

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

GRENADA

CLAIM NO. GDAHCV2018/0421

BETWEEN:

LYNDON ROBERTS

Claimant

and

**[1] GRENADA CO-OPERATIVE BANK
LIMITED**

[2] INSPECTOR 117 SHELDON THOMAS

[3] WPC 806 FRANCES MC LEAN

**[4] THE ATTORNEY GENERAL OF
GRENADA**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Nazim Burke for the Claimant

Ms. Deborah St. Bernard for the First Defendant

Mr. Adebayo Olowu for the Second to Fourth Defendants

2023: March 24:

RULING

[1] **ACTIE, J.:** This is a determination of the issue of whether the claim against the second, third, and fourth defendants is statute barred by virtue of Section 2 of the Public Authorities Protection Act CAP 262.

Brief Facts

- [2] The claimant was employed by the first defendant, when, on 11th November 2013 while serving as a Teller, he experienced a cash shortage at the closure of business day in the sum of \$5,444.08.
- [3] The claimant alleges that on or about 15th January 2014, the first defendant wrongfully and without legal basis or excuse directed and/or procured three officers from the Financial Intelligence Unit (hereafter “FIU”) of the Royal Grenada Police Force including the third defendant to attend his house and arrest him on an allegation that he had stolen money from the first defendant.
- [4] The claimant also claims that he was taken into custody of the FIU where he was interrogated and released without charge.
- [5] On or about 30th April 2014, the claimant further alleges that he was again arrested at his home by the second defendant on the allegation that he had stolen money from the first defendant wherein he was taken into custody, processed as a prisoner and maliciously and without reasonable and probable cause, charged with stealing the sum of \$5,444.08 from the first defendant. On 26th June 2015, the criminal proceedings against the claimant were discontinued.
- [6] The claimant filed claim against the second to fourth defendants for damages for wrongful arrest, false imprisonment and malicious prosecution, general damages for injuries to his credit, character and reputation, and employment prospect, and for severe shock, mental pain and anguish and considerable torment, inconvenience and anxiety, interest and costs.

- [7] The second to fourth defendants contend that the claims for wrongful arrest and false imprisonment are statute barred and seek the dismissal of the claim.

Whether the Claimant's Claim against the Second to Fourth Defendants is Statute Barred

- [8] The second to fourth defendants rely on Section 2(a) of the Public Protection Act Cap 262. They aver that the evidence placed before the court is that the acts complained of were done by the second and third defendants pursuant to or in the execution of their public duty.

- [9] **Section 2(a) of the Public Authorities Protection Act CAP 262** states that:

“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, 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.”

- [10] The second to fourth defendants argue that **Section 2** of the **Public Authorities Protection Act** is applicable as the second and third defendants were exercising a public function during the acts complained of.

- [11] The second to fourth defendants also rely on **Sections 26 and 27** of the **Crown Proceedings Act CAP 74**. **Section 26** states:

“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 **Section 27** states:

(1) This Act shall not prejudice the right of the Crown to take advantage of the provisions of an Act although not named therein; and it is hereby declared that in any civil proceedings against the Crown the provisions 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.

(2) Order 69, rule 3, of the rules of court (which empowers the court in certain circumstances to order the arrest of a defendant about to quit Grenada) shall, with any necessary modifications, apply to civil proceedings brought by the Crown.

[12] The second to fourth defendants contend that the arrest of the claimant occurred on 15th January 2014 and 30th April 2014, whereas the claim itself was filed 28th October 2018, contrary to the six month time limit stipulated by the Public Authorities Protection Act.

[13] The second to fourth defendants rely on **Section 23(1)(j)** of the **Police Act CAP 244** which states that “it shall be the duty of the Force to take lawful measures for exhibiting information and conducting prosecutions for crimes and offences” to argue that the arrest and prosecution of the claimant were done in the direct execution of the statutory duties of the police, and as such the second and third defendants are properly protected by the **Public Authorities Protection Act**.

[14] The range of the protection emanating from the Public Authorities Protection Act was discussed by the Privy Council in **Alves v Attorney General**¹ where it was held:

“Despite the potentially wide words of the Public Authorities Protection Act, it must, as has consistently been held, be construed restrictively. It only applies to public authorities, and not to all persons acting under statutory authority. It does not apply to all actions performed by public authorities, but only to those where the obligation sued upon is owed generally to the public or to a section of it.”

[15] In **Dexter Noel v The Attorney General of Grenada**², Glasgow J cited with approval the case of *Bryan v Lindo* of the Court of Appeal of in which it was stated:

“In cases where the Act is pleaded, three questions arise for determination: (1) is the person or body claiming the protection of the Act a 'public authority' within the Act? (2) is the act which is complained of one that falls within the protection of the Act? (3) if so, from what date does the time period indicated in the Act run?”

This brings us to the second question: was the act complained of one that fell within the protection of the Act? It is not every act which a public authority does that is protected by the Public Authorities Protection Act. The Act protects only acts done in pursuance, or execution, or intended execution of any law, or public duty, or authority. In *Bradford Corporation v Myers* [1916] AC 242 at page 247 Lord Buckmaster LC observed:

'...the words of the section themselves limit the class of action, and show that it was not intended to cover every act which a local authority had power to perform.' In other words, it is not because the act out of which an action arises is within their power that a public authority enjoys the benefit of the statute. It is because the act is one which is either an act in the direct execution of a statute, or in the discharge of a public duty, or the exercise of a public authority.'

¹ [2017] UKPC 42

² GDAHCV2014/0517

[16] In order for the second to fourth defendants to secure the privilege of protection from the Public Authorities Protection Act, the conduct of the second and third defendants must be lawful. It is therefore necessary to consider whether the arrest, imprisonment and prosecution of the claimant were lawful, having regard to all the circumstances.

[17] There were two arrests carried out on the claimant. The first was on 15th January 2014 where he was arrested on an allegation that he had stolen money from the first defendant. The second was on 30th April 2014 when the claimant was arrested, taken into custody, and charged with the offence of stealing.

[18] The police at the time of the arrest must have had reasonable grounds for the arrest. This is determined by what was on the police officer's mind at the time of the arrest. This court, in **Corine Clara v the Attorney General of Grenada**³ at paragraph 28 stated thus:

“In considering whether there was reasonable cause for an officer's suspicion that a person has committed an arrestable offence, it is necessary to focus on the offence which the arrestee is suspected of having committed. The officer must have in mind facts which are capable of supporting a reasonable suspicion that the person arrested committed an offence of the particular kind which the officer has in mind. It is an objective test to be judged based on the information when exercising the arrest.”

[19] In **Everette Davis v The Attorney General of St. Kitts and Nevis**, it was held:

“The test as to whether there is reasonable and probable cause is both subjective and objective. The perceived facts must be such as to allow the reasonable third person and actually cause the officer in question to suspect that the person has committed or is about to commit a crime. It does

³ GDAHCV2013/0514

not matter if the information available to the police leads equally or more to a view that the person may be innocent of the offence, once it leads reasonably to a conclusion that he may have committed, or is about to commit the offence, that is sufficient to ground the arrest. The reasonable police officer is assumed to know the law and possessed of the information in the possession of the arresting officer, and would have believed that the claimant was guilty of the offence for which he was arrested.”

...

“When it comes to the basis for the preferment of a criminal charge, it must be made clear that no criminal charge can be laid against anyone unless the police ground their suspicion that the person has committed that offence on admissible evidence”

[20] With respect to the detention and interrogation of the claimant

Section 22(3) of the **Police Act** provides:

“It shall be lawful for any police officer to detain for questioning, for a period not exceeding forty-eight hours, any person whom he or she believes upon reasonable suspicion to have committed or to be about to commit a criminal offence.”

[21] The interpretation of this power was captured in **Corine Clara v the Attorney General of Grenada**⁴ wherein this court held:

“The condition precedent to exercise the statutory power to detain an individual for questioning is whether the police officer at the time of the detention had or believed to have had reasonable suspicion that the detainee had or was about to commit a crime.”

[22] The claimant argues that on or about 23rd January 2014, after the claimant’s initial arrest, interrogation and detention on 15th January 2014, the third defendant concluded in her report that the claimant’s “demeanour did not express any suspicion of theft”. The claimant contends, therefore, that in the circumstances, there

⁴ GDAHCV2013/0514

could not have been reasonable suspicion of his commission of the offence thereafter.

The First Arrest of the Claimant

[23] By 15th January 2014, the third defendant would have had the following documents in her possession:

- (1) Statement of Roger Duncan dated 10th December 2013;
- (2) Statement of Garvin Baptiste dated 12th December 2013;
- (3) Statement of Allana Joseph dated 6th December 2013;
- (4) The policies of the first defendant with respect to deposits and operations; and
- (5) The PRF-080 Report of the claimant provided by the first defendant.

[24] The statements of Niddica Henry nee James and the claimant were taken after the arrest would have been executed of the claimant by the third defendant, on 21st January 2014⁵ and 15th January 2014, respectively.

[25] Consequently, the information which would have been operating on the mind of the third defendant as arresting officer would have been that there was a report by the first defendant that on 11th November 2013 there was a shortage of cash in the amount of \$5,444.08 arising from the execution of the claimant's duties as teller at the first defendant; that during his working day the claimant was the only one with access to his cash till; and that there was no issue with the electronic systems of the first defendant.

⁵ Actually dated 21st January 2013

[26] Based on the foregoing, there was reasonable cause for the third defendant's suspicion that the claimant committed an arrestable offence. The information available to the third defendant prior to executing the arrest leads to a conclusion that the claimant may have committed an offence, which is sufficient to ground the arrest. Thus, the first arrest of the claimant was lawful, and is accordingly protected by Section 2(a) of the Public Authorities Protection Act.

The Second Arrest and Subsequent Imprisonment and Prosecution of the Claimant

[27] Following the first arrest, on or about 23rd January 2014, the third defendant reviewed the information and concluded, inter alia, that the claimant's "demeanour did not express any suspicion of theft". Thereafter, there are no further developments with respect to the evidence against the claimant.

[28] Counsel for the second to fourth defendants, in submissions, does not address the justification for the conduct of the second defendant in the second arrest and subsequent imprisonment and prosecution of the claimant. Counsel merely states the applicable legal principles, refers to cases in which same has been applied, and concludes that the second to fourth defendants are protected by the provisions of the Public Authorities Protection Act. With great respect to counsel, the stating of police powers to so execute the arrest, imprisonment and prosecution of the claimant is not enough. The second to fourth defendants must go further to justify the use of police power, especially in light of the claimant's submissions regarding the report prepared by the third defendant, to the effect that there was an absence of suspicion of theft with regard to the demeanour of the claimant.

[29] In a witness statement filed 14th January 2022, and at this stage untested evidence before this court, the second defendant stated that he reviewed the documents pertaining to the initial arrest and questioning of the claimant, and formed the view that there was reasonable cause for suspecting that the claimant committed the offence of stealing by reason of employment.

[30] It is therefore necessary to consider whether the arrest, imprisonment and prosecution of the claimant were lawful, having regard to all the circumstances. The court is of the view that the issues arising in relation to the second arrest should be determined on the evidence to be ventilated at a full trial.

Conclusion

[31] It is therefore ordered and declared as follows:

- (1) The claimant's claim as against the third defendant in relation to the first arrest is statute barred by operation of section 2 of the Public Authorities Protection Act and is accordingly dismissed.
- (2) The trial in relation to the second arrest and the remaining reliefs shall be determined at trial to be conducted on the 9th June 2023
- (3) The parties shall file and serve skeleton arguments with authorities that they wish to rely, on or before 15th May 2023.
- (4) With regards to the claim against the first defendant, the parties are at liberty to pursue further settlement discussions.
- (5) Liberty to file a consent order.

Agnes Actie

High Court Judge

By the Court

Registrar