

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(Civil)**

**SAINT LUCIA
SLUHCv2019/0545**

BETWEEN

**JOANNA JOSEPH
representative of the Estate of Arnold Jonah Joseph**

Claimant

and

**[1] THE ATTORNEY GENERAL OF SAINT LUCIA
[2] OFFICER NIGEL NOEL
[3] OFFICER BRENT HARRIS
[4] OFFICER ANTHONY NESTOR
[5] OFFICER ANTONIUS REMY**

Defendants

Before:

Mrs. Michelle John-Theobalds

Master [Ag.]

Appearances (via Zoom):

Mr. Eghan Modeste of Counsel for the Claimant

Mrs. Antonia Charlemagne of Counsel for the Defendants

2021: March 29;
October 29.

JUDGMENT

[1] **JOHN-THEOBALDS M [AG.]:** On 22nd May 2019, the second to fifth defendants who are members of Royal Saint Lucia Police Force were involved in a vehicular chase in central Castries with the driver of a motor car. During this chase, heavy gunfire ensued which resulted in the shooting of 17-year-old Arnold Jonah Joseph who was a passenger in the motor car. Mr. Joseph succumbed to his injuries on 23rd May 2019.

[2] In November 2019, the claimant who is Mr. Joseph's mother, filed a claim for damages naming the Attorney General of Saint Lucia and four police officers as

defendants. The claimant asserts that pursuant to section 13(2) of the **Crown Proceedings Act**,¹ ("the Act") the first defendant is the party against whom all proceedings against the Crown should be initiated and that the second to fifth defendants were at the material time employees and servants and/or agents of the Crown having been assigned and appointed to perform duties as police officers, and as such have been joined as parties to the claim.

- [3] The first defendant, in its defence filed on 17th January 2020, conceded that the second to fifth defendants were acting as servants and/or agents of the Crown at the material time. Accordingly, on 22nd January 2021, the defendants filed an application seeking an order removing the second to fifth defendants as parties to the claim. It is this application which is now before the court for determination.

Defendants' Submissions

- [4] The defendants contended that, as the second to fifth named defendants were at all material times acting as agents of the Crown, the second to fifth defendants ought to be removed as parties to the claim, the Attorney General being the proper party against whom all proceedings against the Crown are to be initiated pursuant to section 13(2) of the **Crown Proceedings Act**. Learned counsel for the defendants, Ms. Antonia Charlemagne, relied on **Jewel Thornhill v The Attorney General**² in support of this submission. In **Jewel Thornhill**, Pereira CJ opined at paragraph 23:

"Police officers in Saint Lucia are therefore without a doubt employees of the Crown. Accordingly, notwithstanding that police officers may not be regarded in the strict sense as servants or agents of the Crown, the Crown is nonetheless liable for any acts in the nature of a delict or quasi-delict committed by a police officer in the performance or purported performance of his police duties."

- [5] Learned counsel also relied on the decision of **Peter Clarke v The Attorney General et al**³ and the decision of the Supreme Court of Jamaica in **Reverend Dr. Ralph Griffiths v Attorney General of Jamaica et al**⁴ in support of her submissions.

¹ CAP 2.05, Revised Laws of Saint Lucia 2017.

² SLUHCVP2012/0035 (delivered on 16th April 2015, unreported).

³ SLUHCV1999 /0475 (delivered 19th April 2004, unreported).

⁴ [2015] JMSC Civ. 34.

Claimant's Submissions

- [6] The crux of the claimant's submissions concerns the allegations in the statement of claim of bad faith against the second to fifth defendants. This pleading, learned counsel for the claimant submitted, has caused the action to be directed personally against the second to fifth named defendants. He further contends that servants or agents of the Crown cannot act in bad faith whilst acting on behalf of the Crown and therefore any act of bad faith will take them outside of the realm of being servants of the Crown and outside the scope of article 2124 of the **Civil Code**.⁵
- [7] Learned counsel for the claimant also contends that the liability of the Crown in negligence can only be established if the negligence of the second to fifth defendants is established. He stated that it was therefore necessary for the second to fifth defendants to be named as parties to the claim.
- [8] Learned counsel for the claimant further asserts that, under section 4(1) of the **Crown Proceedings Act**, once it is established that a servant of the Crown has committed a delict or quasi-delict, the Crown becomes liable for the acts of the servants. He contended that this can only be established after a trial and as such the servants must be made a party to the claim. He also submitted that while section 13(2) of the **Crown Proceedings Act** is clear that civil proceedings against the Crown must be instituted against the Attorney General, the section does not stipulate that civil proceedings against the servants of the Crown shall only be instituted against the Attorney General. This, learned counsel stated, creates a distinction as these proceedings are not strictly proceedings against the Crown but instead are proceedings against servants of the Crown for acts of negligence for which the Crown is vicariously liable.
- [9] In support of his contention, learned counsel for the claimant relies on the decision in **Tamara Barrow v P.C. 240 John Flavien et al**.⁶ In that case, Mason

⁵ Cap. 4.01, Revised Laws of Saint Lucia 2015.

⁶ SLUHCv2006/0182 (delivered 22nd September 2006, unreported).

J, relying upon **Peter Clarke and Inland Revenue Commissioner & Attorney General v Lilleyman and another**⁷ opined:

“I agree with the submission of counsel for the claimant that while section 13 directs that actions against the Crown be in the name of the Attorney General, there is nothing to prevent the first defendant being the perpetrator of the alleged wrongdoing and servant and or agent of the Attorney General from being joined as a party to the action.”⁸

Based on the learning in **Tamara Barrow**, learned counsel for the claimant contended that the defendants’ application must be dismissed.

Discussion

[10] There is no doubt that the Attorney General is a proper party to these proceedings. This is undisputed. The issue in this case is whether the Attorney General should be the only defendant to the proceedings.

[11] At this juncture, it is perhaps useful to outline the relevant provisions of the **Crown Proceedings Act**.

[12] Section 4 (1) (a) of the **Crown Proceedings Act** provides:

“(1) Subject to the provisions of this Act, the Crown shall be subject to all those liabilities in delict or quasi-delict to which, if it were a private person of full age and capacity, it would be subject-

(a) in respect of delicts or quasi-delicts committed by its servants or agents;”

[13] Sections 4(3) and 4(4) of the **Crown Proceedings Act** state:

“(3) Where any functions are conferred or imposed upon an officer of the Crown as such by any enactment having the force of law in Saint Lucia and that officer commits a delict or quasi-delict while performing or purporting to perform those functions, the liabilities of the Crown in respect of such delict or quasi-delict shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

(4) Any enactment which negatives or limits the amount of the liability of any Government department or officer of the Crown in respect of any delict or quasi-delict committed by that department or officer shall, in the case of proceedings against the Crown under this section in respect

⁷(1964) 7 WIR 496 at p. 522.

⁸ Supra n. 6 at para. 30.

of a delict or quasi-delict committed by that department or officer, apply in relation to the Crown as it would have applied in relation to that department or officer if the proceedings against the Crown had been proceedings against that department or officer.”

[14] Section 13(2) states that civil proceedings against the Crown shall be instituted against the Attorney General.

[15] The issue of whether public officers or servants of the Crown may properly be made parties to a claim in respect of acts done in the course of performing their official functions has been considered in several decisions.

[16] It is settled that the Crown is liable for the conduct of its servants provided their wrongful acts or omissions were done in the course of performing their official functions. Indeed, a close look at the construction of section 4(3) of the **Crown Proceedings Act** reveals that the Crown is the proper party to be sued in such circumstances. This was observed by Edwards J in **Peter Clarke v The Attorney General et al** where Her Ladyship stated at paragraphs 48 to 50 of the judgment as follows:

“48. Generally speaking, unauthorized acts by public officers may be the subject of actions against them in their personal capacity, unless the law provides otherwise: (Per the President in **Inland Revenue Commissioner & AG v Lilleyman and another (1964) 7 WI R 496,522**).

49. It appears to me on a close look at Sections 4 (3) of Cap 13 that it is a provision which is an example of the law providing otherwise.

50. I say this because in my view **it seems to make the Crown absolutely liable in every respect for the conduct of its servants provided their wrongful acts were done in the course of performing their official functions.**” (Emphasis added).

[17] The decision of the Supreme Court of Jamaica in **Reverend Dr. Ralph Griffiths v Attorney General of Jamaica et al** is also instructive on this point. In that case, a claim for damages in negligence and for wrongful detention of a motor vehicle was brought against the Attorney General as the first named defendant, a police officer as the second named defendant and the Transport Authority as the third named defendant. Anderson J, in giving the judgment of the Court,

considered the provisions of section 13(a) of the Crown Proceedings Act of Jamaica which is *in pari materia* to section 13(2). At paragraph 7 of the judgment, Anderson J stated:

“That being so, this claim, it must be declared by this court, can only, if it is to succeed at all, properly succeed as against the Attorney General. This is so because, the Crown Proceedings Act, at section 13 (a) provides that - 'Civil proceedings against the Crown shall be instituted against the Attorney General.' **As a matter of law since that statute - Crown Proceedings Act, has clearly specified the party against whom claims against the Crown are to be instituted, it is not open to a claimant who is not claiming against anyone or any entity other than someone or some entity whom or which he alleges, was, at the material time, functioning as a Crown servant or agent, to pursue his claim against anyone other than the Attorney General.**” (Emphasis added)

[18] The reasoning of the learned Chief Justice Pereira in the consolidated appeals **Bryan James v The Attorney General**,⁹**James Enterprises Limited v The Attorney General** and **Fast Kaz Auto Supplies et al v The Attorney General** is also of relevance to the issue at hand. In **Bryan James** Pereira CJ, while addressing a different issue relating to the service of the article 28 notice under the **Civil Code**, observed that the **Crown Proceedings Act** provided for the Attorney General to ‘stand in the shoes’ of a public officer in respect of a claim arising from the acts or omissions of the public officer. At paragraph 39 of the judgment, Pereira CJ explained thus:

"In the instant case, the James Parties' cause of action arose in respect of the alleged delicts of the Comptroller of Customs or customs officers. Section 13 of the CPA says that 'civil proceedings against the Crown shall be instituted against the Attorney General.' Importantly, the cause of action giving rise to the claim against a public officer or servant or agent of the Crown, as a claim against the Crown, does not change the nature of the claim or the cause of action by virtue of the fact that the Attorney General is made the defendant. The acts or omissions of the public officer complained of, continue to be the cause of action giving rise to the claim save that the CPA has provided for the Attorney General as the representative of the Crown and thus the representative of the public officer, servant or agent of the Crown, to be made the defendant in the claim. The CPA simply provides the statutory fiction of the alleged wrongdoer being the Attorney General as distinct from the cause of action arising as a result of the commission of a delict or quasi-delict by the Attorney General qua Attorney General. **Put another way,**

⁹ SLUHCVP2013/0023; SLUHCVP2013/0024; and SLUHCVP2013/0021 (delivered 10th February 2016, unreported).

the Attorney General, by virtue of the CPA is simply made to stand in the shoes of the public officer or other servant or agent of the Crown in respect of any delicts or quasi-delicts committed in the performance of his/her public duties.” (Emphasis added).

It follows from the reasoning of Pereira CJ in **Bryan James** that, if the Attorney General ‘stands in the shoes’ of the public officer in a claim in respect of acts done or omissions during the course of the performance of his or her official duties, the public officer need not be joined to the claim for the purpose of establishing liability, as the Crown will be held absolutely liable if it is found that a delict or quasi-delict has been committed by the public officer.

- [19] Having considered the learning in **Peter Clarke**, **Reverend Dr. Ralph Griffiths**, and **Bryan James** it seems to me that where a claimant brings a civil claim in respect of acts done or omissions by a public officer whom he alleges was at the material time in the course of performing their official functions, the only proper defendant to such a claim is the Attorney General. In this case, the claimant has alleged in its statement of claim that the second to fifth defendants were in course of performing their duties as police officers and servants of the Crown at the time of the circumstances giving rise to the claim. Paragraphs 2 and 3 of the statement of claim clearly state as follows:

“2. The First Named Defendant is the representative of the Crown for the instant suit and representative of the Saint Lucia government and The Royal Saint Lucia Police Force, the Crown being the employer of the Second, Third, Fourth and Fifth Named Defendants. The First Named Defendant as representative of the Crown and pursuant to Sections 4(1)(a) and 6 of the Crown Proceedings Act is vicariously liable for the acts and omissions of the Second, Third, Fourth and Fifth Named Defendants, who were acting as agents of the Crown at the material time. The First Named Defendant is the party against whom all proceedings against the Crown are initiated pursuant to Section 13(2) of the Crown Proceedings Act.

3. The Second, Third, Fourth and Fifth Named Defendants are and were at all material times employees and servants of the Crown assigned and appointed to perform duties as police officers and agents of the Crown and were acting as agents of the Crown at the material time...”

It is pellucid that the first defendant has conceded the allegations set out in paragraphs 2 and 3 of the statement of claim. Accordingly, in my view, there is

no issue to be resolved as to whether the second to fifth defendants were acting as agents of the Crown at the material time and are not being sued in their personal capacities.

[20] While learned counsel for the claimant sought to rely on the decision of Mason J in **Tamara Barrow**, I consider the circumstances in that case to be distinguishable from the case at bar. In **Tamara Barrow**, Mason J stated at paragraph 18 of the decision that "...whether the acts of the first defendant were done in good faith and in respect of his public duties as provided by Article 2124 of the Code can only be established by a trial of the action wherein evidence when led could be cross examined". It seems to me that the issue of whether the first defendant had been acting in performance of his public duties at the material time remained a live issue in the **Tamara Barrow** case when the application came on for hearing before Mason J. As I have stated earlier, this is not the case here given the concession made by the first defendant in the defence.

[21] Furthermore, in relation to the allegations of bad faith made by the claimant against the second to fifth respondents, I agree with learned counsel for the defendants that the pronouncement that the Attorney General 'stands in the shoes' of the servants of the Crown is applicable even where bad faith is alleged. This observation is bolstered by section 4(4) of the Act which allows the Crown to raise any defence which an officer of the Crown could raise had the proceedings been against the officer and not the Crown. I am unable to agree with the submissions of learned counsel for the claimant that in order to establish that a servant or agent of the Crown has committed a delict the servant must be made a party to the claim. Counsel has sought to suggest that these proceedings are not strictly proceedings against the Crown but rather against servants of the Crown. However, in my view, the allegations of bad faith appear to be quite contrary to the allegations set out in paragraphs 2 and 3 of the statement of claim that the second to fifth defendants were acting as servants of the Crown and the related concession by the first defendant. Therefore, it stands to reason that, if it is determined that the second to fifth defendants

committed a delict or quasi delict, the Crown will be subject to all those liabilities in accordance with section 4(4) of the **Crown Proceedings Act**.

[22] In the premises, I am of the considered view that the application for the second to fifth defendants to be removed as parties to the claim ought to be granted.

Conclusion

[23] In light of the foregoing, I order as follows:

- (1) The application is granted.
- (2) The second, third, fourth and fifth named defendants are removed as parties to the claim.
- (3) The matter shall be set down for further case management by the master.
- (4) There shall be no order as to costs.

[24] I am grateful to counsel for their most helpful submissions.

Michelle John-Theobalds
Master [Ag.]

By the Court

Registrar