



134 HENRY STREET
PORT OF SPAIN

REPUBLIC OF TRINIDAD AND TOBAGO

Telephone: (868) 623-2CCJ Fax: (868) 624-4710

Website: www.ccj.org

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CCJ ORDERS RELEASE OF MURDER ACCUSED BISRAM AND MODIFIES UNCONSTITUTIONAL LAW

Port of Spain, Trinidad and Tobago. In a judgment released yesterday, the Caribbean Court of Justice (CCJ) allowed the appeal in the Guyanese case of *Marcus Bisram v The Director of Public Prosecutions [2022] CCJ 7 (AJ) GY*. The Court ordered that Bisram be released, but it noted that he may be re-arrested and charged again if fresh evidence was obtained linking him to the alleged murder.

Bisram, a murder accused, was discharged by the magistrate who heard the evidence at the Preliminary Inquiry (PI) into his murder charge. The only evidence presented at the PI was from a witness who, under cross-examination, changed his testimony by saying that he had not seen or heard the specific things linking Bisram to the alleged murder. The Director of Public Prosecutions (the DPP) thereupon directed the magistrate to reopen the PI and later to commit Bisram for trial, which the magistrate did. Bisram contended that these directives by the DPP were unlawful and that section 72 of the Criminal Law (Procedure) Act (the Act), an “existing law” which empowers the DPP to so direct, is incompatible with the Constitution. He sought orders from the CCJ in relation to these claims.

In the High Court, before Justice Simone Morris-Ramlall, Bisram claimed that section 72 was contrary to article 122A of the Constitution (which secures judicial independence of all courts) and article 144 (which secures the protection of the law to all persons) and to the separation of powers doctrine. He also claimed that the DPP did not precisely follow the steps required by section 72. Justice Morris-Ramlall did not accept that section 72 was unconstitutional but found that the prosecution failed to follow the required steps and that the case against Bisram was insufficient. On this basis, the judge ordered Bisram’s release. The DPP appealed and Bisram also cross-appealed.

The Court of Appeal (CoA) found that the DPP’s failure to follow the required steps did not prejudice Bisram. It also held that section 72 was not unconstitutional. The CoA held that a) section 72 did not offend the separation of powers doctrine as the DPP was not part of the Executive; b) section 72 was inapplicable to article 122A because that article did not apply to magistrates’ courts; and c) section 72 could not be declared contrary to article 144 as the section was saved by article 152 as an existing law. Bisram appealed the decision of the CoA to the CCJ.

The CCJ found that the DPP was required to comply with the carefully crafted procedural steps of section 72, which help to ensure that the accused is given a fair hearing. The failure to do so made it the case that the subsequent acts of both the DPP and the magistrate would have no effect.

More fundamentally, the CCJ concluded that section 72 was unconstitutional. The CCJ held that article 122A does apply to all courts including magistrates' courts, because all courts must be free from any form of direction or control. Since section 72 makes the magistrates' decisions subject to the direction of another official, section 72 must be declared void to the extent that it does this. The CCJ also held that the savings provision in article 152 and the modification provision in section 7(1) of the Constitution Act must be read together. Existing laws must first be suitably modified before being applied, so that they are not in conflict with the Constitution and fundamental rights and freedoms are promoted. The CCJ found that the modification power was a very wide one capable of addressing gaps that arise when an inconsistency in a law is revealed and the inconsistent portion is struck down. The CCJ expressed the firm hope, however, that in such cases the legislature will ultimately address any such gaps.

In its orders, the CCJ restored the decision of Justice Morris-Ramlall to release Bisram and noted that it would be unjust for him to answer any charge of murder in this case on the same evidence as was presented to the magistrate. However, as he was never placed in jeopardy of being convicted for murder since a preliminary inquiry is not a trial, nothing prevents the DPP from having him re-arrested and charged again if fresh evidence is obtained linking him to the alleged murder.

The CCJ also ordered that, until the National Assembly will address the matter, section 72 is modified such that a DPP, who for good reason is dissatisfied with a magistrate's decision to discharge an accused person, will be allowed to apply without notice to a judge of the Supreme Court for the accused to be arrested and committed. The judge can then determine if the depositions and other material that were before the magistrate justify such a course of action.

The Court indicated that it will not make an order on the award of costs until it has heard from the parties.

This matter was heard by the full Bench of the Court, with the judgment delivered by the Honourable Justice Adrian Saunders, President, and the other Judges being Justices Jacob Wit, Winston Anderson, Maureen Rajnauth-Lee, Denys Barrow, Andrew Burgess and Peter Jamadar.

Mr Darshan Ramdhanie QC, Mr Sanjeev Datadin, Mr Dexter Todd and Mr Arudranauth Gossai appeared for the Appellant. Mrs Shalimar Ali-Hack SC, DPP, Mrs Teshana James-Lake and Mr Nigel Hawke appeared for the Respondent.

The full judgment of the Court and a judgment summary are available on the Court's website at www.ccj.org.

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present,

four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

For more information please contact:
The Public Education & Communications Unit
Tel: (868) 623-2225 exts. 2296, 2246
Email: pecu@ccj.org