**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**COMMON LAW SIDE**

**2019/PUB/con/00016**

**IN THE MATTER** OF THE EXTRADITION ACT CHAPTER 96 STAUTE LAWS OF THE BAHAMAS

**AND IN THE MATTER** OF ARTICLE 28 OF THE CONSTITUTION OF THE BAHAMAS 1973

**AND IN THE MATTER** OF THE SUPREME COURT ACT CHAPTER 53 STATUTE LAWS OF THE BAHAMAS

**AND IN THE MATTER** OF THE HABEUS CORPUS ACT CHAPTER 63 STATUTE LAWS OF THE BAHAMAS

**BETWEEEN**

**SEAN BRUEY A.K.A SHAWN SAUNDERS**
**AND**
**THE ATTORNEY GENERAL**
**1ST RESPONDENT**

**AND**
**THE UNITED STATES OF AMERICA**
**2ND RESPONDENT**

**AND**
**THE MINISTRY OF FOREIGN AFFAIRS**
**3RD RESPONDENT**

**AND**
**CHARLES MURPHY**
**(COMMISSIONER OF CORRECTIONS)**
**4TH RESPONDENT**

**AND**
**JUSTICE CAROLITA BETHEL**
**(FORMERLY STIPENDIARY AND CIRCUIT MAGISTRATE)**
**5TH RESPONDENT**

**Before:** The Hon. Mr. Justice Keith Thompson

**Appearance:** Osman R.C. Johnson of Counsel for the Applicant

**Hearing Date**: 9th July 2019

**DECISION**

**THOMPSON, J.**

[1] This is an application for an Order granting leave to the Applicant to enter a Writ of Habeus Corpus Ad Subjiciendum in complaint number 188/03/2003 between Sean Bruey and the Commissioner of Police by Ex Parte Summons filed June 12th 2019. The Application and the Affidavit in Support were both filed May 13th 2019.

The Application is made pursuant to:

1. **The Habeus Corpus Act, Chapter 63,**
2. **The Extradition Act Chapter 96, Sections 11 (1), 13 (1) and (2)**
3. **In the alternative, Article 28 of the Constitution of the Commonwealth of The Bahamas**

[2] It seeks the following orders:

1. **An Order of Certeriori quashing the said Ruling and Order of the learned Stipendiary and Circuit Magistrate Carolita Bethell dated the 13th day of November A.D. 2003 and the Order for Extradition of the Honorable Minister of Foreign Affairs, dated March 5th 2019.**

2. **An Order granting the Applicant a Writ of Habeus Corpus Ad Subjiciendum and directing the Respondents to show cause why the Applicant and each of them should not be released immediately in complaint number #188/03/2003 between Shawn Bruey and Commissioner of Police.**

3. **A Declaration that the Applicant's fundamental rights to liberty and the protection of the law as enshrined in Article 15 (1) of the Constitution of the Commonwealth of the Bahamas has been and is threatened by the commencement of criminal proceedings entailed in complaint number #188/03/2003 between Shawn Bruey and Commissioner of Police, and the subsequent acts and/or omissions of the Respondents, their servants, agents and/or representatives.**

4. **A Declaration that the Applicant's fundamental rights against inhumane and degrading treatment and punishment as enshrined in Article 17 (1) of the Constitution of the Commonwealth of the Bahamas has been and is threatened by the commencement of criminal proceedings entitled in complaint number #188/03/2003 between Shawn Bruey and Commissioner of Police, and the subsequent acts and/or omissions of the Respondents, their servants, agents and/or representatives.**

5. **A Declaration that the Applicant's right to a fair trial within a reasonable time as enshrined in Article 20 (1) of the Commonwealth of the Bahamas has been and is threatened by the commencement of criminal proceedings entailed in complaint number #188/03/2003 between Shawn Bruey and commissioner of Police, and the subsequent acts and/or omissions of the Respondents, their servants, agents and/or representatives.**

6. **Such further and other relief as the Honorable Supreme Court deems just.**

7. **Costs.**

[3] The grounds for the application are:

1. **The Applicant submitted an application for leave to appeal to the Judicial Committee of the Privy Council from the decision of the Court of Appeal under action number 2016 SC/CivApp/No.119, on December 12th 2017.**

2. **The Applicant by way of letter dated December 18th 2018 and addressed to the Registrar of the Judicial Committee of the Privy Council and copied to the Privy Council Agents of the Respondents duly withdrew his application for leave to appeal to the Judicial Committee of the Pricy Council which was filed on December 12th 2017 in action number JCPC 207/0095.**

3. **With reference to Sections 11 (2)(a) and 13 (1) (a) of the Extradition Act Chapter 96, the respondents, after receiving written notice on December 18th 2018 of the Applicant's withdrawal of application for leave to appeal to the Judicial Committee of the Privy Council, were under separate statutory duties, firstly to not extradite the Applicant before the expiry of fifteen (15) days following his withdrawal and thereafter to see his extradition within no later than two (2) months subsequent to the expiry of the aforementioned fifteen (15) day period.**

4. **Under Section 11 (2) of the aforesaid Extradition Act Chapter 96, The Applicant was entitled to be protected from extradition for at least fifteen (15) days following the withdrawal of his application for leave to appeal to the Judicial Committee of the Privy Council on December 18th 2018.**

5. **After the expiry of this period, the Respondents were under a strict statutory obligation by way of Section 13 (1) (a) to extradite the Applicant within two (2) months or by no later than March 2nd 2019, failing which the Applicant is entitled to apply to the Supreme Court**

**for a discharge from custody and with reliance on Section 13 (1) and (2) of the Extradition Act, Chapter 96.**

6. **The 2nd respondent on February 6th and 7th 2019, effected delivery of communications addressed to the Applicant from the Honorable Darren Heinfield, Minister of Foreign Affairs, acting on behalf of the 2nd Respondent and dated January 23rd 2019 and February 4th 2019 respectively.**

7. **The Applicant as of the date of the filing of the present application remains in custody at the Bahamas Department of Corrections and the Respondents have therefore failed and/or refused to comply with their statutory duties under Section 13 (1)(a) to extradite the Applicant with the specified time limit.**

8. **The Respondent has been in persistent breach of the provisions of Section 13 (1) (a) the Extradition Act, Chapter 96 and as it regards the delay to the Applicant's extradition in excess of two (2) months, with the effect being that the Applicant's fundamental rights to liberty and the protection of the law as enshrined in Article 15 (1) of the Constitution of the Commonwealth of the Bahamas have been breached and continue to be breached.**

9. **The Applicant has been held in custody at the Bahamas Department of Corrections (formerly known as HMP Fox Hill) for a total period in excess of Forty Four (44) months and in conditions which are not fit for human habitation and which pose a direct risk to his health and general well-being, with the effect being that the Applicant's fundamental rights against inhumane or degrading treatment of punishment as enshrined in Article 17 (1) of the Constitution have been breached and continue to be breached.**

10. **The Respondents followed the above cited violation of the Applicant's Article 15 and 17 Constitutional rights by an illegal attempt to remove him from the jurisdiction on March 8th 2019, and despite having received due Notice pf the Applicant's Constitutional Motion and Summons pursuant to Section 13 of the Extradition Act by way of physical service on March 7th 2019. There is an Affidavit of Service filed March 13th 2019.**

11. **The Applicant refers this Honorable Court to his Affidavit in support of a separate Constitution Motion under Action number 00038 of 2019 and a letter dated March 8th 2019 from the Bahamas Department of Correctional Services exhibited to these Affidavits, and confirming that the Applicant was turned over to the Royal Bahamas Police Force for the purpose of extradition.**

12. **The Respondents' attempt to illegally remove the Applicant from the jurisdiction prior to the hearing of his Constitutional Motion and**

**Summons for discharge was done to deny the Applicant his right to be heard before the Supreme Court, to further deny the Applicant his right to the protection of the law under Section 13 (2) of the Extradition Act, and this act, in and of itself, continues a further and highly egregious violation of this Applicant's Constitutional rights to the protection of the afore-cited law under Article 15 (1) (a).**

13. **Then Respondents' attempted illegal removal of the Applicant from the jurisdiction and despite having due Notice of his Constitutional challenge was designed precisely to deny the Applicant an opportunity of being heard and of making representations on his own behalf.**

14. **It is an example of the most serious violation of the Applicant's Constitutional rights to the protection of the law under Article 15 on the part of the Respondents, and represents misconduct that is directly contrary to the standard established under the aforesaid Constitution.**

15. **The Applicant submits that the Honorable Minister of Foreign Affairs' issuance of an Order to extradite the Applicant on March 5th 2019, which Order was issued outside of the legal time limit within which the Applicant could have been extradited lawfully, is a nullity and cannot now be exercised upon.**

16. **The Applicant submits that the Respondents' acts and/or omissions by virtue of the unlawful delay in extradition on the part of the Respondents', has not engaged his Constitutional rights under Article 15 91) (a) but by virtue of the said breach, the Applicant contends that he is entitled to the protection of the law in the form of the relief provided under Section 13 (2) of the Extradition Act and that consequently, the respondents have negated their right to legally extradite him from the jurisdiction and he must therefore be discharged.**

17. **The Applicant accordingly prays for an Order pursuant to Section 13 (1) and (2) of the extradition Act, Chapter 96 and/or the inherent relief available to him under the Constitution and granting him a discharge from custody and on the grounds set out herein.**

[4] The Ex Parte Summons like the application is pursuant to:

1. **The Habeus Corpus Act Chapter 63**
2. **Sections 11 (1 ) and 13 (1) and (2) of the Extradition Act Chapter 96**
3. **In the alternative pursuant to Article 28 of the Constitution of The Bahamas**

[5] It seeks the following relief:

- **An Order granting leave to the Applicant to enter a Writ of Habeus Corpus Ad Subjiciendum in complaint number 188/03/2003 between Sean Bruey and the Commissioner of Police.**

[6] The grounds set out in the Ex Parte Summons are as follows:

1. **The Applicant submitted an application for leave to appeal to the Judicial Committee of the Privy Council from the decision of the Court of Appeal under action number 2016/SC/CivApp/No.119, on December 12th 2017.**

2. **The Applicant by way of letter dated December 18th 2018 and addresses to the Registrar of the Judicial committee of the Privy Council and copied to the Privy Council Agents of the Respondents duly withdrew his application for leave to appeal to the Judicial Committee of the Privy Council which was filed on December 12th 2017 in action JCPC 2017/0095.**

3. **With reference to Sections 11 (2) (a) and 13 (1) (a) of the Extradition Act Chapter 96, the Respondents, after receiving written notice on December 18th 2018 of the Applicant's withdrawal of application for leave to appeal to the Judicial Committee of the Privy council, were under separate statutory duties, firstly to not extradite the Applicant before the expiry of fifteen (15) days following his withdrawal and thereafter to see to his extradition within no later than (2) months subsequent to the expiry of the aforementioned fifteen (15) day period.**

4. **Under 11 (2) (a) of the aforesaid Extradition Act Chapter 96, the Applicant was entitled to be protected from extradition for at least fifteen (15) days following the withdrawal of his application for leave to appeal to the Judicial committee of the Privy Council on December 18th 2018.**

5. **After the expiry of this period, the respondents were under a strict statutory obligation by way of Section 13 (1) (a) to extradite the Applicant within two (2) months or by no later than March 2nd 2109, failing which the Applicant is entitled to apply to the Supreme Court for a discharge from custody and with reliance on Section 13 (1) and (2) of the Extradition Act, Chapter 96.**

6. **The 2nd respondent on February 6th and 7th 2019, effected delivery of communications addressed to the Applicant from the Honorable Darren Heinfield, Minister of Foreign Affairs, acting on behalf of the 2nd respondent and dated January 23rd 2019 and February 4th 2019 respectively.**

**7.** **The Applicants of date of the filing of the present application remains in custody of the Bahamas Department of corrections and the Respondents have therefore failed and/or refused to comply with their statutory duties under Section 13 (1) (a) to extradite the Applicant with the specified time limit.**

**8.** **The Respondent has been in persistent breach of the provisions of Section 13 (1) (a) the Extradition Act, Chapter 96 an as it regards to the delay to the Applicant's extradition in excess of two (2) months, with the effect being that the Applicant's fundamental rights to liberty and the protection of the law as enshrined in Article 15 (1) of the Constitution of the Commonwealth of the Bahamas have been breached and continue to be breached.**

**9.** **The Applicant has been held in custody at the Bahamas Department of corrections (formerly known as HMP Fox Hill) for a total period in excess of Forty Four (44) months and in conditions which are nor fit for human habitation an d which pose a direct risk to his health and general well-being, with the effect being that the Applicant's fundamental rights against inhumane or degrading treatment of punishment as enshrined in Article 17 (1) of the Constitution have been breached and continue to be breached.**

**10.** **The Respondents followed the above cited violation of the Applicant's Article 15 and 17Constitutional rights by an illegal attempt to remove him from the jurisdiction on March 8th 2019, and despite having received due Notice of the Applicant's Constitutional Motion and Summons pursuant to Section 13 of the extradition Act by way of physical service on March 7th 2019. There is an Affidavit of Service filed March 13th 2019.**

**11.** **The Applicant refers this Honorable Court to his Affidavit in support filed herein on May 13th 2019 and a separate Affidavit filed herein on March 26th 2019 and in support of a separate Constitution Motion under action number 00038 of 2019 and a letter dated March 8th 2019 from the Bahamas Department of Correctional Services exhibited to these Affidavits, and confirming that the applicant was turned over to the Royal Bahamas Police Force for the purpose of extradition.**

**12.** **The Respondents' attempt to illegally remove the Applicant from the jurisdiction prior to the hearing of his Constitutional Motion and Summons for discharge was done to deny the Applicant his right to be heard before the Supreme Court, to further deny the Applicant his right to the protection of the law under Section 13 (2) of the Extradition Act, and this act, in and of itself, constitutes a further and highly egregious violation of this Applicant's Constitutional rights to the protection of the afore-cited law under Article 15 (1) (a).**

**13. The Respondents' attempted illegal removal of the Applicant from the jurisdiction and despite having due Notice of his Constitutional challenge was designed precisely to deny the Applicant an opportunity of being heard and of making representations on his own behalf.**

**14. It is an example of the most serious violation of the Applicant's Constitutional rights to the protection of the law under Article 15 on the part of the Respondents, and represents misconduct that is directly contrary to the standard established under the aforesaid Constitution.**

**15. The Applicant submits that the Honorable Minister if Foreign Affairs' issuance of an Order to extradite the Applicant on March 5th 2019, which Order was issued outside of the legal time limit within which the Applicant could have been extradited lawfully, is a nullity and cannot now be exercised upon.**

**16. The Applicant submits that the respondents' acts and/or omissions by virtue of the unlawful delay in extradition on the part of the Respondents', has not only engaged his Constitutional rights under Article 15 (1) (a), but by virtue of the said breach, the Applicant contends that he is entitled to the protection of the law in the form of the relief provided under Section 13 (2) of the Extradition Act and that consequently, the Respondents have negated their right to legally extradite him from the jurisdiction and he must therefore be discharged.**

**17. On March 28th 2019, the Applicant received a document which purported to be an Order from the Privy Council officially withdrawing his application for special leave and therefore concluding the previous Habeus corpus process. The said document is exhibited to the Applicant's Affidavit in support and marked "S.S.7".**

**18. If the Honorable Supreme Court accepts this document as being valid and the Applicant's prior Habeus corpus process as having only concluded on the 28th of March 2019, then the Honorable Minister of Foreign Affairs acting on behalf of the 3rd Respondent and the Respondents generally had no lawful authority to execute a Warrant of Surrender and/or Order for Extradition with respect to the Applicant and his act in doing this therefore illegal and contrary to the Applicant's rights under the law he must accordingly be discharged.**

**19. The Applicant further submits that if the Honorable Supreme Court accepts this document as being valid and the Applicant's Habeus corpus process as having only concluded on the 28th of March 2019, then the Respondents had no lawful right or authority to physically**

**remove the Applicant from his cell and transport him to the airport for the purposes of extradition and their acts and/or omissions are therefore illegal and contrary to his rights under the law and he must accordingly be discharged.**

**20. The Applicant accordingly prays for an Order granting him leave to enter a Writ of Habeum Corpus Ad Subjiciendum and pursuant to the Habeus corpus Act, Chapter 63 and Sections 11 (1) and Section 13 (1) and (2) of the Extradition Act, Chapter 96 Statute Laws of the Bahamas and alternatively Article 28 of the Constitution of the Bahamas and/or the inherent relief available to him under the Constitution and on the grounds set out herein.**

[7] I pause here to note that the Application seeks seven (7) orders as relief, however, the Ex Parte Summons seeks just one (1) order, that order being,

> **"An Order granting leave to the Applicant to enter a writ of Habeus Corpus Ad Subjiciendum."**

[8] The grounds in the Application and the summons are identical. The genesis of the application as I see it is for leave to enter a Writ of Habeus Corpus Ad Subjiciendum in complaint No 188/03/2003. I note that the Applicant has not provided any background as to the above mentioned complaint and I now do so.

[9] On 12 December 2002 a grand jury for the United States District Court for the Southern District of Florida returned a seven count superseding indictment charging several Bahamian nationals, one of whom was the Applicant with an assortment of drug offenses.

[10] On 13 November the Applicant and others were all committed to Her Majesty's Prison as it then was called by Stipendiary and Circuit Magistrate Carolita Bethel as she then was to await extradition to the United States to stand trial for various drug related offences.

[11] On 25 November 2003 the Applicant and others commenced the first proceedings for the issuance of a Writ of Habeus Corpus Ad Subjiciendum and Judicial Review. Since then certain events have taken place and several applications for Habeus Corpus have been made by the Applicant. In his affidavit he mentions certain conditions. He focuses on his social and family life. He also alleges coercion and forgery of affidavits on the part of the Crown in an about 2009.

[12] He also mentions having a home invasion in which he was shot a total of five (5) times and alleges that the police in Grand Bahama did nothing. He complains that as a result of the Respondents not extraditing him no later than March 3rd, 2019 is contrary to his right to the protection of law, this he says warrants his discharge.

[13] Based on the Affidavit in support of the application the thrust is that extradition would be oppressive due to the passage of time and the interruption of the Applicant's family and social life. Additionally the Applicant complains about conditions at the department of Corrections.

[14] The Applicant relies on Section 11 (2) (a) and 13 (1) (a) of the Extradition Act Chapter 96 and Articles 15 (1), 17 (1), 20 (1) and alternatively Article 28 of the Constitution of the Commonwealth of the Bahamas.

**Section 11 (2) (a) (Extradition Act Chapter 96:**

> **(2) A person committed to custody under section 10 (5) shall not be extradited under this Act.**
>
> > **(a) In case, until the expiration of the period of fifteen days commencing on the day on which the order for his committal made;**

**Section 13 (1) (a)**

> **"If any person committed to wait his extradition is in custody in the Bahamas under this Act after the expiration of the following period that is to say –**
>
> > **1. "In any case, the period of two months commencing with the first day on which having regard to subsection (2) of section 11, he could have been extradited".**

**Section 13 (2)**

> **"If upon any such application the Supreme Court is satisfied that reasonable notice of the proposed application has been given to the Minister, the Supreme Court may unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged from custody and a warrant for his extradition section 12 quash that warrant".**

[15] The grounds related to the above sections of the Extradition Act Chapter 96 are set out in Grounds 3,4,5,7 and 8 of the Ex Parte Summons.

[16] The Applicant says that by letter dated December 18th 2018, addressed to the Registrar of the Judicial Committee of the Privy Council and copied to the Privy Council's Agents of the Respondents, he duly withdrew his application for leave to appeal to the Judicial Committee of the Privy Council, which was filed on December 12th 2017in action number JCPC 2017/0095.

[17] The Respondents he says were under separate statutory duties to firstly not extradite him before the expiration of fifteen (15) days following his withdrawal and subsequent to that, to extradite him within no later than two (2) months after the expiration of the fifteen (15) days.

[18] In ground 3 of the Ex Parte Summons the Applicant simply says:

> **"With reference …….. the Respondents after receiving written notice on December 18th 2018 of the Applicant's withdrawal, were under separate statutory duties ….day period".**

[19] In the first instance he fails to say who wrote to the Respondents. I take special note of the fact that a simple letter in those circumstances would not have been sufficient. An official document from the Judicial Committee of the Privy Council would have been the only document which could move the Respondents to trigger the relevant sections of the Extradition Act.

[20] The order from the Judicial Committee of the Privy Council which is exhibited to the affidavit of the Applicant as exhibit **"S**.S.**7"** is dated March 28th 2019. If the date of December was used, the Applicant has nowhere in his affidavit stated when or how the said letter of December 18th 2018 was brought to the attention of the Respondents. The Warrant of Surrender is dated March 5th 2109. In my opinion the Warrant of Surrender was written within the time allowed pursuant to section 13 (9) (2), (a) of the Extradition Act Chapter 96.

[21] The running theme throughout the Applicant's Ex Parte Summons and his affidavit is **"DELAY"**. A concurrent theme is the **"CONDITIONS AT THE DEPARTMENT OF CORRECTIONS"** and a third theme is that of the Applicant's **family** and **social** interruption.

[22] As it relates to the delay indicated by the Applicant by way of his allegations that certain steps in the process did not take place when they ought to have, I hasten to point out that there is a presumption that justice will be done in light of the passage of time and the burden is on the accused to show the contrary. In Action Number # 2003/CLE/gen/01880, Austin Knowles et al v. Superintendant Culmer et al, Mr. Senior Justice Stephen G Isaacs said at paragraphs 24-26:

**24. "There is a presumption that justice will be done despite the passage of time and the burden is on the accused to establish the contrary (see Gomes v Attorney General of Trinidad (U.K.H.L. 21 of 2009).**

**25. In Rhett Fuller v Attorney General of Belize (PC No 48 of 2010) where 20 years had passed between the commission of the offence and the pronouncement of the appeal to the Privy Council, Lord Phillips said in part at paragraph 75:**

> **"Extradition proceeds on the basis that the person whose extradition is sought will receive a fair trial in the requesting State. If it is plain that a fair trial will not be possible, it will obviously be unjust and oppressive to return the person, but that is not this case. If it is alleged that the delay that has occurred, or any other matter, has rendered a fair trial in Dade County impossible, the appropriate remedy is to apply to the court there for relief."**

**At paragraph 79 Lord Phillips said in part:**

> **"Had the appellant wished to progress this appeal he could and should have made representations to the Registry. The fact that he did not do so indicates that, perhaps not surprisingly, he was only too happy that the hearing of his appeal should be delayed. In these circumstances the Board does not consider it arguable that Justice demands that the extradition proceedings should be abandoned because of the delay that has occurred."**

**26. What the Applicants have offered to discharge the burden of establishing that it would be unjust and oppressive to extradite them as a result of the passage of time are individual Affidavits describing how their family lives have evolved during the currency of these proceedings. Those histories cannot form the basis for concluding that to extradite the Applicants would be unjust or oppressive. In any event, as a matter of law, whether or not the extradition is unjust or oppressive, in the sense that a fair trial cannot be had, can only be determined by the trial court (see Rhett Fuller *supra*)."**

**FAMILY AND SOCIAL INTERRUPTION & CUSTODY CONDITIONS**

[23] The greater part of the Applicant's affidavit contains the evolution of his financial and social life during the currency of the various proceedings undertaken by the Crown and the Applicant. In the **AUSTIN KNOWLES** Case (supra), Mr. Senior Justice Stephen Isaacs addressed this issue.

[24] In the case of **SHAWN SAUNDERS V COMMISSIONER OF POLICE** CRI/BAL/278/1/2015

**PARAGRAPHS 1–7:**

1. **The Applicant filed a summons and supporting Affidavit filed on the 15th April seeking bail. The application was unique in that the summons states as follows;**

   > **"…. The hearing of an application on behalf of Sean Bruey AKA Shawn Saunders be granted bail as to his commitment on the 23rd October 2017 by the panel (Allen, P., Isaacs, & Crane Scott JJA ) sitting in the Court of Appeal…."**

2. **The facts of this case are unique in of themselves the applicant was arrested on a provisional warrant subject to extradition proceeding which had commenced by the Government of the United States of America. The allegations related alleged importation of dangerous drugs into the United States of America. The Applicant applied to the Supreme Court in January 2003 for Bail. The Court notes the Affidavit and Summons filed in support thereof and the Affidavit filed in objection. The Court further notes that the Applicant was in fact granted bail by Justice Thompson (Retired) and it was later varied by as he then was Justice Isaacs (late).**

3. **While this process was proceeding the Extradition proceeding continued and the S & C Magistrate found there was sufficient cause and committed the Applicant to the Bahamas Department of Corrections Then called "Her Majesty's Prison" The Applicant then filed Habeas Corpus Application seeking to quash the Magistrates decision. The Supreme Court upheld the decision and the applicant then Appealed to The Court of Appeal. The Court of Appeal rejected his application and it is here that the bail previously granted was revoked and the Applicant remanded into custody.**

**4. The facts continued as the Applicant appealed the Court of Appeal decision to Her Majesty's Privy Council but later withdrew his appeal. The Court notes that there is now a separate application before this court related to constitutional questions. The court takes notice only insofar as they involve the same parties and a few of the facts overlap and provide some context.**

**5. At the hearing the court raised the singular question as to whether given that his bail was rescinded by the Court of Appeal whether this Court had jurisdiction to entertain this application or whether this is better placed before another place. It was the Court considered view that prior to making a decision on the question of whether bail ought to be granted it needed to answer the question of whether it had the requisite jurisdiction first. The effect being that it might end the application. The court indicated it would consider the question and give a written decision and do so at this point.**

**6. The challenge in this case is that the Applicant is not awaiting trial in accordance of regular process but rather awaiting the extradition process The court notes the comments made by the Court of Appeal in Trevor Roberts et al v. The Superintendent of Prisons et al SCCrApp & CAIS 264, 265 & 267 of 2014.**

> **"We again note that the object of committal proceedings is only to determine whether the evidence in support of the request for extradition discloses a prima facie case against the person whose extradition is requested. It is still open to the appellants, if surrendered for trial, to raise with the trial judge any objections they may have to the admissibility of any evidence sought to be laid against them by the US. It would be a matter for the discretion of that judge whether to accept or reject it. In the premises, this ground fails."**

**The question given the dissenting decision of JA Crane Scott in Richard Hepburn Jr. v. The Attorney General (No. 2) SCCrApp & CAIS No. 136 of 2016 where she made the following observations:**

> **"As this Court pointed out in Mackey and Johnson, "no policy created by a magistrate or judge can lawfully restrict a person's undoubted right, as authorized by the Constitution and the Bail Act, to apply to the court for bail as often as he wishes or to have that application fully considered." Whatever, the learned judge may have felt of the appellant's chances, it was nonetheless his duty to consider the fourth application fully. To simply reject the application as an abuse**

**of process based on a policy adopted by Hall J with which the judge agreed, was, in my view, to completely abdicate his obligation to fully consider the fresh application on its merits…."**

7. **Is whether this application is a fresh application and all aspects ought to be considered. This court is constrained given certain facts which are known. This applicants bail was rescinded by the Court of Appeal. It is not a question of multiple applications before the Supreme Court and denial of bail. In that context it is not a fresh application. Also no evidence was presented by either of the parties as to reasons the Court of Appeal rescinded the bail of the Applicant. This Court then will take the guidance offered by the Court of Appeal in Hepburn (supra) as the Majority and more specifically (as she then was) Allen P. (retired) where she noted as follows:**

> **"This case however, is slightly different than that of Michael Mackey and Edward Johnson v. Regina SSCrApp Nos. 288 and 289 of 2015 in as much as the applicant in the present case has already obtained a Court of Appeal decision re: the usual considerations pertinent to the decision to grant bail. As a result of the detailed February 15th judgment of this court, it is not open to a justice of the Supreme Court to reconsider the points raised and determined within that judgment unless the applicant can present before that court either 1. new material relevant to the question of bail or 2. demonstrate that at the time of the previous applications before the courts, circumstances existed which were not brought to the court's attention and are relevant to the grant of bail. Neither of these points was raised by the applicant."**

Article 28 of the Constitution of the Commonwealth of the Bahamas provides:

> **"28 (1) If any person alleges that any of the provisions of Articles 16 to 27 (inclusive) of this constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available that person may apply to the Supreme Court for redress".**

Article 28 simply and clearly gives an individual a right to seek redress via the Supreme Court if he apprehends that Articles 16 to 27 have been, are being or are likely to be contravened. In this regard the applicant has exercised that right by a series of applications over the years."

**ARTICLE 15**

**This Article provides:**

> **"15. Where as every person in the Bahamas is entitled to the fundamental rights and freedom of the individual, that is to say, his right, whatever his race, place of origin, political opinions, color, 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 life, liberty, security of the person and the protection of the law."**

It is appropriate in the circumstances to also set out the interpretation of Article 15.

"Interpretation.

**Fundamental rights and freedoms of the individual.**

[25] **Freedom of conscience, of expression and of assembly and association; and (c) protection for the privacy of his home and other property and form deprivation of property without compensation, the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid 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 individual does not prejudice the rights and freedoms of others or the public interest."**

[26] In this regard I cite the case of **GORDON NEWBOLD et, al v. PRIVY COUNCIL APPEAL NOS. 034,0035,0036,0037 and 0059 of 2011** wherein the Board said at paras 32 and 33:

> **"32. The Board does not consider that these three authorities assist the appellants in the present case. They are emphatically not authority for any proposition that article 15 of the Bahamian Constitution operates as and provides a general source of protection of human rights, overlapping with the substance of all the rights provided by the subsequent specific articles . They address a completely different subject-matter to the present, and at best support the view that the concept of "protection of the law" can extend to matters**

**outside the scope of article 18 of the 1973 Constitution. In the present case, the relevant substantive rights are to be found in articles 21 and/or 23 or not at all. Article 15 is in this respect no more than a preamble, as the Board held it to be in Capmbell-Rodriques. There is a distinction between on the one hand constitutions in the form adopted in The Bahamas, Jamaica and Malta, in which the equivalent of article 15 is wholly or predominantly a preamble, and on the other hand constitutions in the form adopted in Trinidad and Tobago and Mauritius, which contain instead an enacting provision. The distinction was recognized by the Board in Societe united Docks v Government of Mauritius [1985] 1 AC 585, 600D-G as well as in Capmbell-Rodriques, paras 9 to 12. In re Fitzroy Forbes (No. 498 of 1990), Hall J was in the Board's view wrong to conclude that distinction did not, or did not any longer, exist, and wrong to treat the Societe United Docks case as an authority applicable on its facts to article 15 of the Bahamian Constitution.**

**33. In short, Mr. Fitzgerald's submission does not only run counter to the natural meaning of article 15. It also ignores the word "Whereas" and the recital in article 15 that it is "the subsequent provisions of this Chapter" which "shall have effect for the purpose of affording protection of the aforesaid rights". Finally, it ignores the clear implication of the restriction of the right of redress under article 28, and the restriction of the saving of existing laws from challenge to cases of alleged contravention of articles 16 to 27. If article 15 had been understood as an independent enacting provision, the constitutional right of redress would have been extended to it. Similarly, to read article 15 as an enacting provision would undermine and make pointless article 30(1), the clear aim of which was that fundamental rights otherwise provided by the** Constitution should not prevail over any contrarily expressed **"existing law. The Board therefore considers that article 15 has no relevance or application in this case, save as a preamble and introduction to the subsequently conferred rights….."**

[27] In my view therefore, reliance upon Article 15 does not further the Applicant's application.

**Article 17**

[28] The Applicant says that whilst held in custody by the Respondent at the Bahamas Department of Corrections for in excess of fourty-four (44) months he was in inhumane, unsanitary and unsafe conditions, whereby he suffered serious effects to his physical and mental state. These allegations are set out in paragraph 27 of his affidavit.

[29] For ease of reference, I think it prudent to set out paragraphs 27 and 28.

27. **"THAT, prior to my withdrawal of application for leave to appeal to the Judicial Committee of the Privy Council, I have been held in custody by the Respondents for a total of 44 months at the Bahamas Department of Corrections (formerly HMP fox Hill), spanning over two (2) periods and in inhumane, unsanitary and unsafe conditions, in which I have suffered serious effects both to my physical and mental state.**

28. **THAT, during the period of incarceration, spanning over 44 months in total, I have been present and witnessed serious violence between inmates towards other inmates and physical attacks from prison guards to inmates, some of which have been unjustified and unprovoked."**

[30] In the case of **JOHN JUNIOR HIGGS AND DAVID MITCHEL V THE MINISTER OF NATIONAL SECUTIRY& OTHERS (1999) UKPC 55**, a case which involved the death penalty and while the delay in execution of a prisoner was cruel and inhumane punishment, the board said, at paragraphs 34-36:

> **"34. The same is true of prison conditions. Detention in prison before execution is a necessary part of the death penalty. If additional hardships and other privations of the kind mentioned by Lord Millett are inflicted upon prisoners on death row, that may well amount to an aggravation of punishment which would make their subsequent execution inhuman and degrading. It is less easy to regard detention in substantially the same general conditions as others. A de la Bastide C.J. said in the Thomas judgment to which their Lordships have already referred, "There is not the same nexus between the abuse complained of and the death sentence as exists between delay in carrying out the death sentence and the actual carrying out of it". This is not to say that the**

**additional cruelties must have been deliberately intended by the prison authorities as additional punishment. That would certainly not have been true of the delays which were held to make the punishment inhuman and degrading in Pratt v. Attorney-General for Jamaica [1994] 2 A.C.1. The question of whether they amount to an aggravation of the punishment of death is an objective one. But there must be some connection with that punishment which would make the execution itself inhuman and degrading.**

**35. For this reason the majority of the Board in Thomas held that prison conditions which it described (at p. 265B) as "completely unacceptable in a civilized society" would not render an execution inhumane or degrading, even if they amounted to an infringement of other constitutional rights. The judgment of the Board in that case makes it clear that the fact that the appellants have suffered "inhuman treatment" in prison, contrary to Article 17(1) of the Constitution, will entitle them to a remedy such as was granted by the Supreme Court of Zimbabwe in Conjwayo v. Minister of Justice, Legal and Parliamentary Affairs 1992 (2) S.A. 56 (ordering the prison authorities to allow longer periods for exercise) but not necessarily to commutation of the death sentences. Their Lordships regard their adherence to this ruling as the main difference of principle between themselves and the minority opinions in this case.**

**36. Their Lordships wish to make it clear that they in no way condone lengthy pre-trial delays or uncivilized prison conditions. They are unacceptable. But they differ sharply from the case of delay in execution because whereas a prisoner cannot be expected to put an end to his uncertainty by demanding his own execution, both pre-trial delay and prison conditions are the subject of other legal remedies. In Fisher No. 1 (at pp.680-681) Lord Goff of Chieveley drew attention to the remedies open to a prisoner who had been held in custody for an excessive period before trial. He can apply to have the prosecution dismissed as an abuse of process; he may apply under Article 19(3) for an order that unless tried speedily he should be released on bail and he can invoke his constitutional right under Article 20(1) to be tried**

**within a reasonable time. Likewise, in the case of prison conditions, the prisoner may apply for injunctive relief. The decision in Conjwayo v Minister of Justice, Legal and Parliamentary Affairs 1992 (2) S.A. 56, to which their Lordships have already referred, is a striking example of the grant of such relief to prisoners under sentence of death."**

[31] As it relates to Article 17 therefore, the Applicant has not put before this court any new or sufficiently extraordinary evidence different than that which all occupants of the Department of Corrections face on a daily basis, and as such I find that the reliance on Article 17 fails.

[32] My brother Mr. Justice Andrew Forbes (Acting) stated at paragraph 9 of Action 2019/CRI/crg/00038:

**9. The Court finds that arguments by the Applicant in and of themselves overlook a number of factors, namely he has been on remand for several unrelated matters and hence the attempt to conflate his current period of remand with others is disingenuous. This court may accept that the housing at the Bahamas Department of Corrections is certainly not acceptable but the court does not find it is warranted to quash the nature of proceedings which are pending against the Applicant. The argument advanced by the applicant is that the present matter has proceeded for a period of seventeen years (17), and in seeking to support this contention points to the multiple proceedings namely, the committal by the Magistrate, the Habeas Corpus hearing and the Appeal to the Court of Appeal and further Appeal to the Privy Council which was withdrawn by the Applicant. There has been unquestionable delay in the advocacy of this matter, but it presumes that this is a typical trial of proceedings whereas it is not. However, to demonstrate that the Applicant is not being entirely frank in this regard the Court finds the Court of Appeal highlighted this fallacy in the Case of Austin Knowles v Superintendent Culmer (Superintendent of Prisons) et.al (supra) specifically paragraphs 16 thru 45, and this Court for its part will enclose the entire segment as oppose to attempting to summarize them. These are the exact same arguments which were advanced and continue to now be advanced.**

**"16. In relation to the complaint of delay as articulated in ground 5, and a part of ground 6, the appellants say, inter alia by reason of the inordinate passage of time attributable to the failure of the Registrar of the Supreme Court to 'preserve' the transcript and record of the committal proceedings as required by Thompson J. and Allen S.J, that the learned judge was wrong to have found that the appellants were content with the delay and erred in rejecting their submission that it was unjust and/or oppressive to extradite them. In relation to the complaint of delay, I find it necessary to hereinafter chronicle each relevant event which occurred in these extradition proceedings.**

**17. Following the filing of the applications for habeas corpus on 25 November 2003, the appellants filed a summons in the Supreme Court on 13 February 2004, whereby they applied for and were granted an order dated 17 February 2004 by Justice Jeanne Thompson, J. (Thompson J.). Their summons however was preceded by letters from their Counsel to Magistrate Bethell, and Registrar of the Supreme Court, Donna Newton, dated 18 and 20 November 2003 respectively, requesting a certified copy of the transcripts of the committal proceedings.**

**18. The Order of Thompson J of 17 February 2004 made upon their summons, however, was to the following effect:**

**"1. That the Originating Notice of Motion filed herein on the 25th November A.D. 2003 be heard simultaneously with the Originating Notices of Motion filed in Common law Actions 01880, 01881, 01882, and 01883;**

**2. That the Registrar of the Supreme Court within 14 days of the date hereof do cause to be produced and delivered to the Chambers of the Honorable Ms. Justice Jeanne Thompson a copy of the transcript of the extradition hearing affecting the Applicant herein before Stipendiary and Circuit Magistrate Carolita Bethell together with a copy of the ruling of Stipendiary and Circuit Magistrate Carolita Bethell and each of the exhibits tendered in the said extradition proceedings.**

**3. That this matter be set down for mention on the 2nd March A.D. 2004 at 9:45 o'clock in the forenoon". (Emphasis added).**

**19.** **In obedience to the said Order, Magistrate Bethell forwarded to Thompson J. by letter of 1 March 2004: "original exhibits, copies of the rough transcripts, written submissions, and the committal orders"; and indeed, by paragraph 6 of an affidavit filed in the Supreme Court on 29 April 2004 (Vol. 3 pages 822-8310, John Z Deal in his capacity as a partner in the firm of Deal and Gomez, Counsel for the appellants in their applicants in their applications for Habeus Corpus, and acting on the appellants' instructions which he said he believed to be true, confirmed the production and receipt of the record. There he stated: "That after many months, the transcript of the Magistrate Court proceedings was finally produced and a record complied for the purpose of the Habeus Corpus and judicial review applications."**

**20.** **Moreover, in paragraph 2 of the said affidavit, John Z. Deal further stated that habeus corpus applications on behalf of the appellants were commenced on or about 19 March 2004. In the premises, the appellants, by the said affidavit, confirmed that by 29 April 2004, the record of the committal proceedings had been produced; they were in possession of the record; and the habeus corpus proceedings had begun.**

**21.** **Inexorably, the record must have been available to Thompson J. when the habeus corpus proceedings commenced before her; and indeed, in my view the disposition of the application for discovery on 19 May 2004 confirms the commencement of those proceedings.**

**22.** **In John Z. Deal's affidavit hereinbefore referred to, he further deposed in paragraph 5:**

**"That one of the issues raised in the habeus corpus proceedings was whether Marcus Bethell had been appointed Acting Minister of Foreign Affairs by the 13 February 2003 when he signed the Authority to proceed in the extradition proceedings which are the subject matter of the habeus corpus proceedings and the two applications for Judicial review."**

**23.** **In that vein, John Z. Deal further swore in paragraph 8 through 16, that respondents failed to produce any document purporting to be an instrument of appointment of the acting Foreign Minister, and that as a consequence he verily believed that there was no such instrument signed by the Governor General Appointing Dr. Marcus Bethell t act during the period 13 to 20 February 2003.**

**24.** **In response to these mattes, Neil Braithwaite, on behalf of the respondents, albeit after the order for discovery on 19 May 2004, swore on 29 June 2004 ( pages 847 to 856 of Volume 3 of the Record herein) that attempts were in fact made during the committal proceedings before the learned Magistrate by then Counsel for the respondents Francis Cumberbatch, to adduce into evidence, the Official Gazette appointing Dr. Marcus Bethell to act as Minister of Foreign Affairs for the period 13 to 20 February 2003, and the actual orders signed by the Governor general granting leave to the Hon. Frederick Mitchell for the same period. According to Mr. Braithwaite's affidavit, the respondents were prevented from laying the documents over, when the Magistrate acceded to the objection of Keir Starmer Q.C., then Counsel for the appellants.**

**25.** **Moreover Braithwaite's affidavit shows that he himself wrote to Damien Gomez on 16 October 2003 before the said committal, informing him that he had sent by letter to the Magistrate, a copy of the Official Gazette of the appointment of the acting Foreign Minister, and also enclosed a copy of the Official Gazette for him. Mr. Braithwaite further states that the appellants were invited by him to make furthers submissions, but that Mr. Starmer Q.C., stated that the documents had not been properly adduced, and they did not intend to make any further submissions. As a result, the Magistrate made her committal orders without those documents before her.**

**26.** **The appellants then somewhat disgenuously, used the absence of these documents as their first line of offence in the habeas corpus proceedings and obtained from Thompson J. On 19 May 2004, the order for the discovery of certain documents from the respondents to assist them in proving that the Authority to proceed issued by the acting foreign Affair Minister was invalid, and their continued detention not justified. The learned judge also granted bail to the appellants. The discovery order of Thompson J. was to the following effect:**

> **"1. that the respondents produce, within fourteen days, a list of documents within their possession or control pertaining to: (1). The alleged purported exercise of the Governor General's power of appointment of the Honorable Dr. Marcus Bethel as Acting Minister of Foreign Affairs in February A.D. 2003,**

**including correspondence with the Right Honorable Prime Minister and the documented leave granted to the honorable Fredrick Mitchell to permit him to leave the jurisdiction; (2) Bills and receipts for hotel accommodations, airfare with relevant warrants or other authorities for payments associated herewith;(3).Any formal documents or communiques signed by Minister Mitchell on his official trip; and (4). Confirmation in writing as to date of publication of the Official Gazette relied upon by the Respondents in the purported proceedings before Stipendiary and Circuit Magistrate Bethel affecting the Appellants.**

**2. That the Respondents, within seven days of production of the list of documents, serve an Affidavit confirming that the documents are within the respondent's possession or control; and**

**3. That the Respondents, within fourteen days of production of the List of Documents, serve the Appellants with a copy of each of the documents set out in the list of documents."**

**27. The decisions of Thompson J to grant bail and to grant the order of discovery were appealed to the Court of Appeal by the respondents. On 2 June 2004, the decision to grant bail was set aside by the Court of Appeal; and on 10 June 2004 the Court set aside the order for discovery. Both decisions were appealed by the appellants to the Privy Council, which by their judgment of 23 March 2005, set aside the Court of Appeal's decision to revoke the bail granted to the appellants by Thompson J., but affirmed the Court's decision to set aside the order for discovery.**

**28. There, matters stood until 2008, when another application by the appellants for the production of the record was made despite the appellants having previously confirmed in 2004 that the record had been produced. Allen SJ(as she then was) however, ordered that the registrar produce to the Court within 7 days thereof, a copy of the transcript of the committal proceedings, and copies of the exhibits, obviously ignorant of the fact that the appellants and the Court had the record since early2004.**

**29. The reason for the lapse of three years between the adjudication by the Privy Council in 2005 and the order for production of the record in 2008 is suggested to be the fact that Thompson J. demitted office in March 2007.**

**30. The next appearance in the proceedings was before Stephen Isaacs S.J, on 15 May 2015. At that hearing, Mr. Elliot Lockhart QC, Tai Pinder, and Osman Johnson appeared for the appellants; and Mr. Anthony Delaney appeared for the respondents. Mr. Lockhart was pointedly asked by the learned judge if he had ever had copies of the transcripts, to which he replied in the negative. While this may have been an honest answer as far as he was concerned in as much as he was new to the matter, the evidence, as noted, strongly suggests that the appellants were in receipt of transcripts since early 2004. Mr. Lockhart also told the judge at page 25 of the Supplementary Record that the habeus corpus proceedings had never begun. This is clearly contradicted by the appellants' Counsel's statements in his affidavit of 29 April 2004, to which I have previously referred, and as well by the order granted by Thompson J. on 19 May 2004.**

**31. A review of the transcripts clearly reveals that neither the Court, nor Counsel knew on 15 May 2015, that the record was in fact in the possession of the appellants and the Court, due in part perhaps to the fact that they were all new to the proceedings.**

**32. The appellants appeared with Counsel again on 8 June 2015, when Mr. Lockhart represented to Isaacs SJ that neither the order of 17 February 2004, nor that of the 19 May 2004 had been complied with. Suffice it to say that the order of 19 May 2004 had been overturned by the Court of Appeal, and that decision affirmed by the Privy Council since 2005. Moreover, as previously noted, the record had in fact been produced on 1 March 2004 in compliance with the order of 17 February 2004.**

**33. Also on that appearance before the court, Mr. Lockhart was made aware by Isaacs S.J., that Deal and Gomez had produced transcripts for the court which Mr. Lockhart, however was reluctant to accept, insisting instead on the production of certified copies of transcripts. Also at that hearing, Mr. Osmond Johnson raised the 19 May 2004 order, insisting the needed confirmation that the order has been set**

**aside by the Privy Council, and further asserting that the Crown was in breach of the 2004 and 2008 orders.**

**34.** **Had Counsel Johnson been more diligent, he would have discovered that the Privy Council did indeed affirm the Court of Appeal's decision to quash the discovery order. He would have found out that the 2004 order for production of the record had been complied with, and that the 2008 order was therefore superfluous. Instead, Counsel Johnson continued to insist that he needed such confirmation, and that it was incumbent on the Crown to produce the record.**

**35.** **Mr. Ian Cargill again repeated Mr. Lockhart's call that the appellants required certified copies of all the transcripts of the committal hearing, oblivious to the fact that the record had been produced for some11 years pursuant to the court order requiring production of copies, not certified copies. Regrettably, it appeared that Mr. Braithwaite was not aware at the time that the record had been produced; and as to Counsel's enquiry concerning the Privy Council's 2005 decision, Mr. Brathwaite took on the responsibility for producing it for the Court, and the matter was adjourned.**

**36.** **At the next hearing before Senior Justice Stephen Isaacs on 3 July 2015, Mr. Brathwaite produced the Privy Council's decision, and disposed of the questions surrounding the status of the 19 May 2004 order for discovery. It was at that hearing that Mr. Braithwaite brought to the attention of the learned judge, the fact that the entirety of the transcripts had been produced since 2004.**

**37.** **Indeed, the learned judge on that occasion took issue with Counsel for the appellants on their insistence on the production of official transcripts, noting that although the request was previously made by them for the same, he had no success in discovering from Counsel the specific days for which transcripts were required, with which Mr. Lockhart agreed.**

**38.** **It was also at that hearing that Mr. Lockhart advised the Court that he had discovered a box in the possession of the learned judge's secretary which contained exhibits, the magistrates' notes and other material which Mr. Lockhart indicated they had been requesting. Mr. Lockhart also informed the Court that he was in possession of**

**correspondence between Thompson J. and the magistrate consisting of a 12 December 2003 letter from Thompson J, requesting 'transcripts, exhibits and written submissions', and a letter of 1 March 2004 to Thompson J. from the Magistrate enclosing 'original exhibits, copies of rough transcripts, written submissions…ordered in respect of committals'.**

**39. An adjournment was given to Mr. Lockhart by the learned judge to go through the contents of the box, and to advise the Court whether, as a matter of law, the discovered transcripts were official or otherwise. Finally, on 3 March 2016, the hearing of the Habeas Corpus applications continued in earnest, ending with Ruling of Senior Justice Stephen Isaacs on 3 May 2016.**

**40. From the above chronology, one is able to clearly see the timelines. Indeed, the time which elapsed between the request for extradition and the order of committal was about a year. From the filing of the applications for habeas corpus to the commencement of habeus corpus proceedings was four months; from the order of discovery by Thompson J., (unnecessary because the Official Gazette was always available) to the disposition of the appeal of the discovery order was ten months. Between 2005, and 2008, there appeared to be no steps taken to progress the applications by anyone, and between 2008 and 15 May 2015, but for the intervention of Counsel for the respondents, there was likewise no attempt to do so.**

**41. Moreover, for the nine months between 8 June 2015 and the hearing of the habeus corpus applications on 3 March 2016, the applications were stalled, due mostly to the insistence of the appellants' Counsel on the production of certified or official copies of the transcripts in circumstances in which both court orders required the production only of 'copies' of the transcripts.**

**42. It bears repeating, that the record of the committal proceedings was produced pursuant to the court order of 17 February 2004 and available within four months of the conclusion of those proceedings. Consequently, the complaint in ground 5 of the Notice of Appeal that the delay was due to the failure of the Registrar of the Supreme Court: 'to preserve the transcripts of the committal proceedings which failure was evidenced by the fact that no transcript signed by either a stenographer or the committing court', is unsustainable.**

**43. At the hearing of the appeal however, Counsel further expanded the grounds to say the appellants bore no responsibility for the delay which they contended was wholly due to administrative and judicial inertia. <u>While I agree there were some administrative and judicial missteps in that the Court was unaware that the record had been produced and was available since early 2004, nevertheless, in my view, the majority of the delay can reasonably be attributed to 'litigant inertia'.</u>**

**44. <u>Undoubtedly, it is ultimately the duty of the requesting state with the assistance of the requested state, to pursue the extradition, nevertheless, the appellants also have an obligation to assert their rights, particularly as they had already been committed to await extradition. In this regard, the appellants have singularly failed to demonstrate any interest during the three years which elapsed between the Privy Council's decision (2005) and the order they sought for the production of the transcripts in 2008, or in the seven-year period thereafter , to further pursue their applications for habeas corpus before the Supreme Court.</u>**

**45. Indeed, as previously noted, the only efforts made were those by Counsels for the respondents, who wrote to the court in an attempt to have the matter set down for hearing. In my view, what was required of the appellants at the least was the filing of a notice of intention to proceed, and some attempt to procure a date for continuation of their applications.**

**46. <u>In the premises, I agree with the learned judge's finding that the delay was not attribute to the failings of the Supreme Court Registry, but due to the appellant's' contentment with the delay as evidenced by their failure to pursue timeously, their applications for habeus corpus.</u> The further question raised by these grounds is whether in any event, and given the delay of 14 years, it would be unjust oppressive, or an abuse of the process of the court to extradite the appellants…"**

**<u>Article 20</u>**

[33] The Applicant also relies on Article 20 (1) of the Constitution which provides:

**"20. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law….."**

[34] The argument and/or reliance on Article 20 is somewhat disingenuous in that the Applicant has been charged for several different matters. He relies on the conditions in which he is being held. However, in the first instance, he is attempting to muddy or conflate his period of remand knowing quite well that he is being held for or on more than one action involving many charges.

[35] While it may be accepted that the conditions are not perfect at the Department of Corrections, the conditions do not warrant the remedies he seeks, in particular the quashing of the proceedings which remain pending against the Applicant. The Applicant's reliance on Article 20 woefully fails.

[36] There seems to be no real new grounds in the present application not even the allegation that the Minister of Foreign Affairs breached Section 13 of the Extradition Act.

[37] The Applicant must necessarily take some responsibility for whatever delays have taken place. He has been disingenuous in that nowhere in his affidavit or submissions does he disclose that he and others were charged for separate alleged breaches of the law and for which he was incarcerated.

[38] This application was presented as if there was one court matter and he has been incarcerated for this one matter and no other.

**CONCLUSION:**

[39] LORD DIPCOCK IN HARRIKISSON V THE ATTORNEY GENERAL OF TRINDAD & TOBAOGO PRIVY COUNCIL APPEAL NO. 40 OF 1997 addressed this very same issue and did so quite clearly and succinctly when he stated:

> **"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 it if is allowed to be misused as a general substitute for the normal procedure 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 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 appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom*…."**

[40] The Court is of the view that based on the authorities set out above that the Applicant's attempt to exercise a right which he claims he is entitled to has not met the necessary standard to persuade the court to accede to the application for leave to enter a Writ of Habeus Corpus Ad Subjiciendum in complaint number 188/03/2003.

[41] I am not persuaded that any of the Applicant's constitutional rights have been breached as alleged or at all. Neither am I persuaded that any of the Applicant's rights under any other statute have been breached. The Applicant has woefully failed to persuade this court to accede to his application and summons based on what was presented in support thereof.

[42] Therefore in all the circumstance and after careful consideration of the application and summons, the application and summons hereby stand dismissed. The applicant ought to be informed of his right to appeal this decision and I so now do.

Dated this day of A.D., 2019.

Keith H. Thompson (Mr.)

Justice