

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CIVIL DIVISION
CLAIM NO. 146 HCV 2004

BETWEEN	CARLTON EDWARDS	CLAIMANT
AND	CONSTABLE RICKETTS	FIRST DEFENDANT
AND	CONSTABLE DALEY	SECOND DEFENDANT
AND	CONSTABLE GAYLE	THIRD DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	FOURTH DEFENDANT

IN CHAMBERS

Akilah Anderson instructed by Knight Junor and Samuels for the claimant

Brian Moodie instructed by the Director of State Proceedings for all the defendants

October 10, 2007

APPLICATION TO STRIKE OUT CLAIM, LAW REFORM
(MISCELLANEOUS PROVISIONS) ACT AND SECTION 4 (2) OF THE
FATAL ACCIDENTS ACT

SYKES J.

1. During a police operation on January 20, 1998, in Seaview Gardens, Mr. Andre Edwards was shot and killed. It is common ground that he was shot by the police. I am not making any judgment about the circumstances of the shooting. A cause of action immediately arose upon the death of Mr. Edwards provided of course that those who would be bringing the claim were able to prove that the police acted wrongfully.
2. The person who took up the challenge to prove the wrongful death of Mr. Edwards was his father, Mr. Carlton Edwards. The claim was eventually filed on January 20, 2004, six years after the cause of action accrued.

3. I now relate the history of the matter after the filing of the claim. The Attorney General applied for and was granted permission to file its defence out of time. The Master granted permission on September 22, 2005. The claimant filed an amended particulars of claim on September 23, 2005. On July 11, 2006, the Attorney General applied for and was granted permission to file his defence out time having failed to do so within the time granted on the first such application heard by the Master.

4. The matter was set for case management conference on April 19, 2007. The case management conference took place as scheduled. At that conference, the Attorney General raised the issue of the claim under the Fatal Accidents Act being statute barred. Her Ladyship Justice Beswick was quite benevolent and rather than striking out the matter as she could have done under the law, facilitated the claimant by setting the issue of the limitation in respect of the claim under the Fatal Accidents Act to be dealt with at the pre-trial review which was set for October 10, 2007.

5. It is common ground that counsel for the Attorney General, acted quite properly by reminding his opponent that he still intended to take the limitation point. Thus when the matter came on for pre-trial review on October 10, 2007, almost six months after the case management conference, the claimant could not have been under any misapprehension about the Attorney General's position.

6. The Attorney General, despite his unique position in the justice system, is like other litigants permitted to rely on a statute of limitation. Mr. Moodie, as he was entitled to do, made his submission that the claim under the Fatal Accidents Act is statute barred and should be struck out. He relied on section 4 (2) of the Fatal Accidents Act which reads;

Any such action shall be commenced within three years after the death of the deceased person or within such longer period as a court may, if satisfied that the interests of justice so require, allow.

7. The text of the legislation is abundantly clear. The claim is barred after three years. Therefore when the claim was filed on January 20, 2004, the claimant was three years past the limitation period. It is said that a limitation statute does not extinguish the claim; it simply bars the claim after a certain period of time. Thus the claimant can still bring his claim outside of the limitation period and leave it up to the defendant to take the point. All this is true. It is also true that if the defendant raises the point and insists on it, it behoves the claimant to seek to take advantage of any discretionary power vested in the court to extend the time within which to bring the claim not by an appeal to sympathy but by placing relevant and admissible material on which the court can exercise its discretion.

9. The judicial discretion, in this case, has to be exercised based on evidence placed before the court and not on the judge's personal views about police shootings. The claimant did not place any evidence before me on which I could exercise my discretion.

9. Miss Anderson stated that because it was common ground that the deceased was shot by the police who were agents of the state, that in and of itself was a possible basis for me to exercise the discretion in favour of the claimant to extend time. Unfortunately, I do not share that view. If Miss Anderson's proposition were true, then it would necessarily mean that all claims against the state under the Fatal Accidents Act, if begun out of time would necessarily be permitted to proceed merely because the state was involved. On Miss Anderson's view, the state would never be able to rely on section 4 (2) of the Fatal Accidents Act. The effect would be that the judicial discretion would no longer be a discretion but a hostage - a hostage to litigants who acted out of time. Miss Anderson's proposition has the effect of neutralising the statute.

10. Miss Anderson attempted to circumvent the conclusion stated in the immediately preceding paragraph by suggesting that justice demands that the police should be held accountable and therefore the claim should be allowed to proceed. I agree that the erring police officers ought to be held accountable but they too are

entitled to justice according to law. If there is a limitation statute that operates in their favour, I can see no good reason why they, like other litigants, should not take advantage of all lawful and legitimate avenues open to them to resist a claim against them. This is what they have done here. At the risk of repetition, this application was not sprung on the claimant at the last moment and even if it were, I would have thought that those who are going to launch a claim would have satisfied themselves that the matter was not statute barred or if statute barred but there is a possibility of bringing the claim outside of the limitation period, would have done what was necessary to facilitate smooth passage of the claim. That not having been done, I see nothing wrong with a defendant insisting on claiming what the law provides, that is, a limitation defence.

11. I should add that this claimant has been facilitated greatly by the courts. Even at this stage, a mere four weeks before trial, it is by no means clear that the claimant will meet the threshold requirement for bringing a claim under the Law Reform (Miscellaneous Provisions) Act. There is yet to be produced any satisfactory evidence that Mr. Edwards is the proper party to bring the claim under that Act. The Attorney General and the court are being overly generous by allowing the claimant yet more time to see if he can procure evidence to establish that he is the proper claimant, nine years after the cause action arose and three years after the claim was filed.

12. The claim under the Fatal Accidents Act is struck out. Costs to be costs in the claim.