

IN THE JUDICIAL COMMITTEE
ON APPEAL FROM THE COURT OF APPEAL
OF THE REPUBLIC OF TRINIDAD AND TOBAGO

Between

WAYNE ALLEYNE
LENNARD SYLVESTER
WINSTON SOLOMON
JUNIOR COLLINS
SIMON HABIB

Appellants

and

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

STATEMENT OF FACTS AND ISSUES

AGREED FACTS

A) BACKGROUND

1. The Appellants were the Applicants before the High Court and Appellants in the Court of Appeal. The Respondent is the Attorney General of Trinidad and Tobago pursuant to section 14(3) of the Constitution.
2. Section 66 of the Criminal Procedure Act Chapter 12:02 provides that if a jury finds that a person tried for an offence did the act charged but was insane at the time, the jury shall return a special verdict to the effect that the person tried was guilty but insane. Section 67 provides that in the event of such a verdict, the Court may order such person to be detained in safe custody in such place and manner as the Court thinks fit until the President's pleasure is known. Section 68 provides that the President shall order such person to be dealt with as a mentally ill person in accordance with the laws governing the care and treatment of such persons or in any other manner he may think necessary.

3. Section 4A(1) of the Offences Against the Person Act Chapter 11:08 provides that a person who kills another shall not be convicted of murder if he was suffering an abnormality of mind which substantially impaired his mental responsibility for his acts, and subsection (3) provides that such a person shall instead be liable to be convicted of manslaughter.
4. Until its amendment in 2017, subsection (6) of the same section provided that where person is convicted of manslaughter on the ground of diminished responsibility under subsection (3), the Court may order such person to be detained in safe custody, in such place and manner as the Court thinks fit until the President's pleasure is known¹.
5. Section 16 of the Mental Health Act Chapter 28:02 establishes a Psychiatric Hospital Tribunal ("the Tribunal") whose functions include, at section 18(1)(a), the review every six months of the case of any patient who has been hospitalised pursuant to an order of the Court or of the Minister with responsibility for prisons.
6. Until the modification of sections 67 and 68 of the Criminal Procedure Act and section 4A(6) of the Offence Against the Person Act, in the circumstances set out below, the powers of the President under those provisions were exercised in accordance with the advice of Cabinet.
7. The Appellants were each charged and indicted with the offence of murder (except the 2nd Appellant who was charged with attempted murder) in separate cases arising out of unrelated events. At their respective trials the 1st, 2nd, 4th and 5th Appellants were found guilty but insane pursuant to section 66 of the Criminal Procedure Act and were ordered to be detained until the President's pleasure is known under section 67 of that Act.
8. At his trial, the 3rd Appellant was convicted of manslaughter on the basis of diminished responsibility, pursuant to section 4A(1) and (3) of the Offences Against the Person Act, and was ordered to be detained until the President's pleasure is known under subsection (6), as that subsection then stood.

¹ After amendment, the provision now reads "... until the Court's pleasure is known".

9. During the course of their detention the Appellants were detained at the St. Ann's Mental Hospital in the Psychiatric Forensic Ward and were subject at various times to reviews by the Tribunal of their mental condition and fitness for release.
10. On 22nd April 2004 **[EB9][EB15][EB21][EB27][EB33]** each Appellant instituted separate proceedings under section 14 of the Constitution challenging the orders for their detention and the manner of the execution of their detention as unconstitutional and a violation of their fundamental rights under sections 4 and 5 of the Constitution. They sought relief, among other things: modifying the orders for detention so as to read "until the Court's pleasure is known"; ordering their release from custody; and awarding them damages under the Constitution.
11. During the course of the proceedings in the High Court disclosure revealed that each of the Appellants had been the subject of favourable reviews and a recommendation by the Tribunal for their release, as follows:
- 1) In respect of the 1st Appellant, on 27th July 2002;
 - 2) In respect of the 2nd Appellant, on 12th September 2001;
 - 3) In respect of the 3rd Appellant, on 8th July 2003;
 - 4) In respect of the 4th Appellant, on 8th July 2003; and
 - 5) In respect of the 5th Appellant, on 26th August 1998.
12. These recommendations were brought to the attention of the Cabinet, who by Cabinet Minute No.6 of 2006 **[EB703]** had on 5th January 2006 directed the Attorney General to prepare the necessary warrants to effect the release of the Appellants.
13. On 21st May 2007, upon the Appellants' applications for interim relief, Mr. Justice Ibrahim ordered that the Appellants be released from custody forthwith and adjourned for hearing and determination all other claims, including damages **[EB39][EB41][EB43][EB45][EB47]**. The Appellants were so released.

B) RELATED PROCEEDINGS

14. On 27th September 2012 the High Court (Mr. Justice Rampersad) determined three related claims which had been filed at around the same time as those of the Appellants herein – Dillon, Ventour and Francois v Attorney General HCA 3498/2003, 1094/2004 and 1090/2004 – which concerned the claims of persons in similar circumstances who had been detained until the President's pleasure is known. The claimants in those cases challenged the constitutionality of sections 67 and 68 of the Criminal Procedure Act and section 4A(6) of the Offence Against the Person Act, and challenged the manner and lawfulness of their detention generally.
15. With regard to sections 67 and 68 of the Criminal Procedure Act, the High Court held, applying principles articulated by the Judicial Committee in Seepersad and Panchoo v Attorney General [2012] UKPC 4, that section 67 was to be modified (or had been modified by previous orders of the High Court) in respect of persons the subject of a special verdict under section 66, so that their detention was to be at the Court's pleasure, not the President's pleasure. With regard to section 4A(6) of the Offences Against the Person Act, the High Court ordered that the section be modified so as to read "at the Court's pleasure", rather than the President's pleasure.
16. The High Court further held that persons detained under those provisions had a right to regular review of their detention and proceeded to award damages to each claimant on the following bases:
- 1) Mr Dillon had been detained for twenty years without treatment or periodic review at all. He was awarded compensatory damages of \$2,500,000 with an additional vindictory award of \$500,000
 - 2) Mr Ventour was charged in 1968 and tried and sentenced in 1975, but his first psychiatric review took place in 1994, some 19 years later; that review and a subsequent review in 1998 had recommended his release, but he was not released until 2007. He was awarded compensatory damages of \$2,500,000 with an additional vindictory award of \$500,000,

- 3) Mr Francois was convicted of murder in 1997, but on appeal to the Judicial Committee his conviction was replaced with one of manslaughter in September 1999; he was not transferred from prison to psychiatric hospital until 2001; he was recommended for release in 2004, but was not released until 2008. He was awarded compensatory damages of \$750,000 with an additional vindictory award of \$250,000.

17. On 25th March 2015 the Court of Appeal gave judgment in another related claim issued at the same time as those of the Appellants, Mukesh Maharaj v Attorney General Civ App 118/2010. Mukesh Maharaj had been detained in November 1999 by an order made under section 4A(6) of the Offences Against the Person Act and was, like the Appellants, a subject of the Cabinet's decision in Cabinet Minute No.6 of 2006. The Tribunal had recommended him for release on 14th March 2004 [EB706], but he was not released until an order of the Court made on 3rd April 2009.

18. The Court of Appeal decided that the period of detention for which Mr Maharaj should be compensated was the period from the date of the recommendation by the Tribunal until his release, subject to deduction of a period of 3 months and 10 days, to allow for a reasonable period to decide to act upon the Tribunal's recommendation and then implement the decision. It found that the judge's award of \$200,000 had been inordinately low, and awarded compensation of \$450,000. It found further that this award was sufficient to vindicate Mr Maharaj's rights, so that there was no need for an additional award of vindictory damages.

C) HIGH COURT DECISION

19. In a judgment delivered on 19th May 2016 Mr. Justice Rampersad determined the remaining claims of the Appellants and the quantum of damages [EB102]. He found that there were three remaining issues:

- 1) The issue of unconstitutionality of Sections 67 and 68 of the CPA and Section 4 of the OAPA.

- 2) The issue of the breaches of the Appellant's constitutional rights under sections 4 and 5 of the Constitution.
- 3) The measure of damages to be awarded to the Appellants.

20. In respect of the first issue, the judge followed the decision in the case of Dillion and others holding that section 67 and 68 of the Criminal Procedure Act and section 4(A)(6) of the Offences Against the Person Act were to be modified to read "at the Court's pleasure" rather than "at the President's pleasure" (paragraphs 84 and 85 **[EB133]**).

21. In respect of the second issue, the judge found that there had been breaches of each Appellant's rights under section 4(a), (b) and 5(2)(h) of the Constitution, upholding their complaints "that the Tribunals did not conduct appropriate reviews and that they were ultimately left in the dark about whether or not their cases were referred to the Minister of National Security or the President for review" (paragraph 89 **[EB134]**).

22. On the assessment of damages, the judge followed the approach taken by the Court of Appeal in Mukesh Maharaj and held that the relevant period for compensation for each Appellant was the period from 3 months and 10 days after the Tribunal's recommendation of release until the date of release. He made the following awards of damages, which he described as being "inclusive of vindictory damages":

Appellant 1	WAYNE ALLEYNE	\$450,000
Appellant 2	LENNARD SYLVESTER	\$550,000
Appellant 3	WINSTON SOLOMON	\$400,000
Appellant 4	JUNIOR COLLINS	\$400,000
Appellant 5	SIMON HABIB	\$900,000

with interest on each award at the rate of 6% per annum from the date of filing of the claim, 22nd April 2004 to the date of judgment, 19th May 2016.

D) COURT OF APPEAL DECISION

23. By separate Notices of Appeal **[EB163][EB252][EB342][EB431][EB514]** the Appellants all contended:

- 1) That the Court's assessment of damages was inordinately low and a wholly erroneous estimate of the loss suffered by the Appellant.
- 2) That the Court had adopted a plainly wrong approach to the assessment of damages and in particular:
 - a. Had failed to grant declaratory relief specifying all of the rights infringed under sections 4 and 5 of the Constitution;
 - b. Had failed to identify the proper period of detention for assessment.
- 3) That the Court had erred in failing to make a separate additional award of vindictory damages.
- 4) That the Court failed to have due regard to factors material to each Appellant's assessment.

24. The appeals were heard together but not consolidated. On 12th June 2024 **[EB654]** the Court of Appeal dismissed the Appellants' appeals with costs to the Respondent. In addition thereto, the Court of Appeal varied the Court's award of interest by substituting a rate of 3% for the period from the date of the various recommendations for release to the date of actual release, but retaining the award of 6% thereafter to the date of judgment.

25. In its judgment **[EB598]** the Court of Appeal characterised the Appellants' appeals as identifying the following errors on the part of the trial judge (paragraph 10 **[EB606]**):

- 1) A failure to make separate distinct declarations as to each breach of each constitutional right.
- 2) A failure to consider the nature of the individual periods of the Appellants' detention, and to assessing damages specifically taking this factor into account and disaggregating them.
- 3) A failure to make a separate award of vindictory damages.

- 4) A failure to take into account the actual deprivation of liberty suffered by the Appellants, by compensating them only for their mental distress.
- 5) The making of awards which were inordinately low.

26. The Court of Appeal addressed each point as follows:

- 1) The declarations sought by the Appellants would have added nothing to the trial judge's analysis as they were already made in Dillon and others and the trial judge clearly had them in the forefront of his contemplation in awarding damages; the effect of the breach of each right was the same, namely the continued detention of each Appellant (paragraph 12 [EB608]).
- 2) The judge had not erred in failing to identify and compensate different periods of detention. The evidence of each Appellant was that he had been seen on an ongoing basis by psychiatrists from the date of admission, and so there was no justification for any award of loss of a chance of an earlier recommendation for release. As to the period after recommendation, the High Court was bound by the decision of the Court of Appeal in Mukesh Maharaj (paragraph 15).
- 3) There was a vital public interest in ensuring that the Appellants' release would not pose any danger to the public and a reasonable period had to be afforded to the Court to decide whether to accept the recommendations or seek further psychiatric opinion; that period should be no different from the period recognised in Mukesh Maharaj (paragraph 19 and 20).
- 4) There was no need to identify a separate award for vindictory damages and there was no error in incorporating such award in his global compensatory award (paragraph 21).
- 5) It was not correct that the trial judge only compensated for distress without paying sufficient regard to the actual loss of liberty; the trial judge had clearly based each award upon the period of detention (paragraph 22).

- 6) The assessments were not inordinately low but were consistent with precedent as to the quantum of damages (paragraph 24).

E) APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

27. The Appellants applied for and were granted leave to appeal to the Judicial Committee by the Court of Appeal. Final leave was granted on 3rd February 2025 [EB668]. The Appellants filed their Notice of Appeal on 27th March 2025 [EB674] and the Respondent filed a Notice of Acknowledgment on 12th December 2025 [EB684].

Grounds of Appeal:

28. The Appellants filed 4 substantive grounds of appeal [EB682]:

1. The Court of Appeal erred in not granting declaratory relief in relation to breaches of the Appellants' rights under, inter alia, ss 4(a), (b) and 5(2) (h), (a) and (b).
2. The Court of Appeal erred in law and acted without jurisdiction in varying the order for interest made by the Learned Trial Judge.
3. The award of damages is inordinately low and a wholly erroneous estimate of the loss suffered by the Appellants to provide redress for the purpose of vindicating the Appellants' rights.
4. The Court of Appeal wrongly exercised its discretion in the award of damages adopting the wrong approach to the assessment and failed to properly consider all relevant circumstances of the Appellants' detention as follows:
 - i) Erred in misconstruing the Appellants' cases as being limited to unlawful detention following the recommendations for release of the Appellants as opposed to the entire period of unconstitutional detention and thereby improperly limited the assessment and failed to assess damages for the relevant appropriate period.
 - ii) Erred in law by proceeding on the basis of an erroneous line of local authorities as to damages based on a flawed interpretation of *Maharaj v The Attorney General of Trinidad and Tobago* (No. 2) [1979] A.C 385 which authorities have thereby misapplied the

relevant principles of law resulting in a trend of under-compensation in the damages awarded under the Constitution.

- iii) Erred in law by adopting the wrong approach to the purely vindicatory element of damages awarded.
- iv) Erred in law in not making/identifying a specific award as the additional award/vindicatory damages and/or failed to consider whether the Court was required to make an additional award.
- v) Erred in law and fact in equating a clinical assessment by the Psychiatric Hospital Tribunal as the review of detention process required by the order for detention when no such review had been completed until the 5th January, 2006.
- vi) Erred in misconstruing the Appellants' case as disaggregating periods of detention as opposed to one of identifying the changing and varying circumstances of the Appellant's detention and thereby failed to adequately consider all relevant circumstances during the course of the Appellants' detention.

AGREED ISSUES

The Appeal raises the following main issues:

- 1) Did the Court of Appeal and trial judge err in not granting declaratory relief in relation to breaches of the Appellants' rights under, inter alia, ss 4(a), (b) and 5(2) (h), (a) and (b)?
- 2) Did the Court of Appeal err in holding that the trial judge was entitled to make a global award of compensation which included vindicatory damages?
- 3) Did the Court of Appeal err in failing to find that the trial judge was plainly wrong in his assessment of damages as follows:
 - i) Did the Court of Appeal have proper regard to the varying circumstances of the Appellants during the period of detention as they affected the Appellants?

- ii) Was the Court of Appeal correct to apply Mukesh Maharaj in limiting the period of assessment as commencing from the date of the recommendations made by the Psychiatric Hospital Tribunal to the date of release, rather than the entire period of detention, or some other date?
- iii) Does the line of authority relied upon in the Court of Appeal and High Court as representing a judicial trend of applicable awards in Constitutional law proceed on a correct juridical basis since the decision of the Judicial Committee of the Privy Council in Maharaj No.2 v The Attorney General of Trinidad and Tobago, or does that line of authority show a trend of under-compensation?