IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEALS Nos. 41 and 42 of 1979

BEFORE: The Hon. Mr. Justice Leacroft Robinson, President
The Hon. Mr. Justice Zacca, J.A.
The Hon. Mr. Justice Melville, J.A.

BETWEEN	NOEL RILEY	)	
		)	
	ANTHONY FORBES	)	
		)	
	AND	)	
		)	
	CLIFTON IRVING	)	PLAINTIFFS/ APPELLANTS
		)	
	AND	)	
		)	
	ELIJAH BECKFORD	)	
		)	
	AND	)	
		)	
	ERROL MILLER	)	
AND	THE ATTORNEY GENERAL	)	
		)	
	AND	)	
		)	RESPONDENTS
	THE SUPERINTENDENT OF PRISONS -	)	
		)	
	ST. CATHERINE DISTRICT PRISON	)	

Messrs. R.N.A. Henriques & Delano Harrison for the appellants Riley, Forbes & Irving.

Messrs. Dennis Daly & Michael Erskine for the appellants Elijah Beckford & Errol Miller.

Mr. Lloyd Ellis & Mr. R.G. Langrin for the respondents.

December 5 & 6, 1979 and
March 14, 1980

ROBINSON, P.:

The appellants herein had all been convicted of murder and sentenced to suffer death in the manner authorised by law. Each had applied unsuccessfully to the Court of Appeal for leave to appeal against his conviction. Two of them had subsequently

applied for special leave to appeal to Her Majesty in Council and their applications had been refused. One had toyed with the idea of also applying for special leave to Her Majesty in Council but after a delay of some 21 months the idea had been abandoned.

In the result the picture in relation to each appellant was as follows:

Name of appellant	Date of conviction	Date Appln. refused for leave to appeal to the Court of Appeal	Date Appln. refused for Special Leave to appeal to Her Majesty in Council
Noel Riley	7. 3.75	23. 2.76	18. 7.78
Anthony Forbes	7. 3.75	23. 2.76	Did not apply
Clifton Irving	22. 3.75	10. 1.77	Proposed appln. abandoned in October 1978.
Elijah Beckford	9. 5.75	6.11.75	Did not apply
Errol Miller	28.10.75	5. 2.76	8.12.76

They all contend that the delay in carrying out the sentences, and the many reasons which they allege therefor, has had the effect of subjecting them to torture and/or inhuman and/or degrading treatment within the meaning of and contrary to section 17 (1) of the Constitution of Jamaica, and they claim that a belated carrying out of their executions at this time would be unconstitutional and illegal being contrary to section 17 (1) of the said Constitution.

Accordingly, they all applied by Motions to the Supreme Court for declarations to that effect, under section 25 of the Constitution of Jamaica.

When the Motions came on for hearing before a bench of 3 judges, a submission was made in limine by the learned Solicitor General to the effect that the Court had no jurisdiction to entertain the Motions as they involved a challenge to the Constitutional powers of the Governor General and the Privy

Council in relation to the exercise of the Prerogative of Mercy. The submission was upheld and the Motions were dismissed without a hearing on the merits.

In the events that happened, it is a little difficult to appreciate what difference it would have made if the matter had not been disposed of on an in limine submission, but what we find disturbing is that the Court should have gone on record as saying that it had no jurisdiction to entertain an allegation that one of the provisions of sections 14 to 24 (inclusive) of the Constitution of Jamaica had been contravened. Section 25 of the Constitution is quite clear. It provides as follows:

> "25. - (1) Subject to the provisions of subsection (4) of this section, if any person alleges that any of the provisions of sections 14 to 24 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.
>
> (2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 14 to 24 (inclusive) to the protection of which the person concerned is entitled:
>
> Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.
>
> (3) Any person aggrieved by any determination of the Supreme Court under this section may appeal therefrom to the Court of Appeal.
>
> (4) ..... "

We therefore allowed the appeals and directed that the Motions be remitted to the Supreme Court to be heard and determined.

If authority were wanted for the proposition that an application of this kind should be treated on its merits and not disposed of in limine, then one need only look at the Reasons delivered by Lord Diplock on the 12th June, 1979, for the decision of the Lords of the Judicial Committee of the Privy

Council in the case of Stanley Abbott v. The Attorney General of Trinidad and Tobago, Privy Council Appeal No. 37 of 1978.

In that case, nearly 6 years had elapsed between the date of conviction (16th July, 1973) and the date of hearing of the Appeal by the Privy Council and it was there claimed, as it has been in the instant appeals, that the delay in executing a death sentence passed on the appellant was a delay so inordinate as to involve a contravention of his constitutional rights. The appeal was dismissed after a hearing on the merits in which it had to be conceded, following the Privy Council's decision in de Freitas v. Benny (1976) A.C. 239, that the appellant could not complain about the delay totalling three years (preceding a Petition for Pardon which was submitted to the Governor General on his behalf on the 26th July, 1976) caused by his own action in appealing against his conviction or about the delay totalling 2 years, subsequent to the rejection of his petition on the 26th February, 1977, caused by his own action in appealing against the sentence on constitutional grounds. His case as advanced before their Lordships, was therefore confined to the period which was allowed by the State to elapse between the lodging of his petition for pardon and its rejection by the President (who had replaced the Governor General on 1/8/76) and this, it was argued, amounted to a delay so inordinate as to involve a contravention of his constitutional rights.

It is to be observed, however, that although the Constitutional provisions in Trinidad and Tobago in respect of the Prerogative of Mercy are not dissimilar in substance to those in this country the Privy Council did not rule out the possibility that there could be circumstances in which a delay might be so inexplicably long as to permit of an argument that the taking of the condemned man's life would not be by due process of law. This is what it said, at p. 5:

> "In their Lordships' view the proposition that, in the circumstances of the instant case, the fact that seven or eight months elapsed before the appellant's petition for reprieve was finally disposed of by the President made his execution at any time thereafter unlawful, is quite untenable. Their Lordships accept that it is possible to imagine cases in which the time allowed by the authorities to elapse between the pronouncement of a death sentence and notification to the condemned man that it was to be carried out was so prolonged as to arouse in him a reasonable belief that his death sentence must have been commuted to a sentence of life imprisonment. In such a case, which is without precedent and, in their Lordships' view, would involve delay measured in years, rather than in months, it might be argued that the taking of the condemned man's life was not "by due process of law"; but since nothing like this arises in the instant case, this question is one which their Lordships prefer to leave open. "

As regards the term "due process of law", an expression used in section 1 (a) of the Trinidad and Tobago Constitution, we should ourselves have thought that its meaning was obvious. However, its meaning, its origin and its history received lengthy and learned treatment in the judgments of the Court of Appeal of Trinidad and Tobago in the case of Lasalle v. The Attorney General (1971) 18 W.I.R. 379, and at the end of the day it was the general consensus that the concept of due process of law connotes nothing more than adherence to the following fundamental principles:

(a) reasonableness and certainty in the definition of criminal offences;

(b) trial by an independent and impartial tribunal; and

(c) observance of the rules of natural justice.

The portion of the Trinidad and Tobago Constitution which was under consideration, appears to have been modelled after the Canadian Bill of Rights, 1960, and in discussing the Canadian approach to the expression "due process of law" Fraser J.A. in the course of his judgment referred to a dictum by McDonald J.A. in R. v. Martin (1961) 35 W.W.R. 385, a case in which the Canadian Bill of Rights and the term "due process of law" were considered by the appellate division of the Supreme Court of Alberta.

At page 399, McDonald J.A. is reported as saying, with the concurrence of Smith C.J. and Kane J.A. as follows:

> "In words and Phrases, Second Series amongst other definitions, it is said p. 168, 'The expressions "due process of law" and "the law of the land" are synonymous'.
>
> It would be difficult, indeed unwise, to attempt an inclusive definition of the phrase 'due process of Law' except to state that in my view in the case at bar it means the law of the land as applied to all the rights and privileges of every person in Canada when suspected of or charged with a crime, and including a trial in which the fundamental principles of justice so deeply rooted in tradition apply. "

We make these references to indicate that, in the final analysis there is really no mystery or magic involved in the use of that expression, and it in no way affects the relevance, albeit obiter, to this country, of the observations of the Privy Council as quoted above.