



**[2025] JMSC Civ 22**

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

**IN CIVIL DIVISION**

**CLAIM NO. SU 2023 CV 02935**

<b>BETWEEN</b>	<b>ANTHONY THARPE</b>	<b>CLAIMANT /RESPONDENT</b>
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<b>AND</b>	<b>NICOLE WALTERS WELLINGTON</b> (The Registrar of The Supreme Court Of Judicature of Jamaica)	<b>1<sup>ST</sup> DEFENDANT /APPLICANT</b>
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<b>AND</b>	<b>BRYAN SYKES</b> (Chief Justice of The Supreme Court Of Judicature of Jamaica)	<b>2<sup>ND</sup> DEFENDANT /APPLICANT</b>
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**IN CHAMBERS**

**The Claimant/Respondent in person**

**Ms Faith Hall instructed by the Director of State Proceedings for the 1<sup>st</sup> and 2<sup>nd</sup>  
Defendants/Applicants**

**Heard: February 5 and 14, 2025**

**Civil procedure – Striking out – Application to strike out claimant’s statement of  
case – Whether the claimant’s statement of case ought properly to be struck out –  
The approach of the court in dealing with an application to strike out – Whether  
the claimant has sufficiently particularized the claim – Whether the claimant’s  
statement of case as framed constitutes an abuse of the process of the court –  
Whether the claimant’s statement of case is prolix, frivolous and vexatious and**

**without merit – Whether the claimant’s statement of case discloses any reasonable grounds for bringing the claim**

**Whether a crown servant may be sued in his or her official capacity – Whether any proceedings shall lie against the crown in respect of anything done or omitted to be done while discharging any responsibility of a judicial nature or in connection with the execution of judicial process**

**Burden – Burden of proof – Standard – Standard of proof – Crown Proceedings Act, sections 2 and 3(5), Civil Procedure Rules, 2002, rules 8.7, 8.9(1), 26.3(1), and 59.2(1)**

## **A. NEMBHARD J**

### **INTRODUCTION**

**[1]** This is an application to strike out the Claimant’s Statement of Case. By way of an Amended Notice of Application to Strike out the Claimant’s Case, which was filed on 29 October 2024, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants seek the following Orders of the Court against the Claimant, Mr Anthony Tharpe: -

1. That the Claimant’s Claim stands struck out.
2. That, in the alternative, the Defendants shall be removed as parties from these proceedings.
3. That should the Court not grant the Defendants’ application to strike out the claim as against them, the time be extended for the Defendants to file a Defence.

**[2]** The application is made on the following bases: -

1. That the Orders sought are in keeping with the overriding objective and are in the interests of justice.

2. That pursuant to Parts 25 and 26 of the Supreme Court Civil Procedure Rules, this Honourable Court has general case management powers to manage the instant matter.
3. That pursuant to rule 26.3(i)(b) of the Supreme Court Civil Procedure Rules, the Statement of Case filed by the Claimant amounts to an abuse of the court's process.
4. That pursuant to rule 26.3(i)(c) of the Supreme Court Civil Procedure Rules, the Claimant's Statement of Case discloses no reasonable grounds for bringing the Claim.
5. That pursuant to rule 26.3(i)(d) of the Supreme Court Civil Procedure Rules, the Claimant's Statement of Case is prolix.
6. That the Claimant's Statement of Case is not in conformity with Part 8 of the Supreme Court Civil Procedure Rules.
7. That the Supreme Court has an inherent jurisdiction to prevent its processes from being abused.
8. That the Claimant's Statement of Case discloses no coherent facts which indicate what the Claim is about.
9. That in the alternative to ground 8, if the Court finds that there is a set of coherent facts, those facts, even if true, do not disclose any legally recognizable Claim against the Defendants.
10. That the instant Claim is vexatious and ill-founded.
11. That the Defendants are prejudiced in filing a Defence in response.

- [3]** The application is supported by the Affidavit of Jevaughnia Clarke, which was filed on 20 June 2024.

## **THE ISSUES**

- [4]** The following issue is raised for the Court's determination: -
- i. Whether the Claimant's Statement of Case ought properly to be struck out.
- [5]** To determine the issue identified at paragraph **[4]** above, the Court must also resolve the following sub-issues: -
- i. Whether the Claimant's Statement of Case discloses any reasonable ground(s) for bringing the Claim.
  - ii. Whether the Claimant has sufficiently particularized the Claim.
  - iii. Whether the Claimant's Statement of Case is prolix, frivolous and vexatious.
  - iv. Whether the Claimant's Statement of Case constitutes an abuse of the process of the court.

## **BACKGROUND**

- [6]** For several years, the Claimant, Mr Anthony Tharpe, was involved in contentious litigation in respect of numerous<sup>1</sup> claims which traversed the various tiers of the Jamaican Court System. These claims include but are not limited to Claim No. 2010 HCV 02692 and Claim No. 2016 HCV 00064. Most of these claims, to which Mr Tharpe was a party, stem from his involvement with Business Ventures

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<sup>1</sup> See – Paragraph 3 of the Affidavit of Jevaughnia Clarke, which was filed on 20 June 2024, where it is stated: *"The Claimant is a litigant with forty-two (42) cases before the Supreme Court of Judicature of Jamaica."*

& Solutions (BVS),<sup>2</sup> and the circumstances surrounding that company's acquisition of property located in the parish of St. James.<sup>3</sup>

[7] The instant claim is brought against the background that Mr Tharpe is aggrieved by the following: -

- i. The outcome of those claims,
- ii. The handling of those matters by the Supreme Court of Judicature of Jamaica, and
- iii. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants' handling of the complaints which he alleges that he made to them in respect of i. and ii. above.

#### **The instant claim**

[8] Mr Tharpe commenced the instant Claim by way of a Claim Form and Particulars of Claim, each filed on 19 September 2023. By virtue of the Claim Form, he seeks the following Orders of the Court: -

*“And the Claimant DEMANDS A JURY TRIAL and states that the Defendant's actions or lack thereof caused her to engage in open: -*

- 1. *Dereliction of Duty.*
- 2. *To engage in Malpractice.*
- 3. *Complicity in real estate and other property fraud under the Law Reform, Fraudulent Transactions Act, which came into being in the year 2013.*

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<sup>2</sup> Business Ventures & Solutions was a corporation incorporated in the state of Florida, in the United States of America. Mr Tharpe was, until or around October 2017, a director and the sole shareholder of this company.

<sup>3</sup> Certain aspects of this matter have been litigated in the state of Florida.

4. *Discrimination against the Claimant et al, which is a human rights violation under the Jamaica constitution and relevant UN Charter and treaties.*
5. *To Abuse both her discretion and exceed her jurisdiction.*
6. *To violate the professional Code of Conduct, commensurate with her office as Registrar of the Supreme Court of Judicature of Jamaica.*
7. *To Violate the human rights of Anthony Tharpe.*

**[9]** Additionally, Mr Tharpe claims the following: -

- “1. US\$200 million for complicity in Trespass for direct and indirect acts which facilitated defrauding the Claimant of property and land rights as well as tortious interference in economic advantages, resulting in significant economic damages to Claimant et al.*
- 2. US\$100 million for economic damages for complicity in defrauding the Claimant.*
- 3. US\$400 million for punitive damages for the violation of the Constitutional [sic] Guaranteed rights of the Claimant et al. Namely violation of the Charter of Fundamental Rights and Freedoms, Chapter 3 section 15 et al.*
- 4. US\$500 million for damages, dereliction of duty resulting in (1) Fraud against the Claimant as well as the Successors in the interest of Business Ventures & Solutions Inc, (2) resulting in the untimely delays of matters before the Supreme Court for which the Defendant has the responsibility to effectively manage in a timely fashion, but deliberately chose not to as it relates to the Claimant et al.*
- 5. US\$1Billion for Human Rights Violation against the Claimant et al. Right to due process as well as human rights violation pursuant to the Sergio Lewinsky Act. The United Nations Charter on Human Rights Violation, to which Jamaica is a signing nation.*
- 6. US\$1Billion for stress, cruel and inhumane treatment of the Claimant as well as other persons.*

7. Costs.

8. *That there be liberty to apply.*"

**[10]** By way of his Particulars of Claim, which was filed on 19 September 2023, Mr Tharpe alleges that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have direct knowledge of all the matters to which he is a party. Mr Tharpe alleges that he complained to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants about what he describes as "alleged fraudulent actions being carried on in some of these matters by officers of the Supreme Court". Mr Tharpe asserts that the actions and inactions of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, in response to his complaints, demonstrate a *"high degree of open abuse of judicial prejudice and discrimination being practiced [sic] against him in the matters to which he is a party"*.<sup>4</sup>

**[11]** In his Particulars of Claim, Mr Tharpe pleads the following as causes of action: -

- i. Dereliction of duty to protect the Claimant from deliberate fraudulent acts as well as the abuse of judicial discretion being practised in the Court and the Registry itself.
- ii. Negligence.
- iii. Engaging in malpractice.
- iv. Complicity in real estate and other property fraud, including fraud under the Law Reform, Fraudulent Transactions Act.
- v. Discrimination against the Claimant, et al, which is a human rights violation under the Jamaican Constitution and relevant UN Charter and treaties.
- vi. Abuse of discretion and exceeding jurisdiction.

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<sup>4</sup> See – "Argument", contained in Particulars of Claim, which was filed on 19 September 2023

- vii. Violations of professional Code of Conduct, commensurate with both Defendants' offices as Registrar of the Supreme Court of Judicature of Jamaica and the Chief Justice of the Supreme Court of Jamaica.

## THE LAW

### Striking out

- [12] Rule 26.3(1) of the Civil Procedure Rules, 2002, as amended ("the CPR"), provides that a court may strike out the whole or part of a statement of case. The rule provides 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) 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;*
- (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 Part 8 or 10."*

- [13] The traditional approach to striking out is that striking out is appropriate only in plain and obvious cases and that those cases which require prolonged and serious argument are unsuitable for striking out.<sup>5</sup>

- [14] In **Dotting v Clifford & The Spanish Town Funeral Home Ltd**,<sup>6</sup> McDonald Bishop J (as she then was) stated as follows: -

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<sup>5</sup> See – **Williams & Humbert Ltd v W & H Trademarks (Jersey) Ltd** [1986] AC 368, HL, per Lord Templeman and confirmed in **Three Rivers District Council v Bank of England (No 3)** [2001] 2 All ER 513, HL and **S & T Distributors Ltd v CIBC Jamaica Ltd et al** SCCA No. 112/2004, unreported, judgment delivered on 31 July 2007. This position was reiterated in the case of **Herbert A. Hamilton v Minister of National Security and Attorney General of Jamaica** [2015] JMSC Civ 39.



*“In considering this application to strike out, I am mindful that such a course is only appropriate in plain and obvious cases. The authorities have established that a claim may be struck out where it is fanciful, that is, entirely without substance or where it is clear that the statement of case is contradicted by all the documents or material on which it is based (Three Rivers District Council v Bank of England (No. 3) [2003] 2 A.C. 1). It may also be said, on the guidance of the relevant authorities, that in determining the issue as to whether the claim should be struck out one may seek to ascertain, among other things, whether the claimant’s pleadings have given sufficient notice to the defendant of the case she wishes to present and whether the facts pleaded are capable of satisfying the requirements of the tort alleged. The ultimate question that should be considered in determining whether to strike out the statement of case on the basis that it discloses no reasonable cause for bringing the claim seems to be essentially, the same as that in granting summary judgment, that is: the claim against the defendant is one that is not fit for trial at all”.*

- [15] The Board of the Judicial Committee of the Privy Council affirmed this approach in the authority of **Peerless Limited v Gambling Regulatory Authority and others**.<sup>7</sup> At paragraph 24, Sir Paul Girvan had the following to say: -

*“The power to terminate proceedings without any hearing on the merits is one which should be exercised with considerable caution and in a proportionate way. In its armoury of powers, the court has other less draconian ways of marking its disapproval of the conduct of a party and its legal advisers. It can, for example, make a wasted costs order against the legal advisers, it may disallow costs, or it may award the costs of the proceedings for the leave application to the respondent even if leave is granted.”*

- [16] An application to strike out a statement of case should be brought by way of a notice of application for court orders<sup>8</sup> and, where certain facts need to be proved, should be supported by evidence on affidavit.

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<sup>6</sup> Claim No. 2006 HCV 0338, unreported, judgment delivered on 19 March 2007, per McDonald Bishop J (as she then was), at paragraph 10

<sup>7</sup> [2015] UKPC 29

<sup>8</sup> In accordance with the provisions of Part 11 of the CPR

- [17] Additionally, the court has the power to treat an application to strike out as one for summary judgment. This enables the court to dispose of insubstantial claims or issues that do not merit a full investigation at trial.<sup>9</sup>

### **The burden and standard of proof**

- [18] The legal burden of proof as to any fact in issue in a civil case lies upon the party who affirmatively asserts that fact in issue and to whose claim or defence proof of the fact in issue is essential.<sup>10</sup> The standard of proof in civil cases is satisfied on a balance of probabilities.
- [19] In **Miller v Minister of Pensions**,<sup>11</sup> Denning J, speaking of the degree of cogency which evidence must reach in order that it may discharge the legal burden in a civil case, said: -

*“That degree is well settled. It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say ‘we think it more probable than not’, the burden is discharged but if the probabilities are equal, it is not.”*

## **ANALYSIS AND FINDINGS**

### **The power of the Court to strike out a party’s statement of case**

- [20] The power of the court to strike out a party’s statement of case is permissive, not mandatory. It confers the court with a discretion which is to be exercised in the light of all the circumstances. This discretion is to be exercised by applying two fundamental, though complementary principles. Firstly, that the parties to an action should not lightly ‘be driven from the seat of judgment’. What that means is that the court will exercise its discretionary power with the greatest care and

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<sup>9</sup> See – **Taylor v Midland Bank Trust Co Ltd** [1999] All ER (D) 831

<sup>10</sup> See – **Murphy on evidence**, 9th edition, at page 71, paragraph 4.5

<sup>11</sup> [1947] 2 All ER 372, at pages 373-374

circumspection and only in cases where it is apparent, plain and obvious that a claim cannot succeed.

- [21] The second principle is that a stay of proceedings or even a dismissal of proceedings may often be required for justice to be done. This is to prevent the parties from being harassed and put to expense by frivolous, vexatious or hopeless litigation.<sup>12</sup>

**The assertions made by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants**

- [22] In the present instance, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants assert the following: -

- i. That the Claimant's Statement of Case contains prolix information.
- ii. That the Claimant's Statement of Case amounts to an abuse of the court's process.
- iii. That the Claimant's Statement of Case discloses no reasonable grounds for bringing the Claim.

- [23] Further, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants maintain that the Claimant's Statement of Case does not disclose any coherent facts which are indicative of what the Claim is about.

- [24] Finally, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants assert that the Claimant's Statement of Case does not disclose any legally recognizable cause of action against them and that the Claim is frivolous, vexatious and ill-founded.

**The assertions made by the Claimant/Respondent**

- [25] For his part, Mr Tharpe denies that the instant Claim is frivolous or vexatious. Nor does he agree with the assertion that the Claim is ill founded. Mr Tharpe asserts that his decision to initiate the instant Claim was not informed by malice or ill-will toward either or both Defendants/Applicants. Mr Tharpe maintains that he

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<sup>12</sup> See – Halsbury's Laws of England (4<sup>th</sup> edn, 2003), volume 37, paragraph 430

initiated this Claim against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants in their professional capacity and in respect of their discharge of their official duties in relation to the complaints which he made to each of them, in respect of the court's handling of the several claims which were initiated in the Supreme Court of Judicature of Jamaica involving him.

- [26] Mr Tharpe asserts that, although the 2<sup>nd</sup> Defendant did not preside over any of the claims to which he is a party, he [Mr Tharpe] sought to join the 2<sup>nd</sup> Defendant as a party to this Claim, as the “CEO” or “Manager” of the Supreme Court of Judicature of Jamaica.

### **The liability of public authorities for tort**

- [27] Public authorities have the same duties and are subject to the same liabilities as the general law imposes on private persons doing the same things. The term ‘public authorities’ is used here to include any person certain of whose functions are functions of a public nature.
- [28] The Halsbury’s Laws of England, Volume 97A (2021), at paragraph 393, reads as follows: -

*“393. Liability of public authorities for torts*

*Unless the contrary is provided by statute, public authorities<sup>13</sup> have the same duties and are subject to the same liabilities as the general law imposes on private persons doing the same things, as well as certain additional duties and liabilities that are imposed on them by common law or statute, notably the common law tort of misfeasance in public office and the duty of a ‘public authority’ to act in a way which is compatible with specified rights guaranteed by the European Convention on Human Rights under the Human Rights Act 1998.*

*Though public servants, agents and officers are not liable in a representative capacity for their torts, they remain personally liable for their tortious acts or*

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<sup>13</sup> The term ‘public authority’ is used here to include any person certain of whose functions are functions of a public nature, as it is in the Human Rights Act 1998 s6(3), where ‘public authority’ includes a court or tribunal, and any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

*omissions and their employer may be vicariously liable if such acts or omissions are done in the exercise of their authority or course of their employment.”*

**[29]** Equally instructive, for present purposes, are the provisions of sections 2(2) and 3 of the Crown Proceedings Act (“the Act”). Section 2(2) of the Act defines the term “Crown” as meaning Her Majesty in right of Her Government in the Island; and “officer” as “in relation to the Crown, includes any servant of Her Majesty, and accordingly (but without prejudice to the generality of the foregoing provision) includes a Minister of the Crown”.<sup>14</sup>

**[30]** Section 3 of the Act is entitled “Liability of the Crown in tort” and provides as follows: -

*“3. - (1) Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject –*

*(a) in respect of torts committed by its servants or agents;*

*(b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and*

*(c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property:*

*Provided that no proceedings shall lie against the Crown by virtue of paragraph (a) in respect of any act or omission of a servant or agent of the Crown unless the act or omission would, apart from the provisions of this Act, have given rise to a cause of action in tort against that servant or agent or his estate.*

*(2) Where the Crown is bound by a statutory duty which is binding also upon persons other than the Crown and its officers, then, subject to the provisions of this Act, the Crown shall, in respect of a failure to comply with that*

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<sup>14</sup> See also – Chapter 1, section 1 of the Constitution of Jamaica which defines “public officer” as meaning “the holder of any public office and includes any person appointed to act in any such office”. The term “public service” is also defined as “subject to the provisions of subsections (5) and (6) of this section, the service of the Crown in a civil capacity in respect of the Government of Jamaica (including service as a member of the Judicial Service Commission, the Public Service Commission or the Police Service Commission) ...”.

*duty, be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.*

*(3) Where any functions are conferred or imposed upon an officer of the Crown as such either by any rule of the common law or by statute, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Crown in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.*

*(4) Any enactment which negatives or limits the amount of the liability of any Government department or officer of the Crown in respect of any tort committed by that department or officer shall, in the case of proceedings against the Crown under this section in respect of a tort committed by that department or officer, apply in relation to the Crown as it would have applied in relation to that department or officer if the proceedings against the Crown had been proceedings against that department or officer.*

***(5) 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.***

*(6) No proceedings shall lie against the Crown by virtue of this section in respect of any act, neglect or default of any officer of the Crown, unless that officer has been directly or indirectly appointed by the Crown and was, at the material time, paid in respect of his duties as an officer of the Crown wholly out of the Consolidated Fund of the Island, or any fund certified by the Accountant-General for the purposes of this subsection or was, at the material time, holding an office in respect of which the Accountant-General certifies that the holder thereof would normally be so paid."*

***[Emphasis added]***

**[31]** Also instructive for the purpose of this analysis is rule 59.2(1) of the Civil Procedure Rules, 2002, as amended ("the CPR"). The rule reads as follows: -

*“59.2(1) Where a claim is made in proceedings against the Crown, the claim form or particulars of claim must contain reasonable information as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the government department and officers of state involved.”*

[32] In this regard, this Court is of the view that, by virtue of section 3(5) of the Act, Mr Tharpe is statutorily precluded from bringing the instant Claim against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants. The relief sought against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicant relates to the perceived actions and inactions of each of them in respect of the discharge of responsibilities which are vested in them in connection with a judicial process. For that reason, the Court is constrained to find that the Claimant’s Statement of Case is both frivolous and vexatious and ill-founded and ought properly to be struck out against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants.

[33] Should the Court be incorrect in its findings in this regard, the Court finds that the Claimant’s Statement of Case discloses no reasonable ground(s) for bringing the Claim.

### **The nature and import of pleadings**

[34] In seeking to exercise its discretion to strike out a party’s statement of case, the Court is entitled to examine the pleadings to determine whether they disclose a cause of action.<sup>15</sup>

[35] The system of pleadings operates to define and delimit with clarity and precision the real matters in controversy between the parties. Pleadings serve the two-fold purpose of informing each party of the case of the opposing party and, at the same time, informing the court of the issues between the parties that will govern

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<sup>15</sup> **Sebol Limited and Another v Ken Tomlinson (as the Receiver of Western Cement Company Limited) and Ors**, Supreme Court of Jamaica, Claim No. HCV 2526/2004, delivered on October 9, 2007, and **Sebol Limited and Anor v Ken Tomlinson (as the Receiver of Western Cement Company Limited) and Ors**, Court of Appeal SCCA 115/2007, delivered December 12, 2008. See also, **Vernaldo Graham v The Attorney General of Jamaica** [2022] JMSC Civ 211.

the interlocutory proceedings between them and which the court will have to determine at the trial.<sup>16</sup>

- [36] Pleadings are therefore required to demarcate the parameters of the case that is being advanced by each party to an action and are critical to identify not only the issues joined between the parties but the extent of the dispute between them.
- [37] Lord Woolf MR, in **McPhilemy v Times Newspapers Ltd and others**,<sup>17</sup> provides a comprehensive analysis of the nature and importance of pleadings. He states as follows: -

*“The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular, they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader.”*<sup>18</sup>

### **The duty of a claimant to set out his case**

- [38] The obligation of a litigant to set out his case has been encapsulated in and streamlined by the CPR.
- [39] Rule 8.9 of the CPR outlines the duty of a claimant to set out his case. The relevant provisions of the rule are set out below: -

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<sup>16</sup> See – **Bullen and Leake and Jacob's Precedents of Pleadings**, 12<sup>th</sup> edition, at page 3

<sup>17</sup> [1999] 3 All ER 775, at pages 792 j - 793 b

<sup>18</sup> See also – **Gasoline Retailers of Jamaica Limited v Jamaica Gasoline Retailers Association** [2015] JMCA Civ 23, at paragraph [48], per Morrison JA (as he then was) and **Desmond Kinlock v Denny McFarlane & Others** [2019] JMCA Civ 20, at paragraphs [27] and [28], per Palmer J



**“8.9** (1) *The claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the claimant relies.*

*(2) Such statement must be as short as practicable.*

*(3) The claim form or the particulars of claim must identify or annex a copy of any document which the claimant considers is necessary to his or her case.*

*(4) Where the claim seeks recovery of any property, the claimant’s estimate of the value of that property must be stated.*

*(5) The particulars of claim must include a certificate of truth in accordance with rule 3.12.”*

**[40]** Rule 8.9(1) of the CPR requires a claimant to include in his claim form or particulars of claim, a statement of all the facts on which he intends to rely. The language of the rule is plain and precise. The word ‘must’, as used in the context of the rule, is absolute. It places on a claimant a strict and unqualified duty to adhere to its conformity. Failure to comply with the rule as mandated offends the rule.

**[41]** In the instant Claim, Mr Tharpe has pleaded several causes of action against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants. The Court finds that “dereliction of duty”, “engaging in malpractice”, “complicity in real estate and other property fraud” and “abuse of discretion/ exceeding jurisdiction” are not causes of action which are known to Law in Jamaica. Nor are they recognized as causes of action by way of the Common Law.

**[42]** Additionally, Mr Tharpe purports to claim fraud, including but not limited to, “complicity in real estate and other property fraud under the Law Reform (Fraudulent Transactions) Act”.

**[43]** In this regard, the Court finds that fraud, as a cause of action, must be precisely alleged and strictly proved. The court cannot deduce fraud based on general or unsubstantiated assertions. The question of the presence (or absence) of fraud is one of fact to be determined by the court, having regard to all the circumstances.

**[44]** In these circumstances, the Court is constrained to find that Mr Tharpe has not specifically pleaded nor particularized any acts of identifiable fraud on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants.

**[45]** Further, Mr Tharpe alleges that the 1<sup>st</sup> Defendant discriminated against him under “the Jamaican Constitution and relevant UN Charter and treaties”. In this regard Mr Tharpe has failed to comply with rules 56.9(1)(2) and (3) of the CPR. These rules provide as follows: -

*“56.9(1) An application for an administrative order must be made by a fixed date claim in form 2 identifying whether the application is for –*

*(a) judicial review;*

*(b) relief under the Constitution;*

*(c) a declaration; or*

*(d) some other administrative order (naming it),*

*And must identify the nature of any relief sought.*

*(2) The claimant must file with the claim form evidence on affidavit.*

*(3) The affidavit must state –*

*(a) the name, address and description of the claimant and the defendant;*

*(b) ...*

*(c) in the case of a claim under the Constitution, setting out the provision of the Constitution which the claimant alleges has been, is being or is likely to be breached;*

*(d) the grounds on which such relief is sought;*

*(e) the facts on which the claim is based;”*

**[46]** Regrettably, Mr Tharpe has not identified the provision(s) under the Constitution of Jamaica which he alleges has been breached, is being breached or is likely to be breached by the 1<sup>st</sup> Defendant/Applicant. The Court finds that Mr Tharpe has

made general assertions regarding an alleged breach of his constitutional rights without detailing the breach(es).

- [47]** With respect to the allegation of the 1<sup>st</sup> Defendant/Applicant “violating the professional Code of Conduct, commensurate with her office as Registrar of the Supreme Court of Judicature of Jamaica” as pleaded by Mr Tharpe, the Court finds that that is not a cause of action which is known to the Laws of Jamaica. Nor is it a cause of action by virtue of the Common Law.
- [48]** Consequently, the Court finds that the Claimant’s Statement of Case ought properly to be struck out against the 1<sup>st</sup> Defendant/Applicant.

## **CONCLUSION**

- [49]** In summary, the Court finds that neither the 1<sup>st</sup> Defendant nor the 2<sup>nd</sup> Defendant can properly be sued in their official capacity, by virtue of the statutory exclusion which is contained in section 3(5) of the Crown Proceedings Act.
- [50]** Should the Court be incorrect in that finding, this Court is of the view that the Claimant’s Statement of Case discloses no reasonable ground(s) for bringing the Claim. The Court finds that the Claimant’s Statement of Case does not disclose a cause of action which is known to the Laws of Jamaica. Nor does it disclose a cause of action which exists by virtue of the Common Law.
- [51]** In relation to the aspect of the Claim which alleges fraud, the Court finds that the Claimant has failed to meet the requirement that fraud must be precisely alleged and strictly proved. The Court finds that the Claimant’s Statement of Case consists of ‘bare’ assertions, in respect of the alleged actions or inactions on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants. In this regard, the Court finds that the Claimant has failed to meet the requirements of rule 8.9 of the CPR.
- [52]** The Court finds that the pleadings, as they currently stand, have not been particularized to demarcate the parameters of the case which is being advanced.

Nor do they disclose any reasonable ground(s) for bringing the Claim against either of the named Defendants.

**[53]** In the result, the Court finds that the Claimant's Statement of Case is frivolous, vexatious and ill-founded and that it discloses no reasonable ground(s) for bringing the Claim.

**[54]** Consequently, the Claimant's Statement of Case ought properly to be struck out as against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants.

### **DISPOSITION**

**[55]** It is hereby ordered as follows: -

1. The Claimant's Claim Form and Particulars of Claim, each filed on 19 September 2023, are struck out.
2. The Applicants/Defendants seek no Order as to Costs in respect of the Amended Notice of Application for Court Orders, which was filed on 29 October 2024.
3. The Applicants/Defendants seek no Order as to the Costs of the Claim.
4. The Applicants/Defendants' Attorneys-at-Law are to prepare, file and serve these Orders.