Easter Term
[2026] UKPC 19
Privy Council Appeal No 0067 of 2023

JUDGMENT

Anthony Noel Hosein (formerly Anthony Noel Egbert) (Appellant) *v* Attorney General of Trinidad and Tobago (Respondent) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Lloyd-Jones
Lord Hamblen
Lord Leggatt
Lord Stephens
Lady Rose

JUDGMENT GIVEN ON
29 April 2026

Heard on 26 March 2026

Appellant
Farai Hove Masaisai
Chelsea Edwards
(Instructed by Hove and Associates)

Respondent
Robert Strang
(Instructed by Charles Russell Speechlys LLP (London))

LORD HAMBLEN:

Introduction

1. On 11 December 2020, the appellant brought a constitutional motion against the respondent, the Attorney General of Trinidad and Tobago, alleging that his constitutional rights were infringed when, in 2003, he was retrenched by his employer, Caroni (1975) Ltd ("Caroni"), a State-owned company, without being allowed to enter into a Voluntary Separation Employment Package ("VSEP"). He contends that this involved discrimination on grounds of race and sex and victimisation.

2. On 9 May 2022, the appellant's claim was dismissed by the High Court on the grounds of abuse of process. On 11 October 2022, the Court of Appeal dismissed an appeal from that decision. On 12 May 2023, the Court of Appeal granted final leave to appeal to the Judicial Committee of the Privy Council.

Factual background

3. The parties have been unable to agree a Statement of Facts and so the factual background is largely taken from the Court of Appeal decision.

4. The appellant was employed as an Estate Constable at Caroni from 1 September 1995.

5. On 7 January 2003, the Inter-Ministerial Committee for the Restructuring of Caroni was appointed to inform the company of the Government's decision to restructure the company and to offer VSEP packages to the employees. The board of Caroni was directed to offer VSEP to all employees under the collective bargaining process through their representative unions.

6. The appellant was offered VSEP by letter dated 17 February 2003. The deadline for accepting the VSEP package was 3 April 2003.

7. On 28 March 2003, the All Trinidad Sugar General Workers Trade Union ("the Union") obtained an interlocutory injunction from the Industrial Court against Caroni restraining it from offering VSEP to its employees.

8. On 3 April 2003, the appellant reported for duty and was informed that the company was not accepting his VSEP letter because of the injunction.

9. On 11 July 2003, Caroni and the Union arrived at an agreement before the Industrial Court that the employees who had not accepted VSEP would be able to do so on 15 August 2003.

10. The appellant contends that certain classes of employees were allowed to accept the VSEP packages after the deadline date while he was unable to do so. In earlier proceedings he said that he rejected the package as he was informed by senior company representatives that he would be retrained and placed in the IT department of the successor company.

11. By a letter dated 31 August 2003, the appellant was retrenched.

Procedural background

12. On 16 October 2009, the appellant filed a complaint against Caroni seeking redress under the Equal Opportunity Act ("the Act") at the Equal Opportunity Commission ("the Commission"). The Act had been passed in 2000 but only came into operation in 2009, the delay being due to a change in government and a challenge to the constitutionality of the Act.

13. Attempts at conciliation under the aegis of the Commission failed and on 28 February 2013 it referred the appellant's complaint to the Equal Opportunity Tribunal ("the Tribunal"). By a claim form dated 5 April 2013 the appellant brought a claim against Caroni in the Tribunal alleging discrimination on the grounds of race and sex, under section 5 of the Act. The appellant subsequently amended his claim on 18 September 2013 to allege victimisation rather than discrimination, under section 6 of the Act.

14. The Tribunal proceedings took a long and complicated path and were the subject of two interlocutory appeals to the Court of Appeal. They ended on 29 July 2020, when the appellant withdrew his complaint, with the permission of the Tribunal.

15. The appellant says that he withdrew his complaint because the proceedings had been rendered procedurally impossible and constitutionally compromised.

16. On 11 December 2020, the appellant filed the present claim against the respondent for redress pursuant to section 14 of the Constitution of Trinidad and Tobago ("the Constitution"). The appellant's claim, as amended on 10 March 2021, alleged that his rights under various sections of the Constitution had been infringed as follows:

(a) His right to due process of law under section 4(a) had been infringed by Caroni's decision to retrench him in breach of the Retrenchment and Severance Benefits Act;

(b) His right to equality before the law under section 4(b) had been infringed by Caroni's decision to treat him differently from other employees, with regard to acceptance of the VSEP;

(c) His right to equality of treatment under section 4(d) had been infringed by Caroni when it denied him the opportunity to submit his acceptance of the VSEP after the deadline date;

(d) His right to fair treatment under section 5(e) had been infringed by Caroni's decision to retrench him without giving him the opportunity to make representations or accept the VSEP; and

(e) His right to the protection of the law under section 4(b) had been infringed by Caroni's decisions to retrench him and to refuse to permit him to accept the VSEP, in breach of the Retrenchment and Severance Benefits Act.

The judgments below

17. On 9 May 2022, Gobin J dismissed the claim as an abuse of the process of the court.

18. The principal basis for this decision was the appellant's inordinate delay in bringing the proceedings. The judge found that the appellant's cause of action for constitutional relief arose in 2003, that the claim was filed approximately 17 years later and that he "has provided no cogent/compelling explanation for his seventeen-year delay". She further held that:

> "He has offered no or no sufficient reason to justify the inordinate delay in keeping with *Durity* and has failed to demonstrate that allowing him to pursue this claim would serve any useful purpose. I take notice of the fact that Caroni (1975) Limited ceased operations over a decade ago, probably two. The Court holds that allowing this claim will amount to an abuse of process."

19. The Court of Appeal (Kokaram and Holdip JJA) dismissed the appeal in an oral judgment given on 11 October 2022. They held that the appellant had failed to show that the judge was plainly wrong in reaching the decision that she did.

20. They held that the judge had jurisdiction to strike out the claim under the court's inherent jurisdiction and also under Part 26 of the Civil Proceedings Rules 1998 ("CPR"). The judge was not plainly wrong in striking out the claim due to inordinate delay. A timely application for constitutional relief could have been made in 2003. If appropriate steps are not made to bring a claim for constitutional relief in a timely manner, cogent reasons for making that process choice should be provided. They did not consider the reasons provided by the appellant to be cogent. The delay was the consequence of choices he had made. As they stated at para 31:

> "[The appellant] chose to wait for six years to access a parallel remedy, which did not exist at the time when his alleged breach arose. Having chosen to go through the processes of making his complaints to the Commission and the Tribunal, he elected to withdraw his complaint."

21. They rejected all other grounds raised by the appellant, including an allegation of apparent bias against the judge.

The issues

22. There is no agreement as to the issues for determination, but the Board considers the essential issue to be whether the Court of Appeal erred in law or was plainly wrong to conclude that the failure to bring a constitutional claim during the 17-year period from 2003–2020 justifies a decision to strike out the claim on the grounds of delay.

The court's jurisdiction

23. It is common ground that the court has inherent jurisdiction to strike out a claim for abuse of process. As stated by Lord Diplock in *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 at p 536:

> "My Lords, this is a case about abuse of the process of the High Court. It concerns the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a

> party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied … It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power."

24. Given that this is common ground it is unnecessary to decide whether the court also has jurisdiction to do so under Part 26 of the CPR.

Abuse of process and delay

25. It is established that delay in bringing a constitutional claim may be an abuse of process. As stated by Lord Nicholls in *Durity v Attorney General of Trinidad and Tobago* [2002] UKPC 20; [2003] 1 AC 405 ("*Durity*") at para 35:

> "When a court is exercising its jurisdiction under section 14 of the Constitution and has to consider whether there has been delay such as would render the proceedings an abuse or would disentitle the claimant to relief, it will usually be important to consider whether the impugned decision or conduct was susceptible of adequate redress by a timely application to the court under its ordinary, non-constitutional jurisdiction. If it was, and if such an application was not made and would now be out of time, then, failing a cogent explanation the court may readily conclude that the claimant's constitutional motion is a misuse of the court's constitutional jurisdiction."

26. It is to be noted that Lord Nicholls considered that delay may (i) render the proceedings an abuse of process and/or (ii) disentitle the claimant to relief. Under section 14 of the Constitution, constitutional relief "may" be granted—ie it is discretionary. If a court concludes that the delay means that no discretionary relief would be granted then it may refuse to entertain the claim by striking it out.

27. In *Webster v Attorney General of Trinidad and Tobago* [2015] UKPC 10; [2015] ICR 1048 ("*Webster*") Baroness Hale of Richmond stated at para 46:

> "There is no statutory time limit for bringing a constitutional motion. However, constitutional relief is discretionary and the

lapse of time since the events in question is a relevant factor in the exercise of that discretion: see *Durity v Attorney General of Trinidad and Tobago* [2003] 1 AC 405. The defendant did raise the issue of delay before Moosai J, who commented, at para 26:

> 'given the extraordinary sanctity of our fundamental human rights and freedoms, the courts are reluctant to shut out a deserving applicant on the ground of mere delay. However, where the delay is inordinate, then, failing a cogent explanation, a court may deny an applicant relief. Everything must depend on the circumstances …'"

28. In *Webster* the Board cited Moosai J's judgment with apparent approval. This indicates that the critical questions are whether the delay is inordinate and, if so, whether there is a cogent explanation for that delay. That was the approach of the Court of Appeal in the present case. As the Court of Appeal stated at para 19(f):

> "There is a clear delay by [the appellant] and as counsel for the appellant acknowledged to this court, what has to be done in this context is to provide a cogent explanation for the delay."

29. Before the Board Mr Masaisai for the appellant submitted that it is also necessary to establish prejudice to the defendant. There is no mention of the need to do so in *Durity* (para 35), in *Webster* (para 46) or in the passage from Moosai J's judgment cited by the Board with approval. Nor is it reflected in the question which the Board said had to be addressed in *Durity* at para 39:

> "Accordingly the question which arises, so far as this aspect of the constitutional proceedings is concerned, is this: in the circumstances, does the existence of the judicial review proceedings and the negotiations sufficiently explain Mr Durity's delay in commencing his constitutional proceedings?"

30. This is consistent with the fact that one is concerned with whether the delay is such as to involve an abuse of the court's process. The focus is on the position of the court, not that of the defendant.

31. The Board does not therefore consider that prejudice is required to be established, as seemingly accepted by the appellant below.

32. Mr Masaisai further submitted that the Board should adopt the broad merits-based approach set out by the House of Lords in *Johnson v Gore Wood & Co* [2002] 2 AC 1 in determining whether there is an abuse of process where a defendant is vexed twice in the same matter. The Board considers, however, that in the specific context of delay in bringing a constitutional claim it is *Durity* that provides the relevant guidance.

The standard of appellate review

33. It was common ground that a decision to strike out a claim for abuse of process is a multi-factorial decision involving an evaluative judgment, as is a decision that no discretionary relief would be granted under section 14 of the Constitution. As such, appellate interference with such a decision will generally only be justified where the court has taken into account immaterial factors, failed to take into account material factors, has erred in principle or has come to a conclusion that was not open to it—see, for example, *Aldi Stores Ltd v WSP Group plc* [2007] EWCA Civ 1260; [2008] 1 WLR 748 at para 16.

Whether the Court of Appeal erred in law in concluding that the failure to bring a constitutional claim during the 17-year period from 2003–2020 justifies a decision to strike out the claim on the grounds of delay

34. As both the judge and the Court of Appeal held, the constitutional relief which the appellant seeks could have been sought in 2003. No claim was brought until December 2020, over 17 years later. This is clearly an inordinate delay. The question is whether a cogent explanation has been provided for that delay.

35. As the Court of Appeal stated at para 29:

> "The question of delay is also wrapped up with the question of process choices made by litigants when a breach or an alleged breach of the Constitution occurs. If the appropriate steps are not made to bring their claim for constitutional relief in a timely manner, they must provide cogent reasons for making that process choice."

36. In relation to the delay from 2003 until 2009, when a complaint under the Act was made, the explanation provided by the appellant was that he understood from the Board's decision in *Jaroo v Attorney General of Trinidad and Tobago* [2002] UKPC 5; [2002] 1 AC 871 that a constitutional claim should not be brought if there is an adequate parallel remedy available under the common law or pursuant to statute. He therefore considered that he should wait for an effective parallel remedy to be provided under the Act. That was his choice. It was also an illogical decision. Although the Act had been passed, it had

not been made operative and until that occurred there was no parallel remedy available. It makes no sense to refrain from bringing a constitutional claim because of a parallel remedy in circumstances where no such remedy is available. As the Court of Appeal stated:

> "30. … In 2003, despite the fact that there was the Equal Opportunity Act which provided a method to resolve allegations of discrimination, there was, as counsel for the Appellant accepts, no operational machinery to access those rights. At that point in time, there could have been no effective parallel remedy for the alleged breach of rights under the Constitution by resorting to relief under the Equal Opportunity Act. Therefore [the appellant]'s option, if he wanted to assert those rights, would have been to resort to the constitutional court, if it was a genuine constitutional complaint or by filing an application for leave for judicial review.
>
> 31. Instead, [the appellant] chose to wait for six years to access a parallel remedy, which did not exist at the time when his alleged breach arose."

37. The Court of Appeal were clearly entitled to conclude that this was not a cogent reason for failing to bring a constitutional claim in a timely manner.

38. In relation to the delay from 2009 until 2020 this was time taken up in pursuing a claim under the Act. That may well have been an appropriate course of action to take but the appellant chose to abandon his claim before any determination of it. That was his choice but the inevitable consequence of it was that the bringing of any constitutional claim had been further delayed.

39. The appellant says that he decided to end the proceedings brought under the Act because they had become procedurally impossible and constitutionally compromised. That is said to derive from his contentions that the Tribunal had no legal authority and that the Chair was conflicted because of her past political affiliations.

40. The appellant's contention that the Tribunal had no legal authority, because its members had been appointed by a Judicial and Legal Service Commission (JLSC) which was itself not properly constituted, derives from the Board's decision in *Maharaj v Attorney General of Trinidad and Tobago* [2019] UKPC 6. However, the fact that the JLSC had included members not properly appointed under section 110 of the Constitution was most unlikely to lead to findings that tribunals or judges appointed by it lacked authority because of the provisions of section 36 of the Interpretation Act. This provides

that the validity of any act of a board established under a written law is not affected by "any defect in the appointment or qualifications of a person purporting to be a member".

41. The appellant's explanation for his contention that the Chair of the Tribunal was conflicted because of her past political affiliations does not demonstrate any real risk of an appearance of bias. Even if it did, remedies were available to him within the Tribunal proceedings.

42. As the Court of Appeal held:

> "I have noted his criticisms of the members of the Tribunal but that is the risk every litigant may meet in any adversarial process. Despite the fact that there was no decision on the merits by the Tribunal, there was an opportunity afforded to him for the full ventilation of his claim of victimisation and discrimination before the Equal Opportunity Tribunal."

43. Its conclusion on whether cogent reasons for the delay had been provided was as follows (para 32):

> "We do not think that those reasons provided by [the appellant] are cogent explanations for the delay having regard to the serious nature of this process of availing himself of the remedy of constitutional relief. It does not meet the standard of acting diligently to secure his rights and it does not appear, because of the delay, to be a bona fide resort to his rights under the Constitution."

44. In summary, the Court of Appeal considered that to be brought in a timely manner the constitutional claim should have been commenced in 2003 and that bringing the claim 17 years later involves inordinate delay. The Court of Appeal then addressed whether cogent reasons for that delay had been provided. It considered the reasons put forward by the appellant and concluded that no cogent explanation has been provided.

45. The Court of Appeal directed itself properly in law, addressed the relevant issues and reached a conclusion which was open to it. It did not err in law. No grounds for appellate intervention have been made out.

Other matters

46. Although, as explained above, there was no requirement to establish prejudice, the Court of Appeal found there to be prejudice. They found that a delay of 17 years "certainly prejudices the Respondent, which would have to defend a matter after some 17 years" (at para 19(f)). This was a reasonable inference. The claim relied on a number of allegations relating to what was said at various meetings. It also involved issues on which there were no longer documents available.

47. At the hearing, Mr Masaisai withdrew the allegation of apparent bias made against the judge. He was right so to do. There was no substance to the allegations made, as held by the Court of Appeal. Indeed, there was never any proper basis for making the allegation.

48. He did, however, maintain the submission that there had somehow been a breach of the separation of powers. The complaint made concerned the fact that the judge explained that she was going to notify the State of the proceedings as she considered that she needed the assistance of State counsel, in light of the issues raised. At this stage the respondent had been served with the proceedings but had not filed a defence or attended any hearing. No objection was taken by the appellant to the judge's proposed course of action either before or after it was taken. This was sensible case management by the judge. Moreover, the judge was communicating with the State in its capacity as a party to proceedings. The mere fact that this happened also to be a communication between the judiciary and the executive does not begin to engage issues of separation of powers.

Conclusion

49. For the reasons set out above, the Board would dismiss the appeal.