

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

GRENADA

CLAIM NO. GDAHCV2024/0311

IN THE MATTER OF THE GRENADA CONSTITUTION

AND

IN THE MATTER OF SECTION 12 OF THE CONSTITUTION

AND

IN THE MATTER OF AN APPLICATION FOR CONSTITUTIONAL REDRESS
PURSUANT TO SECTION 16 OF THE CONSTITUTION

BETWEEN:

KEYLON LATOUCHE

Claimant

and

ATTORNEY GENERAL OF GRENADA

Defendant

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Ruggles Ferguson K.C. and Ms. McKaeda Augustine for the Claimant
Ms. Camille De Souza for the Defendant

2025: April 16th;
May 5th, 28th; (Submissions)
July 17th;
September 17th.

RULING ON APPLICATION TO STRIKE OUT

[1] **ACTIE, J.:** By notice of application filed on 1st April 2025, the defendant seeks an order to strike out the fixed date claim filed by the claimant on the ground that it is statute-barred pursuant to **Section 2(a)** of the **Public Authorities Protection Act ("PAPA")**. The application is refused for the reasons outlined below.

Background Facts

- [2] On 2nd August 2024, the claimant filed a fixed date claim form against the defendant seeking a declaration that the policy which required the claimant to obtain the permission of the Commissioner/Superintendent of Prisons to leave the State of Grenada while on approved vacation leave is ultra vires and infringed his constitutional right under **Section 12** of the **Constitution of Grenada**.
- [3] The defendant contends that the impugned acts which occurred on 14th January 2024 were done by public officers pursuant to or in execution of a public function or policy. The defendant avers that the fixed date claim filed in excess of the six months limitation period required by **Section 2(a)** of the **PAPA** will amount to a waste of judicial and administrative resources.

Legal Analysis

Whether the claimant's claim against the defendant is statute-barred pursuant to Section 2(a) of the PAPA

- [4] **Section 2(a)** of the **PAPA** states:

“Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any statute, or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such statute, duty or authority, the following provisions shall have effect—

(a) the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof;...”

- [5] Counsel for the defendant also relies on **Sections 26** and **27** of the **Crown Proceedings Act Cap 74** which state, respectively:

“Nothing in this Act shall prejudice the right of the Crown to rely upon the law relating to the limitation of time for bringing proceedings against public authorities.”

and

“The Act shall not prejudice the right of the Crown to take advantage of the provisions of the Act although not named therein, and it is hereby declared that in any civil proceedings against the Crown the provision of any Act

which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may subject to any express provision to the contrary, be so relied upon by the Crown”

- [6] Counsel refers to the case of **Hazeline Maynard et al v the Saint Christopher & Nevis Solid Waste Management Corporation et al**¹, a decision of Pereira CJ (as she then was) at paragraph 12 which states:

“The learned master, after having considered the duties imposed by the SWMA and its purposes, concluded that the Corporation would be considered a public authority. Indeed the learned master opined at paragraph 25 that a body that is not the servant or agent of the Crown can still be deemed a public authority for the purposes of the PAPA. I do not agree with this statement. The entire object of the protection is the Crown. The immunities and privileges granted are the Crown’s, enjoyed through its servants or agents...”

- [7] Counsel further relies on the case of **Anthony Benjamin v John Amade et al**², a decision of Lanns M, where it was stated that a police officer employed by the Government of Grenada was deemed to have been acting in the course and scope of his employment, and not in his private or personal capacity.

- [8] Lastly, counsel for the defendant refers to the decision of **Randy Josiah v AMW Welding & Industrial Suppliers Limited**³ where the decision of the Trinidad and Tobago Court of Appeal in **Rattansingh**⁴ was cited at paragraph 18 of the judgment as follows:

“Harsh though it may appear to be the purpose of enacting limitation periods, it is to ensure that genuine claims are prosecuted with dispatch and to relieve potential defendants from defending stale claims, which they were entitled to assume, had been put to rest”.

- [9] Counsel for the claimant in response argues that the cases of **Anthony Benjamin v John Amade et al** and **Randy Josiah v AMW Welding & Industrial Suppliers Limited** relied on by counsel for the defendant are distinguishable as they are private law actions.

¹ SKBHCVAP2015/0006

² GDAHCV2007/0389

³ ANUHCV2013/0401

⁴ Civ. App. 105 of 2000

[10] Counsel for the claimant further contends that reliefs sought pursuant to the jurisdiction of the court under **Section 16** of the **Constitution** are sui generis and are not subject to ordinary statutory limitation periods stated in **PAPA** unless expressly stated. Counsel further asserts that the court has discretion to allow constitutional claims notwithstanding statutory limitation periods, especially where the delay is not inordinate.

[11] Both counsel for the claimant and the defendant rely on the Privy Council case of **Durity v AG**⁵ where at paragraph 30 of the judgment it states:

"...The rights and freedoms recognised and declared in section 4 are not to be abrogated, abridged or infringed by any law except as expressly provided in Chapter 1 of the Constitution or in section 54 (amendment of the Constitution): see section 5. Clearly, the inherent jurisdiction of the High Court to prevent abuse of its process applies as much to constitutional proceedings as it does to other proceedings. And the grant or refusal of a remedy in constitutional proceedings is a matter in respect of which the court has a judicial discretion. These limitations on a citizen's right to pursue constitutional proceedings and obtain a remedy from the court are inherent in the High Court's jurisdiction in respect of alleged contraventions of constitutional rights and freedoms. But the Constitution itself contains no express limitation period for the commencement of constitutional proceedings. The court should therefore be very slow indeed to hold that by a side wind the initiation of constitutional proceedings is subject to a rigid and short time bar. The very clearest language is needed before a court could properly so conclude. Such language is noticeably absent in the present case..."

[12] **Durity** has further been relied on by our Court of Appeal in **Alves v AG**⁶ where Don Mitchell JA [Ag.], states:

"[16]... **The Privy Council, however, reversed the decision of the Court of Appeal and held that the Act did not apply to constitutional proceedings.** As Lord Nicholls of Birkenhead expressed it, **at the forefront of the Constitution was a resounding declaration of the fundamental human rights and freedoms. These rights and freedoms are not to be cut down by other provisions in the Constitution save by language of commensurate clarity. The Constitution itself declares that they are not to be abrogated, abridged**

⁵ [2002] UKPC 20

⁶ BVIHCVAP2011/0065

or infringed by any law except as expressly provided in Chapter 1 of the Constitution.” [emphasis mine]

- [13] Counsel for the claimant further relies on **Gilharry (d/b/a Gilharry's Bus Line) v Transport Board et al**⁷, where the Belize Court of Appeal held that statutory notice requirements under the **PAPA** did not apply to judicial review proceedings, but “to govern private law actions to which the Crown is a party”. Additionally, counsel refers to **Fire Service Association v Public Service Commission et al**⁸, where the Court of Appeal held that notice provisions under Article 28 of the Code of Civil Procedure did not apply to judicial review proceedings, emphasizing the distinction between public law remedies and private law claims.
- [14] Both the Privy Council in **Durity** and the Court of Appeal in **Alves** underscore the principle that constitutional and public law claims are not subject to statutory limitation periods applicable to private law actions unless expressly stated. Accordingly, the application of the provision of **Section 2(a)** of the **PAPA** limiting the time during which a constitutional law action can be brought against the defendant is without merit.

The Application of Section 16 of the Constitution

- [15] At hearing of the application, counsel for the defendant both orally and in written submissions for the first time relies on **Section 16** of the **Constitution** and contends that an alternative remedy in judicial review proceedings is available for the alleged policy being impugned by the claimant. Counsel for the defendant argues that the claimant’s failure to do so should not be rewarded with the constitutional declaration sought in the claim.
- [16] Counsel for the defendant’s argument though elaborated in oral submissions at the hearing was not included as a ground for striking out the claim. Counsel made a valiant effort to seek leave belatedly to amend the application to include this new ground, albeit without specifying the legal basis for the amendment. Counsel for the claimant vigorously objected to the request and reliance on the submission.

⁷ BZ 2012 CA 10

⁸ SLUHCVP2010/0013

[17] The court is of the view that to allow such a significant departure to the sole ground on which the application to strike out was premised would be tantamount to an ambush and abuse of process. The defendant had sufficient time to amend the application, which was originally filed on 1st April 2025, prior to the filed submissions on 6th May 2025. In these circumstances, and given counsel for the claimant's objection, the court must safeguard its process. Accordingly, the court cannot entertain the defendant's new challenge regarding the availability of alternative remedies.

[18] Counsel for the defendant also advanced the argument of the need for promptness of matters of this nature and relied on the case of **Stephen Edwards v AG**⁹ in which the case of **Durity** was referenced to reiterate "the need for expedition in all matters related to the constitution".

[19] In response, counsel for the claimant also relies on **Durity** where the Privy Council emphasized that the absence of an express limitation period in the Constitution means that courts should be cautious in applying statutory time bars to constitutional claims. Counsel for the claimant argues that **Section 16** of the **Constitution** empowers the High Court to grant remedies for violations of constitutional rights. While the Court has discretion to refuse relief where there has been undue delay, such discretion must be exercised judiciously, taking into account the nature of the alleged violation, the reasons for the delay, and any prejudice to the defendant.

[20] The defendant's application is made pursuant to **Rule 26.3** of the **Civil Procedure Rules 2023 Revised Edition**, which states the following:

"(1) In addition to any other power 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 that -

... (c) 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..."

⁹ CCJ Appeal No. CV 3 of 2007 para 22

[21] It is a well-established principle that striking out a claim is a draconian measure, which should be approached with a general reluctance on the part of the court¹⁰, and only utilised in clear and unequivocal instances.

[22] The court observes that the claimant filed the fixed date claim form on 2nd August 2024, approximately six and a half months after the alleged violation. The court is of the view, however, that this elapsed time does not constitute an inordinate delay or abuse of process, particularly in the absence of any demonstrated prejudice to the defendant. Accordingly, the defendant's application to strike out the claimant's claim is refused.

ORDER

[23] For the foregoing reasons it is ordered and directed as follows:

- (1) The defendant's application to strike out the fixed date claim is dismissed.
- (2) Costs shall be costs in the cause.
- (3) The claimant shall file further evidence, submissions and authorities in support of the claim on or before 30th October 2025.
- (4) The defendant shall file further evidence, submissions with authorities in support of the defence on or before 30th November 2025; and
- (5) The matter shall be listed for further hearing on 16th December 2025.

Agnes Actie
High Court Judge

By the Court

Registrar

¹⁰ BVIHCV2011/008 Scatliffe v The BVI Health Services Authority (decision of Ellis J. as she then was)