

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2019/0314

BETWEEN:

NATHALBERT GEORGE

Claimant

And

ATTORNEY GENERAL

Defendant

Appearances:

Ms. Mary Francis of Counsel for the Claimant

Ms. Karen Bernard and Ms. Rochelle John-Charles, Attorney General's Chambers
of Counsel for the Defendant

2022: October 25;
December 1.

JUDGMENT

- [1] **INNOCENT, J.:** The Claimant in the present proceedings was one among many passengers who disembarked at Port Castries from a vessel operated by the inter-island ferry service, L' Express D'Isle on 14th February 2019 at approximately 11:45 pm. At the material time about 73 passengers including the claimant who had disembarked the vessel joined the queue leading to the immigration kiosk at the port. The claimant took up his position on the queue reserved for CARICOM nationals and residents. At the material time, there was only one immigration officer on duty in the person of Police Constable 321 Emmanuel ('Constable Emmanuel') who was attached to the Immigration Department of the Royal Saint Lucia Police Force ('RSLPF').
- [2] It appears that there are conflicting versions concerning the events that unfolded thereafter and which gave rise to the present proceedings.

- [3] The claimant alleged that he had been waiting in line for close to 45 minutes after a long and tiresome journey before he approached the immigration kiosk at the port. According to the claimant, when he arrived at the immigration officer's station he presented his passport to Constable Emmanuel and while doing so complained about the fact that only one immigration officer was on duty at the time and that the service was too slow and that the situation needed to be addressed.
- [4] It was the claimant's case that after he made those utterances Constable Emmanuel directed him away from the immigration kiosk while retaining his passport. It appears that the claimant interpreted Constable Emmanuel's conduct as a clear refusal to process his immigration entry and which deprived him of his right to leave the port of entry. In the circumstances, the claimant alleged that he was wrongfully and unlawfully detained by Constable Emmanuel.
- [5] The claimant further alleged that he inquired of Constable Emmanuel as to the reason for his conduct whereupon Constable Emmanuel called upon two Ports Police Officers who were present and on duty and directed them to place him under arrest. He claimed that as a result he was unlawfully arrested and detained by the Ports Police Officers until 1:45 am then released without charge.
- [6] The claimant also alleged that he was assaulted by PC Emmanuel who he claimed shook his hand in his face while he was standing behind the designated line leading to the immigration kiosk.
- [7] The defendant's case was that at all material times the claimant who was waiting on the designated line leading to the immigration station behaved belligerently. According to the defendant's case, the claimant was loud and obstreperous while awaiting his turn to be processed by the immigration officer.
- [8] Contrary to the claimant's assertions, the defendant alleged that the claimant's disagreeable behaviour continued to the point when Constable Emmanuel directed him to step away from the immigration kiosk.

- [9] It was also alleged that while at the immigration station the claimant continued to behave in a disorderly manner and uttered insulting remarks to Constable Emmanuel. The claimant did not deny making certain utterances; however, there appears to be a dispute regarding the precise substance of the words used. The claimant's evidence was that he called Constable Emmanuel an idiot while Constable Emmanuel's evidence was that the claimant called him a jackass and an idiot.
- [10] It was further alleged that part of the claimant's belligerent conduct included slamming his passport on the counter at the immigration station serviced by Constable Emmanuel. It was also further alleged that the claimant refused to comply with the initial directive given to him by Constable Emmanuel and continued to engage in his belligerent conduct. In the premises, the claimant was accosted by two port police officers who requested that he conducted himself in an orderly manner.
- [11] The defendant denied that Constable Emmanuel instructed the port police officers to place the claimant under arrest. Constable Emmanuel denied assaulting the claimant in the manner alleged by him or at all.
- [12] It appeared from the evidence at the trial that the claimant was the last passenger processed by the immigration officer. After he was processed and cleared immigration he was permitted to leave the port of entry. The defendant denied that the claimant was arrested and unlawfully imprisoned.
- [13] Based on the evidence presented at the trial, the court has discerned that the following issues are relevant to the fair and just disposal of the proceedings; namely: (1) whether the claimant was wrongfully or unlawfully arrested by Constable Emmanuel or the port police officers; (2) whether the claimant was wrongfully or unlawfully detained or imprisoned by Constable Emmanuel or the port police officers; (3) whether the actions of the port police officers amounted to false imprisonment; and (4) if the latter is answered in the affirmative, whether what led to the restraint was also unlawful.

- [14] False imprisonment arises where there is total restraint on the liberty of the person for however short a time by the use of threat or force or by confinement. Nothing short of actual detention and complete loss of freedom can support a claim for false imprisonment. In addition, the restriction upon the person's liberty must be unlawful.
- [15] To constitute false imprisonment, there must be a restraint on liberty, the actual taking control over or possession of the person's will. Such restraint need not be by force or actual physical compulsion. It is sufficient if pressure of any sort is present which reasonably leaves the claimant to believe that he is not free to leave or if the circumstances are such that the reasonable inference is that the claimant was under restraint even if the claimant was himself unaware of such restraint.
- [16] However, in order for the claimant to succeed in his claim for false imprisonment, he must also prove that what led to the restraint was unlawful.
- [17] Having regard to the evidence lead at the trial the court has accepted that the claimant had been restrained but not unlawfully so. In the court's view, the general requirement being that a passenger disembarking a vessel must clear immigration prior to leaving the port the mere fact of Constable Emmanuel's detention of the claimant's passport restricted his liberty to leave the port. Additionally, had the claimant attempted to leave the port without clearing immigration he would have been committing a criminal offence. The restraint on the claimant's liberty was obviously brought home to him by the fact that at the material time he was also accompanied by two port constables. In the premises, it is reasonable to infer that at the material time the claimant's movement within the port area was also restricted.
- [18] It can reasonably be inferred from the evidence at the trial that the claimant may very well have been overwhelmed by the sheer volume of passengers who had to clear immigration on the night in question. In all fairness to the immigration officer, the sheer volume of passengers may very well also have been the source of his reaction to the claimant's demeanour at the time.

- [19] If the court were to accept Constable Emmanuel's evidence regarding the claimant's behavior at the time, then it is reasonable to infer that the claimant would have caused such disturbance as would more than likely than not cause commotion and obstruct Constable Emmanuel in the execution of his duties.
- [20] The claimant testified at the trial to the effect that by refusing to step aside as directed by Constable Emmanuel he was not preventing the other passengers from being processed by Constable Emmanuel. He said that he did not step aside because it was his turn to be served and there was no reason for him to have had to step aside. He agreed that the port constables also asked him to step aside. He also said that he only stepped aside after one of the port constables told him that he was under arrest. This evidence conflicted with his earlier evidence that Constable Emmanuel never asked him to step aside and that he did not refuse to step aside.
- [21] The claimant also accepted that he tried to physically retrieve his passport from Constable Emmanuel. This would have been prior to his clearing immigration and otherwise than in conformity with the Immigration Act.
- [22] It was more likely than not that the claimant's mood and general countenance would have been affected by what were only natural feelings of anxiety, exhaustion and irritability brought on by what seemed to have been a long journey at sea. However, the claimant denied that he was impatient when he stood in line and that it was incorrect to say that he displayed discontent and irritability while standing in line. He also denied being angry or upset when he arrived at the immigration desk.
- [23] Having heard the claimant's evidence and the evidence of the other witnesses at the trial, the court has arrived at the conclusion that the claimant's behavior at the port was indeed disorderly and amounted to a breach of the peace which precipitated the action taken by Constable Emmanuel and the port constables.

- [24] The court also found it seemingly odd that the claimant, having denied the various utterances attributed to him by the defendant would in the same claim seek to rely on his constitutional right to free speech.
- [25] Having found that the claimant was indeed restrained; and having also found that the claimant's behaviour was indeed what was described by the defendant, the court must now consider the question of whether such restraint was necessary or justifiable in the circumstances.
- [26] The present case brings into sharp focus the management, standard operating procedures and regulations in force at the various ports of entry into Saint Lucia which are tailored to suit the necessary requirements for effective border control and security. These procedures have been embodied into statutory form not only for the protection of passengers entering and leaving the seaports and airports but also as a matter of national security. Adherence to these procedures and regulations is a matter of great general public importance particularly in light of Saint Lucia's obligation to observe and abide by international standards, some of which are established by treaty, which regulate the operation of ports catering to international freight and travel.
- [27] In furtherance of the abovementioned objectives, the Saint Lucia Air and Sea Ports Authority Act¹ (the 'Act'), the Saint Lucia Air and Seaports (Seaports) Regulations² (the 'Regulations'), the Immigration Act³ and the Police Act⁴ coalesce to form a regulatory framework to govern the use of the ports and the conduct of persons entering, remaining and leaving the same.
- [28] Therefore, passengers embarking and disembarking vessels at the ports are required to observe strict adherence to the dictates of the Act and the Regulations. Additionally, the ports are governed by a statutory body, the Saint Lucia Air and Sea

¹ Cap. 8.13

² See: section 39 Cap. 8.13

³ Cap. 1.07

⁴ Cap 14.01

Ports Authority (the 'Authority'), that is liable to incur civil liability in the event of loss and damage to property and injury to persons using the port. In the premises, it is imperative that the likelihood of any danger to persons or property is alleviated by strict compliance with the Act and the Regulations by all port users including passengers.

[29] It is within the context of this established statutory framework that the events giving rise to the present claim must be assessed. Therefore, if the evidence presented by the defendant is accepted, that is that the claimant in fact engaged in the conduct complained of, then clearly his claim cannot succeed. In the court's view, the conduct which it is allegedly engaged in by the claimant would have amounted to flagrant breaches of the provisions of both the Act and the Regulations which amounted to criminal offences punishable by both fine or imprisonment or both. Therefore, the actions of the police in detaining the claimant would have been justified to the extent that there were reasonable grounds for suspecting that he had committed or was about to commit a criminal offence that contravened the provisions of the Act and or the Regulations.

[30] It appeared that the claimant took umbrage at the fact that he was not charged or prosecuted for any criminal offence or any offence under the Act or the Regulations contingent on his detention. It appears that the port constables made written witness statements and reported the matter to the General Manager. Indeed the claimant was not prosecuted. In any event, the Act requires by virtue of section 102 thereof that before the prosecution for any offence under the Act or the Regulations can be instituted the fiat of the General Manager must first be obtained. There is no evidence of any such fiat having been obtained. Nevertheless, this complaint made by the claimant does not in any way alter the landscape of the issues to be decided in the present claim and is at best unmeritorious.

[31] At the material time Constable Emmanuel was a police officer acting in his capacity as an immigration officer within the meaning of section 2 of the Immigration Act and duly authorised under section 3(3) to exercise and perform the powers, functions,

or duties of an immigration officer as defined by the provisions of the Immigration Act and the regulations made thereunder.⁵

- [32] The claimant's entry into Saint Lucia was governed by the provisions of section 8 of the Immigration Act which mandates that a person shall not enter Saint Lucia by sea or by air except at a port of entry under this Act and that no person arriving in Saint Lucia by sea or by air shall disembark without the consent of an immigration officer.
- [33] Section 9 of the Immigration Act makes provision for the procedure to be followed by a passenger at a port of entry in order to fulfill the requirements for entry into Saint Lucia. Section 36 of the Immigration Act enacts certain offences where any person who having arrived in Saint Lucia by sea or air, disembarks without the consent of an immigration officer.
- [34] In the premises, the claimant having disembarked at a port of entry required the consent of an immigration officer before he entered Saint Lucia. In other words, the claimant could not have left the port without the consent of Constable Emmanuel. It is on this basis that the defendant contends that at no time was the claimant detained or placed under arrest. On the contrary, the claimant contended that the actions of Constable Emmanuel in retaining his passport without processing his entry was unjustified and unreasonable in the circumstances to the extent that it amounted to an unlawful restraint on his liberty.
- [35] On the other hand the defendant contended that the claimant's detention was reasonable and justified in all the circumstances of the case particularly in light of the claimant's behaviour at the port at the given time. In order to properly assess the defendant's argument on this point, the court has adverted its attention to certain provisions of the Act and the Regulations.

⁵ Section 39(c)

- [36] Section 74 of the Act establishes a core of port police officers known as the Saint Lucia Port Police and sets out their duties and responsibilities. The Saint Lucia Port Police operate under the general command and superintendence of the Commissioner of Police. It is the responsibility of the Saint Lucia Port Police and the duty of every port constable to prevent crime and maintain order within the ports; to assist in the detection and prevention of contraventions of the revenue and customs laws; and generally to assist in the enforcement of the provisions of this Act and the regulations.
- [37] Pursuant to section 75(3) of the Act, every port constable shall in the execution of his or her duty under section 74, have all the protection, exercise all the powers, and be liable to the same responsibilities and discipline as a police officer. Section 23 of the Police Act provides that it is the duty of a police officer to take lawful measures for preserving the public peace; preventing and detecting crimes and other infractions of the law; assisting in preserving order in the different ports and harbours in Saint Lucia; and in enforcing the port regulations therein and doing and performing generally the duties appertaining to the office of a police officer. It appears from a reading of the Act that port constable exercises such authority as delegated to him by the General Manager in carrying out his duties as mandated by the Act and the Regulations.
- [38] Of particular relevance to the present case are the provisions of section 88 of the Act which permits the General Manager to authorise any officer of the Authority to maintain order upon any premises used by the Authority and any officer so authorised shall, in the performance of such duty, have all the powers rights, privileges and protections of a police officer.
- [39] The Regulations makes provision for the conduct of persons entering or remaining in a port. Regulation 3 provides that a person entering or remaining in a port area shall be subject to the general control and direction of the General Manager. Regulation 18(i) specifically provides that a person shall not participate in any disturbance on port property without the permission of the General Manager.

- [40] Of even greater significance are the provisions of regulation 19 which creates general restrictions on the conduct of persons in a port area. Regulation 19 prohibits a person from using any threatening, abusive, indecent, obscene or offensive language in a port area;⁶ and conducting themselves in a riotous, disorderly, indecent or offensive manner or in a manner likely to cause a breach of the peace while in a port area.⁷ Both the Act and the Regulations provide general penalties and imprisonment for the contravention of the relevant provisions of the Act and the Regulations.⁸
- [41] However, having established the statutory framework, it is necessary to consider the question of whether the restraint of the claimant presumably in the fulfilment of Constable Emmanuel's and the port constables' duty under the Act, Regulations and the Police Act was lawful in all the circumstances of the case. In resolving this issue the court has examined certain relevant provisions of the Act, the Regulations and the Immigration Act.
- [42] At the material time the claimant was a citizen of Saint Lucia. Therefore, the provisions of section 3 of the Immigration Act applied to him. Consequently, the claimant was entitled to enter and remain in Saint Lucia.⁹ There is no evidence that the claimant had breached any of the provisions of the Immigration Act relevant to his entry in Saint Lucia which required his detention. He was not a prohibited immigrant¹⁰ or deemed to be such. There is no evidence that he failed to comply with the duty imposed on him by the provisions of section 9 of the Immigration Act. Section 9 of the Immigration Act imposes a duty on a passenger arriving at a port of entry to truthfully answer all proper questions put to him by the immigration officer for the purpose of the Immigration Act, and if required by the immigration officer make and sign the prescribed declaration. In the premises there was no basis for

⁶ Regulation 19(d)

⁷ Regulation 19(e)

⁸ Regulation 21

⁹ Section 3(2)(a)

¹⁰ Section 20

detaining the claimant with respect to any infraction under the Immigration Act related to his entry into Saint Lucia.¹¹

- [43] The case for the defendant was that the claimant had engaged in conduct which obstructed or otherwise hindered Constable Emmanuel in the execution of his duties. Section 36 of the Immigration Act deals with offences under the Immigration Act and the penalties prescribed for the same. Section 36(1) (h) of the Immigration Act makes it an offence for anyone to assault, resist, obstruct, or hinder any immigration officer or member of the Police Force in the execution of his or her duty under the Immigration Act.
- [44] The pith and substance of the defendant's case was that in all the circumstances of the case, the port constables had the authority, albeit delegated, to remove the claimant from the port or any port area owing to his conduct which contravened the provisions of the Act and the Regulations. Therefore, at the material time, the claimant was indeed in a port area, that is the area designated for immigration purposes. In accordance with the provisions of the Act, any person found contravening any provision of or regulation made under the Act, may be removed from the area to which the provision or regulation applies by a police officer or port constable or by any other person authorised in that behalf in writing by the General Manager.¹²
- [45] The court has considered the question of the extent of the powers of arrest held by Constable Emmanuel and the port constables in relation to the contravention of various provisions under the Act and the Regulations and whether that power of arrest or detention was properly exercised in the circumstances. Powers of arrest are conferred on port constables by virtue of section 86 of the Act. The power of arrest conferred on port constables by the provisions of section 86(1) of the Act are limited to offences committed contrary to sections 76, 77 and 85 of the Act which are inapplicable to the present proceedings. However, the general power of arrest

¹¹ Regulation 7 Immigration Regulations

¹² Section 100nsider

is conferred on the port constables by section 86(2) of the Act which limits the power of arrest conferred on any officer authorised by the General Manager, police officer or port constable for any offence against the Act or the Regulations other than an offence mentioned in section 86(1) to circumstances where there is reason to believe that such person will abscond; the person refuses on demand to give his or her name or address; or there is reason to believe that the name or address given by the person is incorrect. Also, section 86(2) is subject to the proviso that where there is reason to believe that such person will not abscond, they shall, if their true name and address are ascertained, be released on their executing a bond for their appearance before a magistrate when required.

- [46] Clearly, the provisions of section 86(2) of the Act do not apply to the present case. The claimant's name and address was readily ascertainable from his passport which was in Constable Emmanuel's possession. Therefore, it seems that neither Constable Emmanuel nor the port constables could have exercised any power of arrest or detention in relation to the claimant for any infraction of the Act, the Regulations or the Immigration Act committed by him.
- [47] The defendant insisted that at the material time the claimant had not been arrested or placed under arrest in relation to any specific offence. The explanation proffered by the defendant for the claimant's detention was that given the claimant's behaviour and the disturbance caused thereby it was necessary and within the power of Constable Emmanuel and the port constables to remove him from that particular area of the port until he had calmed down and could then be processed by Constable Emmanuel.
- [48] In the court's view, both Constable Emmanuel and the port constables had the power and the authority under the Act to detain the claimant to the extent that it flowed from the exercise of their authority to remove him from any area of the port. It can reasonably be inferred from the evidence presented at the trial that the claimant did not immediately comply or refused to comply unless compelled to do so by virtue of the presence of the port constables, with Constable Emmanuel's

directive or request to leave that area of the port where the immigration desk was located. To that extent the court is of the considered view that the actions of Constable Emmanuel and or the port constables was not unlawful given their statutory mandate.

[49] Notwithstanding the court's findings in relation to the substantive claim for wrongful arrest and false imprisonment, the court has made certain observations regarding two clear and distinct technical points concerning the claim one of which was not raised by the defendant but alluded to by the claimant in his written submissions.

[50] Firstly, the claimant contended in his claim that the actions of Constable Emmanuel and the port police officers somehow contravened his constitutional right to freedom of expression; alternatively, that his use of language whether obscene, offensive or insulting or how so ever otherwise, was justifiable in so far as he had the right to freedom of expression guaranteed to him under the Constitution¹³ which the conduct of the immigration officer and the port police officers sought to restrict or curtail.

[51] The court sees no merit in the foregoing contention made by the claimant. The claimant has chosen to pursue his recourse under the civil law. The claimant cannot in the present claim seek to interrogate any question related to a breach of any right guaranteed to him under the Constitution in the present proceedings. Additionally, any allusion made by the claimant to a breach of his rights guaranteed under section of the Constitution can clearly be deemed fanciful and frivolous in light of the findings which the court has made in relation to the claimant's conduct. The right which the claimant sought to have the court declare and uphold in the present proceedings is not an unconditional right. The right which the claimant claims to be entitled is abrogated by the very provisions of the Constitution itself.¹⁴ In the circumstances, the claimant's claim for relief under the Constitution is dismissed.

¹³ Cap. 1.01; section 10

¹⁴ Section 10(2)

- [52] Secondly, although the defendant did not take the point but seemed rather to have accepted that the claimant was competent to bring the claim against the Crown with respect to both Constable Emmanuel's conduct and that of the port police officers presumably pursuant to the provisions of the Crown Proceedings Act, the court holds an entirely different view from that of the claimant and the Attorney General as it relates to the actions of the port police officers.
- [53] The claimant's contention that liability attached to the Crown with respect to the alleged tortious conduct of the port constables in the same manner as it related to Constable Emmanuel fails. While conceding, and in the court's view correctly, that it was arguable whether the alleged actions of the port constables, presumably acting upon the instruction or direction of Constable Emmanuel, was sufficient to attach liability to the Crown as they were not strictly speaking servants or agents of the Crown, the claimant has failed to consider the provisions of the Act.
- [54] The claimant's argument was premised on the assumption that liability attached to the Crown on the basis that since Constable Emmanuel was a servant or agent of the Crown and the mere fact that the port constables purportedly acted in accordance with his instructions or directions of Constable Emmanuel implied that they were his servant or agents. By virtue of this syllogism the claimant contended that the port police officers were servants or agents of the Crown.
- [55] The claimant's argument on this point is defeated by the very provisions of the Act itself. The preamble to the Act reads: "AN ACT to establish an Authority to be known as the Saint Lucia Air and Sea Ports Authority, to provide for co-ordinated and integrated systems of airports, seaports and port services ..."
- [56] The Authority is established by section 3 of the Act as a body corporate¹⁵ and the provisions of section 19 of the Interpretation Act¹⁶ applies to the Authority.¹⁷ Section 19 of the Interpretation Act provides that where an Act contains words establishing,

¹⁵ Section 3(1)

¹⁶ Cap. 1:06

¹⁷ Section 3(2)

or providing for the establishment of a body corporate, the section applies to that body and those words shall operate to vest in the body the right to employ such staff as may be found necessary for the performance of its functions¹⁸ and to make that body liable to be sued in its corporate name.¹⁹

[57] Additionally, section 74 of the Act provides that there shall be constituted for the purposes of this Act a body of Police to be known as the Saint Lucia Port Police;²⁰ and that the Saint Lucia Port Police shall be under the general command and superintendence of the Commissioner of Police and shall consist of such number of port constables as may be determined by the Authority.²¹

[58] Section 75 of the Act makes it clear, notwithstanding the expression “shall be under the general command and superintendence of the Commissioner of Police” used in section 74(2) of the Act, that the terms and conditions of service which includes the right to terminate are regulated by the Authority; and therefore, the port constables are servants or agents of the Authority. The powers conferred on police constables emanate from the Police Act whereas the powers conferred on port constables derive from the Act. Section 75 of the Act provides that the Authority may, after consultation with the Commissioner of Police and subject to standing orders made by the Authority, appoint persons to be port constables;²² and that such standing orders shall provide for the terms and conditions, and the suspension and termination, of appointment of persons as port constables.²³

[59] Having regard to the aforementioned provisions of the Act the court is fortified in the view that the port constables are not servants or agents of the Crown but servants or agents of the Authority. Additionally, as already pointed out the port constables carry out their duties under the Act pursuant to and in right of the delegated authority of the General Manager. Therefore, any liability with respect to acts done by them

¹⁸ Section 19(1)(a)(vi)

¹⁹ Section 19(1)(b)

²⁰ Section 74(1)

²¹ Section 74(2)

²² Section 75(1)

²³ Section 75(2)

in the exercise or performance of their duties imposed on them under the Act, liability attaches to the Authority and not the Crown. It is beyond dispute that the duties performed by the port constables are exercised not in the right of the Crown but pursuant to their statutory remit under the Act.

[60] On the foregoing premises, no liability can attach to the Crown in respect of the delicts of the port constables while acting on their duty as such. Therefore, the court concludes that no claim could have been brought against the Attorney General in the right of the Crown or under or by virtue of the Crown Proceedings Act by the claimant in respect of the conduct which he alleged against the port constables.

[61] The foregoing procedural error highlighted by the court is compounded by the Act itself which limits the Authority's liability in relation to certain claims and sets out a procedure to be followed in respect of civil claims brought against the Authority. Therefore, assuming that the court is correct in finding that the claim in respect of the alleged conduct on the part of the port constables ought to have been brought against the Authority and the claimant had indeed done so, the claim would still fail on account of the claimant's failure to observe the procedure set out under section 90 of the Act.

[62] Therefore, and even more importantly, section 90 of the Act provides that where, any legal proceeding is commenced against the Authority for any act done under, or execution or intended execution of this Act, or regulations or of any public duty or authority imposed or conferred by this Act or any regulations, or in respect of any alleged neglect or default in the execution of this Act, such regulations or of any such duty or authority, the following provisions shall have effect despite anything contained in any enactment, namely, the legal proceeding shall not be commenced until at least one month after written notice containing the particulars of the claim, and of the intention to commence legal proceeding, has been served upon the General Manager by the plaintiff or his or her agent; and the legal proceeding shall not lie or be instituted unless it is commenced within 12 months next after the act,

neglect or default or damage complained of, or in the case of a continuing injury or damage within 6 months next after the cessation.

- [63] In the circumstances, the claimant not having complied with the provisions of section 90 of the Act cannot maintain the present action against the port constables in respect of any action taken by them in the execution of their duty under the Act or the Regulations. Therefore, the claimant's action is limited to the delicts committed by Constable Emmanuel only and cannot interrogate the lawfulness of any conduct on the part of the port constables. By extension, the claimant cannot sustain the present action against the Crown in respect of any tortious act or acts committed by the port constables.
- [64] With respect to the claimant's claim for assault, the court finds that this claim has not been made out on the evidence presented to the court at the trial. Accordingly, the claim for assault is also dismissed.
- [65] Having regard to all the circumstances of the case and the reasons given by the court in this judgment, the claimant's case is dismissed.
- [66] The claimant shall pay the defendant prescribed costs in the sum of \$7,500.00.

Shawn Innocent
High Court Judge

By the Court



Dp. Registrar