



[2023] JMSC Civ 133

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2019CV02342**

<b>BETWEEN</b>	<b>SILVERA ADJUDAH</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL OF JAMAICA</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>MINISTRY OF JUSTICE</b>	<b>2<sup>ND</sup> DEFENDANT</b>
<b>AND</b>	<b>RENITA MULLINGS GORDON</b>	<b>3<sup>RD</sup> DEFENDANT</b>

**IN CHAMBERS**

Mr. Silvera Adjudah, Claimant in person

Mr. Louis Jean Hacker instructed by Director of State Proceedings for and on behalf of the Defendants

**Dates Heard: April 20 and July 12, 2023**

**Civil Practice & Procedure – Striking out statement of case – No reasonable ground for bringing the claim – Claim is frivolous, vexatious or otherwise an abuse of the process of the Court – Civil Procedure Rules 26.3 (1) – Statement of case (Certificate of Truth) – Civil Procedure Rule 3.13 – Defendants not a proper party to the claim – Crown Proceedings Act section 3(5) – Extension of time to file defence – Civil Procedure Rules 10.3 (9) and 26.1 (2) (c) & (v) – Application for default judgment**

**PALMER HAMILTON, J**

## **BACKGROUND**

[1] The Claimant by way of a Claim Form claims against the Defendants to obtain full compensation from the Court for the 3<sup>rd</sup> Defendant's unlawful dereliction and negligence as a Prosecutor and other associated damages in his court case as complainant against an accused in the Half-Way-Tree Criminal Court on the 7<sup>th</sup> day of November, 2018. The Claimant is asking the Court to grant full compensation awards for the following:

- (a) Breach of duty of care for her gross negligence in handling of the case;*
- (b) Breach of duty of care for her deliberate dereliction of duty as Prosecutor*
- (c) Special damage*
- (d) General damage*
- (e) Punitive damage*
- (f) Aggravated damage*
- (g) Breach of my constitutional rights and laws of Natural Justice*
- (h) Discrimination*

[2] The Claimant is alleging that the 3<sup>rd</sup> Defendant was the Prosecutor assigned to represent him, the complainant, in the criminal case at the Half-Way-Tree Court and is the servant and/or agent of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. An Acknowledgment of Service was filed by the Defendants but no Defence was filed.

## **THE DEFENDANTS' APPLICATION**

[3] However, the Defendants filed on the 22<sup>nd</sup> day of June, 2019 a Notice of Application for Court Orders seeking the following Orders:

- (a) The Claimant's statement of case is struck out.*
- (b) In the alternative,*
  - (i) The 3<sup>rd</sup> Defendant is permitted an extension of time to file and serve her Defence.*

*(ii) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are removed as parties to this claim.*

*In the alternative,*

*(iii) The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are permitted an extension of time to file and serve their Defence.*

*(c) Costs of this Application to be costs in the claim.*

*(d) Such further and/or other relief as the Court deems just in the circumstances.*

**[4]** The grounds on which the Applicants are relying are as follows:

*(a) The Claimant's statement of case does not disclose any reasonable grounds for bringing the claim.*

*(b) The Claimant's claim is frivolous or vexatious or otherwise an abuse of the process of the court.*

*(c) The Claimant's Particulars of Claim has not been verified by a certificate of truth.*

*(d) Rule 26.3 (1) (c) of the Civil Procedure Rules, 2002, (CPR) empowers the court to strike out a statement of case if it appears to the court that the statement of case or the part to be struck out discloses no reasonable grounds for bringing the claim.*

*(e) Rule 26.3 (1) (b) of the CPR empowers the court to strike out a statement of case if it appears to the court that the statement of case or the part to be struck out is an abuse of the process of the court.*

*(f) Rule 1.3 of the CPR empowers the court to strike out any statement of case which has not been verified by a certificate of truth and permits a party to apply for such an order.*

*(g) Rule 26.3 (1) (a) of the CPR empowers the court to strike out a statement of case or part of a statement of case if it appears to the court that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings.*

*(h) Pursuant to Rule 19.2 (4) of the CPR, the court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.*

*(i) The 1<sup>st</sup> Defendant is not a proper party to this claim by virtue of section 3 (5) of the Crown Proceedings Act which states that: "No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested*

*in him, or any responsibilities which he has in connection with the execution of judicial process.*

- (j) The 2<sup>nd</sup> Defendant does not have separate legal personality and therefore cannot sue or be sued in its own name.*
- (k) Rule 10.3 (9) of the CPR permits a Defendant to apply for an order extending the time for filing a defence and Rule 26.1 (c) of the CPR vests the court with power to extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension of time is made after the time for compliance has passed.*
- (l) The Defendants have good reasons for requesting an extension of time to file a defence.*
- (m) Extending the time for the Applicants to file and serve a Defence will not cause the Claimant any prejudice which cannot be adequately remedied by an award of costs.*
- (n) Rule 26.1 (2) (v) of the CPR provides that the court may take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective.*
- (o) The application is in keeping with the overriding objective of the CPR in dealing with cases justly.*

**[5]** The Application is supported by the Affidavits of Andre Moulton and Ricardo Maddan filed on the 22<sup>nd</sup> day of June, 2019 and the 1<sup>st</sup> day of September, 2019 respectively.

## **THE CLAIMANT'S APPLICATION**

**[6]** As a consequence of not filing a Defence, the Claimant filed a Request for Default Judgment which was supported by an Affidavit for Application of Default Judgment which were both filed on the 29<sup>th</sup> day of July, 2019. On that same day, the Claimant also filed a Notice of Application for Court Orders seeking Orders of Default Judgment for the Orders he outlined in his Claim Form. That Notice of Application for Court Orders is supported by an Affidavit.

## THE DEFENDANTS' SUBMISSIONS

[7] Learned Counsel for the Defendants submitted that the issues that this Honourable Court will have to resolve are:

*(a) Whether the Claimant's statement of case discloses any reasonable grounds for bringing the Claim and as such ought to be struck out; and*

*(b) Whether or not the Defendants ought to be granted an extension of time to file their Defence.*

[8] Learned Counsel relied on several cases, which were all considered, and submitted that the Court in exercising the power to strike out should examine the statement of case to see if it discloses a known cause of action and whether there are reasonable grounds for bringing the action. Learned Counsel further submitted that the Claimant's statement of case discloses known causes of action, as the claim is grounded in negligence and he is also seeking constitutional damages for alleged breaches of his right to a fair trial and discrimination. However, Learned Counsel contended that there are no reasonable grounds for bringing the actions.

[9] In relation to the claim for negligence, it was submitted that the Claimant has the onus of proving that the Defendants owed a duty to him, that the Defendants breached that duty and that he suffered damage as a result of that breach. It was contended that the 3<sup>rd</sup> Defendant owed no duty to the Claimant and that she does not represent him. There would have been no Attorney/Client relationship between the 3<sup>rd</sup> Defendant and the Claimant. The Claimant was not a party to the criminal matter. The charges were laid and the matter commenced by the Crown and not by the Claimant and it is the Prosecution who conducts the matter on behalf of the Crown against the accused. As such, the claim in negligence ought to be struck out for absence of reasonable grounds. It was further contended that, it was unreasonable for the Claimant to claim that the Defendants ought to pay him damages in an alleged case of assault committed against him by an accused in a criminal matter, merely on the basis that the prosecution against the accused

failed. There are no reasonable grounds pleaded upon which the Claimant can seek to extend that liability to the Defendants.

[10] In relation to the constitutional actions, Learned Counsel for the Defendants submitted that the Claimant's right to a fair hearing was not triggered as albeit that the Claimant was the Complainant in the criminal matter, he had no right to be heard in the Criminal Court as he was not the accused and it is within the Prosecutor's discretion to determine how and the type of evidence which ought to be led, if any, in the prosecution of an accused as it was not a private prosecution. It was further contended that the Criminal Court was not the forum for the Claimant to have an effective judicial remedy wherein he could assert his civil right and as such no reasonable grounds shown in relation to the alleged breach of the Claimant's right to be heard. It was submitted that, no reasonable claim for discrimination has been shown as the Claimant has not shown how he was treated differently and has not provided any comparisons.

[11] In the alternative, if the Defendants' Application to Strike Out Statement of Case was to be refused, Learned Counsel for the Defendants submitted that the Application for Extension of Time to file Defence ought to be allowed. Learned Counsel relied on the case of **Grant and Others v The Firearm Licencing Authority and Others** [2020] JMSC Civ 4 where Master Mott Tulloch-Reid outlined considerations the Court should follow in circumstances where an applicant is seeking permission to file a defence out of time. Learned Counsel submitted that, regardless of the delay, the Defendants have a meritorious Defence with a good prospect of success for the following reasons:

- (a) *The 2<sup>nd</sup> Defendant has no legal personality and ought not to be named as a party to this Claim.*
- (b) *The 3<sup>rd</sup> Defendant, a Deputy Clerk of Courts, undertakes prosecutions on behalf of the Crown and as such was not representing the Claimant.*
- (c) *Based on the case file, in the criminal matter, the 3<sup>rd</sup> Defendant formed the view that there was insufficient evidence to continue with the prosecution and as such offered no further evidence on behalf of the Crown.*

*(d) There is no connection between the allegations of assault in the criminal matter for which the Defendants ought to be liable for the injuries suffered by the Claimant.*

*(e) The Claimant's rights pursuant to sections 13 (3) (r), 16 (2) and 13 (3) (i) (ii) of the Constitution were not breached as the rights were not triggered.*

## **THE CLAIMANT'S SUBMISSIONS**

- [12]** The Claimant submitted that his statement of case cannot be struck out because the case is a genuine one supported by pieces of real evidence and he directed this Court to the documents attached to his Claim Form. He further submitted that his claim is not frivolous or vexatious or otherwise an abuse of the process of the Court because it is backed by a Medical Report.
- [13]** The Claimant contended that Rule 26.3 (1) (b) of the Civil Procedure Rules is not applicable as there is medical evidence which clearly validates the unlawful dereliction and negligence of the 3<sup>rd</sup> Defendant in agreeing to dismiss the case prematurely. He further contended that Rule 26.3 (1) (b) of the Civil Procedure Rules is also not applicable as there cannot be an abuse of the process of the court where there is hard evidence to support the dereliction of duty and the breach of duty of care of the 3<sup>rd</sup> Defendant.
- [14]** In relation to grounds (i) and (j) of the Defendants' Notice of Application for Court Orders, the Claimant submitted that he failed to understand what the Defendants are referring to as the 1<sup>st</sup> Defendant is himself, the Attorney General and the 2<sup>nd</sup> Defendant is the employer of the 3<sup>rd</sup> Defendant.
- [15]** The Claimant also contended that the Defendants received an extension of time on 2 separate occasions and to date no Defence has been served on him. He further contended that no reasons have been stated for requesting an extension of time.
- [16]** The Claimant submitted that ground (o) of the Defendants' Notice of Application for Court Orders is of no relevance as there is no reason of unjust dealing in this

case other than this Application which is unjust. He says this is so as no Defence was filed and the application is just a fishing spree to divert attention from the fact that they are unable to file any Defence.

**[17]** The Claimant also made submissions regarding the late filing of the Defendants' submissions in relation to their application. The Claimant contended that the Defendants failed to file an application asking for extension of time to file late submissions and that is a major breach of court procedure and the Defendants' application therefore cannot be heard. As a result, the Claimant's Request for Default Judgment must now proceed. However, the Claimant's submissions are of no moment as an Order was made by this Court to allow the said submissions to stand as filed.

## **ISSUES**

**[18]** The main issue for my determination is whether the Claimant's statement of case ought to be struck out for disclosing no reasonable grounds for bringing the claim pursuant to Civil Procedure Rule 26.3 (1) (b) and (c).

**[19]** If I find that the statement of case ought to be struck out, then there would be no need for me to consider the other issues as that would bring the entirety of the claim to an end. However, if I find that the statement of case should not be struck out then I would also have to consider the following issues:

(1) Whether the Court should extend the time for the filing of a Defence pursuant to Civil Procedure Rules 10.3 (9) and 26.1 (2);

(2) Whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants ought to be removed as parties to the Claim; and

(3) Whether the Claimant's request for default judgment ought to be granted.



## LAW & ANALYSIS

A. *Whether the Claimant's statement of case ought to be struck out for disclosing no reasonable grounds for bringing the claim pursuant to Civil Procedure Rule 26.3 (1) (b) and (c)*

**[20]** The starting point is Rule 26.3 of the Civil Procedure Rules, 2002 (as amended), hereinafter referred to as 'the CPR', which gives the Court the power to strike out a statement of case or part of a statement of case if it appears to the Court –

(a) ...;

(b) *that the statement of case or the part to be struck out is an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings;*

(c) *that the statement of or the part to be struck out discloses no reasonable grounds for bringing or defending a claim or*

(d) ...

**[21]** The phrase '*statement of case*' is defined in Rule 2.4 of the CPR as -

(i) *a Claim Form, Particulars of Claim, Defence, Counterclaim, Ancillary Claim Form or Defence and a Reply; and*

(ii) *any further information given in relation to any statement of case under Part 34 either voluntarily or by order of the court.*

**[22]** Kodilinye and Kodilinye in their text Commonwealth Caribbean Civil Procedure, 2<sup>nd</sup> Edition stated that "*the phrase 'otherwise an abuse of the process of the court' is a catch-all provision which encapsulates the general principle underlying the striking-out rules...*" The learned authors of Blackstone's, Civil Practice 2002, 3rd Edition, at paragraph 33.6 opined that "*a statement of case ought to be struck out if the facts set out do not constitute the cause of action or defence alleged.*"

- [23] It is clear from the Rule 26.3 (1) (c) of the CPR that if the cause of action discloses no reasonable ground for bringing the claim, the Court should have the matter struck out. I find the view expressed by Batts J in **City Properties Limited v New Era Finance Limited** [2013] JMSC Civ 23 to be instructive where he stated-

*On the issue of the applicable law, the section is clear and means exactly what it says. There must be reasonable grounds for bringing or defending a claim. These reasonable grounds must it seems to me be evident on a reading of the statement of case. It is well established and a matter for which no authority need be cited, that upon an application to strike out pleading, no affidavit evidence need be filed, the issue is determined by reference to the pleadings.*

- [24] I wish to rely on Sykes J interpretation of Rule 26.3 (1) (c) of the CPR which was endorsed by the Court in **Sebol Limited and Another, v Ken Tomlinson (as the Receiver of Western Cement Company Limited) and others**, Supreme Court of Jamaica, Claim No. HCV 2526/2004, delivered on October 9, 2007 and **Sebol Limited and Another, v Ken Tomlinson (as the Receiver of Western Cement Company Limited) and others**, Court of Appeal, SCCA 115/2007, delivered December 12, 2008. Sykes J stated at paragraph 24 that:

*Let us look at what rule 26.3 (1) (c) actually says. The rule does not speak of a reasonable claim. It speaks of reasonable grounds for bringing the claim. It would seem to me that simply as a matter of syntax the instances in which a claim can be struck out against a defendant are wider than under the old rules. The rule contemplates that the claim itself may be reasonable, that is to say, it is not frivolous, unknown to law or vexatious, but the grounds for bringing it may not be reasonable. Clearly the greater includes the lesser. Thus if the claim pleaded is unknown to law then obviously there can be no reasonable grounds for bringing the claim. It does not necessarily follow, however, that merely because the claim is known to law the grounds for bringing it are reasonable. The rule focuses on the grounds for bringing the claim and not on just whether the pleadings disclose a reasonable cause of action." It is not in dispute that the causes of action are ones that are not known to law. The Claim is for negligence, breach of constitutional rights and damages flowing from same. The issue is whether the Claimant has reasonable grounds for bringing a claim for those causes of action.*

- [25] The Claimant is alleging, as was outlined earlier, that the 3<sup>rd</sup> Defendant acted in a highly negligent manner and in deliberate dereliction of her duty in representing him as the Complainant in the criminal matter at the Half-Way-Tree Parish Court.

He further alleges that the criminal matter case was thrown out due to lack of medical evidence and this was due to the fact that the 3<sup>rd</sup> Defendant acted in dereliction of her duty when she refused to wait on the hospital to provide the evidence of the assault injuries, that is the medical reports. While I understand the position of the Claimant, I see no reasonable grounds for bringing such a claim against the Defendants.

[26] The criminal matter was laid by a Corporal based on the report that the Claimant made. The matter was commenced by the Crown and not directly by the Claimant, as is the case with criminal matters. The 3<sup>rd</sup> Defendant would have been acting in her duties on behalf of the Crown against the accused. I found the case of **Patrick Chung v The Attorney General of Jamaica and Director of Public Prosecutions** [2019] JMFC FULL 3 to be instructive where V Harris J stated at paragraph 216 that, “... *prosecutions under the criminal law are brought on behalf of the state in the name of the Crown and the alleged victims/injured parties are typically referred to as virtual complainants. Where crimes are committed, liability is owed to the state (not the injured party) and it is the state which supervises any punishment.*” In that case, the Full Court was considering the issue of whether a virtual complainant who delays unreasonably in making a report of a crime acts in breach of the accused’s constitutional right to a fair hearing within a reasonable time. Even though the circumstances of that case are different from this case, the principle emanating is instructive as it shows that the prosecution is acting on behalf of the state and any liability is owed to the state. Therefore, in the criminal matter at the Half-Way-Tree Parish Court where the Claimant was the Complainant, any liability that may have been found on the part of the accused would have been owed to the state and not to the Complainant. In other words, had the criminal matter proceeded at the Half-Way-Tree Parish Court, and the accused was found guilty, any liability on the part of the accused would be owed to the state and not to Mr. Adjudah.

[27] I agree with the submissions of Learned Counsel for the Defendants that there was no Attorney/Client relationship between the 3<sup>rd</sup> Defendant and the Claimant for a

duty of care to arise. The 3<sup>rd</sup> Defendant was not representing the Claimant at the criminal matter, she was representing the state. Therefore, I see no reasonable grounds for bringing the Claim in negligence against the Defendants.

[28] In relation to the breach of the Claimant's constitutional rights, I am also of the view that no reasonable grounds exist for bringing the claim against the Defendants. The Claimant was not the one who was on trial at the Half-Way-Tree Parish Court, he would therefore not be the one who was entitled to a fair hearing as contemplated by the Constitution. I agree with Learned Counsel for the Defendants that the right to a fair hearing was not triggered. I also agree with Learned Counsel that the criminal court is not the forum for the Claimant to have an effective judicial remedy where he could assert his civil right.

[29] I am also of the view that there exists no reasonable ground for bringing a claim for discrimination. Sykes CJ in **Sean W Harvey v Board of Management of Moneague College, Ministry of Education Youth and Information and Attorney General of Jamaica** [2018] JMSC Full 3 in dealing with the issue of whether the Claimant was discriminated against relied on the Privy Council case of **Bhagwadeen v Attorney General of Trinidad and Tobago** (2004) 64 WIR 402 where it was shown that the claimant needs to show that he has been treated differently from some other similarly circumstanced person. Sykes CJ goes on to quote Lord Carswell at paragraph 18, page 408:

*A claimant who alleges inequality of treatment or its synonym discrimination must ordinarily establish that he has been or would be treated differently from some other similarly circumstanced person or persons, described by Lord Hutton in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] 2 All ER 26 at paragraph 71 as actual or hypothetical comparators. The phrase which is common to the anti-discrimination provisions in the legislation of the United Kingdom is that the comparison must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.*

[30] The Claimant has not shown on his pleadings that he has been or would be treated differently from some other similarly circumstanced person or persons. The

Claimant has simply stated at paragraph 26 of his Amended Particulars of Claim filed the 25<sup>th</sup> day of January, 2021 that:

*Discrimination – The behaviour of the 3<sup>rd</sup> Defendant led me to feel like I did not have the right to file a suit against a top Tourism official. Mr. David Dobson to whom I went to serve the Court documents on when I was assaulted. As such the 3<sup>rd</sup> Defendant made me feel there was class discrimination when she failed to do her duty in prosecuting my case. I asked the Court to award me for Class Discrimination.*

That in my view does not meet the threshold as needed for a claim on discrimination. The Claimant has not shown any reasonable ground for bringing a claim for discrimination.

**[31]** It is therefore my judgment that, the Claimant's statement of case ought to be struck out for disclosing no reasonable grounds for bringing the claim. There were no submissions in relation to the claim being struck out for an abuse of the process of the Court. However, this does not change or affect my findings.

## **CONCLUSION**

**[32]** In light of my findings, there is no logical reason for me to consider the Defendants' application for extension of time and the Claimant's request for default judgment. The matter is at an end once the statement of case is struck out.

## **ORDERS & DISPOSITION**

**[33]** Having regard to the forgoing these are my Orders:

- (1) The Claimant's statement of case stands as struck out.
- (2) Costs to the Defendants, to be taxed if not agreed.
- (3) Permission for leave to appeal is refused.
- (4) Defendants' Attorneys-at-Law to prepare file and serve Orders made herein.