

**THE EASTERN CARRIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHCV2021/0064

BETWEEN:

AZZIWAH NILES

Claimant

and

THE ATTORNEY GENERAL OF SAINT CHRISTOPHER AND NEVIS

Defendant

Appearances:

Mrs. Vadeesha John-Brookes for the Claimant

Ms. Liandra Edwards and Ms. Kiwana Browne for the Defendant

2023: July 13;
September 26.

JUDGMENT

[1] **GILL, J.:** The claimant seeks relief for unlawful arrest and false imprisonment.

Facts

[2] On 18th December 2019 Police Corporal Allison Rouse, while performing patrol duties in Basseterre, St. Kitts, issued a notice, commonly called a parking or traffic ticket,¹ to Azziwah Niles (“Mr. Niles” or “the claimant”) for the offence of failing to comply with a traffic sign by parking his motor vehicle in a no-parking area on Princes Street, Basseterre.

¹ I use the terms interchangeably

- [3] The said traffic ticket directed Mr. Niles to pay a fixed penalty of EC\$100.00 within 10 days of the date of issue, failing which, he was to appear at the Magistrate's Court on 17th January 2020.
- [4] Mr. Niles did not pay the fixed penalty as prescribed in the parking ticket. Therefore, a file which included a duplicate of the said parking ticket was submitted to the Magistrate's Court Department to initiate proceedings against him. Case no. SKBMPT2020/0240 *Licensing Authority v. Azziwah Niles* was listed for hearing on 17th January 2020 at the Magistrate's Court, District "A", as noted in the said parking ticket.
- [5] Mr. Niles did not appear before the Magistrate on that date. The presiding Magistrate adjourned the matter.
- [6] A summons was issued ordering Mr. Niles to appear in court on 7th August 2020. In addition, a Complaint on Oath dated 26th June 2020 and bearing the same case number was issued.
- [7] On 29th July 2020, Woman Police Constable Donaly Liburd-Chiverton, duly served Mr. Niles with that summons. Mr. Niles failed to attend this second court hearing on 7th August 2020.
- [8] On this occasion, the prosecution applied for, and the learned magistrate, upon hearing evidence of service of the summons, issued a 'Warrant When Summons Disobeyed in the Magistrate's Court' for the arrest of Mr. Niles to be brought before the court.
- [9] Pursuant to the said warrant, on 6th October 2020, Mr. Niles was arrested at the Traffic Department, Saint Christopher and Nevis Licensing Authority, Royal Saint Christopher and Nevis Police Force, where Mr. Niles was present for a scheduled driving test to upgrade his driver's licence.
- [10] From the Traffic Department, Mr. Niles was transported to the Basseterre Police Station where he was held overnight.

- [11] The following morning, 7th October 2020, Mr. Niles was brought before the Magistrate to answer to the charge laid against him.
- [12] Mr. Niles was released that same morning after he admitted to the charge and paid a fine forthwith.
- [13] He spent about 20 hours in the custody of the police and alleges that he felt great embarrassment, distress and humiliation as a result of the circumstances surrounding his arrest and detention, including the presence of members of the public, being placed in handcuffs and placed on a bench with “prisoners” in the court lobby.

Claimant's case

- [14] On 6th April 2021, Mr. Niles, being aggrieved, filed a claim against the Attorney General of St. Christopher and Nevis (“the defendant”) as the official representative of the Crown, seeking general damages for unlawful arrest and false imprisonment, exemplary and aggravated damages, interest and costs.
- [15] Mr. Niles’ case is based on the Complaint Without Oath filed on 26th June 2020. He alleges that the said complaint was filed out of time in complete contravention of the Magistrate’s Code of Procedure Act², that is, that the prosecution of the matter was statute barred and as a result, the warrant, subsequent arrest and detention were unlawful and a contravention of Mr. Niles’ rights.

Defendant’s position

- [16] The defendant strenuously defends Mr. Niles’ case and contends that a charge or complaint was properly before the Magistrate’s Court within six (6) months of the date the offence was committed. The defence submits that the duplicate notice, that is, the parking ticket itself, which was submitted to the Magistrate on or about January of 2020, is the initiating document that serves as both (a) the complaint or charge and (b) a summons to attend the Magistrate’s Court on the date provided therein.

² Cap. 3.17 of the Laws of Saint Christopher and Nevis

Trial and closing submissions

- [17] The trial took place on 13th July 2023. The claimant was the sole witness on his side and the defendant called 3 witnesses, all police officers (one retired).
- [18] The parties were ordered to file closing submissions by 4th August 2023. The defendant filed those submissions, albeit late, on 15th August 2023. The court fixed 26th September 2023 for delivery of this judgment as part of its order. I prepared and completed the judgment on 24th September 2023 without closing submissions from the claimant and in time for delivery on the 26th. Astonishingly, learned counsel for the claimant, without more, filed the claimant's submissions **at 8:27 a.m. on 25th September 2023**. I deem this flagrant breach of the order of the court by the claimant wholly unacceptable and intolerable. In the circumstances, I have disregarded the claimant's closing submissions. The parties also filed pre-trial skeleton submissions which I have taken into consideration.

Issues

- [19] This case turns on whether the complaint or charge against Mr. Niles was filed out of time. If so, whether he is entitled to any of the relief sought including general, exemplary and aggravated damages and costs, and, if so, to what quantum is he entitled.

The law

- [20] The applicable legal provisions in this case are to be found in the Magistrate's Code of Procedure Act and the Vehicles and Road Traffic Act.³
- [21] In order for a charge to be valid, it must be brought within the time prescribed in the relevant legislation. Otherwise, the charge will be statute barred. Section 78 of the Magistrate's Code of Procedure Act reads:

³ Cap. 15.06 of the Laws of Saint Christopher and Nevis

Limitation six months unless otherwise provided.

78. In all cases where no time is specially limited for making any charge in the Act or law relating to the particular case such charge shall be made within six months from the time when the matter of the charge arose.

- [22] There is no dispute that this provision is applicable to Mr. Niles' case as there is no limitation period specified in the Vehicles and Road Traffic Act.
- [23] Section 83 of the Vehicles and Road Traffic Act empowers members of the Saint Christopher and Nevis Police Force to give to the driver of a vehicle or affix to any part of a vehicle a notice in the form specified where an offence, including a parking offence as in this case, listed in the Third Schedule of the said Act, has been or is being committed. Further, section 83 provides that a duplicate of the notice, once it is submitted to the Magistrate for the magisterial district in which the offence was committed, is both a complaint before the Magistrate and an automatic summons issued by the Magistrate. Section 83 reads:

Member of Police Force may give or affix notice.

83. (1) Notwithstanding any provisions in any law, where an offence as listed in the Third Schedule to this Act has been or is being committed in any place, it shall be lawful for a member of the Police Force to give to the driver a notice in the form specified in the Fifth Schedule to this Act charging him or her with the commission of such offence and notifying him or her that a complaint will be made against him or her in respect thereof and requiring him or her either to pay the fixed penalty within the time specified in the notice or to appear at the court specified in the notice on the day and at the hour stated therein to answer the said complaint.

(2) Subject to this section, where a member of the Police Force finds a vehicle on any occasion and has reason to believe that an offence is being or has been committed in respect of that vehicle, he or she may affix a notice to any part of the vehicle where the notice may easily be seen, and a notice so affixed shall for the purposes of this section be deemed to have been given to the person liable for the offence, and notwithstanding any provisions or law to the contrary, the registered owner of such vehicle shall, for the purposes of the proceedings instituted by the notice, be presumed to be the person liable for the offence.

(3) Where a member of the Police Force intends to proceed under subsection (1) or (2), the notice shall be given or affixed on the occasion when he or she had reason to believe that the offence was committed.

*(4) The police officer shall send to the Magistrate for the magisterial district in which the offence is alleged to have been committed, a duplicate of the notice, **which duplicate shall be deemed to be a complaint laid before the Magistrate and a summons issued by the Magistrate for the purposes of the Magistrate's Code of Procedure Act.** (Emphasis added)*

[24] Section 84 of the Vehicles and Road Traffic Act specifies the information to be included in the notice as follows:

Particulars to be specified in notice.

84. A notice given or affixed under section 83 shall be signed by the police officer and shall specify—

(a) the date, time and place of the giving or affixing of the notice;

(b) the section of the enactment creating the offence alleged and such particulars of the offence as are required for proceedings under the Magistrate's Code of Procedure Act, Cap. 3.17;

(c) the time within which the fixed penalty may be paid in accordance with section 87;

(d) the amount of the fixed penalty;

(e) the Clerk of the Magistrate to whom, and the address at or to which the fixed penalty may be paid;

(f) the address of the Magistrate's Court at which the person is required to appear in the event of his or her failure to pay the fixed penalty within the specified time, and the date and time of such appearance.

[25] If the driver and/or owner of the motor vehicle pays the fixed penalty in accordance with the notice, the proceedings are discontinued. This is stipulated in section 85 as follows:

Payment of fixed penalty precludes prosecution.

85. (1) *Where a notice has been given under section 83, the driver or the registered owner of the vehicle as the case may be, may pay the fixed penalty in accordance with the notice.*

(2) *The time within which the fixed penalty shall be payable shall be ten days from the date of the notice, and where payment reaches the Clerk of the Magistrate after that time, it shall not be receivable and shall be returned to the sender.*

(3) *Where the fixed penalty is duly paid in accordance with the notice, **the proceedings instituted by the notice** shall be discontinued.*

[26] However, pursuant to section 89, if the fixed penalty is not paid within the time specified in the notice, proceedings in respect of the offence outlined in the notice shall proceed in the manner prescribed by the Magistrate's Code of Procedure Act.

[27] The arrest of Mr. Niles was brought about by the issuance of a warrant by the learned Magistrate under the powers vested in him by section 36 of the Magistrate's Code of Procedure Act. The power to issue a warrant where a person disobeys a summons is in the discretion of the presiding Magistrate. Section 36 reads:

If the person summoned does not appear warrant may issue.

*36. If the person served with the summons does not appear at the time and place mentioned in the summons and it be made to appear to the Magistrate on oath that the summons was duly served within a reasonable time before the time of his or her appearance as aforesaid the Magistrate after taking such evidence on oath to substantiate the matter of the complaint as he or she shall consider necessary **may** issue his or her warrant to apprehend the person so summoned as aforesaid and to bring him or her before a Magistrate to answer to the said complaint and be further dealt with according to law. (Emphasis added)*

[28] Sections 40 to 42 stipulate (a) the form and information that must be contained in a warrant, (b) when and where a warrant may be executed and (c) the proceedings on arrest pursuant to said warrant. They read:

As to form of warrant.

40. Every warrant issued by a Magistrate to apprehend any person may be issued at any time or on any day and shall be under the hand and seal of the Magistrate; and may be directed to a member of the Police Force and to all peace officers of the State; and it shall state shortly the act charged and shall name or otherwise describe the person to be apprehended and it shall order the person or persons to whom it is directed to apprehend the person so named or described as aforesaid and bring him or her before the Magistrate issuing the warrant or before some other Magistrate of the State to answer the charge and to be further dealt with according to law.

When and where warrant may be executed.

41. It shall not be necessary to make the warrant returnable at any particular time but the same may remain in force until executed, and it may be executed by any peace officer in any part of the State without being backed by any other Magistrate in any other district.

Proceedings on arrest.

42. When a person has been apprehended under a warrant he or she shall be brought before the Magistrate so issuing the warrant, or any Magistrate acting for him or her, who shall thereupon either by his or her warrant commit him or her to prison or verbally to the custody of the officer apprehending him or her, or to such other safe custody as he or she thinks fit and may order him or her to be brought up at a certain time and place before him or her, and shall give notice of such order to the person laying the information or complaint but no committal under this section shall exceed one week.

Analysis

[29] The essence of Mr. Niles' case is that the complaint filed on 26th June 2020 was out of time so that his case was statute barred and as such, his arrest and detention were unlawful. In other words, there was no basis for his arrest and detention as the charge against him was not properly before the court. This is on the premise that 26th June 2020 complaint initiated the proceedings against Mr. Niles.

[30] By virtue of section 78 of the Magistrate's Code of Procedure Act, the charge against Mr. Niles should have been brought "within six months from the time when the matter of the charge arose". The matter of the charge is the act or alleged offence

which gave rise to the notice or parking ticket being issued. That clearly occurred on 18th December 2019 when Corporal Allison Rouse issued a notice or ticket for failing to comply with a traffic sign by parking in a no-parking area. I note here that the defendant's pleaded defence states, on what I consider to be faulty reasoning, that time began to run after 10 clear days passed following the issue of the ticket.

- [31] There is a dispute as to whether Corporal Rouse gave Mr. Niles the ticket in accordance with subsection (1) of section 83 of the Vehicles and Road Traffic Act as she stated, or whether Mr. Niles met the notice on his vehicle as he alleged. This distinction is of no moment because even if Mr. Niles' version of the facts on this issue is accepted, subsection (2) of section 83 suffices, and the notice was properly issued to Mr. Niles either way.
- [32] Having established that the matter of the charge arose on 18th December 2019, the charge should have been brought on or before 18th June 2020. Mr. Niles contends that the complaint filed on 26th June 2020 was out of time.
- [33] Section 83(4) of the Vehicles and Road Traffic Act makes it clear that the duplicate of the notice issued by the police officer is deemed to be the complaint laid before the Magistrate and also a summons issued by the Magistrate. Further, section 85 is explicit that the proceedings are instituted by the notice. Therefore, I agree with the defendant's submission that the duplicate notice submitted to the Magistrate is the initiating document, and not the Complaint Without Oath dated 26th June 2020.
- [34] In my view, the complaint of 26th June 2020 was unnecessary and irregular. The matter was already properly before the court on the ticket as authorised by section 83(4). There was no need for the Magistrate to issue another complaint. In fact, when Mr. Niles failed to appear on 17th January 2020 as directed in the notice issued to him on 18th December 2019, it was open to the Magistrate then to exercise his discretion to issue a warrant. Evidently, the Magistrate decided to give Mr. Niles another opportunity to present himself to answer the charge against him by adjourning the matter and issuing another summons instead.

- [35] The complaint of 26th June 2020 included the contents of the notice in relation to the alleged parking offence, adequately described by the defendant as “merely a replica of the information” in the parking ticket, “as part of an additional procedural step in case no. *SKBMPT2020/0240* to sufficiently notify the Claimant of the prosecution and new hearing date...”.
- [36] I agree with the submission of the defendant that the further Complaint Without Oath dated 26th June 2020 and bearing the same case no. *SKBMPT2020/0240*, even if considered irregular, is not fatal to the validity of the court proceedings, the warrant, the subsequent arrest and/or detention of Mr. Niles.
- [37] The existence of the complaint of 26th June 2020 does not negate the fact that the duplicate notice sent to the Magistrate in January 2020 was the initiating complaint laid long in advance of the six-month deadline under section 78 of the Magistrate’s Code of Procedure Act. The unique feature in the Vehicles and Road Traffic Act of a built-in mechanism for complaint and summons ensures compliance with the procedure for securing the attendance before the court of a person who does not pay a fixed penalty.

Conclusion

- [38] The claimant’s case rests solely on the basis that the Complaint Without Oath of 26th June 2020 was out of time. On the evidence before the court and the applicable legal provisions, I rule that the duplicate of the notice issued to Mr. Niles on 18th December 2019 was the initiating document in the proceedings against Mr. Niles, and not the Complaint Without Oath dated 26th June 2020. Therefore, the complaint or charge was not out of time, and properly before the court.
- [39] On that basis, the subsequent arrest of Mr. Niles pursuant to the warrant issued at the discretion of the learned magistrate and executed by the police was not unlawful. That being the case, the detention of Mr. Niles does not amount to false

imprisonment. Where an arrest is not unlawful, an action for false imprisonment must fail.⁴

Costs

[40] Learned counsel for the parties agree that the applicable costs regime in this case is prescribed costs.

Order

[41] Based on the foregoing, it is ordered as follows:

- 1) The claimant's claim is dismissed in its entirety.
- 2) The claimant shall pay costs to the defendant in the sum of \$7,500.00.

Tamara Gill
High Court Judge

By the Court

Registrar

⁴ See *Eric Conliffe v Sergeant Jeffrey Laborde and others* High Court Civil Claim No. 331 of 2009, (Saint Vincent and the Grenadines), delivered August 24, 2011, per Thom J (as she then was) at paragraph 35, citing *Margaret Joseph v Attorney-General of Grenada v Raphael Hamilton* Civ. App. No. 9 of 2003