

**SHELLEY BRYAN v. ATTORNEY GENERAL OF GUYANA  
And COMMISSIONER OF POLICE (C.A. No. 88/2000)**

**[COURT OF APPEAL OF GUYANA (Bernard, C., N. Kissoon and I. Chang, JJ.A)  
January 28; February 14; April 16, 2002.]**

**Constitutional Motion- Search and seizure of a sum of \$360,020.00 under Narcotic Drugs and Psychotropic Substances (Control) Act, 1988, S 83(2) [G]- Deprivation of Property despite acquittal- Whether continued detention of the money seized by the police is in breach of Article 142 of the Constitution- Whether correct procedure for enforcing claim adopted.**

**Administration of Estate- Administratrix durante minore- Whether applicant has locus standi to bring claim on behalf of estate.**

The Appellant, one Hubert Moriah, deceased and others were charged in 1996 with possession of narcotics. During the investigations, a sum of \$360,020.00 was seized and removed by the police from the home of Hubert Moriah, deceased, where he resided with the Appellant. On 14<sup>th</sup> August 1996 the charges against Moriah and the Appellant were dismissed. On 16<sup>th</sup> August 1996, Moriah by his Attorney-at-Law wrote to the Commissioner of Police requesting the return of the money seized. The money was not returned and he made no further efforts to secure its return up to the time of his death in 1999.

The Appellant acting in her capacity as Administratrix durante minore of the estate of Hubert Moriah, deceased, filed a constitutional motion under Article 142 of the Constitution of Guyana 1980 against the Respondents claiming a return of the sum of \$360,020.00 seized by the police. Counsel for the Respondents raised two points in limine, first that the Appellant had no locus standi, and secondly, that Article 142 of the Constitution was not available to the Applicant in a cause of this nature.

The Trial Judge having found that the Appellant had no locus standi and that there were other civil remedies available to the Appellant, dismissed the motion. On appeal,

**HELD, allowing the appeal:**

- (i) If a person charged with an offence under the Narcotic Drugs and Psychotropic Substances (Control) Act, 1988 is acquitted, he is entitled to recover any assets taken into custody by the police.
- (ii) The continued retention of property seized by the police, after charges laid have been dismissed by the court, is in breach of Article 142 of the Constitution.
- (iii) An aggrieved person alleging breaches of Articles 135 – 151 (inclusive) of the Constitution can seek redress in the High Court of the Supreme Court of Judicature regardless of the other forms of remedies available, by virtue of the removal of the proviso to Article 153.

Matter remitted to the trial judge to be heard on its merits.

Cases referred to in the judgment:

Webb v. Chief Constable of Merseyside Police [2000] A.E.R. 209  
Attorney General of the Gambia v. Momodou Jobe [1984] 3 W.L.R. 174  
Harikissoon v. Attorney General of Trinidad & Tobago [1980] A.C. 265  
Thakur Persad Jaroo v. Attorney General of Trinidad & Tobago (No. 54 of 2000)  
P.C.

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**Cases referred to in the judgment cont'd:**

**Smith v. Commissioner of Police (1997) 51 WIR, 409  
Re Royle (1877) 5 Ch. D, 540  
Re Tottenham (1896) Ch. D, 628**

**Legislation referred to in the judgment:**

**Constitution of the Cooperative Republic of Guyana, 1980.  
Narcotic Drugs and Psychotropic Substances (Control) Act, 1988.  
Police Act Cap. 16:01.  
Fundamental Rights (Practice and Procedure) Act, 1988.  
Constitution of the Cooperative Republic of Guyana, 1980, Amendment No. 6/2001  
High Court Act Cap. 3:02 (Rules of the High Court)**

**Mr. B. Gibson with Ms. C. Edwards for Appellant.  
Mr. A. Chase S.C. with Mrs. Y. Yhann for the Respondents.**

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

IN THE COURT OF APPEAL OF THE SUPREME COURT OF  
JUDICATURE

APPELLATE JURISDICTION

G U Y A N A

CIVIL APPEAL NO. 88 OF 2000

BETWEEN:

**SHELLY BRYAN** the Administratrix durante  
Minore of the Estate of Hubert Moriah (deceased)  
by letters of Administration No. 318 of 1999  
having been granted to me in terms of Order of  
Court No. 416 of 1999.

Appellant

- and -

**ATTORNEY GENERAL OF GUYANA  
COMMISSIONER OF POLICE**

Respondents

BEFORE:

<b>The Hon. Madam Justice Desiree P. Bernard</b>	-	<b>Chancellor</b>
<b>The Hon. Mr. Justice Nandram Kissoon</b>	-	<b>Justice of Appeal</b>
<b>The Hon. Mr. Justice Ian Chang</b>	-	<b>Justice of Appeal</b>

Mr. B. Gibson and Ms. C. Edwards for Appellant

Mr. A. Chase, SC and Mrs. Y. Yhann for Respondents

2002:

January, 28

February, 14

April,

J U D G M E N T

BERNARD, C. delivered the judgment of the Court:

Hubert Moriah also known as Hubert Small along with the Appellant  
and others was charged in 1996 with possession of narcotics. In the course

of investigations the sum of \$360,020.00 was seized and removed by the police from the home of Moriah where he resided with the Appellant.

On 14<sup>th</sup> August, 1996 the charges against Moriah and the Appellant were dismissed, and on 16<sup>th</sup> August, 1996 Moriah's lawyer wrote to the Commissioner of Police requesting a return of the money seized. It was never returned, and Moriah took no steps to ensure its return up to the time of his death some time in 1999.

The Appellant sought and was granted an order from the High Court dated 13<sup>th</sup> April, 1999 appointing her Administratrix durante minore on behalf of four infants (children of the deceased) of the estate of Hubert Moriah, and later a grant of Letters of Administration No. 318/1999. In August, 1999 the Appellant acting in her capacity as Administratrix of the estate of Hubert Moriah, deceased, filed a constitutional motion under Article 142 of the Constitution against the Respondents claiming a return of the sum of \$360,020.00 seized by the police. The learned trial judge after hearing submissions from both Counsel for the Appellant and the Respondents dismissed the motion. The Appellant has appealed from this dismissal.

At the hearing of the motion Counsel for the Respondents had raised a point in limine to the effect that the Appellant had no locus standi to bring a motion under Article 142 of the Constitution, and further, no grant of Letters of Administration was produced, only an order of court in which the name of the deceased is not mentioned. This order does not entitle her to recover any money on behalf of the estate of Hubert Moriah. This submission was also made by Counsel for the Respondents at the hearing of the appeal. It was also submitted that there was no nexus between the application and the estate of Hubert Moriah, and there was considerable delay in approaching the Court for relief.

