

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NOS.: ANUHCV2024/0484

BETWEEN:

[1] CAPTAIN JAVONSON WILLOCK

Claimant

And

[1] LIEUTENANT COLONEL DALTON GRAHAM

In his capacity as Commanding Officer First Antigua Barbuda Regiment

[2] BRIGADER GENERAL TELBERT BENJAMIN

In his capacity as Chief of Defence Staff, Antigua Barbuda Defence Force

[3] THE ATTORNEY GENERAL

Respondents

Appearances:

The Claimant in person

Ms. Joy Dublin with Ms. Wattisa Rose and Ms. Rose Ann Kim for the Respondents

Ms. Asheen Joseph-Amicus Curiae

2026: February 25th, 27th
March 11th, 21st (Supplemental Submissions)
March 31st

JUDGMENT

Introduction

[1] **WILLIAMS, J.:** This claim arises out of renewed disciplinary proceedings brought against the Claimant, Captain Javonson Willock a commissioned officer of the Antigua and Barbuda Defence Force (ABDF) in respect of allegations said to have occurred in August 2020. Previous proceedings against him had been declared to be null and void by consent order made on 20th September 2023.

[2] The First Respondent is the Claimant's Commanding Officer, whilst the Second Respondent is the Chief of Defence Staff who exercises overall command and control of the ABDF. The Third Respondent, the Honourable Attorney General has presumably been added as a party due to the Claimant's claim in the tort of misfeasance in public office.

The Proceedings

[3] On 10th February 2025 the Claimant filed an Amended Fixed Date Claim Form seeking the following:

1. A declaration that the Respondents are statute-barred from taking any actions in relation to allegations dating back to 14th August 2020;
2. A declaration that the charges issued to the Claimant in relation to the allegations of misconduct dating back to 14th August 2020 are unlawful, null and void;
3. A declaration that the Second Respondent's overall conduct towards the Claimant amounts to misfeasance in public office;
4. Damages inclusive of general, aggravated and exemplary damages.

[4] The Claimant relies on two affidavits in support of the claim, one filed on 19th December 2024 and another in reply filed on 28th February 2025. The contents of these affidavits will be examined in greater detail later in this decision.

- [5] The Respondents for their part, filed two affidavits in response to the claim, one sworn to by Lt. Col. Alando Michael and the other sworn to by Sgt. Manyakie Edwards both filed on 12th February 2025. The contents of these affidavits will also be examined in greater detail later in this decision.

Trial

- [6] The parties were granted permission to cross-examine witnesses by order made on 8th October 2025. Consequently, when trial of this claim took place on 25th and 27th February 2026 the Claimant, Lt. Col. Alando Michael and Sgt. Manyakie Edwards all gave evidence on 25th February 2026 and were cross-examined. The parties then made submissions to the court on 27th February 2026 and a decision was reserved. The parties were later requested to file further submissions on a legal issue and did so.
- [7] During cross-examination, the parties both appeared to focus on the factual matrix which led to charges being laid against the Claimant. This was of limited relevance to the issues to be decided in these proceedings.

Evidence

The Claimant

- [8] The Claimant's evidence is contained in his Amended Affidavit in Support sworn to on 19th December 2024 and his Affidavit in Response sworn to on 28th February 2025. He avers that he is a serving Captain in the ABDF with approximately nineteen years' service and is approaching pension eligibility at twenty-two years. He states that disciplinary proceedings were first brought against him in relation to alleged misconduct dating back to August 2020 which were declared null and void by Consent Order dated 20th September 2023. That order also directed that the matter be referred to the Chief of Defence Staff to be handled in accordance with the Defence Act.

[9] The Claimant deposes that on 6th December 2024 he was issued with six fresh charge sheets based on the same August 2020 allegations. He contends that, by virtue of **section 131(1)** of the **Defence Act**, the limitation period expired on 14th August 2023. Therefore, any disciplinary proceedings thereafter are statute-barred. He further asserts that charge sheets were issued before any lawful investigation was completed and that investigations conducted by Captain Karl Jarvis were undertaken without lawful authority.

[10] The Claimant further alleges that the ongoing disciplinary measures have jeopardized his military career and pension. He describes emotional distress and psychological strain as a result and further states that continued investigations have hindered his advancement and professional status within the Force.

[11] According to the Claimant, the Second Respondent has acted in bad faith and with improper motives, seeking to frustrate him into resignation and prematurely end his career. He characterises the overall conduct as malicious and amounting to misfeasance in public office. In his reply evidence, he maintains that the Respondents' actions demonstrate a pre-determined effort to prosecute him notwithstanding the earlier High Court order. He therefore seeks declaratory relief together with general, aggravated and exemplary damages for the loss which he claims to have sustained.

[12] Under cross-examination, the Claimant admitted that the allegations against him were serious and could bring the Force into disrepute. He further conceded that the ABDF was right to conduct an investigation into the matter.

Lt. Col. Alando Michael

[13] Lt. Col. Alando Michael's evidence is contained in his Affidavit in Response to the Fixed Date Claim Form sworn to on 31st January 2025. He deposes that he represents the First and Second Respondents and is duly authorised to swear the affidavit on their behalf.

[14] Lt. Col. Michael accepts that earlier disciplinary proceedings against the Claimant were declared null and void by order dated 20th September 2023. However, he states that this was a consent position reached between the parties rather than an adjudication on the merits. He maintains that, following the Consent Order, the Respondents were entitled to recommence investigations in accordance with the **Defence Act**. He asserts that **section 131(1)** of the Act, properly construed, does not bar all forms of disciplinary proceedings after three years. He contends that investigations into the Claimant's alleged misconduct remain in their early stages and are being conducted in accordance with the Defence Act.

[15] Lt. Col. Michael denies that the Second Respondent acted in bad faith or with malice. He rejects the allegation that there was any attempt to force the Claimant to resign or to end his career unlawfully. He further denies that the Claimant has been harassed, constructively dismissed or improperly denied promotion. He states that promotions in the ABDF are not automatic but depend on performance, availability of vacancies and organisational needs. He maintains that the actions taken by the First and Second Respondents were in good faith, within their statutory powers and directed toward preserving discipline within the ABDF.

[16] Under cross-examination, Lt. Col. Michael conceded that it would be unlawful for the disciplinary process to be used to target the Claimant unfairly. He also admitted that there has been a delay in laying the charges against the Claimant. He however, denied that the disciplinary process would necessarily be stressful for the Claimant. In response to a question from the court, he confirmed that a court-martial against the Claimant would be statute barred but that the summary process under the Defence Act could proceed.

Sgt. Manyakie Edwards

[17] Sergeant Manyakie Edwards' evidence is contained in his Affidavit in Response filed on 12th February 2025. He deposes that he was interviewed on 4th January

2024 by Captain Karl Jarvis in relation to allegations arising from a social event in August 2020 at which the Claimant was present. He states that he provided a written and signed witness statement concerning the events of that evening.

[18] Sergeant Edwards further avers that he furnished investigators with WhatsApp messages and photographs from his cellular phone relevant to the incident, which were printed and exhibited. Under cross-examination he admitted that he had never been the subject of disciplinary proceedings in relation to the incident. However, Sgt. Edwards elaborated that due to the incident he was removed from consideration for entry into the officer ranks.

Findings of Fact

[19] Based on the evidence, the undisputed facts are as follows:

1. On or about 14th August 2020 an event involving members of the ABDF including the Claimant and Sgt. Manyakie Edwards took place at Camp Blizzard.
2. The occurrence was investigated and disciplinary proceedings were commenced against the Claimant which resulted in a reprimand.
3. The Claimant challenged this outcome by proceedings in the High Court which resulted in the following order being made by consent:
 - i. That the entire proceedings against the Claimant as it relates to allegations of misconduct is hereby declared null and void.
 - ii. The First Respondent is directed to remove the letter of reprimand from the Claimant's file in respect of the disciplinary convictions in relation to these proceedings
 - iii. This matter is referred to the First Respondent to be handled in accordance with the Defence Act 2006, its amendments and statutory regulations.

- iv. This matter is set down for report on settlement on the issue of damages and costs to 26th October 2023 unless a consent order is sooner filed.
4. Following that referral, investigations into the allegations dating back to the 14th August 2020 incident were initiated pursuant to the Defence Act 2006.
5. On or about 6th December 2024, the Claimant was issued six charges for offences said to arise out of the August 2020 allegations.
6. The Claimant by application filed on 11th December 2024 sought an injunction to prevent the process from continuing against him. This application was refused however the court made an order for an early trial.

Issues

[20] The issues to be determined are as follows:

1. Whether the First and Second Respondents are statute-barred from taking action against the Claimant in relation to allegations which date back to 14th August 2020? and
2. Whether the Respondent's actions constitute misfeasance in public office?

Discussion

Nature of the Proceedings

[21] The Claimant has framed his claim as seeking declaratory relief pursuant to **Rule 56.1(b)** of the **Civil Procedure Rules (Revised Edition) 2023**. The Claimant had previously sought judicial review remedies, but these were abandoned in his amended Fixed Date Claim Form. As outlined by the Privy Council in **Attorney General v. Gisele Isaac**¹ it is open to the Claimant to invoke **CPR Rule 56.1(b)** to seek only declaratory relief and damages.

[22] As previously mentioned, the Claimant has also included a claim for the tort of misfeasance in public office. In this regard **CPR Rule 56.6(1)** provides:

¹ [2018] UKPC 11

“(1) The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that –
(a) arises out of; or
(b) is related or connected to,
the subject matter of an application for an administrative order.”

[23] The Respondents did not object to the joinder of the claim in tort for misfeasance in public office. The court is also satisfied based on the Claimant’s pleadings that the tort of misfeasance is sufficiently connected to his public law claim for declaratory relief. The court will however consider the public law aspects of the claim first before addressing the claim in tort.

The Court’s Approach

[24] Before going on to consider the merits of the Claimant’s case it is necessary to outline the court’s approach to matters of this nature. The Caribbean Court of Justice in **Barbados Defence Force v. David Anthony Harewood** stated:

“What distinguishes the military is that it is an institution that absolutely requires enforcement of the strictest discipline. The service has therefore had to develop a distinct culture, set of rules, standards and procedures geared at maintaining order and operational efficiency. Courts-martial are specifically designed to ensure that breaches of military discipline and the unique requirements of military life and service are appropriately addressed, not by civilian Magistrates or Judges but by military personnel. By excluding them from the remit of the normal criminal trial courts the Constitution recognises that courts-martial are best equipped to fulfil this objective.”²

[25] This court similarly acknowledges the unique role of military justice and the expertise of the ABDF in disciplinary matters. Thus, although the court retains supervisory jurisdiction, it will exercise that jurisdiction with restraint, intervening only where the Force has acted outside the **Defence Act** or the Constitution.

Section 131(1) of the Defence Act

[26] This claim concerns the **Defence Act**³ which establishes the ABDF. Command is vested in the Chief of Defence Staff, subject to the authority of the

² [2024] CCJ 15 (AJ) (BB) at paragraph 49

³ Act No. 10 of 2006

Governor-General acting on the advice of Cabinet. The Act defines ranks, appointments, commissions, enlistment procedures and terms of service.

[27] Part V of the Act governs discipline and trial of military offences in relation to the ABDF. The Claimant has been issued with charges for the following offences pursuant to Part V of the Defence Act:

1. Disobedience to particular orders contrary to section 48(2);
2. Disgraceful conduct contrary to section 77;
3. Scandalous conduct of officer contrary to section 75;
4. Disobedience of standing orders contrary to section 50;
5. Conduct to prejudice of military discipline contrary to section 80; and
6. Conduct to prejudice of military discipline contrary to section 80.

[28] The Claimant's argument is that these charges are statute-barred by virtue of section **131(1)** of the **Defence Act**. This section provides as follows:

“Subject to this section, no person shall be tried by a court-martial for any offence, other than one against section 45 or 46, or for desertion, unless the trial commences within three (3) years after the commission of the offence; but any period during which that person was a prisoner of war and any time during which he was illegally absent shall be disregarded.”

[29] The Claimant contends that the Respondents are barred by virtue of **section 131(1)** from taking any action against him in relation to allegations dating back to 14th August 2020. This is as the charges were issued in December 2024 more than four years after the alleged incident took place.

[30] The Respondents submit that the express reference to trial “by a court-martial” confines the three-year limitation to court-martial proceedings only. As no decision has been made to proceed by court-martial, they argue that **section 131(1)** is not engaged and that the assertion of a statutory bar is premature.

[31] In this regard the Respondents rely on **section 91(3)** of the **Defence Act**, which applies where a charge is referred to the appropriate superior authority as occurred in this case. **Section 91(3)** provides as follows:

“(3) Where a charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and try the charge; but if in the course of investigating the charge the authority considers that it is desirable that the charge be tried by court-martial; the authority shall have the charge so tried.”

[32] The Respondents further rely on **section 91(4)** of the **Defence Act** which provides as follows:

“(4) Where the appropriate superior authority finds the accused guilty, it may award one or more of the following punishments
(a) a fine of a sum not exceeding the equivalent of 56 days' pay
(b) a severe reprimand or reprimand; or
(c) stoppages, where the offence has occasioned any expense, loss or damage.”

[33] The combined effect of **sections 91(3)** and **91(4)** quoted above is that where a charge is referred to the appropriate superior authority, that authority is empowered to investigate and determine the charge itself and to impose specified summary punishments upon a finding of guilt. Court-martial is not automatic, it is triggered only if the authority considers it desirable to be dealt with in that manner. The Respondents submit that due to the limitation period a court-martial is no longer available, but this does not preclude recourse to the summary procedure.

Supplemental Submissions

[34] After trial of this matter concluded on 27th February 2026 the parties were invited to file supplemental submissions on the issue of whether the United Kingdom **Armed Services Act 1981** applied to Antigua and Barbuda by virtue of **section 228** of the **Defence Act**. The parties took this opportunity and by 20th March 2026 both had filed supplemental submissions. The **Armed Services Act 1981** will be examined later in this judgment.

Claimant's Supplemental Submissions

[35] The Claimant submits that the statutory framework governing military discipline establishes a single, unified system in which both summary proceedings and trial by court-martial form constituent parts. He relies on the amendment introduced by **section 6** of the **Armed Forces Act 1981** to **section 132** of the **Army Act 1955**, which replaced the earlier reference to trial by court-martial with the broader formulation of “proceedings,” thereby extending limitation principles beyond court-martial to encompass summary processes. Accordingly, once the jurisdiction of the court-martial is extinguished by the effluxion of time, the jurisdiction to proceed summarily must likewise fall away.

Respondents’ Supplemental Submissions

[36] The Respondents submit that the Defence Act 2006 constitutes a complete and self-contained statutory regime governing disciplinary proceedings within the Antigua and Barbuda Defence Force. In particular, section 131 expressly imposes a three-year limitation period in respect of trials by court-martial only and contains no corresponding limitation applicable to summary proceedings. On a proper construction of the Act, the absence of such a provision reflects a deliberate legislative choice and does not give rise to any lacuna.

[37] It is further contended that **section 228** of the **Defence Act** permits recourse to earlier United Kingdom legislation only where the local statute makes no provision. Since **section 131** addresses limitation, albeit in relation to court-martial, there is no gap capable of being filled by importing the amendments effected by the Armed Forces Act 1981. The Respondents emphasise that the local legislature has not adopted all amendments made to the UK **Army Act 1955** and has instead maintained a distinct statutory scheme, demonstrating legislative autonomy.

[38] In addition, they argue that the amendment introduced by the **Armed Forces Act 1981** is no longer operative, having been overtaken by the enactment of the **Armed Forces Act 2006** in the United Kingdom, which repealed the **Army Act 1955**. In the absence of any provision incorporating that later legislation into the

domestic framework, it is submitted that neither the 1981 amendment nor its successor regime has any application in Antigua and Barbuda.

Discussion

[39] In construing **section 131(1)** of the **Defence Act**, the Court is guided by the settled principles of statutory interpretation. These are that where the language of a statute is clear and unambiguous, effect must be given to its ordinary and natural meaning unless this would lead to an absurdity. (See: **Smith v. Selby**⁴ and **The Labour Tribunal v. St Lucia Electricity Services Ltd**⁵).

[40] **Section 131(1)** provides that “no person shall be tried by a court-martial” after the expiry of three years. Read in isolation, the provision refers expressly to court-martial. **Section 131(1)** is based on the provisions of **section 132** of the United Kingdom’s **Army Act 1955**⁶ which was repealed in that country by the **Armed Services Act 2006**.⁷

[41] **Section 228** of the **Defence Act** provides as follows:

“The Army Act, 1955, the Air Force Act, 1955, and the Naval Discipline Act, 1957, and all amendments to those Acts have effect in Antigua and Barbuda in respect of any matter for which this Act does not provide.”

[42] The above is of course a reception provision which is designed to fill any gaps in the Antigua and Barbuda legislation. In this case there is such a lacuna as **section 131(1)** of the **Defence Act** does not specify what the applicable limitation period is in relation to offences being dealt with summarily. In the United Kingdom this was addressed by an amendment to **section 132** of the **Army Act 1955** by the **Armed Forces Act 1981**.⁸ Taking into account the 1981 amendment, **section 132** of the **Army Act 1955** (prior to its repeal) read as:

⁴ [2017] CCJ 13 (AJ) at paragraph 10

⁵ SLUHCVAP2019/0003 decided 8th April 2020 at paragraph 36 (unreported)

⁶ 3 & 4 Eliz. 2 C. 18

⁷ Ch. 52

⁸ Ch. 55

“(1) Subject to the provisions of this section, no proceedings shall be taken against a person for an offence, other than one against section thirty-one or thirty-two of this Act or desertion, unless the trial or proceedings on a summary dealing are begun within three years after the commission of the offence, there being disregarded any time during which he was a prisoner of war and any time which he was illegally absent.” (my emphasis)

[43] The effect of the amendment is that in the United Kingdom the same limitation period which was applicable to court-martials also applied to the summary procedure. In accordance with the express wording of **section 228** of the **Defence Act** the 1981 amendment to the **Army Act 1955** has the force of law in Antigua and Barbuda. This is as previously stated the Act is silent on the applicable limitation period in relation to the summary process.

[44] Further, it appears that Part V of the **Defence Act** establishes a unified disciplinary code for the trial of service offences. **Section 91(3)** demonstrates that summary proceedings before the appropriate superior authority and trial by court-martial are alternative procedural routes for determining liability of service offences.

[45] If **section 131(1)** were confined strictly to court-martial proceedings, the consequence would be that the same alleged misconduct which could not lawfully be tried by court-martial after the expiry of three years could nonetheless be pursued indefinitely by selecting the summary route. That would permit the ABDF to avoid the statutory time bar by procedural election. Such a construction would substantially undermine the evident purpose of the limitation provision, which is to secure finality and protect service members from the revival of stale allegations. It would also create an anomaly within a single disciplinary code, whereby more serious offences subject to court-martial attract a time safeguard, while lesser offences could be prosecuted indefinitely.

[46] In my view, the absence of any limitation governing summary proceedings within a unified disciplinary code such as Part V of the **Defence Act** suggests a material omission rather than a deliberate legislative exclusion. In the circumstances,

section 228 properly operates to supply that omission by incorporating the broader formulation introduced by the **Armed Forces Act 1981**.

[47] I therefore accept the Claimant's submissions and hold that the three-year time bar in **section 131(1)** of the **Defence Act** applies to disciplinary proceedings in respect of the August 2020 allegations, whether pursued by court-martial or by summary process. The declarations sought at paragraphs (i) and (ii) of the Amended Fixed Date Claim Form are accordingly granted.

Misfeasance In Public Office

[48] The Claimant also seeks a declaration that the Second Respondent's overall conduct towards him amounts to misfeasance in public office. The Claimant also includes a claim for damages including aggravated and exemplary damages.

[49] The elements of the tort of misfeasance in public office have been outlined in the case of **Three Rivers District Council v. Governor and Company of the Bank of England (No 3)**.⁹ These are:

1. The defendant must be a public officer.
2. The exercise of power, which is the subject of complaint, must occur in the course of their functions.
3. The act (or failure to act) must have been committed in bad faith which is either targeted malice or recklessness.
4. The act (or failure to act) must cause actual loss or damage.

[50] The parties are in agreement that the first two elements of the tort apply in this case. Thus, it is not disputed that the First and Second Respondents were public officers and were acting in the exercise of their official powers at all material times. The question is whether the evidence establishes the necessary mental element and the remaining requirements of the tort.

⁹ [2003] 2 AC 1.

[51] In **Southern Developers v. Lester Bird et al** the Court of Appeal applying **Three Rivers** outlined the mental element of the tort as follows:

“[31] The answer to the second question rests primarily on Lord Steyn’s speech in the House of Lords in the case of *Three Rivers District Council v Bank of England*. In this case His Lordship defined the two different forms of liability with respect to misfeasance in public office. The first is targeted malice by a public officer, being conduct specifically intended to injure a 11 person or persons. The second is where a public officer acts knowing that he has no power to do the act complained of and that the act will probably injure the [claimant]. Lord Millett, in the same case, expressed the view that these are merely different ways in which the necessary element of intention is established. According to His Lordship: “In the first limb it is established by evidence; in the second by inference.

[32] I agree with Mr. Simon, QC, that once the element of bad faith is established in the exercise of a power, the tort is constituted and the question of intention may be established either by way of targeted malice or recklessness. This accords with what Lord Millet said as noted above.¹⁰”

[52] The Claimant must prove more than unlawfulness: the public officer must have acted with targeted malice, or with knowledge (or reckless indifference) as to illegality and with foresight of probable harm and must establish loss caused by the tort. The court has already declared that the fresh charges laid against the Claimant are statute barred by virtue of **section 131(1)** of the **Defence Act**. However, in **Three Rivers** the House of Lords stated that:

“It is also established that an ultra vires act will not per se give rise to liability in tort (see *X and ors (minors) v Bedfordshire CC*, *M (a minor) v Newham BC* [1995] 3 All ER 353, [1995] 2 AC 633).”¹¹

[53] The Claimant has outlined the following actions which he claims are evidence of targeted malice against him by the second respondent. These are:

1. Disciplinary proceedings have only been brought against him although other persons were involved in the alleged misconduct.
2. The delay in carrying out the investigation and laying the charges.

¹⁰ ANUHCVP2006/0020A decided 7th April 2026 (unreported) at paragraphs 31-32

¹¹ [2003] 2 AC 1

3. The fresh charges are barred by virtue of section 63 of the Armed Forces Act 2006 (UK).

[54] Firstly, the Claimant alleges that he was singled out as the only person to be charged in relation to the events of 14th August 2020. This was despite other persons being involved. The Claimant pressed this point forcefully especially during cross-examination of Sgt. Manyakie Edwards.

[55] This does not take the Claimant's case very far. The Claimant admitted in cross-examination that the allegations were serious and required investigation and prosecution if warranted. Thus, the decision to initiate proceedings against the Claimant as opposed to other persons is an exercise of prosecutorial discretion. The courts are very reluctant to intervene in decisions to prosecute. Although speaking in the context of judicial review, the Privy Council in **Sharma v. Browne-Antoine** outlined the principles as follows:

“(5) It is well established that a decision to prosecute is ordinarily susceptible to judicial review, and surrender of what should be an [2007] 1 WLR 780 at 788 independent prosecutorial discretion to political instruction (or, the Board would add, persuasion or pressure) is a recognised ground of review: *Matalulu*, at pp 735–736; *Mohit v Director of Public Prosecutions of Mauritius* [2006] 1 WLR 3343, paras 17, 21. It is also well established that judicial review of a prosecutorial decision, although available in principle, is a highly exceptional remedy. The language of the cases shows a uniform approach: “rare in the extreme” (*R v Inland Revenue Comrs, Ex p Mead* [1993] 1 All ER 772, 782); “sparingly exercised” (*R v Director of Public Prosecutions, Ex p C* [1995] 1 Cr App R 136, 140); “very hesitant” (*Kostuch v Attorney General of Alberta* (1995) 128 DLR (4th) 440, 449); “very rare indeed” (*R (Pepushi) v Crown Prosecution Service* [2004] Imm AR 549, para 49); “very rarely”: *R (Birmingham) v Director of the Serious Fraud Office* [2007] 2 WLR 635, para 63. In *R v Director of Public Prosecutions, Ex p Kebilene* [2000] 2 AC 326, 371, Lord Steyn said:

“My Lords, I would rule that absent dishonesty or mala fides or an exceptional circumstance, the decision of the Director to consent to the prosecution of the applicants is not subject to judicial review.”¹²

¹² [2007] 1 WLR 780 at 787 (paragraph 14)

[56] Thus, the fact that the Claimant alone was charged does not by itself prove malice or recklessness on the part of the Respondents. It is completely within the competence of the ABDF to decide who to prosecute once the provisions of the Defence Act are adhered to. Accordingly, this fact cannot be the basis for a claim in misfeasance.

[57] Secondly, the Claimant relies on the delay in bringing charges against him since the Consent Order of September 2023. Lt. Col. Alando Michael attempts to explain the delay by reason of the Commanding Officer falling ill and the numerous court proceedings brought by the Claimant. I am not convinced that these are acceptable explanations. However, although the delay in bringing charges may be unacceptable, there is simply no evidence that this was actuated by malice or bad faith.

[58] Thirdly, the Claimant relies on **section 63** of the United Kingdom **Armed Forces Act**¹³ which provides:

- “(1) This section applies where a person—
 - (a) has been convicted or acquitted of a service offence;
 - or
 - (b) has had a service offence taken into consideration when being sentenced; and in this section “offence A” means the offence mentioned in paragraph (a) or (b).
- (2)
- (3) This subsection applies if—
 - (a)
 - (b)
 - (c) the person was convicted or acquitted of offence A by the Court Martial or the Service Civilian Court and offence B is an offence of which undersection 161 (alternative offences) he could have been convicted on acquittal of offence A.
- (4)
- (5) Where by reason of this section a person cannot be tried by the Court Martial for an offence—
 - (a) the Service Civilian Court may not try him for that

¹³ Cap. 52

offence; and
(b) a charge against him in respect of that offence may not be heard summarily by an officer.”

[59] The court has doubts that **section 63** of the **Armed Forces Act 2006 (UK)** applies by virtue of **section 228** of the **Defence Act**.¹⁴ As previously noted that section permits the reception of amendments to the Army Act 1955, Air Force Act 1955 and Naval Discipline Act 1957. However, it does not expressly provide for the reception of an Act which entirely repealed and replaced these pieces of legislation.

[60] In any event, the said section does not avail the Claimant. The section is merely a statutory codification of the common law principles of *autrefois acquit* and *autrefois convict*. However, in order for *autrefois* to apply there must be a complete adjudication on the merits of the matter.¹⁵ In this case the conviction which the Claimant seeks to rely upon was declared to be null and void by the Consent Order of September 2023. Thus, there is no conviction on its merits subsisting for *autrefois* to apply.

[61] The court has also taken into account what appears to be a tense relationship between the Claimant and Second Respondent. This raises the issue of whether the fresh disciplinary charges were instituted solely as a result of this fractured relationship. However, this does not appear to be the case based on the evidence. The Claimant himself has admitted that allegations made against him were serious and required investigation. This undermines any suggestion that the fresh charges were motivated by malice rather than a bona fide disciplinary purpose. Thus, the Claimant has failed to prove the elements of malice or recklessness in order to succeed in a claim for misfeasance in public office.

[62] Even if I am wrong about the elements of malice or recklessness not being present, the claim for misfeasance will still fail due to the Claimant’s failure to

¹⁴ Section 228

¹⁵ [1964] AC 1254 at 1280

prove any actual loss or damage. In **Watkins v Secretary of State for the Home Department**,¹⁶ the House of Lords made clear that the tort of misfeasance in public office is not actionable per se. Proof of material damage is an essential element of the cause of action. At paragraph 27, Lord Bingham stated:

“I would accordingly rule that the tort of misfeasance in public office is never actionable without proof of material damage as I have defined it.”

[63] Earlier, at paragraph 7, his Lordship explained what is meant by “material damage”, observing that it includes financial loss or physical or recognised psychiatric injury, but does not extend to mere distress, injured feelings, indignation, or annoyance. Accordingly, even where bad faith is established, the absence of material damage is fatal to the claim.

[64] In this case the Claimant has not been suspended, terminated or suffered any loss of pay. However, he states that his promotion prospects have been affected by the pending charges. The Claimant also describes feeling harassed, embarrassed, frustrated, humiliated and mentally strained. He asserts that he has sought psychological intervention to cope with the situation.

[65] In terms of promotion prospects, the Respondents point out that promotions are based on several factors including performance and the operational requirements of the ABDF. I agree.

[66] With respect to the mental anguish and stress purportedly experienced by the Claimant, such matters do not constitute psychiatric injury as defined in **Watkins**. The Claimant has provided no medical evidence substantiating a psychiatric injury to support his assertions. Therefore, the claim for misfeasance in public office cannot be maintained and must be dismissed.

Costs

¹⁶ [2006] 1 WLR 807

[67] The Claimant has succeeded in his claim for declarations as to the applicability of **section 131(1)** of the **Defence Act** in relation to the fresh charges brought against him. However, his claim in misfeasance has been dismissed. In **Keston Riley v. Attorney General**¹⁷ the Court of Appeal considered costs in a similar claim seeking administrative orders as well as a claim in misfeasance. The Court stated at paragraph 32 of the judgment as follows:

“For avoidance of doubt, the tort of misfeasance in public office is indeed an unusual tort. It is generally regarded as the common law’s only truly public tort because the only people who can commit it are those holding public office, and the only occasions on which it can be committed are those in which public office holders misuse their public power. Notwithstanding what one can call the public law flavour of the tort, it is nonetheless at its core, a tort, and actionable in the private law realm. Therefore, the Court does not take the view that the appeal has an entirely administrative character.”

[68] Accordingly, **CPR Rule 56.11(6)**, which stipulates that no order for costs may be made against an applicant for an administrative order unless the court determines that the applicant has acted unreasonably in making or conducting the application does not apply to the misfeasance claim.

[69] In accordance with **CPR Rule 64.6(1)** the general rule is that the unsuccessful party must pay the successful party’s costs. **Rule 64.6(6)** outlines that factors which the court should take into account in determining which party shall pay costs:

- “(a) the conduct of the parties both before and during the proceedings, including whether a party unreasonably refused to participate in a form of alternative dispute resolution approved by the court;
- (b) the manner in which a party has pursued –
 - (i) a particular allegation;
 - (ii) a particular issue; or
 - (iii) the case;
- (c) whether a party has succeeded on particular issues, even if the party has not been successful in the whole of the proceedings;
- (d) whether it was reasonable for a party to –
 - (i) pursue a particular allegation; and/or

¹⁷ MNIHVCAP2021/0011 decided 20th September 2023 (unreported)

- (ii) raise a particular issue; and
- (e) whether the claimant gave reasonable notice of intention to issue a claim.”

[70] In accordance with **CPR Rule 64.6(6)(c)** quoted above the court takes into account the partial success of both parties to this claim. Accordingly, the appropriate order in this case is that each party shall bear their own costs.

Order

[71] Accordingly, it is ordered as follows:

1. It is hereby declared that the First and Second Respondents are statute-barred from taking any disciplinary action whether by court-martial or summary dealing against the Claimant in relation to allegations of misconduct dating back to 14th August, 2020.
2. It is hereby declared that the charges issued to the Claimant on or about 6th December 2024 which relate to allegations of misconduct dating back to 14th August, 2020 are unlawful, null, void and of no effect.
3. The claim for misfeasance in public office is dismissed.
4. No order as to costs.

Rene Williams
High Court Judge

By The Court

Registrar