THE COURT OF APPEAL OF BELIZE AD 2021

CIVIL APPEAL NO 11 OF 2016

**GLEN MYVETT** **APPELLANT**

**v**

**ATTORNEY GENERAL OF BELIZE**
**MINISTER OF NATURAL RESOURCES** **RESPONDENTS**

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BEFORE

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| The Hon Mr. Justice Samuel L. Awich | Justice of Appeal |
| The Hon Mr. Justice Murrio Ducille | Justice of Appeal |
| The Hon Mr. Justice Lennox Campbell (retired) | Justice of Appeal |

M Young SC with A Jenkins for the appellant.
S M Tucker, Assistant Solicitor General, with A Finnegan, Crown Counsel, for the respondents.

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6 March 2019 and 1 June 2021

**AWICH JA**

**[1]** This is the judgment agreed to by the Court. It has been prepared by Awich JA. The appeal is from the court order made on the 24 June 2015, by the learned trial judge Abel J. in the Supreme Court. The court order dismissed an application by Mr. Glen Myvett, the claimant, now the appellant, for constitutional relief on an allegation that: (1) his constitutional fundamental right to equal protection of the law under s.6 (1) of the Constitution of Belize Cap. 4, Laws of Belize, and (2) his constitutional fundamental right to an opportunity to gain (earn) a living by work which he chose and accepted, under s.15

of the Constitution, had been denied by the Ministry of Natural Resources, the defendant, now the respondent, represented by the Attorney General. In the appeal, Mr. Myvett has asked for, several declaratory orders, a reinstatement order, injunction orders, aggravated damages order and an order for costs.

**[2]** The facts are common to both sides. On 28 May 1996, Mr. Myvett was employed in the post of a draughtsman Grade II in the category of, "Open Vote Workers", in the Ministry of Natural Resources. He was posted at Belmopan and transferred to Dangriga at one time, and back to Belmopan.

**[3]** On 18 March 2013, the Chief Executive Officer of the Ministry of Natural Resources wrote to Mr. Myvett inviting him to show cause why a disciplinary action should not be taken against him on an allegation that, he had received $1,355 from one Nigel Leon Martinez "to facilitate the processing", of subdividing a parcel of land.

**[4]** Mr. Myvett requested a hearing. He was charged with the disciplinary offence of misconduct under *Regulation 25 of the Government (Open Vote) Workers Regulations, Statutory Instrument No. 145 of 1992*. At the hearing Mr. Myvett was, by his choice, represented by Mr. Ramon Davis of the public Service Union. Mr. Myvett admitted having received the money from Mr. Martinez, "to facilitate the transaction" or "out of gratitude". On 11 May 2013, the Chief Executive Officer wrote to Mr. Myvett dismissing him from the employment.

**[5]** On 22 November 2013, six months after the dismissal, Mr. Myvett appealed to the Commissioner of Labour under *Regulation 25(3) of the Government (Open Vote) Workers Regulations.* The CEO or any other representative of the Ministry of Natural Resources did not attend the hearing before the Commissioner of Labour. This court was informed by counsel that the reasons for the appeal were that, the decision of the CEO was wrong, and the punishment was excessive. Mr. Myvett asked to be reinstated in his employment. The Commissioner decided that, the CEO had been wrong in dismissing Mr. Myvett, and directed that Mr. Myvett be reinstated in his employment and be paid his salary to date. The Commissioner then wrote to the CEO demanding that, the decision of the Commissioner be carried out without delay.

**[6]** Subsequently, on 19 August 2014, Mr. Myvett reported to the Ministry of Natural Resources office for work. He was not allowed to resume work. On the same day the CEO wrote to Mr. Myvett informing him that, the Department would take the matter to court for a decision.

**[7]** On 12 November 2014, Mr. Myvett filed his application for constitutional relief under *R56.7 (1) (b) of the Supreme Court (Civil Procedure) Rules, 2005.* The application - claim was registered No.650 of 2014. Then on 12 January 2015, the Attorney General, acting for the Ministry of Natural Resources, filed a fixed date claim No.12 of 2015, "stating a case" to the Supreme Court to answer. In his judgment on 24 June 2015, the learned judge Abel J. sitting in the Supreme Court, made the court orders dismissing the application for constitutional relief of Mr. Myvett and refused all other relief. The orders

he made are now appealed. The judge also held that, the claim by the Attorney General was misconceived. There has been no appeal against that decision.

**[8]** In detail, the orders appealed from by Mr. Myvett are the following:

"ORDER

Wednesday, the 24th day of June, 2015

BEFORE THE HONOURABLE JUSTICE COURTENAY ABEL

UPON THIS MATTER COMING ON FOR TRIAL on the 22nd day of January, 2015

UPON HEARING Mrs. Andrea McSweaney-Mckoy, Counsel for the Claimant/Defendant, and Mr. Nigel Hawke, Deputy Solicitor General, and Ms. Agassi Finnegan for the Defendant/Claimant the Attorney General of Belize and Minister of Natural Resources

IT IS HEREBY ORDERED AND DECLEARED THAT:

1. The application is dismissed for a Declaration that Mr. Myvett's rights under section 6(1) of the Belize Constitution have been contravened by the Defendants.
2. The application is dismissed for a Declaration that Mr. Myvett's rights under section 15 (1) of the Belize Constitution have been contravened by the Defendants.
3. An order is refused directing the Defendant to reinstate Mr. Myvett to his duties at the Ministry of Natural Resources, and to pay salaries withheld since May, 2013.

4. An order is refused for an injunction restraining the Defendant, and their servants or agents from any further contravention of Mr. Myvett's constitutional rights.
5. The application by Mr. Myvett is dismissed for Damages and Aggravated Damages.
6. No Order as to costs.

Dated the 19 day of February, 2016.

BY ORDER

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REGISTRAR"

**[9]** The grounds of the appeal challenging the above court orders are the following:

"NOTICE OF APPEAL

TAKE NOTICE that the above-named Appellant being dissatisfied with the parts of the decision more particularly stated in paragraph 2 hereof of the Supreme Court of Belize contained in the Judgment of the Honurable Justice Abel pronounced on the 24th day of June, 2015 and drawn up in the Order dated the 19th day of February, 2016 DOTH HEREBY appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

1. …
2. ...

3. **Grounds of Appeal**

(1) The Learned Trial Judge erred in fact and in law in dismissing the Appellant's claim for a Declaration that the Appellant's right to work under section 15 (1) of the Belize Constitution had been contravened by the Respondent.

(2) The Learned Trial Judge erred in law in finding and holding that the Labour Commissioner made an error of law in finding that the Chief Executive Officer is not the proper person to have dismissed the Appellant.

(3) The Learned Trial Judge erred in law and in fact in refusing the Appellant's claim for reinstatement to his employment in the Ministry of Natural resources.

(4) The Learned Trial Judge erred in law and in fact in finding and holding that the Appellant was not entitled to payment of salaries withheld since May, 2013, having already found that the decision of the Labour Commissioner was valid and subsisting.

4. The Appellant will seek to have those parts of the decision aforementioned set aside.

5. …

DATED the 10th day of March, 2016.

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Andrea McSweaney-McKoy
Andrea McSweaney-McKoy & Co.
Attorney-at-Law for the Appellant"

**Submissions**

(1) Submissions for the appellant.

**[10]** The appellant changed attorneys. Learned attorney Ms. A. Mckoy who represented Mr. Myvett in the Supreme Court, the trial court, and who filed the notice of appeal and the first written submissions was replaced by learned attorney Mrs. M. Marin Young SC, who prepared the reply submissions. She was the counsel who presented the appeal at the hearing in this Court.

**[11]** Mrs. Marin-Young abandoned the ground of the appeal that, the trial judge erred in holding that, the appellant was denied the constitutional fundamental "right to work", that is , "the right to an opportunity to gain his living by work which he freely chooses and accepts…". The abandonment saved time. There was simply no plausible basis in law for faulting the decision of the learned trial judge that, Mr. Myvett had no constitutional right to work in the Ministry of Natural Resources, and that, his dismissal (we might add, rightly or wrongly) did not deny him an opportunity to practice his trade as a draughtsman.

**[12]** The right to equality before the law, that is, to equal protection of the law, was not expressly stated as a ground of appeal. Counsel for the appellant submitted on it as part

of ground of appeal No. 4 that, the trial judge, “erred in law and fact”, when he decided that, the decision of the Commissioner of Labour was valid, and despite that decision, held that Mr. Myvett was not entitled to reinstatement to his employment and to his back payment of salary since the date of his dismissal. This offshoot ground became the major point in the submissions by counsel.

**[13]** Mrs. Marin submitted that, the decision of the Commissioner of Labour was, according to the Government (Open Vote) Workers Regulations, final, the CEO of the Ministry of Natural Resources was obliged to comply with it; and when the CEO refused to reinstate the appellant to his employment, the appellant was denied the right to the protection of the law. Counsel submitted further that, since the appellant could not enforce the decision of the Commissioner of Labour by proceedings under the Crown Proceedings Act, it was proper for him to go to the court by an application for constitutional relief. Counsel cited in support, *Gairy and Another v Attorney General of Grenada [2001] 1 AC 167 or [2001] UK PC 30.*

**[14]** The court asked Mrs. Marin Young to make a submission as to whether the trial judge erred in deciding that, it was an abuse of process for Mr. Myvett to bring an application for constitutional relief instead of an application for judicial review, or a private law claim. Counsel’s answers were these. 1. The decision of the Commissioner of Labour that the appellant be reinstated in his employment and be paid salary arrears was final; refusal by the CEO to comply with it was a breach of the right of the appellant to equal protection of the law. 2. The CEO deliberately decided not to seek judicial review of the decision of the Commissioner of Labour and simply acted arbitrarily in refusing to implement the decision of the Commissioner; that was a denial of the constitutional

fundamental right to the protection of the law. 3. Where there are special circumstances, such as in this case, a constitutional claim was appropriate even where there are alternative claims or remedy. Counsel cited in support of the submission, *Lucas and Another v Chief Education Officer and Others [2015] CCJ 6 (AJ)*. 4. The trial judge was authorised by *R56 of the Supreme Court (Civil Procedures) Rules, 2005*, to convert the application for constitutional relief to judicial review proceedings or an ordinary claim, the judge erred in dismissing the constitutional proceedings altogether. Counsel cited *Karen Thames v National Irrigation Commissions Ltd [2015] JMCA Civ 43,* in support of the submission.

(2) Submissions for the respondents.

**[15]** Learned counsel, Mrs. Samantha Matute-Tucker, Assistant Solicitor General, welcomed the abandonment of the ground of appeal that, the constitutional fundamental right to work of the appellant had been denied. She did not ask for anything further regarding that ground.

**[16]** Counsel proceeded to submit that, the Commissioner of Labour was wrong in law on three points. First the appeal of Mr. Myvett was on a limited point; the Commissioner went outside the appeal. Counsel stated that, the appeal was limited to the complaint that the punishment of dismissal was excessive, and Mr. Myvett asked for reinstatement; he had admitted that he had received money from Mr. Martinez as a bribe. Secondly, the Commissioner was wrong in deciding that the CEO of the Ministry of Natural Resources was not an officer authorized to dismiss an open vote worker like Mr. Myvett.

**[17]** The third submission was extensive. Ms. Matute-Tucker submitted that, the fact that the CEO acting by the Attorney General, did not challenge the decision of the Commissioner of Labour was not, "an abuse of process", and was not a denial of the constitutional fundamental right of the protection of the law, it was open to Mr. Myvett to make a claim in court, and he did make a claim in court. Counsel proceeded to contend that, the claim was however, an abuse of process because it was made by an application for constitutional relief when there was alternative remedy. Counsel cited two cases in support namely: (1) *Kemrajh Harrikisson v Attorney General of Trinidad and Tobago (1979) 31 WIR 349*, and *Thakur Persad Jaroo v Attorney General of Trinidad and Tobago (2002) 59 WIR 519*.

**[18]** Regarding reinstatement of the appellant in his employment, Mrs. Matute-Tucker submitted that, the case was not one in which the judge could order reinstatement; the order would require supervision of the conflict, which courts should avoid. Counsel cited in support, *Chief Constable of North Wales Police v Evans [1982] 3 All ER 141.*

**Determination**

**[19]** This Court concluded that, the appeal of Mr. Myvett be dismissed, and that, he should pay the costs of the appeal to the respondent because his application for constitutional relief, that is, his claim under the Constitution is an abuse of the process of court. The idea that some interpretation of the Constitution will be found that will absolve a person employed in the public service of responsibility for a corrupt act that has been proved, so that **a court of justice** may reinstate him in his employment, was an unacceptable idea of law and justice to us. Without going into Jurisprudence, the principal

meaning of justice is fairness, moral rightness. Usually it entails balancing the right of an individual against the right (interest) of the public. In this case, the right of Mr. Myvett the appellant would come from his contract of employment with the Government. On the other hand, the right (interest) of the public is not to have a corrupt official in a public office.

**[20]** This was a case, if it had merit, of wrongful dismissal. The cause of action was in contact; the terms of the contract included the Government (Open Vote) Workers Regulations. No constitutional fundamental right could be invoked in the case. The Attorney General's case was practically that, the Ministry of Natural Resources (the Government) had the right and authority to dismiss its employee as a matter of disciplinary measure, and that if the appellant wished to challenge the disciplinary action taken, beyond the appeal to the Commissioner of Labour, the appellant could bring a case of wrongful dismissal to the court by judicial review application or by private law claim in contract.

**[21]** The practical case of the appellant was that, the Ministry of Natural Resources, by its CEO, acted arbitrarily; it refused to comply with the decision of the Commissioner of Labour when the CEO refused to reinstate the appellant in his employment and pay him arrears salary, thereby the CEO denied the appellant the constitutional fundamental right of the protection of the law. Counsel for the appellant argued that, on those facts, the appellant was entitled to bring proceedings for constitutional relief; it was, a proper claim for constitutional redress for breach of his right to equal protection of the law, counsel submitted.

**[22]** The provisions of the Constitution in point are ***ss.3, 6 (7), 6 (8), 6(9)***, and **20**. The sections are the following:

PART II

*Protection of Fundamental Rights and Freedoms*

3. Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

(a) life, liberty, security of the person, and the protection of the law;

(b) freedom of conscience, of expression and of assembly and association;

(c) protection for his family life, his personal privacy, the privacy of his home and other property and recognition of his human dignity; and

(d) protection from arbitrary deprivation of property;

the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said

rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

…

6(1) **All persons are equal before the law** and are entitled without any discrimination **to the equal protection of the law**.

…

(7) **Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial**; **and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.**

(8) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(9) Nothing in subsection (8) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties

thereto and the legal practitioners representing them to such extent as the court or other authority-

(a) may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or …

…

20(1) If any person alleges that any of the provisions of section 3 to 19 inclusive, of the Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), **then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress**.

(2) The Supreme Court shall have original jurisdiction-

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section, and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of section 3 to 19 inclusive, of this Constitution:

**Provided that the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.**

(3) If in any proceedings in any court (other than the Court of Appeal or the Supreme Court or a court-martial) any question arises as to the contravention of any of the provisions of section 3 to 19 inclusive of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the Supreme Court **unless, in his opinion, the raising of this question is merely frivolous or vexatious**.

(4) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal:

Provided that no appeal shall lie from a determination of the Supreme Court under this section dismissing an application **on the ground that it is frivolous or vexatious**.

**[23]** The principle of law regarding the application of identical provisions in the Constitution of Trinidad and Tobago and in the Constitutions of most Commonwealth Caribbean countries has been established by the Privy Council in 1979 in the *Kemrajh Harrikissoon* case and explained in the *Persad Jaroo* case and several others. The relevant provisions in the Constitutions of most Commonwealth Caribbean countries are identical to the provisions in the Constitution of Trinidad and Tobago and in the Constitution of Belize, so the two judgments of the Privy Council apply to relevant cases in Belize and most Caribbean Commonwealth countries.

**[24]** The facts and the principle of law in the *Kemrajh Harrikissoon* case are the following. The Teaching Service Commission of Trinidad and Tobago, acting under the public Service regulations 1966, transferred the appellant from one school to another without giving him the required three months notice, unless the exigencies required. The appellant believed that the transfer was intended as punishment for an allegation of impropriety he had made, and that, there were no exigencies for which the three months notice could be dispensed with. Instead of pursuing the review procedure provided for under the Regulations, the appellant applied for constitutional relief, claiming among others, a declaration that, his human right and fundamental freedom of equality before the law and the protection of the law had been violated.

**[25]** In the High Court of Trinidad and Tobago, the constitutional claim was rejected. On appeal, the Court of Appeal of Trinidad and Tobago held (erroneously) that, it had no jurisdiction under a provision of the Constitution, and dismissed the appeal.

**[26]** On further appeal to the Privy Council, their Lordships dismissed the appeal. They held that: (1) although the right to apply to the High Court under the Constitution for redress when a human right or fundamental freedom had been or was likely to be contravened was an important safeguard of those rights and freedoms, **it was an abuse of the process of the court to make such an application as a means of avoiding the necessity of applying for the appropriate judicial remedy for an unlawful administrative action which involved no contravention of a human right or fundamental freedom**; (2) since the appellant deliberately chose not to apply for the appropriate judicial remedy which the law gave him, the proceedings brought by the appellant and his claim that he had been deprived of the human rights and fundamental freedoms guaranteed by the Constitution were totally misconceived; and (3) the appellant's remedy against the order transferring him to another school was to apply under the Regulations for a review of the order transferring him.

**[27]** In their judgment delivered by Lord Diplock, their Lordships made the all important statement of the law which will for the foreseeable future be ever cited. At page 350, their Lordships stated this:

> "*The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to*

*individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under section 6 (1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection* ***if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action*** *which involves no contravention of any human right or fundamental freedom.*"

**[28]** In the *Persad Jaroo* case, two new points to be noted emerged. The points provided useful explanation to the law stated in *Kemrajh Harrikissoon*. The first point was that, there were no administrative Regulations providing for how disputes such as that at issue in the *Persad Jaroo* case would be resolved. The second point was, counsel for the appellant made a submission that, s.20 (1) of the Constitution provided that, constitutional application may be made **without prejudice to any other action with respect to the same matter**, therefore the appellant was entitled to make the application for constitutional relief, even if he had other (non-constitutional) remedy available.

**[29]** Before we consider the two points that emerged, it is convenient to set out the facts and decision in the case, the *Persad Jaroo* case. They are the following. In August 1987, the appellant purchased a motor vehicle which had been licensed for hire. He took it to be licensed for private use. He was informed that, the chassis number and the engine number had been tampered with. He was advised to take the vehicle to the Police to confirm the ownership. In October 1987, he took the vehicle to the Police and left it in their custody for them to confirm the ownership. He did not hear from the Police for an extended period. He made request several times for the return of the vehicle. His requests were unanswered. In May 1988, about 6 months after, the appellant applied for constitutional redress, claiming that, he had been deprived of the constitutional fundamental right to the enjoyment of his property without due process of the law, he asked for an order for the return of the vehicle and damages.

**[30]** The Attorney General, acting on behalf of the Police, opposed the claim. He filed an affidavit of a police officer stating that, the chassis number and the engine number of the vehicle had been tampered with, and the vehicle had been repainted; the Police believed that it had been stolen, and wanted to conduct further investigation which they believed would lead to arrest and charging of those concerned. The appellant did not answer the contents of the affidavit.

**[31]** The trial judge in the High Court of Trinidad and Tobago dismissed the claim for constitutional relief for the reason that, the Police had reasonable ground for believing that the vehicle had been stolen, and that, the Police acted reasonably in retaining the vehicle in order to preserve evidence and exhibit. Further, the judge held that, given the discovery of tampering with the chassis number and engine number, the claimant-

appellant failed to prove that he owned the vehicle and therefore he was entitled to the constitutional right to enjoy it.

**[32]** On appeal, the Court of Appeal of Trinidad and Tobago dismissed the appeal. The Court held that, on the evidence, the police had reasonable ground for retaining the vehicle, the appellant was not denied the fundamental right to enjoy property. Of significance, the Court of Appeal raised the question whether a constitutional motion was the appropriate means for the appellant to pursue his grievance. The Court answered that, resort by the appellant to proceedings under the Constitution when there was an obvious available recourse under the common law, lacked **bona fide** and was inappropriate and constituted an abuse of process.

**[33]** On further appeal to the Privy Council, their Lordships dismissed the appeal. They held that: (1) where a parallel remedy existed, the right to apply for redress under the Constitution was to be exercised only in exceptional circumstances; (2) before issuing a constitutional originating summons for a claim founded on a constitutional fundamental right and freedom, one must consider the true nature of the right allegedly contravened, and whether some other common law (or statutory) procedure might not more conveniently be used, and where such other procedure was available resort to constitutional originating motion would be inappropriate and an abuse of process; (3) where in the proceedings by a constitutional originating motion it become clear that continuing with the constitutional proceedings was inappropriate, one should apply for amendment in order to pursue the appropriate common law (or statutory) remedy; (4) the applicant could not be criticized initially for considering that constitutional proceedings were appropriate when his inquiries were not answered, because the guarantee of the

right to due process included a right to protection against abuse of power and a requirement that the State exercise power against an individual lawfully and not arbitrarily, which meant that the police were required to give reasonable grounds for detaining and retaining the vehicle; (5) however, when the affidavit by the police officer was served on the appellant, the content rendered the constitutional proceedings inappropriate, and the appellant should have applied to have his pleadings amended to pursue the common law remedy in detinue which was available to him; it was an abuse of process for the appellant to continue by way of constitutional motion, he was therefore not entitled to a declaration that his constitutional rights had been infringed; (6) the trial judge erred partially in holding that, to claim constitutional right to enjoyment of property, the appellant had to prove ownership of property; the law was that, the right to enjoyment of property may be claimed based on ownership or possessory title.

**[34]** About the two new points to be noted, we have the following to say. First, the decision in the *Persad Jaroo* case is a confirmation that, the principle in the *Kemrajh Harrikissoon* case that, it is an abuse to bring proceedings by an application for constitutional relief when there is an alternative procedure for other remedy, applies whether the alternative procedure and remedy is given in a statute or administrative regulations as in the *Kemrajh Harrikissoon* case, or is available in private law, that is, in the common law, as in the *Persad Jaroo* case.

**[35]** Secondly, the decision in *Persad Jaroo* clarified that, the provision in the Constitution of Trinidad and Tobago that, the constitutional application proceedings for the protection of constitutional fundamental rights and freedoms may be made, "without prejudice to any other action with respect to the same matter", did not bar the trial court

from inquiring whether an appropriate alternative procedure existed for obtaining a statutory remedy or private law remedy, and the constitutional application was an abuse of process. As far as Belize is concerned, this power of the court is, in fact, stated in the **proviso in s.20 of the Constitution** as follows:

> Provided that the Supreme Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

**[36]** On the evidence, and applying the law in *Kemrajh Harrikissoon*, and *Persad Jaroo*, we decided that, an appropriate alternative procedure for the appellant to make an appropriate claim for wrongful dismissal was available to the appellant in private law, and that his constitutional application under *R56 of the Supreme Court (Civil Procedure) Rules, 2005,* was an abuse of process. We noted that, the appeal to the Commissioner of Labour was stated in the Regulations to be final. We interpreted that to mean, final as far as resolving the disciplinary decision administratively was concerned. The provision in the Government (Open Vote) Workers Regulations did not oust the jurisdiction of the court of law in any claim that the appellant would have wished to pursue in court. Indeed, he proved that the court had jurisdiction by filing his constitutional claim which we have decided was an abuse of process. We uphold the decision of Abel J. striking out the claimant-appellant's constitutional application and dismissing all the requests in the application.

**[37]** It was not necessary; however, we have considered whether, had we not upheld the decision of Abel J. striking out the constitutional application, we would have found in the evidence that the CEO acted arbitrary in dismissing the appellant, and in not complying with the decision of the Commissioner of Labour, and therefore denied to the appellant the constitutional fundamental right of the protection of the law. We concluded that denial of the fundamental right would not have arisen. The appellant had access to the court- see *Attorney General v McLeod (1984) 32 WIR 450: [1984] 1 All ER 694.*

**[38]** We make the following orders: (1) the appeal is dismissed; (2) the orders made by Abel J. in the Supreme Court on 24 June 2015, are confirmed; (3) the respondent is to pay the costs of the appeal, to be taxed if not agreed, because his constitutional application was an abuse of process; the order for costs is provisional, and shall become absolute in 14 days, unless either party makes an application within the 14 days for a different order.

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AWICH JA

I concur in the judgment and order prepared by Awich JA.

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DUCILLE JA