

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
ST. CHRISTOPHER CIRCUIT
IN THE HIGH COURT OF JUSTICE
CLAIM NO. SKBHCV2023/0136
BETWEEN:

[1] SCHUYLER BRADSHAW
Claimant

and

[1] OSRICK CAINES
[2] KYLE GRANT
[3] THE ATTORNEY GENERAL OF SAINT
CHRISTOPHER AND NEVIS
Defendants

Appearances:

Mr. Anthony Gonsalves KC with him Ms. Chauntelle Hobson for the Claimant
Mrs. Simone Bullen Thompson Solicitor General for the Defendants

2024: April 16
May 9

JUDGMENT

BACKGROUND

[1] **SAUNDERS, M.:** The Claimant's ("*Mr. Bradshaw's*") claim is against the 1st named Defendant ("*Private Caines*") for assault and battery and against the 2nd named Defendant ("*Constable Grant*") for damages for wrongful arrest/false imprisonment. The 3rd named Defendant ("*the Attorney General*") is joined in a representative capacity by virtue of section 13(2) of the St. Christopher and Nevis Crown Proceedings Act ("*the Act*").

[2] Mr. Bradshaw has pleaded that Private Caines and Constable Grant were at all material times acting in the course of their employment with the Government of the Federation of St. Christopher and Nevis¹ and the Defendants have admitted those allegations².

¹ Statement of Claim issued 19 July 2023; at [2] and [3]

² Defence filed 13 October 2023; at [2]

- [3] Mr. Bradshaw has alleged that Private Caines struck him with a considerable amount of force for no other reason than to demonstrate that he could do so with impunity. Mr. Bradshaw's claim against Constable Grant is that rather than admonish his colleague (Private Caines) for what he had done, he allegedly acquiesced in the unlawful act by arresting Mr. Bradshaw without cause.
- [4] On 24 November 2023 the Defendants applied for, among other things, the following relief:
- a. That leave is granted to the Applicants/Defendants to further amend the Amended Defence dated and filed on the 13th day of November 2023 to insert the Certificates of Truth for the Applicants/Defendants in accordance with the provisions in Rule 3.11 of the CPR, to rectify minor clerical or typographical errors, and to add new information; (*the Amendment Application*).
- And:
- b. An Order that Private Caines and Constable Grant be removed as parties to this action as they are not proper parties pursuant to Part 19 of the CPR (*the Strike Out Application*).
- [5] A Notice of Opposition (*the Notice*) was filed by Mr. Bradshaw on 27 November 2023 opposing the Strike out Application in principle and the Amendment Application only insofar as an order was sought that there be no order as to costs, or, that an order be made for costs in the cause.
- [6] At the beginning of the hearing the parties agreed to the costs of the Amendment Application in the amount of \$1,500 and I shall make that order accordingly. No opposition in the Notice having been levelled in respect of the substance of the Amendment Application, the Defendants have permission to amend their pleadings as requested.
- [7] The parties made oral submissions in respect of the Strike Out Application on 16 April 2024 and after reserving my decision, considering the oral and written

submissions and the authorities relied upon, I have decided to dismiss the Strike Out Application for the reasons which follow.

THE STRIKE OUT APPLICATION

[8] The Strike Out Application is made pursuant to CPR 19.3(1) and (2). Those rules govern the addition and removal of parties. The Strike Out Application is premised on the argument, the gist of which can be gathered from [43] and [49] of the Defendants' Written Submissions, that:

"[43] The Crown Proceedings Act, Cap. 5.06 of the Federation of Saint Christopher and Nevis ("the Act") is the authority which sets out, inter alia, the civil liabilities of the Crown and the matters relating to civil proceedings against the Crown. The Act is not intended to allow servants or agents of the Crown who could previously only be sued in their private capacity to now be sued in their official capacity."

And:

"[49] It is law that public officers are not suable in their official capacities. Section 13(2) of the Act, which falls within Part III of the Act, expressly states that civil proceedings against the Crown must be brought against the Attorney General. It is here that the Act makes provisions for the Attorney-General to be sued in a representative capacity for the acts or omissions of public officers which cause harm if they occur during the course of their duties"

[9] The Defendants contend that, as the Attorney General has conceded that Private Caines and Constable Grant were acting in the course of their employment, they should be removed as parties to the suit. The practical effect of such a severance would be that the Court would no longer be able to make any order or declaration against the officers regardless of whether Mr. Bradshaw is successful at trial.

[10] The Defendants are content to say in their Written Submissions that because Private Caines and Constable Grant were acting in their official capacities, they cannot be named as defendants³. And that IF the Court were to find that they

³ Defendants' Written Submissions filed 18 December 2023; at pg. 18, [58]

committed the acts alleged, they are not responsible for any damages⁴. It is the State that must pay⁵. In other words, the taxpayers of St. Christopher and Nevis alone are responsible for any damages awarded because, as it is alleged Private Caines suggested, he is beyond reproach for his actions as long as he is acting within the course of his employment. I do find this state of affairs hard to accept without significant legal authority weighing in its favour.

[11] In the ordinary case, a cause of action in tort arises in respect of both an agent and their principal resulting from the agent's tortious acts so long as the agent is acting within the course of their duty.

[12] In the Caribbean Court of Justice ("*the CCJ*") decision **Basil Williams and Prithima Kissoon, Guyana National Newspaper Limited and The Attorney General of Guyana** CCJ Application No. GY /A/CV2022/003 the CCJ at [16] adopted the following statement regarding the ordinary position as set out in The Law of Tort⁶:

"...The essence of vicarious liability is that it is imposed on the employer without the need for fault on the employer's part – the employer is strictly liable as long as the elements needed for vicarious liability are present. Vicarious liability does not, however, replace the defaulting employee's primary liability for his own tort, so that the employer and the employee are jointly and severally liable for the employee's tort. In theory, the employer (and, by subrogation, his indemnity insurer) may claim an indemnity from the employee for any damages paid, on the basis of an implied term in the employment contract that the employee will take reasonable care when performing his duties or as joint tortfeasors"

[13] See also the statements of Lord Hoffman in the House of Lords decision **Standard Chartered Bank v Pakistan National Shipping Corpn and others (Nos 2 and 4)** [2003] 1 AC 959 at [40]:

⁴ Defendants' Written Submissions filed 18 December 2023; at pg. 18, [58]

⁵ Defendants' Written Submissions filed 18 December 2023; at pg. 18, [58]

⁶ Andrew Grubb (ed), The Law of Tort (3rd edn, LexisNexis 2014) para 3.1.

“My Lords, the maxim culpa tenet suos auctores may not be the end, but it is the beginning of wisdom in these matters. Where someone commits a tortious act, he at least will be liable for the consequences; whether others are liable also depends on the circumstances. Here, as the facts make plain and as Cresswell J specifically found, ‘all the ingredients of the tort of deceit are made out against Mr Mehra (and Oakprime)’. In other words Standard Chartered have proved all that is required to make Mr Mehra—and through him Oakprime—liable in deceit. That being so, there is no conceivable basis upon which Mr Mehra should not indeed be held liable for the loss that Standard Chartered suffered as a result of his deceit.” [emphasis added]

- [14] I will refer to the above statements regarding the ordinary position concerning the liability of agents for their torts as “*the Ordinary Rule*”.

DID THE ACT CHANGE THE ORDINARY RULE AS IT PERTAINS TO AGENTS OF THE STATE ACTING IN THEIR OFFICIAL CAPACITIES

- [15] The Defendants, without disputing the soundness of the Ordinary Rule and that it is what obtained in respect of tortfeasors who were agents of the State prior to the enactment of the Act, have relied on several decisions in supporting the Strike Out Application.

- [16] In **James Enterprise Limited v Attorney General** SLUHCVP2013/0024 Blenman JA made the following statement which, were it not for the fact that it was made by way of obiter dicta, would bind this Court:

“29. It is the law that public officers are not suable in their official capacities. It is for that reason that section 13(2) of the Crown Proceedings Act makes provision for the Attorney General to be sued in a representative capacity for acts or omissions of public officers which cause harm, provided that they occur during the course of their duties. There is great force in the argument advanced by Senior Crown Counsel Mr. Lee that the initial claim by JEL against the Comptroller of Customs was unsustainable in so far as he cannot be sued in his official capacity. However, it does not appear that any issue was taken at first

instance about JEL having substituted the Attorney General for the Comptroller of Customs by way of the amended statement of claim, I would therefore refrain from pronouncing on whether the original claim was a nullity as urged by Mr. Lee" [emphasis added]

[17] Blenman JA's statement was not germane to any of the issues for decision in **James Enterprise Limited**, however, it was noteworthy enough that it made its way to the headnote of the Judgment. It is therefore somewhat understandable that the statement was relied upon as providing some support for the Strike Out Application. Given the nature of the statement and the circumstances of same, it is not binding nor does it really assist in clarifying the law in dispute.

[18] In the Jamaica Court of Appeal decision **Peter Kavanaugh v The Attorney General and Det. Insp. Carey Lawes** JM 2015 CA 18, the defendants succeeded in striking out the claim against the 2nd defendant on the basis that, and as the Defendants have argued in these proceedings, where the agent of the State was not on a frolic of their own, the Attorney General alone is the proper party to be sued. The Court of Appeal relied on statements made by Bingham JA in **The Attorney General v Gladstone Miller** Civil Appeal No. 95 of 1997, a prior decision of the Jamaica Court of Appeal, to make their point. The statement relied upon is set out at [45] of **Peter Kavanaugh** as follows:

*"Although claims in tort could still be brought against the Crown- servant or employee alone, once it was established that he was acting within the course or the scope of his employment the proper defendant to be sued was the Attorney General, he being the official representative of the Crown by virtue of his office. A suit against the servant or employee alone therefore would be meaningless, as the Attorney General could enter an appearance and take over the defence of the suit. It is in this vein that section 13(2) of the Crown Proceedings Act mandates that 'Civil Proceedings against the Crown shall be instituted against the Crown [sic]'"*⁷ [emphasis added]

⁷ The Attorney General v Gladstone Miller Civil Appeal No. 95 of 1997; at [45]

[19] It cannot be doubted that the conclusion reached in the above judicial statement is the one advanced by the Defendants and it does amount to a change in the Ordinary Rule. My concern, however, is that the court in **Peter Kavanaugh** appears to have construed section 13(2) of the Act as stating more than simply that proceedings against the State are to be made against the Attorney General as the representative party, which is what I understand the plain meaning of that section to be.

[20] I also have a difficulty with the statement that, “*A suit against the servant or employee alone therefore would be meaningless, as the Attorney General could enter an appearance and take over the defence of the suit*”⁸. A Claimant, as is evidently the case in these proceedings, may find value in keeping the agents joined if only so that a declaration, or, an award of damages can be made against them. Such a declaration or award, even though the money is ultimately paid by the State, may serve to salve upset feelings that the Claimant has about the manner in which the tort was conducted. In any event, if the Ordinary Rule was undisturbed by the Act, it is the Claimant’s right to join the agents to the proceedings.

[21] Section 13(2) of the Jamaica Crown Proceedings Act (“*the Jamaica Act*”) is in *pari materia* with section 13(2) of the Act which is as follows:

“Parties to proceedings.

13. (1) Civil proceedings by the Crown may be instituted by the Attorney General: Provided that where in any enactment passed before the coming into operation of this Act it is therein provided that any debt due to the Crown shall be sued for and recovered by a particular officer of the Crown, civil proceedings by the Crown for the recovery of such debt may be instituted by that officer. (Amended by Act 6 of 1976)

(2) Civil proceedings against the Crown shall be instituted against the Attorney-General.

(3) No proceedings instituted in accordance with this Part of this Act by an officer of the Crown or in the name of or against the Attorney-General

⁸ The Attorney General v Gladstone Miller Civil Appeal No. 95 of 1997; at [45]

*shall abate or be affected by any change in the person holding that office or holding the office of Attorney-General.*⁹ [emphasis added]

[22] It was not in dispute in these proceedings that the main purpose of the Act was to assure persons injured by allegedly tortious acts of State agents that, *“once they are carried out in the due execution of their official duties, that the State will be liable for any damages awarded and that the public official will not personally have to pay the same*¹⁰.

[23] With that context in mind, it is hard to fathom how it could be said that the legislature also intended by section 13(2) to change the Ordinary Rule. I would have expected that if the legislature also intended to change the Ordinary Rule when they introduced the Act that they would have done so with clear language.

[24] The Defendants further relied on **Desmond Kinlock v. Denny Mcfarlane et al** [2019] JMSC Civ 20, another decision of the Jamaica Court of Appeal. It was conceded by the Defendants, however, that in **Desmond Kinlock** the Court of Appeal overruled the lower court decision to remove the State agents as parties to the proceedings. It was argued that in doing so, the Court of Appeal did not deprecate **Peter Kavanaugh** and similar decisions but distinguished their decision on the basis that when the application was made to strike out the claim against the other defendants, no defence had been filed by the Attorney General. The point being that, until it is clear whether the Attorney General accepted that its agents were acting in the course of their employment, a suit could be maintained against them subject to the ultimate clarification by the filing of a defence by the Attorney General.

[25] It was stated in **Desmond Kinlock** that the Attorney General could *“mount a defence that the other respondents were on a frolic of their own, which if*

⁹ St. Christopher and Nevis Crown Proceedings Act; s. 13

¹⁰ Basil Williams and Prithima Kissoon, Guyana National Newspaper Limited and The Attorney General of Guyana CCJ Application No. GY /A/CV2022/003 at [21]

successful, would leave the appellant up the proverbial creek without a paddle, once the said respondents were removed as parties to the claim.”¹¹

[26] According to **Desmond Kinlock**, following the introduction of the Act, a claimant is entitled to join an agent of the State to vicarious liability proceedings, not based on their cause or causes of action against the agent, but based on the defence of the principal. My difficulty at the outset with that position, from a construction of section 13(2) or indeed any other section of the Act, is that one has to infer all of that from the fact of section 13(2), or, the Act itself. None of it, with respect, is within the plain meaning of the language used in any of the sections of the Act in my view.

[27] Mr. Gonsalves KC, in opposing the Strike Out Application, relied principally on the decisions of **Basil Williams** and **M v Home Office** 1994] 1 AC 377. In **Basil Williams** Prithima Kissoon initiated defamation proceedings against former attorney general Basil Williams for alleged defamatory statements made by him while holding the office of Attorney General. Mr Williams was joined to the proceedings in his personal capacity along with the Attorney General and a local newspaper. The Attorney General applied to strike out the claim against Mr Williams in his personal capacity contending that the joinder of Mr Williams breached the Guyana State Liability and Proceedings Act Cap 6:05 (*“the Guyana Act”*). The High Court granted the application. Ms Kissoon appealed to the Full Court of the Supreme Court, succeeded and Mr. Williams eventually sought leave to appeal to the full panel of the Court of Appeal. That application was dismissed.

[28] On special leave to the CCJ, and on the court dismissing Mr. Williams’ appeal, Saunders PCCJ stated as follows at [20]-[21]:

“Mr. Williams may not have expressly couched his arguments in this way, but essentially, what he is claiming is that the Act has the effect of immunising him personally from suit on account of his then status as Attorney General. That is a fallacy. No one is above the law. It would be

¹¹ Desmond Kinlock v. Denny Mcfarlane et al [2019] JMSC Civ 20 at [49]

a remarkable thing for a court to hold that any office holder should be so immunised unless the Constitution clearly so prescribes, as it does in relation to the President while the latter holds that office.

...

The fundamental purpose of the State Liability Act is not to immunize public servants from suit for such a public servant's allegedly tortious acts, but to assure any person who is harmed by such acts, once they are carried out in the due execution of their official duties, that the State will be liable for damages awarded and that the public official will not personally have to pay same"

- [29] Although the Act and the Guyana Act are not exactly the same, the CCJ considered that the Guyana Act, having been modelled on the United Kingdom Crown Proceedings Act 1947 (*"the UK Act"*), gave insight into the mischief sought to be addressed by the enactment of the Guyana Act; that is, the same acknowledged background set out at [22] above. In that regard, the CCJ relied on dicta of Lord Woolf in the House of Lords in **M v Home Office** wherein he reiterated the continued liability of the agent under the UK Act in making their decision. As Lord Woolf stated at pg. 410:

*"Section 1 enabled the Crown to be sued directly in those situations where prior to the Act a claim might have been enforced by a petition of right. Section 2 in general permitted actions to be brought against the Crown in respect of torts committed by its servants or agents for any breach of its duties which gave rise to tortious liability (including breach of statutory duty where the breach created a cause of action) Section 2 did not remove the right to sue the actual tortfeasor."*¹² [emphasis added]

- [30] Section 1 of the UK Act does not correspond with section 13(2) of the Act. Section 17(3) of the UK Act is the section which does¹³. Notwithstanding that,

¹² *M v Home Office* [1994] 1 AC 377

¹³ The United Kingdom Crown Proceedings Act 1947 s. 17(3):

"Civil proceedings against the Crown shall be instituted against the appropriate authorised Government department, or, if none of the authorised Government departments is appropriate or the person instituting

one would have thought that if section 17(3) of the UK Act did exactly what Lord Woolf had stated section 2 did not do, he would have made that clarification.

[31] When I asked Mrs. Bullen Thompson for her submissions regarding Lord Woolf's statement in **M v Home Office**, she insisted that it should be understood as meaning that the right to sue the actual tortfeasor was subject to the Attorney General filing his defence and making it clear that it was not alleging that the agent was on a frolic of their own. So, the same position taken by the Jamaica Court of Appeal in **Desmond Kinlock**. As I have said, my issue with that position is that, in construing the plain meaning of the language used in section 13(2), that is not my understanding of the section. It is also not what was stated by Lord Woolf.

[32] The United Kingdom Supreme Court ("*the UK Supreme Court*") decision of **Rahmatullah (No 2) v Ministry of Defence and another** [2017] UKSC 1 puts it even further beyond doubt that the Ordinary Rule, and therefore Mr. Bradshaw's causes of action against the officers, was unaffected by the enactment of the Act. In that matter Mr. Rahmatullah and others argued that the very limited defence of "Crown act of state" had been abolished by section 2(1) of the UK Act. That section, which is in *pari materia* with section 4(1) of the Act, is as follows:

"Liability of the Crown in tort

Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject:-

- (a) in respect of torts committed by its servants or agents;*
- (b) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and*
- (c) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property:*

the proceedings has any reasonable doubt whether any and if so which of those departments is appropriate, against the Attorney General"

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

- [33] Lady Hale, whose decision carried the majority, in plainly stating that the Ordinary Rule had been unaffected by the enactment of the UK Act, which therefore preserved the "Crown act of state" defence, stated as follows at [39]-[41] of **Rahmatullah (No 2)**:

"39. Both Leggatt J and the Court of Appeal held that the 1947 Act had not had the effect of abrogating the defence of act of state. Section 2(1)(a) made the Crown vicariously liable for the torts of its servants or agents. The proviso makes it clear that this does not apply where the act or omission would not have given rise to a cause of action in tort against the servant or agent.

...

Where the Act intended to create immunities or restrictions, or preserve existing common law rules, or make savings, it did so clearly and expressly; an example is section 2(5), which gives the Crown immunity from liability for anything done by any person while discharging responsibilities of a judicial nature.

41. There is, however, nothing odd about preserving the previous law by means of a proviso aimed at the agent. The Act imposed vicarious liability for the acts of its servants or agents upon the Crown. It is natural, therefore, to make it clear that the Act is not making any difference to the previous law relating to the liability of that servant or agent, even if the previous law in question is one which applies only to Crown servants or agents. It may be that the proviso was unnecessary but there is no reason to doubt that the previous law of Crown act of state, whatever it was, was left intact."

CONCLUSION

- [34] Given what is acknowledged by all to be the Ordinary Rule, the fact that, as I have said, my construction of section 13(2) of the Act does not coincide with

that of the Defendants, the decision in **Basil Williams** and the statements in **M v Home Office** and **Rahmatullah (No 2)**, the Strike Out Application is dismissed. My finding is that Mr. Bradshaw's causes of action against the officers as agents of the State are unaffected by the passing of the Act and there is therefore no basis for me to dictate to him whether he should join those defendants to his action under CPR Part 19.

[35] I am cognisant of the importance of this decision for the Attorney General and that the Defendants did provide legal authorities in support of their position. I am fortified in my construction of the Act, however, as, notwithstanding that there are decisions and statements of Judges of the Jamaican and ECSC Courts of Appeal which may run to the contrary, the positions taken by the CCJ, the House of Lords and later its successor, the UK Supreme Court, support my said construction. Having said all of that, I give the Attorney General Leave to appeal my decision to dismiss the Strike Out Application.

[36] I thank counsel for their cogent written and oral submissions, including Ms. Liandra Edwards (not present), who I understand prepared the Defendants' written submissions.

[37] I hereby order as follows:

- a. The Amendment Application is granted and the Defendants shall pay the sum of \$1,500 in costs.
- b. The Strike Out Application is dismissed;
- c. The Defendants have leave to appeal my dismissal of the Strike Out Application;
- d. I shall hear the parties on the costs of the Strike Out Application at the next hearing of the matter.

Yuri Saunders
Master

Registrar