



**IN THE SUPREME COURT OF
THE TURKS AND CAICOS ISLANDS**

Action No: CL 17/2021

**IN THE MATTER OF THE TURKS AND CAICOS ISLANDS CONSTITUTION ORDER
2011**

**IN THE MATTER OF THE CRIMINAL PROCEEDINGS NO. CR 35/12, 36/12, 37/12,
38/12 40/12 44/12, 18/14**

BETWEEN:

- (1) MICHAEL EUGENE MISICK,**
- (2) FLOYD BASIL HALL**
- (3) McALLISTER EUGENE HANCHELL**
- (4) JEFFREY CHRISTOVAL HALL**
- (5) THOMAS CHALMERS MISICK**
- (6) MELBOURNE ARTHUR WILSON**

PLAINTIFFS

AND

- (1) THE ATTORNEY GENERAL OF THE
TURKS AND CAICOS ISLANDS**
- (2) THE DIRECTOR OF PUBLIC PROSECUTIONS**

DEFENDANTS

CORAM: AGYEMANG CJ

**MR. ARIEL MISICK QC, WITH MR. SELVYN HAWKINS FOR THE PLAINTIFFS
MR. ANDREW MITCHELL QC, WITH MR. QUINN HAWKINS AND MS. KATE
DUNCAN FOR THE DEFENDANTS**

HANDED DOWN ON 7TH MAY 2021

EXECUTIVE SUMMARY OF JUDGMENT

Facts:

1. By an originating summons, the Plaintiffs sought *inter alia* a declaration that the continuation of the proceedings in **CR 35-38, 40, 44/2012 and 18/2014 R v Michael Misick and others** in any form or manner contravenes or is likely to contravene the plaintiffs' right to protection of law under section 1(a) of the 2011 Constitution, and their right to a fair trial within a reasonable time under section 6(1) of the Constitution.
2. The Plaintiffs are all defendants in **R v Michael Misick** trial charged for various crimes under the broad umbrella of corruption. The trial judge died on 7 February 2021, bringing that trial, which commenced in December 2015, to an end. On 1 March 2021, the prosecutor announced that he will continue with the criminal prosecution against the Plaintiffs and Clayton Greene, and on 3 March, filed an amended Information.
3. The Defendants have objected *in limine* to the constitutional motion and seek their own relief which is *inter alia* that the first two paragraphs of the constitutional motion be struck out.
4. The issue considered by the Court was whether the originating summons seeking constitutional relief is frivolous, vexatious and must be struck out as amounting to an abuse of the process of this court.

Held: Originating Summons dismissed.

Reasons:

1. In response to the Defendants' submission that procedurally, the application is improper due to the existence of disputes of fact which may not be resolved in a proceeding brought by an originating summons, the court found that that while there were recognizable differences in the evidence between that of the Plaintiffs and Defendants, there was no real dispute regarding the veracity of matters. Therefore, the originating summons was not an improper procedure to use to seek constitutional relief (para 36-38) **Order 5 r.4(2) RSC**

2. In response to the Defendants' submission that **section 21(2)** of the **Constitution** operates as a jurisdictional bar to the entertaining of this application for constitutional relief, because there exist other remedies such as is being explored by the bringing of an abuse of process application by all of the Plaintiffs, the court found that the Plaintiffs assumed the burden of persuading the court that the abuse of process – which they had resorted to in the trial process – was not a true alternative as it did not offer adequate means of redress. The Plaintiffs failed to discharge that burden. In the present situation, there is an alternative means of redress, and it is an application to stay proceedings, brought within the criminal process, to which the Plaintiffs have already helped themselves (paras 39-69). **Missouri Bain Thompson v The Commissioner of Police 2015/PUB/con/00015** per Charles J (Bahamas), **Herbert Bell v DPP and another** [1985] AC 937, **Gibson v The Attorney General of Barbados** [2010] CCJ 3 (AJ), (2010) 76 WIR 137, **Urban St Brice v The Attorney General of St Lucia** [2016] ECCJ (Unreported) SLUHCV AP 2012/0027, at 27 DISTINGUISHED

3. In response to the Defendants' submission that the originating summons should be struck out under **Order 18 r.19(1)(d)**, the Court found that the present application was pursued in the circumstance of a double-headed attack and in the face of section 21(2) of the Constitution, that the application has no *bona fides* and was contrived for the possible purpose of increasing the chances of the Plaintiffs' success in their plaint against the defendants. But the court stopped short of describing it as frivolous and altogether an abuse of process. Therefore the court chose not to strike out the suit, but dismissed it (paras 70-81).