

2013 HC DEM CIV CM 15

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CIVIL JURISDICTION

CONSTITUTIONAL AND ADMINISTRATIVE DIVISION

In the matter of Articles 139, 141, 142 and  
144 of the Constitution of the Cooperative  
Republic of Guyana

RICKFORD HECTOR

Plaintiff

-and-

1. THE ATTORNEY GENERAL OF GUYANA
2. THE CHIEF COLLECTING OFFICER OF THE  
GEORGETOWN MAGISTERIAL DISTRICT
3. JULIET CUMMINGS

Defendants

Jointly and Severally

Appearances:

Ms. Rinee Kissoon for the Plaintiff

Ms. Raeanna Clarke for the Attorney General

*Decision of the Honourable Madame Justice Priya Sewnarine-Beharry*

1. On the 26<sup>th</sup> September 2012, the Plaintiff filed a Notice of Motion No 74/M of 2012 in the High Court for Writs of Certiorari and

Prohibition directed to her Worship the Magistrate Faith Mc Gusty and the Chief Collecting Officer, Georgetown Magisterial District to quash their decision to issue a committal warrant committing the Plaintiff to prison for three months for his failure to pay purported arrears of maintenance and restrain them from initiating steps to recover sums claimed as purported arrears of maintenance on CJ 385-386 of 2002 on the basis that the order for maintenance made by Her Worship Magistrate O. Waldron Allicock was the subject of a pending appeal and therefore suspended.

2. On 29<sup>th</sup> September 2012, before the motion was heard, the Plaintiff was arrested by members of the Guyana Police Force whilst carrying out his trade as a photographer at GuyExpo 2012 at the Sophia Exhibition Centre Georgetown.
3. The Plaintiff was detained for several days at different police stations before he was eventually escorted to Camp Street Prison where he committed. He was later transferred to the Timehri Prisons where he remained incarcerated until 29<sup>th</sup> October 2012.
4. On 3<sup>rd</sup> October 2012, Justice Reynolds issued Orders Nisi of Certiorari and Prohibition directing Magistrate Mc Gusty and the Chief Collecting Officer, Georgetown Magisterial District to show cause why their decision to apply for and issue a warrant for the recovery of purported arrears of maintenance flowing from an Order that was the subject of an Appeal ought not to be quashed. Following frequent adjournments without a determination of the matter, an application was filed on 24<sup>th</sup> October 2012 in the High Court for the issue of a Writ of Habeas Corpus directed to the Director of Prisons to produce the body of the Plaintiff before the Supreme Court on the basis that the Plaintiff's detention and continued incarceration was unlawful. On the 25<sup>th</sup> October 2012

Justice Reynolds directed the Director of Prisons to attend the High Court on 29<sup>th</sup> October 2012, produce the body of the Plaintiff and show cause why he should not be released from custody. On that date the Plaintiff was released after hearing submissions of the parties and the Orders Nisi of Certiorari and Prohibition were made absolute.

5. The purported arrears of maintenance arose out of an order for variation made by Her Worship Magistrate O. Waldron Allicock in 2002 directing the Plaintiff to pay an increase from \$700 to \$2000 per week per child on Case Jackets 385-386 for the maintenance of his two children Rickford and Rickesha Cummings which were born of the relationship between the Plaintiff and the third named Defendant.
6. This Order was the subject of an appeal which was not heard and determined.
7. The Plaintiff alleged that after he filed the Notice of Appeal challenging the Order for an increase, he was directed to pay the sum of \$700 per week per child by the Chief Collecting Officer Georgetown, Magisterial District on the basis that the Notice of Appeal suspended the Order for variation and increase.
8. The Plaintiff paid the sum of \$700 per week per child from 2002 to 2011.
9. In 2011, when his son, Rickford Cummings Jr., attained the age of majority, the Order for maintenance came to an end and the third named Defendant made an application to increase the maintenance of the child Rickesha Cummings from \$700 to \$3000 on CJ 281 of 2011.
10. Notwithstanding the Appeal, filed challenging the order to pay the increase from \$700 to \$2000 on CJ 385-386 of 2002, a warrant was

- issued for purported arrears of maintenance in the sum of \$634,000 being the difference between \$700 as paid by the Plaintiff for the period 2002 to 2011 and the sum of \$2000 for the said period which order remained the subject of an appeal.
11. His Worship Magistrate H Ramdhani directed the Plaintiff to pay the purported arrears and he paid the sums of 126,000 and 170,000 towards the purported arrears for his son and daughter respectively.
  12. On 8<sup>th</sup> November 2011, Magistrate Ramdhani granted the application for variation filed by the Third named Defendant increasing the maintenance payable for the child Rickesha Cummings from 700 to \$2,300 effective from 8<sup>th</sup> November 2011.
  13. The Plaintiff was also told he was required to pay the sum of \$338,000 being outstanding the balance of purported arrears of maintenance for 2002 to 2011. He was unable to do so and caused 74-M of 2012 to be filed directed to the Chief Collecting officer and Her Worship Faith Mc Gusty who dealt with the matter in the absence of Magistrate Ramdhani and who issued the committal warrant.
  14. The Plaintiff filed this action contending that his arrest, detention, imprisonment and incarceration by the Defendants between 29<sup>th</sup> September 2012 and 29<sup>th</sup> October 2012 was unlawful, without due process of law and in violation of his Fundamental Rights as guaranteed by Articles 139, 141, 142 and 144 of the Constitution of the Cooperative Republic of Guyana.
  15. The Plaintiff contended that he was injured in reputation and practice of his profession and suffered grave mental and physical anguish, expense and loss and damage.

16. The Plaintiff caused a Notice to be issued on 12 December 2012 pursuant to the provisions of the Justice Protection Act Cap 5:07 directed to the Defendants and Magistrates Ramdhani and Mc Gusty.
17. Consequently, the Plaintiff claimed special damages set out in paragraph 35 of the Motion herein and exemplary and punitive damages for wrongful and unlawful arrest, false imprisonment, breach of statutory duty and violation of his fundamental rights as guaranteed by Articles 139, 141, 142 and 144 of the Constitution and a declaration that his fundamental rights and freedoms as guaranteed by Articles 39, 141, 142 and 144 of the Constitution were infringed by the Executive and Judicial Arms of the State.
18. The first and second defendants contended that the committal warrant issued by her Worship Magistrate Faith Mc Gusty in accordance with section 60 (1) of the Custody, Contact, Guardianship and Maintenance Act 5 of 2011 was lawful. They argued that Section 66(1) (4) of the Custody Contact Guardianship and Maintenance Act No 5 of 2011 provided that an appeal shall not operate as a stay and as such the appeal filed by the Plaintiff in 2002 was not stayed and the Plaintiff ought to have complied with the order by paying the increased maintenance as directed by the learned magistrate. They further argued that the Plaintiff's payments of 126,000 and 170,000 towards the purported outstanding arrears constituted an abandonment of his appeal. They also contended that the arrest, detention and imprisonment of the Plaintiff by the members of the Guyana Police Force between 29<sup>th</sup> Sept to 29<sup>th</sup> Oct 2012 was lawful and there were no breaches of the Plaintiff's constitutional rights.

19. The first issue that must be determined is whether the filing of an appeal by the Plaintiff stayed the execution of the Order of Magistrate O. Waldron Allicock.
20. Section 12 of the Summary Jurisdiction (Appeals) Act Cap 3:04 as amended by Act No 13 of 2014 now provides that an appeal shall not operate as a stay of execution of the decision under appeal.
21. Prior to the amendment of section 12 (1) of the Summary Jurisdiction (Appeals) Act Cap 3:04, however, the law provided that the execution of the decision under appeal shall be suspended until the appeal is heard or abandoned. This was the law at the time the Plaintiff filed his appeal in 2001.
22. The Defendants relied on Section 66(4) of the Custody, Contact, Guardianship and Maintenance Act which provides that an appeal does not operate as a stay of the order appealed against. This Act was passed in March 2011 and has no applicability to the Appeal against the order which was filed in 2002.
23. The amendment to Section 12 did not operate retroactively and therefore it can be concluded that the filing of an appeal in 2001 by the Plaintiff stayed the decision of Magistrate O. Waldron-Allicock until the hearing or abandonment of the appeal.
24. The Defendants argued that even if the filing of the Appeal had the effect of staying the order this was not an indefinite suspension. Counsel for the State submitted the Plaintiff's conduct in not making efforts to further his appeal from 2002 to 2012 demonstrated that he abandoned his appeal. Counsel also argued that the fact that the Plaintiff made payments towards the purported arrears was further evidence of him abandoning his appeal.

25. Section 7 of the Summary Jurisdiction (Appeals) Act Cap 3:04 provides that once a Notice of Appeal is filed, "the clerk shall make an entry of the fact and the time of the receipt in a record book to be kept for that purpose and shall inform the magistrate of the fact." Sections 8 further provides that the Magistrate shall draw up a formal statement of his reasons for the decision appealed against which shall be lodged with the clerk who shall prepare a copy of the proceedings including the reasons for the decision and when the copy is ready notify the appellant.
26. From the evidence it appears that the Magistrate Waldron-Allicock uplifted the case jackets but never remitted to the clerk the reasons for her decision. The Plaintiff's evidence that he did all that was required of him when lodging the Appeal is uncontradicted. Further, I do not find that the making of part payments towards the purported sums due constituted an abandonment of the Appeal. The Appellant testified that Magistrate Ramdhani ordered him to pay purported arrears. The contention that the Appellant abandoned his appeal is unmeritorious.
27. The fact that the procedure under Section 48(a) of the Summary Jurisdiction(Magistrates) Act Cap 3:05 ought to have been exhausted by the Magistrate prior to issuing the committal warrant also seemed to escaped the Defendants' attention. Section 48(a) provides that a warrant directing that the purported arrears be recovered by distress or sale of goods or chattels must be obtained before a warrant of committal is issued.
28. This court finds that Magistrate Mc Gusty exceeded her jurisdiction when she issued the committal warrant for the arrears of maintenance due pursuant to Magistrate Allicock's order when the

decision was stayed until the hearing or abandonment of the Appeal.

29. Consequently, I find that the Plaintiff's rights guaranteed under Articles 139, 141 and 142 of the Constitution were breached and he is entitled to damages for those breaches.
30. In his Statement of Claim, the Plaintiff claimed special damages for Loss of Income, the sums paid to the collecting officer and legal fees. I do not find that the Plaintiff has proved special damages set out in the Statement of Claim for legal fees in the sum of \$380,000 (three hundred and eighty thousand dollars) as he stated in evidence that he could not recall what the legal expenses were at the time and he did not have the receipts. He also claimed Loss of Income in the sum of \$120,000 (one hundred and twenty thousand dollars) for each month he was incarcerated. The Plaintiff testified that in addition to the income he lost as a result of not being able to work at the remaining two days of GuyExpo in the sum of \$130-140000 (one hundred and thirty to one hundred and forty thousand dollars) and \$500,000 (five hundred thousand dollars) for both days at Essequibo night, his income from photography was \$400,000 (four hundred thousand dollars) per month. This material inconsistency has caused me to doubt the credibility of the Plaintiff's evidence on this issue and I would decline to make an award for Loss of income.
31. I find from the evidence the Plaintiff has proved that he is entitled to the sum of \$296,000 (two hundred and ninety-six thousand dollars) for which was paid to the Chief Collecting officer and which ought not to have been collected as a result of the pending appeal.

32. I do not find that Plaintiff's arrest involved the usual aggravating features which would have qualified him for an award of aggravated or exemplary damages.
33. However, I find the Plaintiff is entitled to an award of compensation for the infringement of his fundamental rights guaranteed under Articles 139, 141 and 142 of the Constitution.
34. In the case of **Navindra Singh vs. Police Constable Benjamin 11712 et al Action No 602-W of 2006, Demerara** Justice Ramlal, awarded the Plaintiff inter alia the sum of \$119,463(one hundred and nineteen thousand four hundred and sixty-three dollars) for his unlawful detention and false imprisonment for a period in excess of four hours. In **Application by Corwin Nicholson and Clavis Nicholson vs. the Attorney General , the Commissioner of Police and anor Action No 2016 HC DEM CIV CM 71** Chief Justice Roxane George(ag) awarded the Plaintiffs the sum of \$1,000,000(one million dollars) for unlawful arrest and detention together with a further sum of \$500,000(five hundred thousand dollars) each for inhumane treatment after being detained overnight at the police station in what she described was an "unwholesome cell" without justification. In **Tularam Ramassar vs. Mark Abraham a member of the Guyana Police Force, The Commissioner of Police and Anor Action 2017 HC DEM CIV SOC-108** Justice Gino Persaud awarded the Claimant the sum of \$1,500,000(one million five hundred thousand dollars) for the infringement of Article 139(1) of the Constitution for the Claimants loss of liberty for less than 72 hours together with the sum of \$500,000(five hundred thousand dollars) for deprivation of property.

35. Prior to the Claimant's incarceration he was ferried to different police stations for several days. At the time of his incarceration he suffered from high blood pressure. He was unable to eat, was uncomfortable and lost weight. Although he was not able to prove specifically his loss of income and potential loss of income it cannot be disputed that he was unable to earn a living due to his loss of liberty for a month.
36. For the breaches of the Plaintiff's fundamental rights guaranteed under Articles 139, 141 and 142, I award the sum of \$5,000,000(five million dollars). Costs are also awarded to the Plaintiff in the sum of \$200,000(two hundred thousand dollars).

Priya Sewnarine-Beharry

Puisne Judge

6<sup>th</sup> March, 2020.