

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Civil Division

SAINT LUCIA

Claim No. SLUHCV2020/0137

BETWEEN

JOSAPHAT SMALL

Claimant

-and-

**[1] HER HONOUR SANDRA ROBERTSON
FAMILY COURT MAGISTRATE**

[2] THE ATTORNEY GENERAL OF SAINT LUCIA

Defendants

Appearances:

Claimant in person; and
Kareem Alleyne and Antonia Charlemagne for the Second Defendant.

2022: May 19;
May 30 – via email

DECISION

Second Defendant's application to strike out

[1] **PARIAGSINGH, M.:** - Before the Court is the Second Defendant's application filed on September 09, 2020 seeking an order that this claim be struck out against both Defendants. The grounds of the application in summary are that:

- (a) The Claimant has no standing to bring the claim on behalf of his two children;
- (b) The Claimant is non-suited to bring an action against the Second Defendant;
- (c) Time is prescribed for the bringing of a claim against the Second Defendant arising out of any delict of servants and/or agents of the Crown; and

(d) The statement of claim does not disclose any grounds for the bringing of a claim against the Second Defendant.

- [2] In support of the application is the affidavit of René Williams, Senior Crown Counsel which comprises of legal arguments and submissions for the most part. Save for paragraph 6 and the first sentence of paragraph 8 the remainder of this affidavit mirrors the submissions advanced by Counsel at the hearing. Whilst the rules do permit matters of information and belief to be stated in any affidavit in support of an interlocutory application, that is not an open invitation to argue a party's case in their affidavit. This practice is to be discouraged as it poses a real challenge in responding, more so in cases such as this one, where the Claimant is a litigant in person. Accordingly, I have attached very little weight to the affidavit in support of the application.
- [3] There is no affidavit filed in response to the application by the Claimant. Instead on January 25, 2022 the Claimant filed a one page document titled "submissions" in which he request the opportunity to amend his case. I have attached no weight to this document.
- [4] At the hearing of the application I did not permit Counsel for the Second Defendant to make any submissions on behalf of the First Defendant. I only permitted the Second Defendant to pursue this application on behalf of the Second Defendant. My reason for doing so is addressed below when I treat with the claim against the First Defendant.
- [5] The Claimant's claim is that he is the biological father of three minor children. These children were ordered to be brought to the Family Court on September 18, 2019. The Claimant contends that the children were brought to the Family Court to have a conversation with their mother in the presence of the Family Court Director.
- [6] The Claimant contends that his children were taken into a room and he waited outside for a while after which he heard their voices. He opened the door to the room and

alleges that he saw his children crying. He contends that he left the Family Court indicating that he was going to get a lawyer and come back.

[7] His case is that when he returned he was met by security officers who informed him that he they were instructed by the Magistrate not to let him in. The Claimant contends that the liberty of the children was wrongly restrained from 9:30 am to 4:00pm. He further contends that during this same period, the children were abused by Police Officers at the Family Court. He contends that the wrist of one child was squeezed. The Claimant further contends that the children were threatened to be sent to Juvenile detention or foster care.

[8] Neither the claim form nor the accompanying statement of claim seek any relief. All documents were filed by the Claimant in person. There are no documents identified or annexed to the statement of claim.

STANDING OF THE CLAIMANT:

[9] It is clear from the statement of claim that this action is brought on behalf of the minor children. Paragraph 8 of the statement of claim refers to the alleged assault suffered by the children. The Claimant's first hurdle is **rule 23 CPR** which states:

23.2 (1) The general rule is that a minor or patient **must have a next friend to conduct proceedings on his or her behalf.**

(2) The court may, on the application of a minor, make an order permitting the minor to conduct proceedings without a next friend.

(3) An application for an order under paragraph (2) –

- (a) may be made by the minor;
- (b) if the minor has a next friend – must be on notice to that next friend; and
- (c) if there is no next friend – may be made without notice.

(4) If –

- (a) the court has made an order under paragraph (2); and

(b) it subsequently appears to the court that it is desirable for a next friend to conduct the proceedings on behalf of the minor; the court may appoint a person to be the minor's next friend.

(5) **A next friend must act by a legal practitioner unless the court otherwise orders.**

(6) The next friend must sign any certificate of truth under rule 3.12 on behalf of the minor or patient

[10] To properly commence this action, an application had to be made for someone to be appointed as next friend of the children. That was not done. Even if I was minded to make such an order at this stage it would not assist the Claimant. A next friend cannot act in person, they must act through a legal practitioner. **Rule 23.2 (5) CPR** specially mandates this.

[11] I agree with Counsel for the Second Defendant, that this Claimant lacks standing to bring this claim. I have considered the exercise of my discretion to direct that the Claimant make the necessary application or even grant the order and permit the Claimant time to retain counsel but I have decided against this given the other aspects of this decision.

CLAIM AGAINST THE FIRST DEFENDANT:

[12] As stated above, I did not permit Counsel for the Second Defendant to advance this application on behalf of the First Defendant. This is primarily because there is no valid subsisting claim against the First Defendant and any application to strike out is otiose.

[13] **Part 8.12(1) CPR** provided that a claim form must be served within 6 months. Once this is not done, that is the end of the claim. The Claim Form has no validity after that except if the Court grants an order extending the life of the claim form. There was no such application made in this case for such an order. In this regard, for completeness, the claim against the First Defendant is struck out by reason of non-service within the prescribed time.

[14] Before I leave the case against the First Defendant, I note what the Claimant said during the hearing of this claim regarding serving the First Defendant. The Claimant indicated that he attempted to serve the First Defendant with this claim on two occasions and he was prevented from doing so by the police and staff at the Family Court. He says he was told that he could not serve the First Defendant, a Magistrate personally and that he has to serve the claim on the Attorney General's office. If what the Claimant says is correct, this is a cause for concern that ought to be addressed. Whilst for security reasons it may not be best practice to allow any litigant or process server access to serve a Magistrate personally, provisions ought to be made to allow a Magistrate to be served with proceedings if the need arises.

CLAIM AGAINST THE SECOND DEFENDANT:

[15] The thrust of the application to strike out is **Article 28 of the Civil Code** and **section 4(5)(VII) of the Crown Proceedings Act** which states that:

"No public officers, or other person fulfilling any public duty or function, can be sued for damages by reason of any act done by him on the exercise of this functions nor can any judgment be rendered against him, unless notice of such suit has been given to him at least one month before issuing the claim.

Proceedings shall not lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person whilst discharging or purporting to discharge any responsibilities of a judicial nature vested in him or her, or any responsibilities which he or she has in connection with the execution of judicial process."

[16] There is no pleading that such a notice was served nor is there any evidence that a notice of suit was served. This notice of suit is a precondition to the issuance of this claim. In my view that the Claimant, even if he had standing to bring this claim, which he does not, is non-suited having not served a notice of suit at least one month before instituting the claim.

[17] I agree with the submission of Counsel for the Second Defendant that **section 4 (5) VII of Crown Proceedings Act** provides the Attorney General with immunity of suit with respect to judicial officers acting in the execution of their duties. For this reason, the Claimant's claim discloses no grounds for bringing any claim against the Attorney General in respect of any judicial acts of a Magistrate.

[18] Further the fact that the Claimant has not claimed any relief on his claim form or his statement of case or has not filed a certificate of value all lent to the web of infractions which together make this claim incurable by amendment.

[19] More fundamentally, any action for assault or false imprisonment against the Crown for the actions of the Police Officers would be subject to the prescription period set out in **Article 2124 of the Civil Code**. This article states that:

“Actions against public officers in respect of acts done by them in good faith and in respect of their public duties are prescribed by six months”

[20] Good faith is always presumed as per **Article 2066**. This is a rebuttable presumption. To rebut the presumption, the Claimant would have to plead bad faith and provide particulars. This too was not done.

[21] Prescription extinguishes not only the right but also the remedy. The Court has no jurisdiction once time is prescribed. In this claim, the acts occurred on September 18, 2019 and the claim was commenced on March 17, 2020 but was only served on the Second Defendant on May 12, 2020. By that time, time was already prescribed. Accordingly the Court has no jurisdiction in this matter.

DISPOSITION:

[22] In the circumstances, I find that;

- (a) the Claimant has no standing to bring this action on behalf of his minor children.

- (b) the claim against the First Defendant was not served within the life of the claim and is accordingly struck out.
- (c) the Claimant is nonsuited to bring an action not having served notice at least one month before bringing the action.
- (d) time is prescribed there being no proper judicial demand before six months of the alleged delicts.
- (e) the Court has no jurisdiction in this matter.
- (f) in any event, the statement of case is incurably bad and cannot be cured by amendment.

COSTS:

[23] On the issue of costs, there shall be no order as to costs in relation to the First Defendant as the claim was never served. In relation to the claim against the Second Defendant, there is no reason to depart from the general rule that costs follow the event. The Claimant has been unsuccessful and shall accordingly pay the Second Defendant's costs. The resolution of this application having determined the claim against the Second Defendant, it cannot recover both the costs of the claim and the application. Accordingly, the Claimant shall pay the Second Defendant 45% of its prescribed costs on a claim of value of \$50,000.00.

ORDER:

[24] In the circumstances, it is hereby ordered that:

- (a) The claim against the First Defendant is struck out and stands dismissed with no order as to costs;
- (b) The claim against the Second Defendant is struck out and stands dismissed; and

- (c) The Claimant shall pay the Second Defendant's costs of this claim in the sum of \$3,375.00.

**Alvin Shiva Pariagsingh
High Court Master**

By the Court,

Registrar