



[2020] JMSC Civ 27

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

**CLAIM NO. 2018HCV02417**

**BETWEEN SILVERA ADJUDAH CLAIMANT**

**A N D THE ATTORNEY GENERAL OF JAMAICA DEFENDANT**

Claimant in person

Carson Hamilton instructed by the Director of State Proceedings for the defendant

20 and 27 January and 17 February 2020

**Claim arising from alleged procedural errors/unlawful actions in a prior claim – Proper forum to raise those issues is the Court of Appeal in appeal against outcome in prior claim – No separate cause of action arising – Constitutional claim inappropriate – Statement of case discloses no reasonable grounds for bringing the claim – Abuse of the process of the court**

**ORAL JUDGMENT**

**D. FRASER J**

**THE APPLICATION**

- [1] By Notice of Application for Court Orders dated 5 June 2019 and filed 11 June 2019 the Attorney General sought to have the claimant's claim form and particulars of claim both filed on the 26 June 2018 struck out or in the alternative that the time for the defendant to file a Defence (if necessary) be extended to 14 days after the determination of the application.
- [2] The grounds on which the defendant sought the order striking out the claimant's claim were that:
- a. The statement of case discloses no reasonable grounds for bringing or defending a claim (Civil Procedure Rules (CPR) Rule 26.3(1)(c));

- b. The statement of case is an abuse of the process of the court (CPR Rule 26.3(1)(b)); and
  - c. The statement of case is prolix or does not comply with the requirements of Parts 8 or 10 of the CPR. (CPR Rule 26.3(1)(d))
- [3] The grounds also allege that the claimant seeks to obtain compensation for breach of his constitutional rights without stating which constitutional right is being breached or identifying a known constitutional right. Further that the claim contains defamatory and untrue statements in relation to the Crown Servant named in the claim.

#### THE CLAIM

- [4] The claim filed by the claimant in this matter arises out of the circumstances surrounding the conduct and determination of his earlier claim for wrongful dismissal brought against The Attorney General bearing claim number 2017HCV01103. After a hearing before Master P. Mason that matter was determined against the claimant on the basis that his claim was statute barred and additionally that there were no reasonable grounds disclosed in the statement of case. Master Mason also refused leave to appeal her decision. See ***Silvera Adjudah v Attorney General of Jamaica, South Eastern Regional Health Authority and Donald Farquharson*** [2019] JMSC Civ 142. The claimant indicated that he has filed an application for leave to appeal that decision in the Court of Appeal.
- [5] In this claim the claimant seeks compensation for:
- a. Breach of his constitutional right for maliciously and vindictively causing a delayed conclusion in his court case beyond a reasonable time.
  - b. Malicious and Vindictive damage for obvious reasons;
    - i. Previous complaint against Solicitor General
    - ii. Previous complaint against Attorney General and political interference in the case
  - c. Special Damage
  - d. General Damage
  - e. Punitive Damage

- f. Aggravated Damage
- g. Breach of Duty of Care – Negligence in filing late applications
- h. Discrimination against a poor self-represented party

[6] The particulars of claim relied on by the claimant in summary complained of:

- a. the defendant defying the starting time of his court case (Claim number 2017HCV01103) on 22 February 2018 by a verbal request by the representative of the Attorney General to file an application for extension of time to file Defence;
- b. Photocopies of documents silently sent to his email on 2 May 2018 which appeared to be backdated;
- c. The sending of court documents to his email by the defendant without his permission in clear breach of the standard procedure of serving court documents outside their authentic form. Also the serving of documents on him a few days before the court date of 9 May 2018 was a clear breach of the standard procedure of twenty-one days of serving court documents before the court date;
- d. The withdrawal of the application for extension of time to file Defense on 13 June 2018 and the service on the claimant of another application set for hearing 3 months later;
- e. The first application resulted in approximately 4 months delay and the second application resulted in about 3 months delay;
- f. The first application was based on a malicious false premise as there was no indication by the other two defendants that they would contest the claim and support the defendant's application;
- g. The second application was also malicious and vindictive as there was no new information to warrant its gross late filing. The information has been in the possession of the defence from the claim was served on them 12 April 2017;
- h. Both applications were in clear breach of CPR requirement to file a Defence within 42 days after the service of the claim form and

particulars of claim. There was no justification for the filing of late applications;

- i. The filing of each late court application caused the claimant more pain, suffering, emotional distress and financial consequences. The pain and suffering and emotional distress he suffered were supported by two medical reports and there was clear evidence of financial consequences;
- j. Malice and vindictiveness shown by:
  - i. Other outstanding matters claimant has at the Office of the Attorney General went unattended to for years and there were complaints filed against the then Solicitor General and the Attorney General; and
  - ii. Political interference because the persons who carried out the actions against him are close associates of the political directorate.

[7] The claimant filed an amended particulars of claim dated 10 January 2020 and filed 13 January 2020 which sought to supplement the particulars of claim in the following ways:

- a. It alleged that late filing is a clear breach of the constitutional right to a fair hearing within a reasonable time;
- b. It exhibited medical reports and a letter from the National Housing Trust concerning the consequences of non-payment of his mortgage;
- c. It alleged breaches by counsel from the Attorney General's Chambers of CPR rule 9.2;
- d. Affidavit and submissions filed by the defendant which claimant relies on to support his claim for aggravated damages

[8] Prior to the filing of this amended particulars of claim, a notice of application for court orders to enter default judgment in default of defence, was filed by the claimant on 28 August 2018.

## THE SUBMISSIONS

### Submissions of counsel for the defendant/applicant

#### *The application to strike out*

[9] Counsel submitted that nothing in the claimant's statement of case raises a separate cause of action from what was addressed in claim 2017HCV01103, nor raised a cause of action arising from any breach of the CPR. Counsel argued that no separate cause of action can arise based on any procedural matter that led to the Master's decision. Therefore, if the claimant believed that the outcome of the previous claim 2017HCV01103 was influenced by procedural errors that should be raised on appeal. Counsel contended that the claim form and amended particulars of claim disclosed no reasonable grounds for bringing the claim which amounted to an abuse of the process of the courts. Accordingly he submitted that the claim should be struck out and no further costs incurred in this matter.

#### *The application for default judgment*

[10] Concerning the application for default judgment filed by the claimant, counsel submitted that as the Claim Form and Particulars of Claim were filed 26 June 2018, the Defence would not have been due until 24 September 2018 taking into consideration CPR rule 3.5 (1), which indicates that time does not run during the legal vacation. The default judgment application was therefore premature

[11] Regarding the Amended Particulars of Claim filed 13 January 2020, counsel argued that pursuant to CPR rule 20.3 (1) as amended 2011 the defendant had 42 days within which to file a Defence. Therefore if the application filed in August 2018 for default judgment was still valid, the filing of the amended particulars would make that application premature.

#### *The absence of the Certificate of Truth on the Amended Particulars of Claim.*

[12] Counsel for the defendant submitted that the claimant's Amended Particulars of Claim filed 13 January 2020 was not verified by a certificate of truth as required by CPR rule 3.12 (1). Counsel also advanced that the

form of such certificate was set out at CPR rule 3.12 (7) and that CPR rule 3.13, provided that the court may strike out a matter where there is no certificate of truth. Counsel however frankly noted that this was not his main submission as he was aware that an amendment could be applied for and granted to cure the defect.

### **Submissions of the claimant/respondent**

- [13] Mr. Adjudah submitted that there is a difference between procedural errors and deliberate malicious actions. He contended that filing an application a year after a default date was given asking for time to file a defence on behalf of persons who did not acknowledge the claim form, was unlawful.
- [14] Further he argued that filing an application to strike out a case a year and a half after the claim was served was grossly unlawful when the defendant had been given 42 days to respond. Those, he contended were deliberate actions not procedural errors.
- [15] He also advanced that on 22 February 2018 when he appeared for a default hearing counsel for the Attorney General requested permission for extension of time to file defence. He indicated that he filed a complaint to the Honourable Chief Justice concerning the Master who gave counsel a date for a matter which had not yet been filed. He further outlined that the application was immediately withdrawn, and then counsel for the Attorney General filed the second application to strike out the case. Mr. Adjudah lamented that counsel for the Attorney General submitted documents from the South East Regional Health Authority which did not want to have anything to do with the case. This he contended was deliberate criminal action to force another defendant to do something.
- [16] Mr. Adjudah further outlined that upon his submitting a written response to counsel's application to strike out the case, counsel from the Attorney General filed a further affidavit and having already made her submission sought permission from the Master to make a second submission. This Mr. Adjudah maintained was another delay that led to him having pain and suffering. This he said was grossly unlawful and not justice.

- [17] He highlighted that from 22 February 2018 when the default judgment was sought, the case was delayed for another whole year and never ended until May 2019. He contended that this delay was not the result of professional errors, but were deliberate unlawful acts that ought not to be substantiated by the court.
- [18] He indicated he was not aware of the way the vacation period operated in respect of the default judgment, but noted that it was now one year later and the defendant was still asking for time to file a defence.
- [19] Concerning the statement of truth Mr. Adjudah indicated that he had been unaware of that requirement but asked the court for time within which to submit it.
- [20] He maintained that his claim was genuine and separate from the previous matter which was going to the Court of Appeal.

#### **ANALYSIS**

- [21] CPR rule 26.3 (1) outlines the bases on which the court may strike out a statement of case or part of a statement of case. The relevant bases for this application are those contained in paragraphs (b) – (d). They provide as follows:

26.3 (1) In addition to any other powers under these Rules, the court may 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 case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or
- (d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10.

[22] This claim arises out of the previous claim number 2017HCV01103 filed by the claimant/respondent for unfair dismissal. That claim ended in the favour of the defendant/applicant on the basis that the learned Master found that the claim was statute barred and also that it did not disclose any reasonable basis for bringing the claim. This claim alleges that the conduct of counsel from the Chambers of the Attorney General caused delay in the completion of that matter; that it was conducted in a manner that was deliberately malicious, vindictive and unlawful; and that the claim itself was affected by political interference. The claimant also alleges that the delays in and the conduct of the matter caused him pain and suffering, emotional distress, and financial loss.

[23] I have carefully examined the claim and my findings are as follows:

- a. Nothing in the claimant's claim raises a separate cause of action. The claimant's statement of case discloses no cause of action arising from any breach of the CPR or any other issue raised by the claimant.
- b. The constitutional claim raised is not appropriate in this context.
- c. It is not competent for this court to entertain a challenge to the outcome of claim 2017HCV01103 on any basis. The claimant cannot seek to obtain by a side wind, in a separate action, what he was unable to obtain in the substantive claim. As there is no separate cause of action disclosed, if the claimant believes that the outcome of the previous claim was improperly influenced by procedural errors or unlawful actions, that contention should be raised on appeal. At this point the Court of Appeal is the appropriate forum for any such challenge.
- d. Based on my previous findings there is no need to consider the applicant's alternative request for an extension of time to file a Defence.



## **CONCLUSION**

- [24] Based in the foregoing, the statement of case of the claimant is struck out as disclosing no reasonable grounds for bringing the claim and as an abuse of the process of the court.
- [25] Costs to the defendant/applicant to be agreed or taxed.
- [26] Counsel for the defendant/applicant to file and serve order.