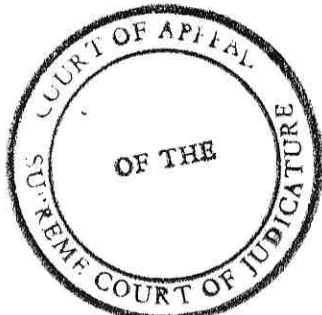


IN THE COURT OF APPEAL OF THE SUPREME COURT OF  
JUDICATURE

C&M.



APPELLATE JURISDICTION

GUYANA

CIVIL APPEAL NO. 134/98

BETWEEN:

**THE ATTORNEY GENERAL OF GUYANA**

Appellant

- and -

**CLAUDE JARDIM**

Respondent

BEFORE:

Hon. Madam Justice Desiree Bernard	- Chancellor
Hon. Mr. Justice Nandram Kissoon	- Justice of Appeal
Hon. Madam Justice Claudette La Bennett	- Additional Judge

Mr. D. Singh, SC, Attorney General in person  
Mr. R. McKay, SC with Ms. J. Ali for Respondent.

2002: October 14

2003: February 19

JUDGMENT

**BERNARD, C. delivered the judgment of the Court:**

In 1994 the Respondent held a firearm licence No. 5649 for a .32 Taurus pistol and 100 rounds of bullets which he kept at his residence at Lot 309 Quamina Street, Georgetown. On 27<sup>th</sup> December, 1994 a squad of policemen executed a search on his home for narcotics, and in the course of the search found the pistol under the mattress of his bed. It was seized along with the ammunition and taken to Police Headquarters. His licence was later revoked by the Commissioner of Police by letter dated 9<sup>th</sup> February, 1995. The Respondent in a motion filed in the High Court sought and was granted

an order nisi of certiorari directed to the Commissioner of Police to quash his decision to revoke the licence as well as an order nisi of mandamus to have the pistol and ammunition returned and the licence restored. After hearing arguments the learned trial judge made the said orders absolute. The Appellant has appealed to this Court against the said orders.

A point in limine has arisen which I am of the view ought to be decided first as, if upheld, may preclude further consideration of the substantive issues in this appeal. Counsel for the Respondent has raised the issue that the Attorney General is not a proper party to the appeal as he was not a party in the action at first instance. The orders absolute of certiorari and mandamus were made against the Commissioner of Police, and prerogative writs do not lie against the Attorney General. He made reference to "Short & Mellor, 2<sup>nd</sup> Edn. Vol. 1" p. 197 and to the cases of Minister of Foreign Affairs, Trade & Industry v. Vehicles & Supplies Ltd. et anor (1989) 39 WIR, 270, dicta of Cummings J, in Re: Application by Gerriah Sarran (1969) 14 WIR, 361; and the decision of Stoby J, in Coghlan v. Vieira (1958) LRBG, 108. He contended that the State Liability and Proceedings Act 1984 has no application to prerogative writs which fall in the realm of public law, the Act being solely concerned with private law remedies.

Counsel for the Appellant made reference to the powers of the President of Guyana as set out in Articles 177 (1) – 182 of the Constitution, and submitted that the President does not have the same powers as the monarch of England who had the authority to issue prerogative writs. He sought to distinguish the State Liability and Proceedings Act, 1984 from the English Crown Proceedings Act, and contended that nowhere in our Act is there any restrictive meaning of civil proceedings. He sought to

distinguish the case of Minister of Foreign Affairs, Trade & Industry v. Vehicles & Supplies Ltd. et anor (supra), from the present one by alluding to the fact that "civil proceedings" were clearly defined in the Crown Proceedings Act to exclude "Crown side proceedings"; our State Liability and Proceedings Act stipulates no such limitation. He submitted that on a proper construction of the State Liability and Proceedings Act, the concept of "State side proceedings" is a part of our jurisprudence and the Act does not exclude such proceedings from the concept of "civil proceedings".

He contended that it has long been accepted that prerogative writs fall within the realm of civil law as against criminal law, and thus are civil proceedings.

In deciding this preliminary procedural point one ought to begin by tracing the importation of the prerogative writs into the laws of Guyana. In England the prerogative writs of mandamus, certiorari and prohibition were the means by which the King's Bench Division exercised supervisory power over inferior jurisdictions. The procedure for the issue of such writs was governed by the Crown Office Rules, 1906. The Supreme Court Ordinance, 1893 established the Supreme Court of British Guiana which provided for its exercise of "all the authorities, powers and functions belonging or incident to such a Court according to the Law of England." Our Courts therefore inherited the prerogative writs which were governed by the Crown Office Rules 1906.

However, in 1938 by the Administration of Justice (Miscellaneous Provisions) Act, 1938 the prerogative writs were abolished in England. This, notwithstanding the said writs continued to be governed by the Crown Office Rules, 1906 in our jurisdiction. This was held to be so by Stoby J, in

the case of Coghlan v. Vieira (supra) who at page 120 came to the conclusion that the English Act of 1938 did not abolish the writs in this country since the procedure provided by the English Order 59 Rule 3(1) was designed to meet a situation which arose by reason of the introduction of a new scheme of legislation. **Cummings JA**, in Re Application by Gerriah Sarran (supra) concurred with this conclusion.

The prerogative writs not having been abolished in our jurisdiction are still governed by the Crown Office Rules 1906, and one has to decide where they stand in relation to the State Liability and Proceedings Act 1984 which was an Act "to amend the law relating to the civil liabilities and rights of the State and for matters connected therewith."

Part II of the Act is intituled "Substantive Law" which provides for liability of the State in tort including provisions as to industrial property, application of law as to indemnity and contribution between joint tortfeasors, salvage claims against the State, provisions relating to the armed forces, and saving clauses in respect of acts done under prerogative and statutory powers (prerogative here relates to the prerogative of the State conferred by any written law).

Part III of the Act relates to jurisdiction and procedure providing a right to sue the State as of right without the fiat of a Minister, and also enforcement of claims by or against the State. It provides that "claims against the State" includes a claim by way of set-off or counterclaim. It also provides for time for entering appearance, interpleader proceedings, judgment and proceedings thereon, discovery, injunction, specific performance and parate execution.

The whole tenor of the Act relates to civil liability and the rights of the State in matters connected therewith. This leads to the next question – is

