and ammunition were found; and
- b. her admission to them that she lived in the house where the firearms and ammunition were found.

The police account is disputed by Ms. Scott who says she was arrested without reasonable or probable cause.

- [2] She was incarcerated at the Kolbe Foundation from 15<sup>th</sup> May 2019 to 24<sup>th</sup> May 2019 when she was granted bail by the Supreme Court. The charges against her were withdrawn and discontinued by the prosecution on 11<sup>th</sup> November 2019.
- [3] On 19<sup>th</sup> May 2020 (within a year of her admission to bail), Ms. Scott filed a claim pursuant to section 20 of the Constitution and Part 56 of the Supreme Court (Civil Procedure) Rules (“**CPR**”), against the Attorney General of Belize (“**the AG**”) applying for relief under the Constitution (in the form of compensatory and vindicatory damages) for an alleged violation of her right:
- a. under section 5(1)(e) of the Constitution not to be unlawfully deprived of her liberty;
  - b. under section 6(3)(a) of the Constitution to be presumed innocent until proven guilty; and
  - c. under section 3(a) of the Constitution to protection of the law.
- [4] Ms. Scott alleged that the Firearms Act was applied in an arbitrary, unlawful and draconian manner contrary to the rule of law and the general duty of the police to protect and serve. She asserted that, in breach of section 6(3)(a) of the Constitution she was never presumed innocent until proven guilty. She also asserted that the State failed to take positive steps to prevent its agents from applying the Firearms Act contrary to the law.
- [5] It is a significant feature of this claim filed by Ms. Scott that it is entirely for redress for alleged violations of her constitutional rights. It contains no claim for redress for alleged infringement of common law rights and it is an **application for an administrative order** (as that term is defined in Part 56.1(1) and (2) of the CPR).
- [6] This is an appeal by the AG from substantially the whole of the decision of the Hon. Mr. Justice Westmin R A James (given on 1<sup>st</sup> March 2021) making various Case Management orders including refusing his application to strike out Ms. Scott’s claim for Constitutional redress:
- a. as an abuse of process for being unmaintainable; or
  - b. as disclosing no reasonable grounds for bringing the claim.<sup>1</sup>

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<sup>1</sup> The terms of the order made by James, J on 1<sup>st</sup> March 2021 are:

1. Applicant/Defendant’s Strike Out Application is dismissed;
2. Costs are awarded in the sum of \$1,000.00 to the Claimant;
3. Claimant is file an affidavit in reply; if necessary on or before 8<sup>th</sup> March 2021;

The factual underpinning of both grounds of the AG's application was the availability to Ms. Scott of an alternative remedy (being a private law claim for false imprisonment and malicious prosecution) that she had not exhausted, and which would preclude the court from granting her relief under the Constitution. The AG felt the court's overriding objective of dealing with cases justly warranted the striking out of the Constitutional claim.

[7] The power to strike out a statement of case falls within the Case Management powers of the Court below as articulated in Part 26 of the CPR. There is merit in the submission of counsel Banner that the issue for this court is to determine whether James, J. was plainly wrong in rejecting the AG's strike out application. This court cannot set aside the decision of James, J. merely because it may have exercised its discretion differently in considering the application. We are at large to re-consider the application afresh if the Judge below made an error of law or principle in doing so, but not otherwise. It is within that context that we direct our focus in examining the decision of the Judge below.

[8] James, J. started out by accepting the principle that *"if there is an adequate parallel remedy, constitutional relief is only appropriate where some additional "feature" presents itself"*.<sup>2</sup> He accepted, based on decided cases, that:

- a. an arbitrary use of state power<sup>3</sup>; and
- b. where several rights are infringed, some of which are common law rights and some for which protection is available only under the Constitution<sup>4</sup>;

were examples of special features which could take a case out of the well-established principle that the right to apply to the Supreme Court pursuant to section 20 of the Constitution should be exercised only in exceptional cases where there is no parallel remedy<sup>5</sup>.

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4. Discovery is to be filed and served on or before 22<sup>nd</sup> March 2021;
  5. Pre-Trial Memorandum to be filed and served on or before 30<sup>th</sup> March 2021;
  6. Pre-Trial Review on 26<sup>th</sup> April, 2021 at 10:30am.

<sup>2</sup> At paragraph 6 of his written reasons.

<sup>3</sup> **Attorney General of Trinidad and Tobago v Ramanoop** [2005] UKPC 2005; **Takitota v AG** [2009] UKPC 11.

<sup>4</sup> **Belfonte v Attorney General** [1968] WIR 416 [CA T&T]

<sup>5</sup> Paragraphs 3 & 6 of his written reasons.

- [9] James, J. found, *inter alia*, that:
- a. In relation to her arrest and charge Ms. Scott has a parallel remedy available to her *via* an action for false imprisonment<sup>6</sup>.
  - b. In relation to Ms. Scott's prosecution, malicious prosecution would not be an adequate alternative remedy because, "*based on the evidence before the Court at this stage it is more likely than not that the Claimant would have a difficulty in proving malice*".<sup>7</sup>
  - c. In claiming her right to protection of the law was breached Ms. Scott was alleging a "*breach of the positive duty of the State to protect the citizens against arbitrary power of police officers*".<sup>8</sup>
  - d. There is jurisprudence for Ms. Scott to base a claim for protection of the law on "*the failure of the State to protect citizens from the practice of police officers from arresting and charging persons on the basis that they own a property or live or an identification card was found in a place in which a firearm was found*".<sup>9</sup>
  - e. The matters at c and d above cannot be dealt with in an ordinary claim and so there is no adequate alternative remedy.<sup>10</sup>

[10] If the police's account of events were to be borne out at trial, Ms. Scott's arrest, charge and remand until admitted to bail, would, *ex facie*, fall within their powers under the applicable laws. The opposite is true if it is Ms. Scott's account that is ultimately established at trial.

[11] Section 16 (as amended) of the Criminal Justice Act states,

- (1) *Notwithstanding any other law or rule of practice to the contrary, no magistrate, justice of the peace or a police officer shall admit to bail any person charged with any of the offences set out in subsection (2) below.*
- (2) *The offences referred to in subsection (1) are the following:*
  - ....
  - (i) *an offence under the Firearms Act;*

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<sup>6</sup> Paragraph 18 of his written reasons.

<sup>7</sup> Paragraph 26 of his written reasons.

<sup>8</sup> Paragraph 31 of his written reasons.

<sup>9</sup> Paragraph 38 of his written reasons.

<sup>10</sup> Paragraph 38 of his written reasons.

[12] In May 2019 Ms. Scott had been charged for offences under the Firearms Act being, Kept Firearm, Kept Prohibited Firearm, and Kept ammunition without a licence contrary to sections 3(1), 5, 32(1), 32(4) and 37(1)(d) of the Firearms Act (as it was at the time).

[13] Section 3 of the Firearms Act prohibited ownership, carrying, discharge or use of any firearm or ammunition for any purpose unless the holder of a valid licence for the purpose. Section 5 of the Firearms Act made the contravention of section 3 an offence.

[14] Section 6(1) of the Firearms Act (as it was at the time) stated,

*“The owner or occupier of any land, house or premises in or on which any firearm or ammunition is found shall, for the purposes of this Act, be deemed to be the owner or keeper of such firearm or ammunition until the contrary is proved.”*

[15] Section 6A (1) (as it was at the time) stated,

*“Where any firearm or ammunition is found in or on any premises owned or occupied by more than one person, such firearm or ammunition shall be deemed to be in the joint possession of all such persons and it shall be for the said person or persons to adduce evidence to show that it was there without his or her or their knowledge or consent.”*

[16] Section 22 of the Firearms Act allowed any police officer to arrest without warrant any person whom he believes to be in possession of, or to be using or carrying a firearm or ammunition in contravention of any of the provisions of the Act. Section 23 allowed any police officer to enter and search all premises of persons suspected of possessing or selling firearms or ammunition otherwise than in accordance with the Act.

[17] The above extracts from the various substantive laws show that they governed an arrest, charge, remand without bail until brought before a High Court judge, for offences under the Firearms Act, together with the imposition on the person charged of the burden of establishing their innocence (if legitimately done pursuant to those laws).

[18] The AG seeks to have this court:

- a. set aside the order of James, J;
- b. Make an order striking out and dismissing Ms. Scott's claim; and
- c. Order Ms. Scott to pay the costs of the appeal and in the court below.

[19] The grounds of appeal are that:

- a. James, J. erred in law and/or misdirected himself:
  - i. in concluding that Ms. Scott, on her pleadings, had shown that a private law claim for false imprisonment and malicious prosecution could not provide her with an adequate alternative remedy to the relief she sought under the Constitution;
  - ii. in concluding that a claim for malicious prosecution would not be an adequate alternative remedy because of the difficulty that the Claimant would have in proving malice;
  - iii. when he considered Ms. Scott's pleadings and the AG's pleadings when determining the AG's application to Strike Out Ms. Scott's claim. [I refer to this as **the pleading ground**].
  - iv. in awarding costs of the Strike Out application to Ms Scott.
- b. The decision of James, J. is against the weight of evidence in that he did not consider the affidavit evidence in support of the AG's application to Strike Out. [I refer to this as **the affidavit ground**].

[20] Summarized, the affidavit evidence in support of the AG's application for Ms. Scott's application for Constitutional redress to be struck out as an abuse of process and for disclosing no reasonable grounds for bringing it, was that:

- a. Ms. Scott's arrest for offences under the Firearms Act was effected pursuant to or under the authority of a warrant of arrest issued by a Justice of the Peace or a Magistrate;
- b. As a matter of law the Magistrate before whom Ms. Scott was arraigned on 15<sup>th</sup> May 2019 could not grant her any bail because the relevant legislation prevented the Magistrate from granting Ms. Scott any bail;
- c. The sections of the Firearms Act that were unconstitutional had been repealed in 2010; and

- d. Ms. Scott has not pursued or exhausted her right to seek redress in a private law claim for false imprisonment and malicious prosecution.

[21] I address the pleading and affidavit grounds first.

[22] As the strike out application was brought on the ground of abuse of process and on the basis that the claim discloses no reasonable grounds for bringing it, the ground of appeal asserting that James, J. erred in considering the pleadings of both sides when determining the application to strike out, fails. I understand the law to be that a Judge examining whether a case constitutes an abuse of the process of the court is entitled to look at all the material before him.

[23] In any event I am reluctant to equate the strike out ground of “*discloses no reasonable grounds for bringing the claim*” set out in Civil Procedure Rule (CPR) 26.3(1)(c) with its historical procedural precursor that allowed a Judge to order a pleading struck out on the ground that it “*discloses no reasonable cause of action*”. The latter ground succeeded or failed on an examination of the claimant’s pleaded case only. The former is not confined to looking for a cause of action solely although, clearly, if none is there, there would be no reasonable ground for bringing the claim. There is no need for me to (and I do not) decide whether the latter ground is to be determined on an examination solely of the Claimant’s pleadings as, in this particular case, the striking out application being mounted on the alternative basis of the case being an abuse of the process of the court is sufficient to justify the court’s examination of the pleaded cases of both sides, and not just that of the Claimant.

[24] Although I see no specific mention by James, J in his reasons of the affidavit filed by the AG in support of his application, he does touch on each of the main factors set out in that affidavit at one or other point in his judgment. The ground of appeal alleging his decision is against the weight of the evidence for not considering that affidavit evidence therefore fails.

[25] As already shown in paragraph 9 above, the judge below did find that a private law claim for redress for false imprisonment in relation to Ms. Scott’s arrest and remand in custody was available to her

as an alternative to a claim for constitutional relief<sup>11</sup>. In respect of Ms. Scott's prosecution he did not, however, accept the AG's submission that Ms. Scott also had an adequate parallel remedy she could seek in bringing a claim for malicious prosecution. He rejected the AG's argument that once Ms. Scott established that there was no reasonable suspicion for her arrest, she could rely on the lack of reasonable suspicion to establish malice in relation to her alleged malicious prosecution<sup>12</sup>.

[26] I agree with the following statement made by James, J.<sup>13</sup>:

*"If there is an adequate parallel remedy, constitutional relief is only appropriate where some additional feature presents itself."*

[27] I do not however agree with James, J that the facts of this case present additional features making appropriate the bringing of a claim for constitutional relief and, in particular, a claim for breach of Ms. Scott's fundamental right to protection of the law. I am of the view that James, J. erred, and was plainly wrong, in not finding that Ms. Scott's claim for redress under the Constitution disclosed no reasonable grounds for bringing it on account of her failure to utilize the available alternative remedy of a private law claim for false imprisonment and malicious prosecution.

[28] For reasons adverted to subsequently in this judgment I find James, J did not err in refusing to strike out the claim on the basis of it being an abuse of the process of the court.

[29] The material before the court indicated that the question whether Ms. Scott occupied a house where illegal firearms and ammunition were found, was in issue. Ms. Scott's ability to obtain compensation for false imprisonment and malicious prosecution turns on whether she can establish the absence of any reasonable or probable cause for the police's suspicion that she occupied the house where the illegal firearms and ammunition were found.

[30] Having accepted that Ms. Scott had a parallel remedy available to her in false imprisonment if her arrest and remand were unlawful, I am unable to see why that also would not be the case in relation to the parallel remedy of malicious prosecution. If it could be argued by Ms. Scott that there was no

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<sup>11</sup> Paragraph 18 of the judgment.

<sup>12</sup> Paragraph 19 of the judgment.

<sup>13</sup> Paragraph 6 of the judgment.



reasonable or probable cause for the police to arrest, charge and hold her in remand, the same could be argued in relation to her prosecution. The latter flows naturally from the former whether or not it is sufficient to establish malice. There are other facts (eg. the abandonment of the prosecution of Ms. Scott by the state in spite of the fact that the Firearms Act shifted the burden of proof of her innocence to her) that could challenge an assertion by the State of an absence of malice. In my view it did not fall to James, J on the application before him to determine (as he did) that Ms Scott would have a difficulty in proving malice and to use that determination as a basis for concluding (as he did) that malicious prosecution would not be an adequate alternative remedy<sup>14</sup>. If the parallel private law claims for compensation for false imprisonment and malicious prosecution are brought by Ms. Scott, it would fall to the judge trying those claims to determine if they are made out after considering the nature and quality of the evidence adduced. That an element of the tort may be difficult to prove is not, without more, material to the issue of whether the tort is an available alternative to a claim for constitutional redress. Malice is just one element of the tort of malicious prosecution that requires proof to ground liability. The factual circumstances will determine how easy or difficult any required element is to prove. In assessing the AG's application to strike out Ms. Scott's claim for constitutional redress and, in particular, whether malicious prosecution was an adequate alternative remedy available to her, James, J erred in saying that because she would have a difficulty in proving malice, it was not. In so saying, he was speculating on an issue that, ultimately, would be for the judge trying Ms. Scott's claim.

[31] Ms. Scott's statement of case as set out in her Fixed Date Claim Form asserts, *inter alia*, that, contrary to sections 3(a), 5(1) (e), 6(1) and 6(3)(a) of the Constitution, the police had no reasonable or probable cause to arrest and charge her for offences under the Firearms Act which led to her incarceration.

[32] I see a difference in the nature of:

- a. a complaint that the police had no reasonable or probable cause for their actions that led to the individual's arrest, charge, detention, etc.; and

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<sup>14</sup>Paragraph 26 of the judgment.

- b. a complaint that the arrest, charge, detention, etc. of the individual by the police was not permissible under (and inconsistent with) the Constitution.

The circumstances of the instant case fall within (a) above, not (b). The first (a) may involve a failure on the part of the police to comply with the law but the notion that it necessarily entitles one to claim redress for a breach of some human right or fundamental freedom is fallacious.<sup>15</sup> A constitutional claim is not necessary if there is an adequate alternative claim available. The second (b) could entitle the individual to bring a claim for redress under the Constitution, once it is apparent that the claim was not filed with the sole purpose of avoiding the normal judicial remedy for unlawful administrative action, and where the constitutional claim allows the claimant to access needed reliefs not otherwise available.<sup>16</sup> James, J did not distinguish between the two. His failure to do so, in my view, led to his erroneous conclusion that this case, or a significant element of it, could only be adequately addressed *via* a constitutional claim of a breach of Ms. Scott's right to protection of the law. That error allows us to reconsider the issue and, if thought fit, exercise our discretion differently.

[33] The cases of ***Allison Major Sr. v The Attorney General of Belize***<sup>17</sup> and ***Brhea Bowen v The Attorney General of Belize***<sup>18</sup> (both relied on by Ms. Scott in her statement of case as the basis for her claimed declaration that her constitutional rights were violated) centered around sections of the Firearms Act that ultimately were declared unconstitutional. Those unconstitutional legislative provisions were repealed *via* the Firearms Amendment Act 2010 and have no relevance to the instant case.

[34] There is, in this case, no contention by Ms. Scott that any provision of the Firearms Act used as the basis for arresting, charging and holding her in remand, is unconstitutional. The declaration she seeks in her Fixed Date Claim Form<sup>19</sup> that is based on those two cases is, in the circumstances of this case, not apposite<sup>20</sup>.

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<sup>15</sup>***Lucas & Carillo v The Chief Education Officer et al.*** [2015] CCJ 6 (AJ) BZ at paragraph 59.

<sup>16</sup> ***Hillaire Sears v Parole Board*** [2022] CCJ 13 (AJ) BZ at paras 32 & 33.

<sup>17</sup>Claim No 478 of 2014

<sup>18</sup> Claim No 493 of 2017

<sup>19</sup>Relief 3 d.

<sup>20</sup> Just as in ***Lucas & Carillo*** (ante), at paragraph 59, on a similar basis.

[35] A person who is deprived of his liberty upon reasonable suspicion of having committed a criminal offence under any law<sup>21</sup>, is not unlawfully deprived of his fundamental constitutional rights to liberty, due process and protection of the law. If there was no reasonable or probable cause for the arrest, charge, detention and commencement of prosecution, then the remedies in an action for false imprisonment and malicious prosecution are available and adequate and, as such, would render an application for constitutional relief solely, inappropriate. For the reasons I've already outlined it is my view that James, J erred in law in concluding that *"arresting and charging persons on the basis that they own a property or live or an identification card was found in a place in which a firearm was found"*<sup>22</sup> cannot be dealt with in an ordinary claim.

[36] Whenever a statute shifts the burden of proof of innocence to the accused, the common law presumption of innocence is displaced. When that displacement occurs pursuant to the rule of law, it is not, without more, unconstitutional for being a breach of the citizen's right to protection of the law.

[37] The issue of the displacement of the presumption of innocence mentioned by James, J in his reasons<sup>23</sup> as being a legitimate concern of Ms. Scott cannot, in the circumstances of this case, be a basis for redress under the Constitution. Her claim to constitutional redress for a violation of her fundamental right to be presumed innocent until proven guilty relies on section 6(3)(a) of the Constitution which says,

*"Every person who is charged with a criminal offence- shall be presumed innocent until he is proved, or has pleaded, guilty."*

However, there is, in her claim, no mention of section 6(10) of the Constitution which qualifies the above with the following,

*"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection 3(a) of this section to the extent that the law in question"*

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<sup>21</sup>Section 5(1) (e) of the Constitution.

<sup>22</sup> Paragraph 38 of the judgment.

<sup>23</sup> at paragraph 38.

*imposes upon any person charged with a criminal offence the burden of proving particular facts;”*

Section 6 of the Firearms Act imposes, on a person charged, the burden of proving that

- (a) she was not the owner or keeper of the firearms and ammunition found on the premises;  
and that
- (b) the firearms and ammunition were on the premises without her knowledge or consent.

In his reasons, no mention was made by James, J of sub-section (10) of section 6 of the Constitution. The content of that sub-section seems to have escaped his attention, which possibly explains his error in accepting Ms. Scott’s contention that the displacement of the presumption of innocence was a special factor giving rise to a basis for a claim by her to constitutional redress for breach of her right to protection of the law.

[38] As previously stated, there is no assertion in this case that the provisions of the Firearms Act (or any other relevant Act) were unconstitutional. Ms. Scott’s claim only puts in issue whether the police had reasonable or probable cause for their suspicions leading to her arrest, charge and remand.

[39] I find the grounds of appeal asserting that James, J erred in law in concluding that malicious prosecution was not an available alternative remedy to the relief Ms. Scott sought under the Constitution, are made out. In my view that conclusion of James, J is also inconsistent with his conclusion that a claim for false imprisonment is an alternative remedy that is available to her.

[40] For all the above reasons I detect no special feature that would take this case out of the general principle<sup>24</sup> that alternative remedies to constitutional redress are to be utilized where they are available to avoid a needless resort to the redress provision contained in section 20 of the Constitution<sup>25</sup>.

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<sup>24</sup> As restated in the cases from Trinidad & Tobago of *Jaroo v Attorney General* (2002) 59 WIR 519 (TT PC) and *Attorney General v Ramanoop* (2005) 66 WIR 334 (TT PC)

<sup>25</sup> *Hillaire Sears v Parole Board* (ante) at para 29.

[41] That is not the end of the matter. Although I accept the AG's contention that a claim for constitutional redress was not appropriate given the availability to Ms. Scott of the alternative forms of redress *via* an action for false imprisonment and malicious prosecution, I am not, however, of the view that her action is unmaintainable for being an abuse of the process of the court. That may have been the case had it been filed outside of the 1-year period limited for bringing actions against public authorities.<sup>26</sup> In that event, the question would arise whether the application for constitutional redress was being used to get around the expired limitation period. But that doesn't apply here. This action was filed within the stipulated 1-year limitation period. Ms. Scott's remand at the hands of the state ceased on 24<sup>th</sup> May 2019 and this action was filed by her on 19<sup>th</sup> May 2020. All the facts raised by her in her claim for constitutional redress are those that would underpin a private law action by her seeking redress for false imprisonment and malicious prosecution.

[42] This claim is expressly brought for constitutional redress under Part 56 of the CPR and, as pointed out at the outset of this judgment (in paragraph 5), it is an application for an administrative order. The court's powers under CPR 56.8(3) would have allowed it to:

- a. direct that the whole application be dealt with as a claim for redress for false imprisonment and malicious prosecution and give **appropriate case management directions**; and
- b. make any order it considered just as to costs that have been wasted because of the unreasonable use of the procedure under Part 56.

I note that, by order of James, J made on 20<sup>th</sup> April 2021 granting the AG leave to appeal his refusal of the strike out application to this court, this claim was stayed pending the decision of this court rendered on the appeal. [I remind the parties that order requires them to inform the High Court of the outcome of the appeal within 30 days of the final order of the Court of Appeal made in this appeal.]

[43] Converted into a claim for compensation for false imprisonment and malicious prosecution, this case would not be introducing any new facts or issues not already raised by Ms. Scott, and it would still retain its commencement date of 19<sup>th</sup> May 2020 (keeping it within the 1-year period limited for bringing such claims against public authorities or state agents).

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<sup>26</sup> Section 27 of the Limitation Act

[44] Against that background and, using the powers of the Court of Appeal contained in section 205 of the Senior Courts Act to, –

*“confirm, vary, amend or set aside the order or make any such order as the High Court or the judge thereof from whose order the appeal is brought might have made, or to make any order which ought to have been made, and to make such further or other order as the case may require;”*

I make the following orders:

1. The appeal is allowed in part;
2. The order of James, J made on 1<sup>st</sup> March 2021 is set aside.
3. The application by the Attorney General dated 3<sup>rd</sup> July 2020 to strike out the Claimant's statements of case as an abuse of process for being unmaintainable, is refused.
4. The Claimant is precluded from seeking relief under the Constitution given her available alternative remedy of a private law claim for false imprisonment and malicious prosecution.
5. The Claimant is permitted, within 28 days of delivery of this judgment, to file and serve on the Respondent's attorney-at-law an amended claim for false imprisonment and malicious prosecution utilizing the procedure of a Claim Form in place of the current Fixed Date Claim Form.
6. If the Claimant does file and serve an amended claim as aforesaid, the matter is to proceed as if begun by Claim Form accompanied by Particulars of Claim and, thereafter, the pleading time lines in the CPR will apply.
7. The costs of the proceedings before the High Court from the date of service of the Fixed Date Claim Form to 20<sup>th</sup> April 2021 (being the date when the proceedings below were stayed) are awarded to the Appellant, the Attorney General of Belize, against the Respondent, Shelly Whitney Scott, and are to be assessed if not agreed.
8. Each party is to bear its/her costs of this appeal.

[45] Orders 3-7 above are substituted Case Management orders replacing those made by James, J on 1<sup>st</sup> March 2021 that are the subject of this appeal. I believe those are the orders which ought to have

been made on that occasion in furtherance of the overriding objective of enabling the court to deal with the case justly.

**Minott-Phillips, JA**  
Justice of Appeal

[46] I concur with the reasons for judgment and the order made by my sister Minott-Phillips JA.

**Hafiz-Bertram, P**  
President

#### DISSENTING JUDGMENT

[47] **Woodstock Riley, JA:** I have had the opportunity to read the draft judgment of my sister Minott-Phillips JA.

[48] I am in agreement with the review in paragraphs 21-24 of the grounds of appeal that the Judge erred in considering the pleadings and erred in not considering the Affidavit and the finding that those grounds have no merit.

[49] I respectfully disagree with the decision that the order of the Honourable Mr. Justice Westmin James should be set aside and disagree with the order that the Respondent is “*precluded from seeking relief under the Constitution given her available alternative remedy of a private law claim for false imprisonment and malicious prosecution*”.

[50] The draft judgment references the **alternative** remedy of malicious prosecution (paras 39-41, 44). I think it is important to consider the legal requirement is **adequate alternative remedy**. James J did comprehensively outline the considerations of the remedy of malicious prosecution from several

authorities and noted the *‘the mere existence of an alternative remedy does not automatically warrant excluding constitutional proceedings’* (paragraph 4 of the High Court judgment).

[51] James J also quoted at length at para 5 of his judgment the Privy Council decision in **Attorney General of Trinidad and Tobago v Ramanoop** [2005] 66 WIR 334

*“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 courts 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. That said, their Lordships hasten to add that the need for the courts to be vigilant in preventing abuse of constitutional proceedings is not intended to deter citizens from seeking constitutional redress where acting in good faith, they believe the circumstances of their case contain a feature which renders it appropriate for them to seek such redress rather than rely simply on alternative remedies available to them. Frivolous, vexatious, or contrived invocations of the facility of constitutional redress are to be repelled. But ‘bona fide resort to rights under the Constitution ought not to be discouraged’.*

[52] It is agreed as noted in paragraph 41 of the draft Judgment that this was not an application for constitutional redress being used to get around an expired limitation period and could not on that basis be considered an abuse of process. Certainly not frivolous, vexatious or contrived.

[53] I am of the opinion that James J correctly established why malicious prosecution would not be an adequate alternative remedy. Paragraph 22 of his judgment is important noting inter alia the need to show the defendant was actuated by malice, not just the absence of reasonable and probable cause, and that the courts do not infer malice solely in that absence. Terms used in the authorities quoted include needing to prove *‘the defendant deliberately misused the process of the court’* ... *‘proceedings instituted were not a bona fide use of the court’s process’*, ... *‘ulterior improper motive’*, ... ***‘even if the court had decided that objectively the first respondent lacked reasonable and probable cause to prosecute, there was no basis to hold that he acted with malice.’*** **Sandra Juman v The Attorney General of Trinidad and Tobago** [2017] UKPC 3 (para 22-26 of the High Court Judgment)

[54] The Hon. Madam Justice Shona Griffith in **Bhrea Bowen v Attorney General of Belize** (upheld on appeal) which is referred to by the Respondent does also review malicious prosecution and why as a private law remedy it would not be adequate and a citizen should not be blocked from pursuing a



constitutional redress. The very issue highlighted in that case was, was the claim for constitutional redress a viable claim or liable to be defeated by reason of the repeal of the law under which the prosecution was commenced and the existence of a parallel remedy. (para. 14, 15 of her Judgment).

[55] In that regard I do not agree with para 33 of the draft Judgment that **Brhea Bowen** has 'no relevance to the instant case'. The case was not based on a challenge to the relevant act/law. The repeal of the sections of the law were noted, and the challenge was on the abuse of police powers and the positive duty of protection. It was accepted as properly a constitutional claim.

[56] In my opinion the mere existence in theory of an alternative remedy is not equivalent to an adequate alternative remedy and from all the authorities and the requirements to succeed in an application for malicious prosecution there was sufficient justification for James J to have found a claim for relief by means of constitutional action was appropriate as opposed to a private law claim.

[57] It is agreed that the Respondent is not challenging the constitutionality of the Act under which she was charged, but she is raising her constitutional right for protection from arbitrary actions of the police and asserting a positive obligation by the state. James J points out the recognition by the Caribbean Court of Justice (CCJ) of the positive duties placed on the state in **The Maya Leaders Alliance v The Attorney General of Belize** [2015] CCJ 15. The breach of a protection in this way is not available as a private claim.

[58] *"What the Claimant is alleging is that there is breach of a positive duty of the State to protect the citizens against arbitrary power of police officers. Useful dicta in relation to this right can come from the Inter American Human Rights system to which Belize is subscribed to and which has been acknowledged by the CCJ as relevant in the interpretation of the Belizean Constitution."* (See **Maya Alliance** [2015] CCJ 15.)

*"The Inter American Commission on Human Rights and the Inter American Court of Human Rights have repeatedly examined the scope of these provisions in establishing positive obligations on a state in the realm of human rights."*

*“The once hesitant approach of enforceability of positive obligations has been addressed more recently within the Caribbean, where the courts have recognized that constitutional right exert some positive obligations by a State.”(paragraphs 32, 33, 35 of the High Court Judgment)*

[59] The Judgment of the CCJ, as delivered by then President Sir Dennis Byron and Mr. Justice Winston Anderson in **Maya Alliance** notes “ *the possibility of remedies in private law against the perpetrators of incursions onto Maya lands does not answer the point that there is a quite separate and distinct avenue available to the Maya people of suing the state for breach of the constitutional right to protection of the law where state responsibility is established.*’

[60] James J noted “*The CCJ have recently articulated the positive duties placed on the state by the bills of rights in **The Maya Leaders Alliance v. AG of Belize** [2015] CCJ 15. The right to protection of the law under the Commonwealth Caribbean constitutions, which is related to the concept of the rule of law, may impose positive constitutional obligations on the State vis-à- vis its citizens. The CCJ indicated that the concept of protection of the law goes beyond access to the court but includes the right of the citizen to be afforded ‘adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.’ They held that ‘the right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights.’ They went on to say that ‘Where the citizen has been denied rights of access and the procedural fairness demanded by natural justice, or where the citizen’s rights have otherwise been frustrated because of government action or omission, there may be ample grounds for finding a breach of the protection of the law for which damages may be an appropriate remedy.’ The CCJ found the Government of Belize breached Maya community members’ right to protection of the law by failing to ensure that the existing land law system recognized and protected Maya land rights.*”

[61] “*Therefore, there is jurisprudence for the Claimant to base a claim for protection of the law on the failure of the state to protect citizens from the practice of police officers*”. (paragraphs 37 and 38 of High Court Judgment)

[62] Our apex court in **Hillaire Sears v Parole Board** [2022] CCJ 13 has reviewed the issue and elucidated the ‘*contemporary judicial mindset*’ which I believe should guide us. As this is an important

issue I quote at length from the reasons for decision delivered by Mr. Justice Wit and Mme Justice Rajnauth-Lee.

[63] *“The CCJ in a judgment authored by Jamadar JCCJ in Marin v R 2021 CCJ 6 (AJ) BZ discussed the ‘contemporary judicial mindset’ to such procedural objections, and the purposive and generous approach to the interpretation and application of fundamental rights and freedoms in order to facilitate flexible access to courts for the fullest vindication of those rights.<sup>11</sup> In addition, Jamadar JCCJ considered the case of Observer Publications v Matthew<sup>12</sup> from Antigua and Barbuda. At [172] of Marin, Jamadar JCCJ noted that in Observer Publications, Redhead JA in the Court of Appeal expressed himself as having great difficulty in agreeing, “that by merely shrieking breach of a fundamental right one can knock on and disturb the sanctity of the constitutional door.” When the matter got to the Privy Council, Lord Cooke made these important observations at [53]:*

*With respect, the image of the Constitution as secluded behind closed doors is not one which their Lordships adopt. Nor would it be right to think of the Constitution as if it were aloof or, in the famous phrase of Holmes J, ‘a brooding omnipresence in the sky’. On the contrary, human rights guaranteed in the Constitution of Antigua and Barbuda are intended to be a major influence upon the practical administration of the law. Their enforcement cannot be reserved for cases in which it is not even arguable that an alternative remedy is available. As Lord Steyn said, delivering the advice of the Privy Council in Ahnee v DPP [1999] 2 AC 294 at 307 ‘... bona fide resort to rights under the Constitution ought not to be discouraged’. Frivolous, vexatious or contrived invocations of the facility of constitutional redress are certainly to be repelled.”*

[64] *“As regards the proper procedure for bringing a claim for constitutional relief, the Belizean case of Lucas v Chief Education Officer<sup>13</sup>, which was heard before the Court, is also instructive.”*

[65] *“Saunders JCCJ examined the issue of procedure. He noted the principle as restated in the cases from Trinidad and Tobago of Jaroo v Attorney General<sup>14</sup> and Attorney General v Ramanoop<sup>15</sup>, that where there was a parallel remedy, a citizen should not be given constitutional relief, unless the circumstances of which complaint was made, included some feature which justified resort to a claim*

*for breach of a fundamental right. Saunders JCCJ further noted that this principle was buttressed in some Caribbean constitutions by a specific proviso that mandated the court to decline constitutional relief where a parallel remedy existed. Even though the Constitution of Belize had no such proviso, Saunders JCCJ observed that few would doubt that Belizean courts were still expected to disapprove needless resort to the redress provision contained in s 20 of the Constitution.”*

[66] While this general principle is cited and relied on by the Appellant the qualification is omitted.

[67] “..., Saunders JCCJ agreed with Sharma CJ in the Trinidad and Tobago case of *Belfonte v Attorney General*<sup>18</sup> heard in the Court of Appeal that the determining factor in deciding whether there had been an abuse of process was not merely the existence of a parallel remedy, but also, the assessment whether the allegations grounding constitutional relief were being brought “for the sole purpose of avoiding the normal judicial remedy for unlawful administrative action”.

[68] “The Court adopts the effective and just approach of assessing the appellant’s claim to satisfy itself that it is a genuine recourse to constitutional redress under s 20 ..and the claim was not filed with the sole purpose of avoiding the normal judicial remedy for unlawful administrative action.”

[70] “The Court continues to caution against the unnecessary reliance on strict rules of procedure to shut out citizens from seeking constitutional relief, especially in the face of serious allegations of constitutional violations. The focus of this Court, as is the clear intention of the Constitution, is to provide flexible and effective access to justice for the peoples of Belize so that they can seek full vindication of their constitutional rights.”

[71] I do not think James J erred in his decision and a citizen be denied the right to claim constitutional redress in these circumstances. Converting the claim to a private law action does limit her to the claim of false imprisonment, the likelihood of being unsuccessful in a malicious prosecution claim and being completely shut out on a claim for protection of the law under the constitution and the breach of her constitutional rights.

[72] In the circumstances, I would dismiss the appeal and order the Appellant to pay the Respondent's costs of this Appeal.

**Woodstock Riley, JA**  
Justice of Appeal