



[2019] JMSC Civ 215

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2015 HCV 03304

BETWEEN	ALTON WEDDERBURN	CLAIMANT
AND	RED STRIPE BREWING COMPANY	1ST DEFENDANT
	TRADING as RED STRIPE	
AND	THE ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT

Mr. Makene Brown instructed by Chen Green and Company for the claimant

Mrs. Tanisha Rowe Coke instructed by the Director of State Proceedings for the second defendant

Heard: October 8, 2019 and November 5, 2019

IN CHAMBERS

CORAM: J Pusey J:

BACKGROUND

- [1] The claimant, a Businessman, was employed to the Red Stripe Brewing Company Limited T/A Red Stripe as a Centre Distribution Manager attached to its Smithfield Distribution Centre in the parish of Westmoreland. Investigations carried out by Red Stripe's Loss Prevention Manager, Mr. Andrew Wynter, resulted in the claimant being arrested on the 21st day of April, 2006 and charged for several counts of obtaining monies by false pretence. The claimant was placed in custody and remanded without bail from April 28, 2006 to December 14, 2006 when he was released on bail.
- [2] The claimant was convicted on the 13th August 2008 in the Westmoreland Parish Court and sentenced to 18 months imprisonment. His conviction was overturned by the Court of Appeal and he was discharged on July 30, 2009.

- [3] On July 1, 2015 the claimant filed this claim for damages for False Imprisonment, Malicious Prosecution, Negligence and Defamation. For present purposes the claim for defamation is not addressed as it is against the 1st defendant only.

THE APPLICATION

- [4] By Notice of Application for Court Orders filed on October 1, 2019 the 2nd defendant, the Attorney General, seeks, inter alia, the following Order:

1. The claim against the 2nd defendant is struck out as it relates to the cause of action for false imprisonment and negligence.

- [5] The grounds for the application are:

1. Rule 26.3(1)(c) of the Civil Procedure Code (CPR) empowers the court to strike out a statement of case or part thereof where it appears that the statement of case or the part to be struck out is an abuse of the process of the court.
2. The claim for damages for false imprisonment and negligence was not filed within the six-year period required by section 3 of the English Limitation Act 1623 21 James Cap 16 and those causes of action were accordingly statute-barred at the time of filing. Those actions are therefore an abuse of the process of the court.
3. The application is in keeping with the over-riding objective of the CPR in dealing with cases justly.

APPLICANT/DEFENDANT'S SUBMISSIONS

- [6] The 2nd defendant submits that the claims for false imprisonment and negligence ought to be struck out as an abuse of the process of the court as they are both statute-barred pursuant to section 3 of the Limitation Act, which provides that the claims must be brought within six years of the cause of action arising. Counsel supports her submission on two main pillars.

- [7] First, relying on the decision of Brooks J (as he then was) in **International Asset Services Limited v Edgar Watson** Claim No. 2009 HCV 03191, delivered on October 25, 2010, in which the decisions in **Riches v Director of Public Prosecutions** [1973] 2 ALL ER 935 and **Ronex Properties v John Laing** [1982] 3 ALL ER 1983 were analyzed, counsel posited that local courts have power to strike out a claim if it is filed outside the limitation period and is

therefore statute-barred. Brooks J noted, she submitted, in the **International Assets** case, that Rule 26.3(1)(c) authorizes striking out for this reason.

- [8] Secondly, relying on the decision of the Court of Appeal in **The Attorney General of Jamaica v Arlene Martin** [2017] JMCA Civ 24, counsel submitted that in claims for false imprisonment and malicious prosecution and negligence, though filed together, they are separate claims. In determining whether they are statute-barred each claim should be analysed separately and the period for which time is to run decided separately.
- [9] In the matter at Bar, she argued, the cause of action for malicious prosecution arose when the claimant was acquitted and discharged on July 30, 2009 and is therefore not statute-barred.
- [10] However, in relation to the cause of action for negligence and false imprisonment that is not the case. The false imprisonment arose when the claimant was released on bail, even before the determination of the matter for which he was charged. Also the complaint regarding negligence in the conduct of the investigations, arose in 2006 when he was charged, therefore both causes of action were statute-barred when the claim was filed in July 2015, nine years later. Consequently the claims for negligence and false imprisonment should be struck out.

CLAIMANT'S SUBMISSIONS

- [11] The claimant submits that although the court is empowered to strike out a claimant's statement of case under its general powers to manage a case pursuant to CPR 26.3(1)(b) and (c)and for failure to file it within the limitation period, the determination of the limitation period in the matter at Bar posited by the claimant is accurate. The claimant argued that, as acknowledged in **Stewart v Issa** SCCA 16/2009 and **Sebol Limited and Selective Homes and Properties Limited v Ken Tomlinson, National Investment Bank of Jamaica Limited, The Registrar of Titles and Pan Caribbean Financial Service Limited** SCCA 115/2007, the court should examine the pleadings in the matter to see if they give rise to the cause of action.

- [12] In relation to the claim for false imprisonment counsel referred to **Halsbury's Laws of England Tort (Vol. 97 (2015) paragraph 556** for the proposition that the ambit of that tort extends to continued reputational damage after the restraint has ended until there is an avowal of the false imprisonment. To quote counsel's quotation from Halsbury,

'A false imprisonment does not merely affect a person's liberty but also his reputation, and the damage to reputation continues until it is caused to cease by an avowal that the imprisonment was false.'

- [13] The reference from the Halsbury referred to the case of **Lunt v Liverpool City Justices** (March 5, 1991, unreported), CA [1991] EWCA civ J03050-4 in which **Warby and Another v Cascarino and others** [1989] Lexis citation 1229, which was an assessment of damages for false imprisonment. In that case the Master of the Rolls said;

"In assessing the damages, we have to take full account of the trauma suffered by the plaintiffs.[...] It must in many ways have been a blighted Christmas for these ladies, and those members of their families who knew about it, the following summer, and it continued thereafter in a different form in that Tesco's did not withdraw the charge until today. So they are entitled to substantial damages—greater damages, we all think, than the jury awarded. Above all, they are entitled to receive a figure to which they can turn, if anybody ever raises this charge again, and say, 'Not only were we cleared, but we received f-X damages to show that it was fully accepted that we were the victims of a charge which should never have been brought against us'."

- [14] In the matter at Bar therefore, it was only after the appeal was determined in his favour, avowing the criminal charges against him, that the claimant could properly bring all the claims he did so that full account could be taken of the trauma he suffer, counsel argued.
- [15] Regarding the submission by the applicant that the striking out furthers the overriding objective of the CPR, counsel argued that by bringing all the claims together at the time he did, there was no need to file a claim and then amend

it to add other claims when the appeal was concluded. One comprehensive claim was filed, at the time it was, placing all allegations before the court for determination. He concludes that the pleadings disclose a reasonable basis upon which to bring this claim for false imprisonment and negligence and should not be struck out.

ISSUE

- [16] The issue for the court's determination is whether time had run out when the claim for negligence and false imprisonment were filed in July 2015, rendering them statute-barred.

ANALYSIS AND CONCLUSION

- [17] There is no dispute that the court is empowered under R 26.3(1)(b) and (c) of the CPR with its case management powers to strike out a statement of claim as an abuse of process if it is statute-barred. That is the main ground for impugning the statement of case in the matter at Bar. Brooks J in **International Asset Services Limited v Edgar Watson Supra** decided that a statement of case could be struck out for being filed out of time.
- [18] In determining this issue at this stage in the progress of the case it is the pleadings that must be examined to see whether the cause of action is made out. That proposition was approved and applied by Dukharan JA in the **Sebol Limited** case.
- [19] In **The Attorney General of Jamaica v Arlene Martin Supra** P Williams JA decided that each cause of action was separate and the limitation period of each must be ascertained separately. In approaching the computation of the limitation she said at paragraph 39 of the judgement;

*The correct approach to be taken when calculating the limitation period was usefully discussed in **Blackstone's Civil Practice 2012** at paragraph 10:13:*

*"The rules on accrual fix the date from which time begins to run for limitation purposes. Lindley LJ in **Reeves v Butcher [189] 2 QB 09** said: 'It has always been held that the statute runs from the*

*earliest time at which an action would be brought.’ In **Read v Brown** [1888] 22 QBD 128 Lord Esher MR defined ‘cause of action as encompassing every fact which it would be necessary for the [claimant] to prove, if traversed, in order to support his right to the judgement of the court. In other words, time runs from the point when facts exist establishing all the essential elements of the cause of action.” Emphasis mine.*

- [20] The question that arises is, when did facts exist in the matter at Bar to give rise to the causes of action of negligence and false imprisonment as disclosed in the pleadings?

The Claim for False Imprisonment

- [21] The pleadings disclose that the claimant was arrested on April 26, 2006 and was remanded by the Resident Magistrate, without bail, from April 28, 2006 until December 14, 2006. The claimant filed his claim on July 1, 2015.
- [22] In **The Attorney General v Arlene Martin Supra**, P. Edwards JA at paragraph [52] of the judgement defined false imprisonment in the following way;

The tort of false imprisonment arises where there is the complete restraint and deprivation of one’s liberty, however short, without lawful justification. The tort is complete when the restraint or detention of the person ceases.

- [23] Applying that decision, the time when the cause of action for false imprisonment arose would be December 14, 2006 when the claimant was released on bail.
- [24] The claimant challenges this and argues that he could not maintain the claim for false imprisonment in 2006 because the extent of the damage to him could only be decided when the accusations against him was avowed. That would be when he was acquitted. Put another way, what established the unlawfulness of his detention was his acquittal and avowal by the Court of

Appeal on July 30, 2009 that his arrest and charge and all that flowed from it was unlawful, including his detention.

- [25] It is arguable that that proposition is consistent with the definition of cause of action and the calculation of the limitation period enunciated in **Blackstone's Civil Practice 2012**. It was at acquittal that '**every fact which would be necessary for the claimant to prove, if traversed, in order to support his right to the judgement of the court**,' arose. Consequently time should run from July 30, 2009. Questions arise such as- could he maintain a claim for false imprisonment when the criminal proceedings were ongoing before the Resident Magistrate's court? Such a claim would be traversed on the basis that the arrest and detention was lawful as the Crown has a case against him in the court which caused the detention. Arguably, this is what makes false imprisonment arising out of a criminal arrest and detention different in specie from other forms of false imprisonment as the detention is *prima facie* lawful until the accused is acquitted and his detention avowed. This conclusion is supported by the decision in **Warby and Another v Cascarino and others** in 1989. That case is only of persuasive authority in our jurisdiction. This court is bound by the decision of the Court of Appeal in **The Attorney General v Arlene Martin Supra** and therefore can only conclude that the cause of action arose when the detention ceased in December 2006 and not July 30, 2009 when the case against him was dismissed by the Court of Appeal.

The Claim for Negligence

- [26] In relation to the claim for negligence, the pleadings disclose that care was not taken in assessing the evidence presented by the claimant to the police regarding the operation of the loan account at the National Commercial Bank. The decision of the Court of Appeal spoke directly to the manner in which the investigations were conducted. The issue for present purposes is when did the cause of action arise for negligence; when were the facts necessary to sustain the claim manifest?
- [27] In the **Arlene Martin** case the court said at paragraph [56],

As far as the claim for negligence in the arrest and charge of the respondent was concerned, the limitation period would have commenced from the time the acts complained of occurred, which was clearly in 2005. The respondent was not prosecuted for four years from 2005 to 2009. At the most, the prosecution would have lasted from the time the matter was first before the courts to the time there was an indication that the Crown did not intend to continue the proceedings. This would have been when the nolle prosequi was entered in 2006.

- [28] The Court of Appeal concluded that the cause of action in negligence was statute-barred as it arose from the time of the arrest and charge or at most, at the time when the *nolle prosequi* was entered. It follows that, like for false imprisonment in the case at Bar, time would begin to run from the time of the arrest and charge of the claimant and was not impacted by the acquittal.
- [29] This raises the same issues as were alluded to by the claimant in relation to false imprisonment. It was argued that it is the acquittal that gave substance to the contention that the investigations were negligently conducted. The claimant argued that in the instant case, the Court of Appeal in handing down the judgement commented on the quality of the investigations. The claimant would be hard pressed to maintain a claim for negligent handling of the investigations while the criminal prosecution was ongoing.
- [30] However attractive this argument may be, this court is bound by the decision in the **Arlene Martin** matter. The negligence arose when the claimant was arrested and charged, which was April 2006 and the claim is therefore statute-barred.

ORDER

1. The claim against the 2nd defendant is struck out as it relates to the cause of action for false imprisonment and negligence.
2. Cost is cost in the claim
3. The claimant to prepare file and serve this order
4. Leave to appeal granted