[2011] UKPC 31
Privy Council Appeal No 0101 of 2010

JUDGMENT

Electra Daniel Administrator for the estate of George Daniel (deceased) (Appellant) *v* The Attorney General of Trinidad and Tobago (Respondent)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Brown
Lord Wilson
Sir David Keene

JUDGMENT DELIVERED BY
Lord Brown
ON

9 August 2011

Heard on 21 June 2011

Appellant	*Respondent*
Sir Fenton Ramsahoye SC Anand Beharrylal (Instructed by Bankside Commercial Ltd)	Peter Knox QC (Instructed by Charles Russell LLP)

LORD BROWN :

1. The Hall of Justice in Port of Spain houses Trinidad and Tobago's Supreme Court of Justice: the High Court (Assizes and Civil Courts), the Court of Appeal and the Probate Registry. It is the Republic's main court complex. Built in the mid-1980s, unfortunately it omitted to make any special provision for the disabled, above all direct wheelchair access through the public entrance at the top of the steps on Knox Street. Down the years those confined to wheelchairs have instead been permitted on prior application to gain entry to the Hall of Justice by elevator reached through the basement car park.

2. Unsurprisingly this lack of public access and difficulties experienced too in using the court's witness boxes, jury boxes, public toilets and other such facilities increasingly became a matter of concern to the disabled and thus it was that George Daniel, President of the Trinidad and Tobago Chapter of Disabled Peoples International and himself confined to a wheelchair, on 8 March 2005 issued an originating motion pursuant to section 14 of the Constitution. (Sadly Mr Daniel died following the Court of Appeal hearing but although this further appeal to the Board is now maintained by his mother as Administrator ad litem for his estate, it is convenient to continue referring to him as the appellant.)

3. By the motion the appellant asserted the violation of three of his fundamental rights and freedoms under section 4 of the Constitution:

> "(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
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> (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;
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> (g) freedom of movement;"

4. Following the issue of the constitutional motion Mr Gary Kelly, the Court Executive Administrator at the Hall of Justice, issued tender invitations in December 2005 and January 2006, inviting an analysis of the building and its facilities and architectural solutions to the problems of access for the disabled. By an affidavit then sworn in the proceedings dated 24 March 2006 Mr Kelly stated that "the Judiciary is

committed to addressing all recommendations provided by the Architectural Firm it has engaged within the shortest time that is feasible."

5. Following the hearing of the motion, Bereaux J gave judgment on 20 July 2007, upholding the appellant's complaint under section 4(a) but dismissing it under sections 4(d) and 4(g). It is sufficient for present purposes to set out the final few paragraphs of the judgment:

> "26 . . . It is unacceptable that our physically impaired citizens, more so those who are wheelchair bound, must suffer the inconvenience and indignity of being wheeled into the Hall of Justice in so roundabout a manner [ie through the underground car park].
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> 27 Our Constitution mandates that they be treated in a far more civil and dignified manner. It is in the Hall of Justice that our citizenry come to pursue and enforce their rights. Physical access to it is an important part of their right to the protection of the law and ultimately to due process. They must be able to pursue their remedies and to witness proceedings, the latter of which is an important part of the legal process. It allows the litigant and the public the opportunity to view and to assess the fairness of the legal process. Without actual physical access to witness the process, credibility of the legal system will be undermined. Such access must be readily available to all. It is not sufficient that one's attorney can access it. The physically impaired must themselves have easy and direct access to the Hall of Justice to personally pursue the upholding of their rights and to witness proceedings if they so choose. '*Liberty*' requires that they have that option. A lack of unimpeded access can act as a disincentive to the legitimate pursuit of one's legal rights. Such access may be to able-bodied persons so routine as to seem trivial but for persons who are physically impaired such physical access is neither trivial nor routine. It can be a daily challenge. But such access is a right not an option and is indelibly part of due process of law.
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> 28 I accept that there are very significant challenges posed to the modification of courtrooms of the Hall of Justice so as to accommodate wheelchair bound members of our society in jury boxes of the courts of the Hall of Justice and to allow them to serve as jurors. But I certainly do not accept that ramps or even elevators to allow for the public conveyance of motorised or manually operated wheelchairs could not already have been constructed at the entrance of the Hall of Justice on Knox or Abercromby Streets. It is quite unacceptable that even a

> timeframe for such a construction has not yet been set. It is not that we do not possess the resources.
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> 29 I shall grant the applicant a declaration that the non-provision by the State of direct public wheelchair access through the public entrance to the Hall of Justice, Knox Street, Port of Spain, is a breach of the applicant's right to liberty under section 4(a) of the Constitution. Pursuant to the provisions of section 14, I shall direct that the State take such immediate steps as are necessary to provide within 18 months, direct access through the public entrance of the Hall of Justice, Knox Street, Port of Spain, to the applicant and other members of the physically challenged who are wheelchair-bound. The defendant shall pay the claimant's costs certified fit for two junior counsel."

These paragraphs, it will readily be seen, contain a resounding endorsement of the rights of the disabled, a clear recognition that these rights were violated in breach of the appellant's article 4(a) right to liberty by the failure to provide proper public access to the courts, and appropriate declaratory relief together with a direction to provide such access within 18 months.

6. This success notwithstanding, the appellant on 30 August 2009 appealed to the Court of Appeal on the basis that the judge had been wrong not also to have found violations of sections 4(d) and 4(g) and to have made further declarations accordingly. Two years later, in a skeleton argument for the appeal dated 25 September 2009, the appellant for the first time in the proceedings mentioned damages, asserting that: "an award of vindicatory damages should be made to 'reflect the sense of public outrage, emphasise the gravity of the breach and deter future breaches'", citing in support the decision of the Board in *Attorney General of Trinidad and Tobago v Ramanoop* [2006] 1 AC 328. The appellant's final skeleton argument to the Court of Appeal dated 22 January 2010, however, concluded:

> "The appellant will be content with the additional declarations sought to vindicate his constitutional rights without any award of damages on the facts of this case. This is not, however, a bar to the court awarding vindicatory damages of its own motion."

7. The appeal came before the Court of Appeal (Archie CJ, Kangaloo and Mendonca JJA) on 29 January 2010 and on the same day was dismissed (with no order as to costs) in a brief ex tempore judgment given by the Chief Justice in the following terms:

> "We have reached a decision on the preliminary point, and that is, that the appeal ought not to be heard, for the following reasons: We feel that the relief granted by judge below afford adequate vindication of the appellant's constitutional right. And this would be so, even if the facts complained of constituted a concurrent breach of Sections 4 (D) and (G) of the Constitution, a finding that we are not prepared to make at this stage.
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> The substance of his complaint, is a denial of the access to the Hall of Justice, for the purpose of participating fully in the administration of justice, as any other citizen would be entitled to, and to follow the progress of any matters in which he might be concerned. There is no assertion that the other rights in respect of which he seeks declarations differ in content, and to that extent, as between the parties to this action, tis appeal is academic. See in this regard *The Queen v Ex parte Salem,* 199 – 1991 (1) appeal cases 450, and in particular the passage at 457, which is quoted in the case of *Bob and Moses v Manning*, CA No. 97/02, which has been cited before the Court in written submissions.
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> Additionally, we see no compelling reason why, in the public interest, the content of the rights under Sections 4(D) and (G) of the Constitution need to be explored in this case. There's no claim for damages here or below, and, in any event, we are of the view that any vindication of rights, whether by damages or declaratory relief, should respond to the facts proven or accepted to constitute the breach, and impact thereof, and not as a result of the number of categories into which they can be fitted. In all the circumstances, therefore, the appeal is dismissed."

8. In short, the Court of Appeal took the view that it was both unnecessary and inappropriate to decide whether the judge had been right or wrong in ruling against the appellant in respect of his complaints under paragraphs (d) and (g) of section 4. The plain fact was that the self-same undisputed facts were relied upon to support the complaints under those paragraphs as the complaint under paragraph (a) and that no different substantive outcome (by way either of remedial works directed or, indeed, if appropriate, damages) would have resulted from a different conclusion as to whether the other paragraphs were also breached. In other words, it simply did not matter whether or not there were breaches of the other paragraphs of section 4 too. The core grievance of the disabled has been recognised. They now know that their section 4(a) right to liberty embraces the right of public access to all courts of law. That holding by the judge was left unappealed by the State. In these circumstances it was entirely permissible - indeed, in the Board's view, correct – for the Court of Appeal to regard the appeal as academic between the parties and to conclude that there was no compelling public interest in hearing it nonetheless. It is not as if Bereaux J's judgment now stands as a binding precedent as to the true scope of section 4 (d) and

(g): by declining to decide these questions the Court of Appeal have left this in doubt. It is altogether more appropriate that these important issues be decided in a different factual context when the decision actually matters.

9. In these circumstances it was ill-judged of the appellant to pursue this further appeal. It would be absurd for the Board to tell the Court of Appeal that, in a case like this, they have no alternative but to decide all the issues raised, however immaterial to the practical outcome, and for us therefore to remit the case to the Court of Appeal for decision on these issues; and no less absurd for the Board itself to decide the issues without any decision upon them by the court below. This matter has been brought before us for all the world as if it should be regarded as a great constitutional cause célèbre. Such an approach is entirely misconceived.

10. Insofar as it is suggested that the Court of Appeal erred also in not making an award of vindicatory damages, that too is plainly unsustainable. As already indicated, no damages claim was advanced before the judge and, unsurprisingly therefore, the notice of appeal made no complaint of failure to award them. In any event it is entirely within the court's discretion under section 14 to treat the declaration of a violation as itself a sufficient vindication of the appellant's constitutional rights, particularly when accompanied, as here, by a direction that (inevitably expensive) remedial works have to be undertaken. As to the width of this discretion generally, see particularly the Board's decisions in *Surratt v The Attorney General of Trinidad and Tobago* [2008] UKPC 38 and *James v The Attorney General of Trinidad and Tobago* [2010] UKPC 23. *Ramanoop*, the Board would point out, was a very different case indeed – involving (see Lord Nicholls' judgment at para 2) "some quite appalling misbehaviour by a police officer". It would have been very odd indeed had the Court of Appeal here entertained this appeal in order to make an award of vindicatory damages.

11. In the event the Board dismissed this appeal (without calling on the respondent) at the hearing on 21 June 2011 for reasons to be given thereafter. These are our reasons. In the particular circumstances of this case their Lordships would propose to make no order for costs on the appeal, noting inter alia in this regard that the judge's direction as to remedial works was not in fact complied with; indeed, we were told, the required construction works began only in April this year. If, despite this intimation, the parties nevertheless wish to seek some different costs order, they will have 28 days within which to make written submissions.