

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO C.L. 1995/D 137

BETWEEN SAMUEL DALE PLAINTIFF
A N D THE ATTORNEY GENERAL
OF JAMAICA
DETECTIVE INSPECTOR ROWE DEFENDANTS

Mr. Dennis Daly Q.C. instructed by Daly, Thwaites and Campbell
for Plaintiff.

Miss Nicole Simmonds instructed by Director of State Proceedings
for 2nd Defendant.

IN CHAMBERS

SUMMONS FOR INTERLOCUTORY MANDATORY INJUNCTION

Heard: July 24, September 23rd, 1996

KARL HARRISON J.

The plaintiff has filed suit against The Attorney General and Detective Inspector Rowe claiming certain reliefs and damages for false imprisonment and malicious prosecution. This summons which came before me seeks however:

- "1. An order that the second - named defendant do forthwith deliver to the plaintiff or his Attorneys-at-Law, Daly, Thwaites and Campbell at 62 Duke Street, Kingston (sic) and documents taken from him by the second-named defendant on or about the 25th of July, 1994 at the Elleston Road Station, in particular:
 1. The plaintiff's two passports.
 2. A letter of invitation from the United States Embassy to attend an interview.
 3. Articles and Memorandum of Association in respect of Samuel Dale Import Export Ltd.
 4. All other documents."

It is quite obvious that the plaintiff is seeking a mandatory injunction against the second-named defendant for the delivery up to himself or his Attorney at Law, his passports and other documents taken from him

by the said defendant.

Now, paragraph 2 of the plaintiff's statement of claim alleges:

"2. The first named defendant is sued under and by virtue of the Crown Proceedings Act for that the acts committed were done maliciously and/or without reasonable or probable cause by the second-named defendant he being the servant or agent of the Crown purporting to act in the execution of his duty as a member of and a detective inspector of Criminal Investigation Branch of the Jamaica Constabulary Force."

One of the issues to be decided then, is whether or not the court will grant an injunction against a police officer who it is alleged was acting as a servant or agent of the Crown and was purporting to act in the execution of duty as a member of the Jamaica Constabulary Force at the material time.

The relevant statute for consideration is the Crown Proceedings Act. Section 16(1) states inter alia:

"In any civil proceedings by or against the Crown the Court shall, subject to the provisions of this Act, have the power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

Provided that:

(a) where in any proceedings against the Crown and such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the Court shall not grant an injunction but may in lieu thereof make an order declaratory of the rights of the parties..."

It is further provided in section 16(2) that:

"The Court shall not in any civil proceedings grant an injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown."

Another issue for decision, is whether or not section 16(1)(2) apply where the applicant although charged by the police for certain offences

has not been charged with any offence concerning the passports which have been seized.

Mr. Daley referred to the affidavit evidence of the applicant sworn to on the 10th July, 1996. The relevant paragraphs are as follows:

- "2. The said passports and other documents were taken from me by the second-named defendant on or about the 25th July, 1994 and this is partly admitted by the first-named plaintiff in paragraph 5 of his defence filed on or about the 21st day of June, 1996.
3. I am a business man and a importer of goods and I make my livelihood by travelling to neighbouring countries and purchasing goods which I bring back to Jamaica to sell.
4. The reason why I have two passports is that because of my frequent travel abroad the earlier passport had become filled up, and had to be cancelled before it had expired and a second one issued in its stead. I however, keep them together although the earlier one has been cancelled.
5. The detention of my passports and other documents by Detective Inspector Rowe has been, and continue to be, substantially deprived of my means of livelihood.
6. That since my release from custody on or about 5th of August, 1994 I have made several and strenous efforts to get back my passports and letter including the following:
 - A) On the 8th of August, 1994 I went to Mr. Rowe's office to get back the property he had seized from me but he refused to return them, saying that they were being investigated.
 - B) Later that month I went to the passport office for my passports as I was told by Sgt. Williams and verily believed that Inspector Rowe had told the Sgt. that he had sent them there. However, I was informed at the passport office and verily believe that they had not received my passports

.....
7. All my efforts to secure the return of my passports and other documents have been to no avail and the second-named defendant continues his wrongful and illegal possession of the same and has, maliciously and/or without reasonable or probable cause, demonstrated that he has no intention of returning these documents despite his knowledge of the severe hardship which it is causing me.

8. The return of the said passports and letter to me would not cause any hardship or inconvenience to either defendant or to any third party or to the public interest..."

The Minister's letter dated August 3, 1995 and referred to in paragraph 6 (D) of the above affidavit, states inter alia:

"I am advised that it is necessary to interview you to determine the basis on which you are in possession of two (2) valid passports. Clearly, if there is a lawful explanation then both documents will have to be returned; may face criminal prosecution.

It seems that it would be in your interest to attend on Inspector Rowe along with your Attorney at Law.

Alternatively, a civil action could be instituted claiming the return of the documents and damages for wrongful detention if all your actions pertaining to the passports have been in compliance with the law.

Yours Sincerely

K. D. Knight
Minister

Mr. Daley forcefully submitted that the provisions of section 16(2) of the Crown Proceedings Act did not arise for consideration in the instant case. He argued that the defence had alleged that the plaintiff was lawfully detained for conspiracy, robbery and illegal possession of a firearm but there wasn't any allegation that he was involved in illegality so far as the passports were concerned. He contended therefore, that there was no reasonable and probable cause for the passports to have been taken at the time of seizure and none two years later. In these circumstances, it would have been quite proper for the court to make an order for the passports and documents to be handed over to the plaintiff.

He also referred me to paragraph (iii) at page 743 of Hanbury and Maudsley on "Modern Equity" where it states inter alia, that:

"...mandatory interlocutory injunctions will be granted in a suitable case, for example to enforce the return of passports wrongfully detained by the police"
(See Ghani v Jones [1970] 1QB 693)

It was held in Ghani's case that the police was not entitled to retain passports and letters seized since it had not been shown that these material evidence to prove the commission of the offence that the police was investigating and furthermore the passports and letters had been kept long enough.

He also referred me to Malone v Commissioner of Police of the Metropolis [1979] 1 All E.R. 256, a case in which the police acting under a search warrant, found banknotes at a suspect's home and for which no charges were made in respect of them despite demands for their return. It was held inter alia, in that case that the police had no power to retain property lawfully seized from an accused person if it was not stolen or the subject of any charges unless the retention was justified on ascertainable grounds.

Miss Simmons, on the other hand, submitted that the plaintiff was caught by section 16(1) & (2) of the Crown Proceedings Act. According to her, the Defence did admit that the second defendant was acting as a servant or agent of the Crown at the material time and there were allegations in that Defence stating that the passports which were taken from the plaintiff were to be used as exhibits in the criminal case against the plaintiff.

She further contended that paragraph 6 of the Defence alleges that the plaintiff was advised that emergency travel documents could be provided by the police if he wished to travel so this meant that no restriction was placed on the plaintiff's rights to travel. She also contended that the plaintiff has not alleged that he had requested emergency travel document and this was denied. As to the preferring of charges, Miss Simmons, submitted that the Defence had dealt with this. Paragraph 8 alleges:

"8 ... he was inadvertently bailed to attend Sutton Street Court instead of the Gun Court. The first-named defendant will also say that Summons were prepared to be served on the plaintiff but were not served because the second-named defendant could not locate the plaintiff and his Attorney refused to accept service of the said summons."

able to obtain some declaratory order.

In McKenzie's case (supra) the plaintiff company had sought the grant of an interim injunction against the defendants to restrain them from taking steps to acquire compulsorily certain lands until the writ filed by the company against the defendants was tried. The learned Chief Justice held that the application for this injunction had to be refused as the Minister, though a corporation sole, was nevertheless acting as servant or agent of the Crown and was entitled to the protection afforded under the Crown Proceedings Law.

In Linton Thomas v The Minister of Housing (supra) Kowe, J.A, as he then was, had this to say about the McKenzie case:

"That judgment was delivered on November 13, 1972 and has ever since informed and influenced the practice in respect of suits in matters arising from the implementation of the powers of the Minister of Housing under the Housing act. It is a decision which in my view accords iwth principle and authority and ought to be affirmed." (Emphasis supplied)

Can I then, in light of Mr. Daley's submissions that since the plaintiff was not charged for any illegality with respect to the passports and that they were kept long enough by the police (i.e. for two years), make the order sought? It seems to me that the plaintiff has a problem. The cases cited by Miss Simmons show quite clearly that the court will not grant an injunttion against an officer/servant or agent of the Crown if its effect would be to grant such a remedy against the Crown. It is my considered view that the provisions of section 16(1) & (2) of the Crown Proceedings Act would also apply to the instant case albeit, that the defendant has not been charged with any offence relating to the passports. The plaintiff has alleged inter alia, in his statement of claim:

"5....Detective Inspector Rowe had the plaintiff brought in custody to Elleston Road Police Station and illegally seized from him several documents including two passports....."

In response to these allegations the defence has alleged that the passports were taken as exhibits in the case for which the plaintiff was bailed

inadvertently to attend the Sutton Street Court rather than the Gun Court. It would mean therefore, that the defence has joined issue so far as the passports are concerned and would be a matter to be resolved at trial.

I am therefore of the view, that the plaintiff is caught indeed by the provisions of section 16(1)(2) of the Crown Proceedings Act. The Court shall not grant an injunction against the Crown and it shall not:

16(2) ... in any civil proceedings grant an injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown."

The definition of "Officer" in the Crown Proceedings Act in relation to the Crown, includes any servant of Her Majesty, hence the second defendant would fall within the above provision.

I also hold that the cases of Ghani v Jones and Malone v Commissioner of Police of the Metropolis (supra) are inapplicable as they do not really decide whether or not an injunction can be granted against an officer of the Crown acting or purporting to act in the execution of his duties. The summons is therefore dismissed with costs to the defendant to be taxed if not agreed.

I am further of the view that the plaintiff should proceed to have his action set down for trial without any further delay since the pleadings have been closed for some time now.

Miss Simmons finally submitted that the case of Ghani v Jones (supra) was quite distinguishable from the instant matter as the issue of whether an injunction could be granted against the Crown was not dealt with. In fact, she argued, that the officer in Ghani's case was sued in his personal capacity, whereas in the instant case, the police officer was sued in the capacity of servant or agent of the Crown which has been admitted in the Defence filed. She referred to and relied on the cases of Waite v Chief Electoral Officer and Anor. (1976) 24 WIR 416; McKenzie v Minister of Housing Supreme Court Judgment E200/72 delivered 14th November, 1972; Thomas v Minister of Housing and Anor SCCA 60 & 61/83 delivered 22nd June, 1984 and Merrick v Heathcoat Amory and Anor (1955) 2 All E.R. 453 as authorities for the principle that the Court ought not to grant an injunction against the Crown or against an officer of the Crown acting in the course of duties. She submitted therefore that the plaintiff's summons ought to be dismissed.

I now turn to consider the cases cited by Miss Simmons. In Waite v Chief Electoral Officer (supra) the plaintiff had sought by way of summons, an interlocutory injunction to restrain the defendants from holding by-elections. Henry J., as he then was, in delivering judgment said:

"It is clear on the authorities cited by the Attorney General that:

- a) the Court cannot grant an injunction against the Crown but may in lieu thereof grant a declaration.
- b) the declaration is a final remedy and there is no power to grant an interim injunction or an interim declaration;
- c) the court cannot grant an injunction (or an interim injunction) against an officer of the Crown if its effect would be the grant of such a remedy against the Crown..."

The plaintiff in Merricks case (supra) had moved the court for a mandatory injunction against a Minister of Government. The Court held that it could not grant an injunction against the Crown. It was of the view however, that if the action proceeded, the plaintiff might have been