



[2019] JMSC Civ. 55

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2018 HCV 03415

BETWEEN RAYMOND JOHNSON 1ST CLAIMANT

AND BETWEEN ALECIA HUTCHINSON 2ND CLAIMANT

AND THE COMMISSIONER OF POLICE 1ST DEFENDANT

AND THE ATTORNEY GENERAL 2ND DEFENDANT

IN CHAMBERS

Mr. Leonard Green and Miss Sheri Jones Instructed by Chen Green and Company for the claimants/applicants

Miss Kamau Ruddock instructed by Director of State Proceedings for the 1st and 2nd defendants/respondents.

Heard:

March 5, 2019 and March 28, 2019

CORAM: J. PUSEY J.

INTRODUCTION

[1] By Fixed Date Claim Form filed on September 11, 2018, the claimants, who are members of the Jamaica Constabulary Force, seeks a number of orders, which for present purposes it is unnecessary to set out in full but is concerned with the prevention of the Commissioner of Police from conducting disciplinary

proceedings against them. The disciplinary hearing was scheduled for September 12, 2018.

[2] In response to the Affidavit of Urgency in support of the Fixed Date Claim Form the defendants filed an Affidavit sworn to by Senior Superintendent of Police in charge of Administration, Mr. Andrew Lewis on January 29, 2019. The claimants are contending that the statement of case disclosed in this affidavit should be struck out pursuant to Civil Procedure Rule 2002 (CPR) 26.3(1)(b) and (c). Consequently on January 30, 2019 they filed this Notice of Application for Court Orders seeking the following orders:

1. That the Statement of Case contained and referred to in the affidavit of Andrew Lewis dated January 29, 2019 is an abuse of the process of the court and will most definitely obstruct the just disposal of the proceedings in the claim;
2. The defendants have produced no evidence or any proof whatsoever that the Order of the Parish Court was wrongly made;
3. Cost of this application to be cost in the cause;
4. Such further and other relief as may be just.

[3] The grounds on which the application is made, in addition to CPR 26.3(b) and (c) is stated in the Notice thus:

The affidavit of Andrew Lewis submitted and filed on behalf of the defendants expresses a view at paragraph 10 that the defendants are of the opinion that Raymond Johnson and Alecia Hutchinson were acquitted by the parish Court of the charges on account of "incorrect procedures". That statement establishes as a fact that any hearing conducted by the defendants would be a farce and could not be a fair process.

BACKGROUND

[4] The claimants are police officers stationed in Western Jamaica. They were charged under section 14 of the Corruption Prevention Act with corruptly soliciting and accepting a sum of money for releasing a prisoner from the custody of the police in 2013. It was alleged that they went to the Freeport Police Station

and pretended to be other officers from Westmoreland, detailed for prisoner escort to take a prisoner to Westmoreland for court. The prisoner was placed in their custody and they released him to his girlfriend on route to Westmoreland. They were also charged with attempting to pervert the course of justice.

Section 14 of the Corruption Prevention Act says inter alia:

- (1) *A public servant commits an act of corruption if he –*
- (a) *Corruptly solicits or accepts, whether directly or indirectly, any article or money or other benefit, being a gift, favour, promise or advantage for himself or another person for doing any act or omitting to do any act in the performance of his public functions;*
 - (b) *In the performance of his public functions does any act or omits to do any act for the purpose of obtaining any illicit benefit for himself or any other person.*

[5] Both claimants were tried in the Parish Court for the parish of St. James, holden in Montego Bay, in a trial that lasted two and a half years, ending on July 1, 2015. They both gave sworn evidence and were cross-examined. They were acquitted of all charges.

[6] The Commissioner of Police had suspended both claimants after their arrest on ¼ pay. After the trial they were placed on Interdiction with ¾ pay awaiting administrative decisions regarding their future. This finally came on February 2, 2018 when Approved Disciplinary Charges were personally served on both claimants. The charges are:

In relation to Woman Constable Alecia Hutchinson,

Charge I

- I *That you being a member of the Jamaica Constabulary Force conducted yourself contrary to the discipline, good order and guidance of the force, in that you were unbecoming in your conduct when you falsely identified yourself as Woman Constable K. Brown attached to the Savanna-La-Mar Police Station and you along with No. 10530 Constable Raymond Johnson, who falsely identified himself as Detective Constable A. Bent also of the Savanna-la-Mar Police Station when on Wednesday, January 30, 2013 at about 7:30 you went to Montego Bay Police Station cell block and presented yourselves as prisoner escorts and requested male*

prisoner Greg Anthony Taylor, who was handed over to you to be escorted to Savanna-la-Mar for court on January 31, 2013 and you released him without lawful authority sometime after leaving St. James.

Charge 2

- II That you being a member of the Jamaica Constabulary Force conducted yourself contrary to the discipline, good order and guidance of the Force, in that you willfully, deliberately facilitated the escape of male prisoner Greg Anthony Taylor from custody at the Montego Bay Police Station Cell Block in the parish of St. James on Wednesday, January 30, 2013 at about 7:50p.m. when you falsely identified yourself as Woman Constable K. Brown attached to the Savanna-la-Mar Police Station and you along with No. 10530 Constable Raymond Johnson, who falsely identified himself as Detective Constable A. Bent also of the Savanna-la-Mar Police Station when on Wednesday January 30, 2013 at about 7:30p.m. you went to Montego Bay Police Station cell block and presented yourselves as prisoner escorts and requested male prisoner Greg Anthony Taylor, who was handed over to you to be escorted to Savanna-la-Mar for court on January 31, 2013 and you released him without lawful authority sometime after leaving St. James.*

In relation to Constable Raymond Johnson,

Charge 1

- I That you being a member of the Jamaica Constabulary Force conducted yourself contrary to the discipline, good order and guidance of the force, in that you were unbecoming in your conduct when you falsely identified yourself as Detective Constable A. Bent attached to the Savanna-La-Mar Police Station and you along with No. 14447 Woman Constable Alecia Hutchinson, who falsely identified herself as Woman Constable K. Brown also of the Savanna-la-Mar Police Station when on Wednesday, January 30, 2013 at about 7:30 you went to Montego Bay Police Station cell block and presented yourselves as prisoner escorts and requested male prisoner Greg Anthony Taylor, who was handed over to you to be escorted to Savanna-la-Mar for court on January 31, 2013 and you released him without lawful authority sometime after leaving St. James.*

Charge 2

- II That you being a member of the Jamaica Constabulary Force conducted yourself contrary to the discipline, good order and guidance of the Force, in that you willfully, deliberately facilitated the escape of male prisoner*

Greg Anthony Taylor from custody at the Montego Bay Police Station Cell Block in the parish of St. James on Wednesday, January 30, 2013 at about 7:50 p.m. when you falsely identified yourself as Detective Constable A. Bent attached to the Savanna-la-Mar Police Station and you along with No. 14447 Woman Constable Alecia Hutchinson, who falsely identified herself as Woman Constable K. Brown also of the Savanna-la-Mar Police Station when on Wednesday January 30, 2013 at about 7:30p.m. you went to Montego Bay Police Station cell block and presented yourselves as prisoner escorts and requested male prisoner Greg Anthony Taylor, who was handed over to you to be escorted to Savanna-la-Mar for court on January 31, 2013 and you released him without lawful authority sometime after leaving St. James.

- [7] The claimants were required to respond in writing, stating grounds by which they could exculpate themselves. Counsel for the claimants responded on their behalf. The hearing was scheduled for September 12, 2018 after the responses were delivered. The claimants filed the Fixed Date Claim Form herein to thwart the hearing. The defendant responded by the affidavit of Andrew Lewis. This affidavit resulted in the filing of this Notice of Application for Court Order filed January 30, 2019 on the aforementioned grounds.

ISSUE

- [8] The issue to be decided is –

Whether the affidavit in response to the claimants' affidavit is a statement of case and if so, should it be struck out pursuant to CPR 26.3 (b) and (c).

THE CLAIMANTS' SUBMISSION

- [9] The claimants filed written submissions in which they argued that Regulation 37 of the Police Service Regulations 1961, makes provision for what is to obtain when an officer is acquitted of a criminal charge. It states,

*A member acquitted of a criminal charge shall not be dismissed or otherwise punished in respect of any charge of which he has been acquitted, but nothing in this regulation shall prevent his being dismissed or otherwise punished in respect of any charge **arising out of his***

*conduct in the matter, unless such other charge is substantially the same as that in respect of which he has been acquitted. **Emphasis mine***

[10] They contend that 'the same or substantially the same' in the Regulation must be given their literal interpretation, that is, 'same' means identical and not different and 'substantial' means to a great or significant extent. If the charges are the same then they ought to be struck out as an abuse of process.

[11] They argued that the charges are the same because they are based on the same facts/evidence used in the criminal trial, as the claimants have been served with the same statements used in the criminal trial. Further they argued, even if it is not the same facts/evidence that will be relied on to ground the complaint, Regulation 37 provides a bar to proceeding against them as the Commissioner cannot do so unless the disciplinary charges are substantially same as the criminal charges they have been acquitted of. It is useful to quote from the written submission,

*.....Regulation 37 has the effect of raising the bar that the defendants have to clear by requiring that the defendants cannot proceed with disciplinary proceedings "**unless**" the other charges that they claim that arises from the alleged conduct of the claimants on January 30, 2013 was "**substantially the same** as that in respect of which (they have) (my insertion) been acquitted."*

*In other words the burden on the defendant would be for them to prove that not only was the disciplinary charges not the same but even if they were different the charges were not '**substantially the same**.'....*

[12] Counsel also cited the contents of an opinion from the Attorney General's Chamber found in The Police Force Order, Kingston, dated 18th October 2007 at Appendix C at paragraph 5 in support of their submission. It reads

*As you know, the Police Service Regulations 'the Regulations' require that where an officer has been acquitted of a criminal charge then that officer should not be dismissed or otherwise punished in relation to the same charge of which he has been acquitted. **This prohibition against otherwise punishing an officer applies only where the officer has been acquitted.***

- [13] Counsel urged that police officers should have a reasonable expectation that the Commissioner would act in accordance with the advice of the Attorney General and the Regulations and that these charges should not be preferred against them if this was obeyed.
- [14] Relying on the definition of corruption in Black's Law Dictionary (10th Edi. 2014), - as 'depravity, perversion or taint; an impairment of integrity, virtue or moral principle; especially the impairment of a public official's duties by bribery,' counsel submitted further that the both sets of charges question the integrity of the claimants as police officers, accusing them of being immoral, depraved and tainted. Therefore both sets of charges are the same or substantially the same. Counsel urged that it would be unfair to bring these disciplinary charges in circumstances where the claimants have been acquitted by a competent court.
- [15] Examining the Affidavit of Superintendent Lewis, counsel suggested that the statement in paragraph 10 that the acquittal resulted from the use of an incorrect procedure for identifying the claimants was an inaccurate assessment of what transpired. Counsel argued that the Parish Judge examined all the evidence and found it to be not credible.
- [16] The claimant also submitted that the defendant's statement of case is predicated on the fallacious and unsubstantiated premise that the trial judge came to a conclusion without adequate evidence.
- [17] Finally counsel urged that the defendants cannot succeed with their statement of case as revealed in the Superintendent's affidavit. It should therefore be struck out.

DEFENDANT'S SUBMISSION

- [18] Counsel representing the defendants submitted that CPR 26.3(1) (b) and (c) is neither applicable nor relevant to the proceedings before the court. The rule relates to a 'statements of case', defined in CPR 2.4 as,

- a) *A claim form, particulars of claim, defence, counterclaim, ancillary claim form or defence and reply; and*
- b) *Any further information given in relation to any statement of case under Part 24 either voluntarily or by order of the court.*

[19] Based on this definition, the affidavit filed in response to the claimant's affidavit filed with a Fixed Date Claim Form, is evidence to be relied on in the determination of the matter. It is not a statement of case that can be struck out. Fixed Date Claim Forms, she argues, are unique as they seek the answers to questions and the affidavit evidence given is evidence that the court is at liberty to consider and apply sufficient weight to as it deems fit. It follows, that this application to strike out the statement of case is misconceived, as none of the grounds relied on by the claimants have any basis in law or fact.

[20] Further she argued that in **Sebol Limited and Selective Homes and Properties Ltd v Ken Tomlinson and others** Claim No. HCV 2526/2004 Sykes J (as he then was) formed the view that the power to strike out, conferred on the court wider powers of striking out than under the old rules and included cases in which there was a legally known cause of action pleaded but which disclosed no reasonable grounds for bringing the claim. The affidavit of the Superintendent provides, she argued, crucial evidence of the circumstances in which the Jamaica Constabulary force commenced disciplinary proceedings against the claimants. It discloses reasonable grounds for defending the claim and should not be struck out.

[21] The affidavit also provides evidence that supports the defendant's argument that the Jamaica Constabulary Force is perfectly entitled to explore whether there has been behaviour or conduct for which disciplinary procedures toward dismissal is warranted. It cannot therefore be argued, she urged, that there is no reasonable grounds for defending the claim.

[22] Further she argued that in **Linden Simpson v Jamaica Civil Service Association and others** [2019] JMSC Civ 10, Palmer-Hamilton J dealing with the issue of whether disciplinary proceedings with a view to dismissal against a

claimant who was acquitted of criminal charges amounted to double jeopardy, found that there was no double jeopardy and that the disciplinary charges were different from the criminal charges. It follows that the court could take the view that the charges are different from the criminal charges and refuse to strike out the defendant's statement of claim.

[23] The affidavit of the Superintendent is not, counsel urged, an abuse of the process of the court. She cited dicta of Lord Diplock in **Hunter v Chief Constable of the West Midlands Police**, [1982] AC 529, to support the contention that the power to strike out a statement of case is based on the inherent jurisdiction of the court and rules of court and is necessary to prevent abuse of the process of the court where it would be manifestly unfair to a party to continue litigation which would be unsuccessful. It is a discretionary power requiring material considerations when it is evoked.

[24] She also cited **Trillian Douglas v the Commissioner of Police** [2017] JMSC Civ 183 in which Lindo J cited and applied the approach to be adopted in assessing abuse of process enunciated in **Johnson v Gore Wood and Co. (A Firm)** [2002] 2 AC 149 by Lord Bingham of Cornhill. She quoted from the judgment of Lindo J,

It "should be broad, merit-based judgment which takes into account the public and private interests involved as well as the facts of the case. He also stated that is not necessary before abuse is found, to identify any additional element such as a collateral attack on a previous decision or dishonesty and noted that the presence of these elements will make the later proceedings more 'obviously abusive'".

[25] The defendants, counsel argued, have merely provided evidence and are not abusing the process of the court. The defendants should therefore be allowed to defend the claim and not be prevented by the draconian step of having it struck out.

ANALYSIS AND CONCLUSION

- [26] It might be useful to begin this exercise by examining whether an affidavit in response filed in a matter commenced by Fixed Date Claim Form is a statement of case pursuant to CPR 2002. The submission that it is not is based on the definition of a statement of case in CPR 2.4, outlined above, which does not expressly include a Fixed Date Claim Form. It merely states a claim form.
- [27] To my mind it can reasonably be argued, that by using the term 'claim form' not as a proper noun but as a generic term, a Fixed Date Claim Form is not excluded, as it is a claim with certain peculiarities. If that is acceptable, then the affidavit which supplies the evidence and assertions, on which the court is to rely, must be a statement of case. This is so as it begs the question – What else is? It cannot be the Fixed Date Claim Form itself as it only sets out the orders being sought but not the basis or grounds for granting them.
- [28] If I am not correct in this assessment, CPR 2002 provides that particulars of claim can be filed with a Fixed Date Claim Form, usually when the matter is to be heard in open court, for example in Probate Actions. Where particulars of claim are required, there can be no question that it is not a statement of case. However, what obtains when it is an affidavit in response?
- [29] The amendment to Part 8 of the CPR 2002 (the insertion of rule 8.8(2) in 2011, sets out the procedure to be followed when dealing with a Fixed Date Claim Form, particularly in relation to the filing of affidavit evidence in response as follows;

The following steps apply for the purposes of this Rule:

- (a) Where the claimant uses Form 2 the claimant must file an affidavit containing the evidence on which the claimant intends to rely.*
- (b) The claimant's affidavit must be served on the defendant along with the claim form.*
- (c) A defendant who wishes to rely on written evidence must within 28 days of service of the claim form file an affidavit containing that evidence.*

(d) Upon so filing the defendant must also serve a copy of the affidavit on the other party.

(e) The claimant may within 14 days of service of the defendant's affidavit file and serve on the other parties, further evidence in reply.

CPR 10.2 stipulates how a defence is to be filed. It states,

(1) A defendant who wishes to defend all or part of a claim must file a defence (which may be in form 5).

(2) However where –

(a) A claim is commenced by a fixed date claim in form and there is served with that claim form an affidavit instead of a particulars of claim; or

(b) Where any rule requires the service of an affidavit, the defendant may file an affidavit in answer instead of a defence.

(3) In this part the expression “defence” includes an affidavit filed under paragraph (2)

(Emphasis mine)

[30] It follows that for the purposes of defending or answering a Fixed Date Claim form, the affidavit filed in response is to be treated as a defence. According to CPR 2.4, a defence is a statement of case. Consequently, the affidavit of Superintendent Andrew Lewis in response to the claimant's affidavit is a statement of case. The application by the claimants in the instant case therefore, to strike out the statement of case of the defendant, can be entertained by the court and if the requirements of CPR 26.2 subsist, the statement of case can be struck out.

[31] Before analysing the issue of whether the statement of case in this matter should be struck out, it is prudent to examine the circumstances of the case that informs the statement of case under consideration.

[32] The claimants were acquitted of criminal charges in the St. James Parish Court in 2015 and are now facing disciplinary proceedings related to the incident giving rise to those charges. Regulation 37 of the Jamaica Constabulary Force Regulation 1961, as set out above, makes provision on how to treat a member of the Jamaica Constabulary Force acquitted of criminal charges. Counsel for the claimants contends that in the circumstance of

[33] this matter, the disciplinary proceedings ought not to be conducted because the Approved Disciplinary Charges laid are the same or substantially the same as the criminal charges.

[34] In **Lynden Simpson v Jamaica Civil Service Association and others** (*supra*) Palmer-Hamilton J, dealing with Regulation 37 of the Public Service Regulations, (which is identical to Regulation 37 of the Police Services Regulations 1961), in seeking to distil whether the disciplinary charges were ‘the same’ or ‘substantially the same’ as the charges for which the party had been acquitted, approached the issue by conducting an analysis of both sets of charges. Adopting that approach, I will analyse the charges in the matter at Bar.

[35] Any global assessment of the letter, spirit or underlying theory of the defendant’s statement of case, cannot ignore the view taken by the defendants, that the claimants were acquitted of the criminal charges on a procedural technicality having to do with identification and not on the merits of the case. It is expressly stated in paragraph 10 of the affidavit of Andrew Lewis as follows;

Constables Raymond Johnson and Alecia Hutchinson were acquitted of the charges on account of incorrect procedures utilised in the identification of both accused.

[36] It is on this basis that the disciplinary charges were laid. Support for this conclusion is to be found in paragraph 18 of the affidavit of Andrew Lewis as follow;

*..... The decision was taken to charge Constables Raymond Johnson and Alecia Hutchinson with a view to dismissal due to the **serious nature of the incident** and **the type of conduct they displayed** which is a threat to good order and the disciplinary policies which are strictly enforced in the JCF. The Commissioner of Police has a discretion in preferring charges with a view to dismissal where the offence is serious and not minor. **Emphasis mine***

[37] It is therefore inescapable that the conduct of the Constables for which they were charged and acquitted is the same action that the disciplinary charges are aimed at sanctioning.

[38] The Approved Disciplinary Charges seek to establish misconduct unbecoming of a police officer on the part of the claimants. The charges under Section 14 of the Corruption Prevention Act also seek to establish misconduct by their actions that resulted in criminal corruption charges. The sanctions available for these charges are different. Under the Corruption Prevention Act the sanction is a fine or imprisonment or both. Under the disciplinary hearing the sanction is dismissal. The substance of the charge, notwithstanding the varying sanctions and the legal regime under which the charge is laid, however, to my mind, is the same – namely misconduct as police officers.

[39] The 'same' or 'substantially the same' has a natural corollary - 'different'. For the disciplinary charges to be brought the Regulations requires the disciplinary charges to be different. Without aiming at being exhaustive such charges could include for instance, if during the course of the investigations and proceedings surrounding the corruption charges, the claimants sought to interfere with witnesses, lie to the authorities or tamper with evidence. Any disciplinary charge resulting from those activities would be different and not substantially the same as the original charges. Those charges could properly be laid against the claimants with a view to their dismissal. However, the Approved Disciplinary Charges which focuses on,

....conducted yourself contrary to the discipline, good order and guidance of the Force,

-in that you were unbecoming in your conduct....

- in that you wilfully, deliberately facilitated...

are precisely what the charge of corruption envisages – actions that are contrary to accepted norms of a police officer. The Corruption Prevention Act does not define corruption but section 14 focuses on actions or omissions carried out by an officer which amounts to improper conduct, unbecoming of an officer, deliberately executed. It is therefore the same in substance as the disciplinary charges, albeit with a different sanction. 'Substantially' is defined in the Concise Oxford English Dictionary, Eleventh Edition, Revised in 2004, as,

“Concerning the essentials of something” and “real and tangible rather than imaginary”

[40] I find that the disciplinary charges are concerning the essentials of the criminal charges. I therefore agree with counsel for the claimant that the charges are the same or substantially the same in both forum.

[41] The fact that the charges are the same does not automatically mean that the statement of case of the defendant will be struck out. The power to strike out a statement of case must be carefully exercised. In **Biguzzi v Rank Leisure plc** [1999] 1 WLR 1926 Lord Woolf MR (as he then was) examining the same power to strike out in the United Kingdom’s Civil Procedure Rules, emphatically set the tone for the approach to be taken, of the then new provision, when he said,

The fact that a judge has that power does not mean that in applying the overriding objectives the initial approach will be to strike out the statement of case. The advantage of the CPR over the previous rules is that the court’s powers are much broader than they were. In many cases there will be alternatives which enable a case to be dealt with justly without the draconian step of striking the case out.

[42] In **National Solid Waste Management Authority v Louie Johnson, Joya Hylton, Lemoy Malabre (b.n.f. Phyllipa Blake) and Ernest Sandcroft**, [2018] JMCA App 22 the court was concerned with striking out of a statement of case as being frivolous and vexatious and an abuse of the process of the court. Frank Williams JA in delivering the judgment of the court, agreed with the approach taken by the judge at first instant in determining whether the case was frivolous and vexatious and therefore not disclosing an arguable case. At paragraph 39 of his judgment he said,

She (judge of first instant) found that a proper determination of the application could only be made from an assessment of the “terms and contents of the statement of case”.

[43] In like manner I will examine the tenets of the statement of case of the defendant herein to ascertain if it ought properly to be struck out.

[44] The power to strike out is contained in CPR 26.3(1) (b) and (c) which states;

(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 –

(2) 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;

[45] In the matter at bar the claimant is urging the court to strike out the defendant's statement of case pursuant to CPR 26.3 (1)(b) and (c), as being an abuse of the process of the court and disclosing no reasonable grounds for defending the claim.

[46] The affidavit of Superintendent Andrew Lewis, as discussed earlier, after outlining the chronology of events, states at paragraph 10 and 18 why the disciplinary charges were preferred.

[47] The documents that were served on the claimants in support of the charges are the same statements used in the criminal proceedings. They even bear the Seal of the Parish Court.

[48] As discussed above, the charges are not dissimilar in substance from the criminal charges. In addition the entire proceedings is predicated on the assumption that the decision to acquit the claimants was based on a procedural defect in the trial. There is no written decision on the matter and therefore no basis for conclusively arriving at the real basis for the acquittal. In addition the trial was not truncated on a submission of no case to answer, which would be available for a procedural defect on identification. The claimants assert the opposite position and urged that the trial was thorough and the Parish Judge heard and contemplated all the evidence in coming to her decision that the evidence was not credible. There is not sound basis for me to disagree with this assertion. To my mind, even if the evidence is not credible or there was a

procedural defect, that is no defence to the claimant's contention that the Approved Disciplinary Charges are the same or substantially the same and is in breach of Regulation 37 of the Police Service Regulations 1961. The Regulations do not focus on the reason for the dismissal of the criminal charges but rather on the nature of the disciplinary charges. Having found that the charges are substantially the same, the disciplinary charges cannot be preferred as they are in breach of Regulation 37. It follows therefore that the statement of case does not disclose any reasonable grounds for defending the claim as the Approved Disciplinary Charges levelled are not permitted under the Regulations.

[49] There is no alternative course put forward by the defendants in the affidavit of Andrew Lewis that can obviate the need to resort to striking out the claim. The affidavit is very concise and reveals no other defence or matters for consideration to vitiate striking it out as disclosing no reasonable grounds for defending the claim. It would therefore be an abuse of process of the court to allow the defence as mounted to go forward. Draconian though this step may be, there is no other alternative.

The following orders are made;

1. Order in terms of paragraph one of the Notice of Application for Court Orders filed on the January 30, 2019 as amended to read, '*The statement of case contained and referred to in the affidavit of Andrew Lewis dated January 29, 2019 stand struck out as disclosing no reasonable grounds for defending the claim and an abuse of the process of the court.*'
2. The defendants have produced no evidence or any proof whatsoever that the Order of the Parish Court was wrongly made;
3. Cost of this application to be cost in the claim
4. The claimants' attorney is to prepare file and serve this order