

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

COMMONWEALTH OF DOMINICA

DOMHCVAP2020/0009

BETWEEN:

LEVI MAXIMEA

Appellant

and

**[1] THE CHIEF OF POLICE
[2] THE POLICE SERVICE COMMISSION
[3] THE ATTORNEY GENERAL OF DOMINICA**

Respondents

Before:

The Hon. Mr. Mario Michel
The Hon. Mr. Trevor Ward
The Hon. Mr. Paul Webster

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

The appellant in person
Mrs. Tameka Burton for the Respondents

2023: May 12
December 7

Civil appeal – Res judicata – Filing of new claims addressing same issues pending the delivery of judgment – Whether the learned judge erred in finding that the new claims were litigated and determined in earlier proceedings – Whether the learned judge erred in striking out the claim on the ground of abuse of process – Whether the delay in the delivery of the judgment resulted in breach of the constitutional right to a fair hearing within a reasonable time – Whether rule 26.3(1)(c) of the CPR 2000 is inconsistent with section 103 of the Constitution

On 20th November 2019, the Appellant, Levi Maximea attempted to pursue claims for wrongful dismissal and constructive dismissal in claims No. 247 and 248 of 2018 respectively (“the New Claims”). The New Claims sought substantial damages for his dismissal from the Dominica Police Force including aggravated damages and exemplary damages, damages for infringement of his constitutional rights, and pre-judgment and post-judgment interest.

The Respondents applied to strike out the New Claims on grounds that (i) they are an abuse of the process of the court in that they allege that the Appellant was unlawfully dismissed and/or constructively dismissed from the Dominica Police Force which are claims that have already been litigated by the courts and (ii) the claims are statute barred having been brought more than six years after the causes of action arose. The application was heard by Stephenson J. On 12th June 2023, the learned trial judge delivered a written judgment by which she found that the New Claims were an abuse of the process of the court and struck them out.

The Appellant appealed against the learned judge's order dismissing the New Claims. The essence of the appeal is that the learned judge erred in finding that the claims in the New Claims were litigated and determined in earlier proceedings. The Appellant also relied on two additional grounds: (i) that the failure to deliver reasoned judgment after trial on the merits for more than 11 years breached his constitutional right to a fair hearing within a reasonable time and (ii) the power in part 26.3(1)(c) of the Civil Procedure Rules 2000 to strike out public law proceedings after trial on the merits on the ground of abuse of process is inconsistent with section 103 of the Constitution and thus unconstitutional, void and without effect.

Held: dismissing the appeal with costs to the Respondents to be assessed if not agreed within 21 days of the date of this order, that:

1. Where a matter becomes the subject of litigation and adjudication by a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case. The court will not (except in special circumstances) permit the same parties in subsequent litigation to raise issues that could have been brought forward as part of the subject in the first litigation, but which were not through negligence, inadvertence, or even accident. This rule is not based on the doctrine of *res judicata* in a narrow sense, nor any strict doctrine of issue estoppel or cause of action estoppel. It is a rule of public policy based on the desirability, in the general interest as well as that of parties themselves, that litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do.

Henderson v Henderson (1843) 3 Hare 100 followed; **Barrow v Bankside Members Agency Ltd.** [1996] 1 All Er 981 followed.

2. The Appellant's New Claims were struck out because they were an attempt by the appellant to re-litigate issues that had already been heard by the court. The Appellant was not entitled to bring fresh claims on the ground that decisions were outstanding in Claims No. 139/2011 and 121/2012 ("the Old Claims"). This was an abuse of the court's process.
3. The claim for constructive dismissal was also correctly struck out as being *res judicata*. This Court is bound by the decision of the Caribbean Court of Justice which upheld the judgment of Stephenson J in claim No. 54 of 2009 which included the finding that there was a claim for loss of future earnings and gratuity based on constructive dismissal of the appellant from the Police Force.

4. The trial judge was correct in striking out the New Claims and there is no reason to interfere with her decision.
5. As a general rule, the Court of Appeal does not have original jurisdiction to entertain breaches of the Constitution. It has jurisdiction in two situations: (i) on appeal from a final decision of the High Court where such issues were raised for determination, and (ii) where such questions arise in extant appellate proceedings. In this case, there is no final decision on the constitutionality issue in the High Court and the Appellant must bring the case under the second situation. His challenge to the constitutionality of the delay in the delivery of the judgment in the Old Claims by filing an additional ground of appeal does not qualify as an issue that arose in extant proceedings. The challenge should have been raised in an appeal against the decision of the Old Claims, or in the High Court as was done in claim No. 84 of 2015. In these circumstances, the Court does not have original jurisdiction to deal with the alleged breach of the Appellant's constitutional rights to a fair trial by the delay in the delivery of judgment in the Old Claims.

Allen Chastanet v Ernest Hilaire SLUHCVP2019/0005 (delivered 16th January 2020, unreported) followed; **Akim Monah v R** GDAHCRAP2021/0015 (formally 2014/0002 delivered 23rd February 2022, unreported) followed.

6. There is nothing unusual, irregular, or unconstitutional about a superior court taking upon itself the power to strike out the claim for abuse of process. Even without CPR rule 26.3, such an entitlement is an inherent feature of all superior courts to prevent misuse of their procedures. The claim that CPR rule 26.3(1) is unconstitutional lacks merit and Stephenson J was entitled, and right, to strike out the claim.

CCJ Application No. DM/A/CV2021/001 applied.

JUDGMENT

- [1] **WEBSTER JA [AG.]:** This is an appeal against the order of the learned trial judge, Stephenson J, striking out and dismissing as an abuse of the process of the court two claims brought by the Appellant, Levi Maximea ("Mr. Maximea"), against the Chief of Police, the Police Service Commission and the Attorney General of Dominica ("the Respondents"). The claims were brought by Mr. Maximea on 20th November 2018 claiming substantial damages of over XCD 40 million in each claim plus pre-judgment and post-judgment interest and costs. The claims are the last in a series of claims brought by Mr. Maximea against the Respondents and other persons starting in 2005 concerning his employment and later his dismissal from the Dominica Police Force. It is necessary to outline

the various claims that were made by Mr. Maximea over the years to fully appreciate the judgment of the learned trial judge striking out and dismissing the 2018 claims and the appeal from that judgment.

Background and procedural history

- [2] Mr. Maximea was an officer of the Police Force of the Commonwealth of Dominica from February 1982 up to the time of his dismissal in April 2012. He was an ambitious officer who felt that his qualities as an officer were not recognised and rewarded by the Respondents. He was also dissatisfied with the way his claims were handled by the courts. Below is a summary of his claims and how they were dealt with by the courts.

- [3] **DOMHCV 2005/0006** is an application by Mr. Maximea against the Respondents and three senior police officers seeking declarations that the Respondents failed to consider him to be an officer who was eligible for promotion, and to promote him, and for various other declarations related to his employment as a police officer. The application was dismissed by Henry J on 1st May 2007.

- [4] **DOMHCV 2009/0054** is a claim by Mr. Maximea against the Respondents for judicial review and administrative orders including declarations, damages and other reliefs regarding his treatment as an officer in the Police Force. The claim was amended to include a claim for damages for the tort of misfeasance in public office based on the Respondents' failure to promote him. The claim was heard by Cottle J in October 2011 and by a written judgment delivered on 31st July 2013, the learned judge dismissed the claim.

- [5] On appeal from the judge's decision, the Court of Appeal found that the Chief of Police was in breach of the Police Service Commission Regulations insofar as he failed to forward to the Secretary of the Police Service Commission and the Permanent Secretary responsible for the Police Service a report each year in relation to Mr. Maximea as required by regulation 31 of the Police Service Regulations. The Court of Appeal allowed the appeal and remitted the claim to the High Court to determine whether Mr. Maximea was entitled to damages

resulting from the breach of regulation 31, and if so, the quantum of such damages.¹

[6] On 19th November 2014, Mr. Maximea filed a notice of application for assessment of damages. The application was supported by the affidavit of Mr. Maximea. In his usual style, the affidavit was prolix and dealt with the events related to his claim in great detail, even if the details were only marginally relevant or not relevant at all to the claim. The affidavit dealt with the bases of his claim for damages including the claim for damages for misfeasance in public office in failing to promote him to the position of Chief of Police, and transferring him within the Force in a manner that amounted to a demotion. Mr. Maximea also said that his chances of employment by the Bermuda Police Force were negatively affected by the Respondents' failure to promote him and by the negative reports that the Respondents gave to the police force of Bermuda about his character.

[7] Claim No. 54 of 2009 did not contain a claim for constructive dismissal – it could not have because in April 2009 when the claim was filed Mr. Maximea was still working with the Police Force. However, when the claim was remitted to the High Court for assessment of damages, Mr. Maximea included in his affidavit filed on 19th November 2014² in the assessment proceedings that the Police Force no longer intended to be bound by the tenure of his office and:

“Therefore, I treated myself as having been discharged from any further performance of my functions under the tenure of office. On this ground alone I was justified in leaving the employment and treating the matter as one of constructive dismissal.”

Further, in paragraph 104 of his affidavit he continued

“Having terminated the employment based on the defendants conducts, I was served with a copy of an adverse report against me captioned ‘Absent without leave’ dated 17 February 2011.”

¹ DOMHCVAP2013/0019 (Order dated 14th November 2014).

² Hearing Bundle volume 2 starting at e-page 53.

- [8] By these allegations Mr. Maximea made constructive dismissal an issue in the assessment proceedings in claim No. 54 of 2009. It is not surprising that Stephenson J noted in paragraph 81 of her judgment that -
- “Additionally, the claimant also made a claim for loss of future earnings and gratuity as he was constructively dismissed.”
- [9] The learned judge went on in paragraphs 82 and 83 to consider the evidence led by Mr. Maximea that he was constructively dismissed including Mr. Maximea’s letter dated 17th April 2011 to the Chief of Police stating that “[H]e quit and is not obliged to give any notice in law.”
- [10] In the circumstances, I agree with the Respondents’ submission that the issue of constructive dismissal was dealt with by the learned judge in the assessment proceedings and that this finding is important for the issue of *res judicata* which I will deal with below.³
- [11] The learned judge disposed of the main issues that were remitted to the High Court by finding that Mr. Maximea had failed to produce evidence to prove that he was entitled to damages resulting from the breach of regulation 31 and that he was not entitled to damages (for misfeasance in public office by the Respondents), aggravated damages or exemplary damages. However, she awarded Mr. Maximea \$20,000.00 as vindictory damages to recognise that the Respondents had breached his constitutional rights by their non-compliance with regulation 31 of the Police Service Regulations. The learned judge denied all other claims made by Mr. Maximea which includes the claim for constructive dismissal.
- [12] Mr. Maximea appealed against the learned judge’s order in appeal **DOMHCVAP 2017/0003**. The Court of Appeal affirmed the learned judge’s decision that Mr. Maximea failed to prove that the Respondents’ failure to submit the annual reports in breach of regulation 31 was the cause of his alleged losses and that

³ DOMHCV2018/0247 & DOMHCV2018/0248 (delivered 12th June 2020, unreported at paragraphs 29-40), and see paragraphs 34-36 below

he was not entitled to damages. The Court of Appeal also dismissed his appeal against the quantum of the award of \$20,000.00 vindictory damages.

- [13] Mr. Maximea applied to the Caribbean Court of Justice (“the CCJ”) for leave to appeal against the decision of the Court of Appeal. On 2nd March 2020 the CCJ refused his application for leave to appeal finding that: (1) the decision of the Court of Appeal did not involve a question as to the interpretation of the **Constitution**⁴, and (2) there was no evidence produced by Mr. Maximea to prove loss, whether economic, psychological or otherwise, to justify an increase in the award of damages.
- [14] The decision of the CCJ, being the highest court in the Commonwealth of Dominica, marked the final disposal of the claims raised in claim No. 54 of 2009. These claims undoubtedly included the claim for misfeasance in public office relating to the alleged mistreatment of Mr. Maximea while he was employed as an officer of the Dominica Police Force. The Respondents argued that the decision of the CCJ also settled the claim for constructive dismissal that was raised by Mr. Maximea in the assessment proceedings. Whether the decision had this effect is immaterial because of the decisions of the lower court and this Court to dismiss the claims which are the subject of this appeal for abuse of the process of the court. The abuse of process claims are DOMHCV 2018/247 and DOMHCV 2018/0248 which are dealt with below.

DOMHCV 2011/0139 and DOMHCV 2012/0121

- [15] Claim No 139 of 2011, like claim No 54 2009 discussed above, is for judicial review and administrative orders in relation to the Respondents’ failure to promote Mr. Maximea within the Police Force. These events and other alleged mistreatment by the Respondents resulted in Mr. Maximea leaving his employment with the Police Force in April 2011. On 17th May 2011, he filed claim No 139/2011. The relief sought included declarations that he was constructively dismissed from the Police Force and was entitled to maximum benefits of

⁴ Chapter 1:01 Laws of the Commonwealth of Dominica

gratuity and pension, damages including special, general, aggravated and exemplary damages.

- [16] Following his alleged constructive dismissal Mr. Maximea absented himself from work. His continued absence from work resulted in the Chief of Police and the Police Service Commission terminating his employment on 17th April 2012 with effect from 1st December 2011. He filed claim No 121 of 2012 for judicial review and administrative orders in respect of the decision to dismiss him.
- [17] For convenience I will refer to claims 139/2011 and 121/2012 as “the Old Claims”. The Old Claims were heard by Cottle J. It appears from the record that claim 139/2011 was heard in October 2011 and claim 121/2012 was heard in June 2012. Up to the time of the delivery of the judgment that is the subject of this appeal by Stephenson J in June 2020, Cottle J had not delivered a judgment in any of the Old Claims. It appears from an order of Stephenson J that was presented to the Court by Mr. Maximea during the hearing of this appeal that a judgment dismissing claim No 139/2011 was delivered in September 2020. Ms. Burton also informed the Court that a judgment in claim No 121/2012 was delivered in February 2023. Copies of these judgments were not provided to the Court and the Court has received minimal assistance on what has happened regarding the delivery of the judgments in the Old Claims. What is clear for the purposes of this appeal is that the Old Claims were heard in 2011 and 2012 and judgment was not delivered up to the time of the filing and hearing of claims 247/2018 and 248/2018 which I will deal with below.⁵

DOMHCV2015/0084

- [18] While waiting for the judge’s decision in the Old Claims Mr. Maximea filed a new claim DOMHCV 2015/0084 on 31st March 2015 against Cottle J and the Attorney General. The primary relief sought was for Cottle J to determine the Old Claims and deliver his decision. The claim alleged that the delay in delivering the judgments infringed Mr. Maximea’s constitutional right to a fair hearing within a reasonable time and sought remedies including that the Respondent Cottle J

⁵ See paragraphs 20-22 below.

determine the Old Claims so that he could proceed to assessment of damages. The claims also sought a multitude of other reliefs against the Respondents including misfeasance in public office and damages for loss of earnings. There is no evidence that Mr. Maximea pursued this claim which he could have done since his primary complaint was that the learned judge heard the Old Claims and had not delivered a decision.

DOMHCV 2018/0160 and DOMHCV 2018/0161

- [19] Instead of pursuing his claim 84 of 2015 for orders and/or declarations regarding the learned judge's delay in delivering his decision in the Old Claims, Mr. Maximea filed two new claims on 31st July 2018. Claim 160 of 2018 was for loss of earnings and pension, damages and other relief for his constructive dismissal from the Police Force in 2011. Claim 161 of 2018 was for wrongful dismissal from the Police Force seeking similar reliefs as in claim 160 of 2018. The total amount claimed is just over \$9 million. The Respondents' position, which is not disputed by Mr. Maximea, is that both claims were withdrawn by Mr. Maximea in open court on 15th November 2018. There is no order in the record of appeal evidencing the withdrawal of the claims.

DOMHCV 2018/247 and DOMHCV 2018/0248

- [20] Mr. Maximea's next attempt to pursue his claims for constructive dismissal and wrongful dismissal was the filing of claims 247 of 2018 and 248 of 2018 on 20th November 2018. For convenience only, I will refer to these claims together as "the New claims". Claim No 247 of 2018 was for wrongful dismissal and sought damages of \$10,150,014.10, aggravated damages of \$10 million for injured feelings, \$10 million for exemplary damages, \$10 million for infringement of his constitutional rights, pre-judgment and post-judgment interest. The fixed date claim form for claim 248 of 2018 is not in the record of appeal but the references to the claim in the submissions of counsel and the judge's judgment make clear that it is for substantial damages for constructive dismissal.
- [21] The Respondents applied to strike out the New Claims on grounds that (1) they are an abuse of process of the court in that they allege that Mr. Maximea was unlawfully dismissed and/or constructively dismissed from the Dominica Police

Force which are claims that have already been litigated by the courts; and (2) the claims are statute barred having been brought more than six years after the causes of action arose.

- [22] The strike out application was heard by Stephenson J on written submissions. On 12th June 2020 she delivered a written judgment by which she found that the New Claims were an abuse of the process of the court and struck them out. This finding was sufficient to dispose of the New Claims and the learned judge did not go on to deal with the issue of whether the New Claims were statute barred.

The Appeal

- [23] Mr. Maximea appealed against the learned judge's order dismissing the New Claims. The essence of the appeal is that the learned judge erred in finding that the claims in the New Claims were litigated and determined in earlier proceedings. She ought to have found that the Old Claims were not determined and Mr. Maximea was not estopped from pursuing the New Claims because there was no decision on the merits of the Old Claims.
- [24] Mr. Maximea also filed and relied on two additional grounds of appeal, namely:
- (i) the failure to deliver reasoned judgment after trial on liability and hearing the arguments on the merits more than 11 years ago breached his constitutional right to a fair hearing within a reasonable time; and
 - (ii) the power in part 26.3(1)(c) of the **Civil Procedure Rules 2000** ("CPR") to strike out public law proceedings after trial on the merits on the ground of abuse of process is inconsistent with section 103 of the **Constitution** and thus unconstitutional, void and without effect.
- [25] It is not clear from the record that Mr. Maximea was granted leave to rely on the additional grounds. He told the Court that he was given leave by the Court of Appeal at a hearing on 22nd November 2022. There is no order showing that leave was granted nor an amended notice of appeal. However, the order of the 22nd November 2022 gave the Respondents leave to reply to the additional

grounds and the Respondents filed reply submissions dealing with the additional grounds. In the circumstances I will deal with the two additional grounds.

Abuse of process

[26] The Respondents' application to strike out the New Claims is grounded in CPR part 26.6(1) which states that the court may strike out a statement of case on any one of four separate grounds including ground (c) 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. This ground was considered by this Court in **St Kitts Nevis Anguilla National Bank Ltd v Caribbean 6/49 Ltd**.⁶ where Barrow JA indicated in what he described as textbook examples of abuse of process "[R]e-litigating a matter that has been decided and bringing a second action based on the same cause of action as formed the basis for the proceedings in existence at the time of the first action."⁷

[27] It is apparent from the outline of the claims brought by Mr. Maximea against the Respondents that the issue of his constructive and/or unlawful dismissal from the Police Force were the subject of proceedings brought by Mr. Maximea. The Old Claims are judicial review claims based on constructive dismissal and wrongful dismissal respectively. The claims were heard by Cottle J. As at the time of the hearing of the New Claims in 2019 judgment on the Old Claims was still outstanding. The delay in the delivery of judgment in these claims did not give Mr. Maximea the right to commence fresh claims against the Respondents based on the same set of facts and circumstances without running the risk of the New Claims being struck out as an abuse of process. Mr. Maximea was on the right track when he commenced claim 84 of 2015 seeking orders in relation to the delay in the delivery of judgments in the Old Claims.⁸ The record does not disclose the result of this claim. What Mr. Maximea could not do was commence fresh proceedings on the same facts and circumstances.

⁶ SKBHCVP2002/0006 (delivered 31st March, 2003, unreported)

⁷ Ibid at paragraph 35

⁸ See paragraph 18 above

- [28] The Respondents submitted that the New Claims should be struck out because the issues in these claims were litigated in the Old Claims and Mr. Maximea should be estopped from bringing fresh claims in respect of the same facts and circumstances on the general principles of *res judicata* and the rule in **Henderson v Henderson**.⁹

Res Judicata

- [29] In its simplest form the principle of *res judicata* provides that where a decision is pronounced by a court or tribunal with jurisdiction over a particular matter, that same matter cannot be reopened by the parties who are bound by the decision, except on appeal. The principle applies not only to the decisions of the earlier court or tribunal but to any issue or matter that could have been dealt with in earlier proceedings. This latter aspect of the principle is known as the rule in **Henderson v Henderson**. The rule is encapsulated in the dictum of Sir James Wigram VC in the following terms –

“[W]here a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.”¹⁰

- [30] Stephenson J also referred to **Barrow v Bankside Members Agency Ltd**¹¹ where Sir Thomas Bingham MR made the important point that the rule in **Henderson** is not based on the principle of *res judicata* in the narrow sense but is a matter of public policy. He stated at page 983 that -

“The rule is not based on the doctrine of *res judicata* in a narrow sense, nor even on any strict doctrine of issue or cause of action estoppel. It is a rule of public policy based on the desirability, in the general interest

⁹ (1843) 3 Hare 100

¹⁰ Ibid at 115.

¹¹ [1996] 1 All ER 981

as well as that of the parties themselves, that litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed.”

- [31] It is apparent from these cases that one of the fundamental differences between *res judicata* in the narrow sense and the rule in **Henderson** is that a decision on the merits in the first claim is required for *res judicata* to operate, while a decision of the first court is not required for the rule in **Henderson** to apply. The rule applies as a matter of public policy to prevent abuse of the court’s process whether or not there is a decision on the issue that is sought to be re-litigated.
- [32] In my opinion, the rule in **Henderson** applies with full force in this case and is a good example of how the rule works in the absence of a previous decision by another court or tribunal. The Old Claims are for relief based on the alleged constructive and/or wrongful dismissal of Mr. Maximea from the Police Force. As stated above the claims were heard and judgment was outstanding as at the time that the strike out application came before Stephenson J in 2019. Mr. Maximea also brought a claim 84 of 2015 seeking relief in respect of the delay in the delivery of judgment but there is no evidence that this claim was pursued. Remarkably, on 31st July 2018 Mr. Maximea filed claims 160 of 2018 and 161 of 2018 for constructive and/or wrongful dismissal respectively. These claims were withdrawn by him in open court on 15th November 2018. Even more remarkable is that five days later on 20th November 2018 Mr. Maximea filed the New Claims seeking substantially the same relief.
- [33] This, in my opinion, is a paradigm case of an abuse of the process of the court. Mr. Maximea has had full access to the courts, and it appears that he is prepared to file successive claims based on substantially the same facts and circumstances until he gets the result that he wants. Regrettably for him, the court does not accommodate that type of litigant or litigation. The commencement and hearing of a claim is not a dress rehearsal – it is the final act and the claimant must present all the issues on which he or she intends to rely. Failure to do so will expose the litigant, as has happened in this case, to an application by the defendant, or an order by the court of its own motion, to strike out the new claim as an abuse of the court’s process.

[34] The trial judge also found that the principle of *res judicata* in the narrow sense applies to the claim for constructive dismissal because the claim was raised and dismissed in the assessment of damages proceedings in the misfeasance in public office claim 54 of 2009 (see paragraph 11 above). The judge noted at paragraph 81 of her judgment that Mr. Maximea had also made a claim for loss of future earnings and gratuity “[A]s he was constructively dismissed” and she outlined the evidence relating to the alleged constructive dismissal in paragraphs 82 and 83. The learned judge went on to award \$20,000.00 as vindictory damages and denied all other claims by Mr. Maximea¹². Mr. Maximea appealed against the orders made by the judge in the assessment proceedings. The appeal was dismissed by the Court of Appeal in appeal DOMHCVAP 2017/0003. He then applied for leave to appeal to the CCJ, but the application was refused by that Court. The findings by Stephenson J in claim 54 of 2009 therefore stand, including the finding that there was a claim for loss of future earnings and gratuity based on the constructive dismissal of Mr. Maximea from the Police Force.

[35] Mr. Maximea submitted during the hearing of the instant appeal that Stephenson J erred in making a finding relating to constructive dismissal because that was a liability issue, and it was not before her on the assessment of damages in claim 54/2009. There is no evidence that he raised this issue in the appeal from Stephenson J’s judgment in appeal DOMHCVAP2017//0003 and this Court cannot deal with issues arising from the assessment proceedings in the instant appeal. This Court is bound by the decision of the CCJ which upheld the judgment of Stephenson J.

[36] In the circumstances, I find that there was a decision by a court of competent jurisdiction on the claim for constructive dismissal and Mr. Maximea is estopped by *res judicata* in the narrow sense from raising this issue in the New Claims.

[37] Mr. Maximea attempted to justify the filing of the New Claims by submitting that the Old Claims were public law claims for judicial review and administrative

¹² paragraph 118(2) of the judgment

orders and the New Claims are private law claims based on breaches of his contractual rights as an employee of the Police Force. He relied on the cases of **Attorney General of Trinidad and Tobago v Siewchand Ramanoop**¹³, **Angela Inniss v the Attorney General of St Christopher and Nevis**¹⁴ and **Wendell Nichols v Attorney General and the Commissioner of Police**¹⁵. However, these cases do not assist Mr. Maximea. They acknowledge the indisputable principle that a litigant can have parallel claims against a public body comprising public law and private law claims. Where, for example, the claimant brings a claim in public law for judicial review and it turns out that the claim is a private law claim for breach of contract, the claimant should apply to the judge for permission to continue the claim as a private law claim. Further, the defendant can apply for a similar order or the trial judge may order the conversion of the claim on his own motion. What is clear from the rules of estoppel cited above is that a claimant will not be allowed to pursue a public law claim regarding his dismissal, and when that claim fails, to commence and pursue a private law claim for the same or substantially the same relief in a new claim.

- [38] This is what Mr. Maximea attempted to do in this case. Having filed and pursued the Old Claims for judicial review which were heard between 2011 and 2012 when judgment was reserved but has not been delivered, he commenced private law claims for constructive and/or wrongful dismissal in the New Claims on the same or substantially the same facts and circumstances as the claims for judicial review. There is nothing in the cases cited by Mr. Maximea that permits this manner of proceeding. As I suggested in paragraph 18 above, Mr. Maximea could have pursued claim 84 of 2015 seeking orders in respect of Cottle J's delay in delivering a decision on the Old Claims. Alternatively, he could have applied for leave to withdraw the Old Claims on account of the delay and start fresh proceedings in the form of the New Claims. But in doing so he would have to deal with the effect of laches and the relevant limitation period.

¹³ [2005] UKPC 15.

¹⁴ [2008] UKPC 42.

¹⁵ BVIHCV 2005/0313 (delivered 19th June 2007, unreported).

Conclusion on res judicata

[39] I agree with the conclusions of the learned trial judge that the New Claims be struck out because they are attempts by Mr. Maximea to re-litigate issues that have already been heard by the court. Mr. Maximea is not entitled to bring fresh claims on the ground that decisions were outstanding in the Old Claims that were heard in 2011 and 2012. This is an abuse of the process of the court. The claim for constructive dismissal was also correctly struck out as being *res judicata*.

[40] The trial judge did not deal with the issue of whether the New Claims were barred by the statute of limitations because it was sufficient to dispose of the strike out application by the finding that the filing of the New Claims was an abuse of the process of the court. Mr. Maximea did not appeal against the trial judge's decision not to deal with the issue of whether the New Claims were statute barred and the Respondents did not counter appeal for an order that New Claims are statute barred. In the circumstances, I would not deal with the issue of whether the claims are statute barred. I would dismiss the appeal based on the finding that the learned trial judge was correct in striking out the New Claims and there is no reason to interfere with her decision.

[41] My only comment on the issue of whether the New Claims are statute barred is that the causes of action accrued more than six years before the claims were filed in November 2018 and time did not stop running or was interrupted in relation to these claims by the filing of the Old Claims. Mr. Maximea's submission to the contrary is rejected.

Additional Ground (1) - Breaches of the Constitution

[42] Mr. Maximea complained in the first additional ground that the delay of over 11 years in the delivery of judgment in the Old Claims infringed his constitutional right to a fair hearing within a reasonable time. He submitted that this Court should grant him relief under section 103 of the **Constitution** which reads -

(1) Subject to the provisions of sections 22(5), 38(6), 42(8), 57(7), 115(8), 118(3) and 121(10) of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened

may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.

(2) The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter I thereof) has been or is being contravened and to make a declaration accordingly.

[43] The marginal note to section 103 “Original jurisdiction of the High Court in constitutional questions” reflects the intention of the lawmakers in enacting the section. It gives the High Court, and not the Court of Appeal or any other court, original jurisdiction to deal with constitutional questions such as an allegation that the applicant’s constitutional right to a fair hearing within a reasonable time has been or is being infringed. Mr. Maximea’s allegation is that a fair hearing within a reasonable time includes receiving a decision from the court that tried the Old Claims. Therefore, he has the right to apply to the High Court to assert that his right to a fair hearing within a reasonable time was infringed based on the delay in the delivery of the judgment in the Old Claims. He made such an application in 2015 in claim 84 of 2015, but, as stated above, there is no evidence as to what happened to this claim. He did not file any other application to the High Court complaining of the alleged breach of the **Constitution**. Instead, he sought to invoke the original jurisdiction of this Court to deal with the alleged breach.

[44] As a general rule, the Court of Appeal does not have original jurisdiction to deal with breaches of the Constitution. It has jurisdiction in two situations, viz: on appeal from a final decision of the High Court where such issues were raised for determination, and where such questions arise in extant appellate proceedings.¹⁶ In this case there is no final decision on the constitutional issue in the High Court and Mr. Maximea must bring his case under the second situation. However, his challenge to the constitutionality of the delay in the delivery of the judgment in the Old Claims by filing an additional ground of appeal in this appeal does not qualify as an issue that arose in extant appellate

¹⁶ Per Blackman JA in *Maycock v Commissioner of Police* [2015] LR 183 (Bahamas Court of Appeal) followed by this Court. in *Allen Chastanet v Ernest Hilaire* SLUHCVP2019/0005 (delivered 16th January 2020, unreported) at paragraph 10.

proceedings. The challenge could have been raised in an appeal against a decision on the Old Claims, or in the High Court as was done in claim 84 of 2015.

[45] A good example of how this exception operates is the case of **Akim Monah v R**¹⁷ cited by Mr. Maximea. The Court of Appeal entertained Mr. Monah's constitutional challenge based on the court's delay in producing the transcripts of the trial in the High Court for use in the appeal proceedings from the trial. That was an appeal arising from the proceedings in the High Court. In this case the appeal is from the proceedings conducted by Stephenson J on the assessment of damages. The delay in the delivery of judgment in the Old Claims was not an issue in these proceedings nor did it arise from the proceedings.

[46] In the circumstances, this Court does not have original jurisdiction to deal with Mr. Maximea's alleged breach of his constitutional rights to a fair trial by the delay in the delivery of judgment in the Old Claims. That claim must be pursued in the High Court. I would dismiss the first additional ground of appeal.

Additional Ground (2) - CPR 26.3(1)(c)

[47] Mr. Maximea complained in the second additional ground of appeal that CPR 26.3(1)(c) is inconsistent with section 103 of the **Constitution** and thus is unconstitutional and void. It is remarkable that Mr. Maximea has raised this additional ground. He raised it in proceedings before the CCJ in CCJ Application No. DM/A/CV2021/001 which was a separate challenge to earlier findings by the High Court, Court of Appeal and the CCJ on the claim for misfeasance in public office. The claim was dismissed at all levels. Mr. Maximea attempted to resurrect the misfeasance claim by submitting that the claim in tort infringed his constitutional rights. That application was also refused by the lower courts and the CCJ refused his application for leave to appeal. In doing so the CCJ found at paragraph 11 that –

“There is nothing unusual, irregular, or unconstitutional about a superior court taking upon itself the power to strike out the claim for abuse of process. Indeed, even without rule 26.3, such an entitlement is an

¹⁷ GDAHCRAP2021/0015 (Formerly 2014/0002 delivered 23rd February 2022, unreported).

inherent feature of all superior courts to prevent misuse of their procedures. The claim that the rule 26.3(1) of the CPR is unconstitutional lacks merit. Justice Stephenson was entitled and right to strike out the claim.”

- [48] This finding by the CCJ that CPR rule 26.3(1) is not unconstitutional is sufficient to dispose of the second additional ground. I would simply add that the ground is entirely lacking in merit and it borders on effrontery to invite this Court to make a decision that would be inconsistent with a decision of Dominica’s apex court on almost identical issues made just over two years ago involving the same parties.

Disposal

- [49] I would dismiss the appeal with costs to the Respondents to be assessed if not agreed within 21 days of the date of this order.

I concur.
Mario Michel
Justice of Appeal

I concur.
Trevor Ward
Justice of Appeal

By the Court

Chief Registrar