

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE COMMONWEALTH OF DOMINICA
IN THE HIGH COURT OF JUSTICE

(CIVIL)

CASE NO. DOMHCV2018/0247 &
DOMHCV2019/0248

BETWEEN:-

LEVI MAXIMEA

Claimant

And

[1] THE CHIEF OF POLICE

[2] THE POLICE SERVICE COMMISSION

[3] THE ATTORNEY GENERAL OF DOMINICA

Defendants

Appearances:

Levi Maximea (in person) for the Claimant

Nadira Lando State Attorney of the Attorney General's Chambers for the
Defendants

2019, February 28th
October 21th
2020: June 12th

**RULING
ON WRITTEN SUBMISSIONS**

- [1] **STEPHENSON J.:** This is the decision of the Court on an application brought by the defendants in both matters to have the claim brought by the claimant on the 20th November 2018 struck out. The application to strike out was filed in the first instance on the 20th December 2018 with affidavit in support of the application. An

amended application was filed on the 14th January 2019 at 8:30 AM. With affidavit in support.

- [2] On the same morning the claimant sought to file an application to strike out the defence and the defendant's application pursuant to CPR 26.3(1)(b) and/or (c) and/or pursuant to the inherent jurisdiction of the court and/or summary judgment pursuant to CPR 15.2(a).
- [3] This court will deal with the application to strike as being the first application in time. Should the court not accede to the application to strike then the court will turn its attention to the claimant's application.
- [4] The defendants' application to strike was accompanied by an affidavit in support.
- [5] The gravamen of the defendants' application was that the claimant in the matters before the court was raising the same or similar issues raised and dealt with in earlier proceedings and the claim is therefore an abuse of process. The defendants also contend that the claimant's claim in any event is statute barred having been brought more than six (6) years after the cause of action first arose.
- [6] The application to strike out is brought pursuant to:
 - a. Rule 26.3(1)(c) of the Civil Procedure Rules 2000 (CPR); and
 - b. Section 5 of the **Limitation Act** UK 1980
- [7] The parties were ordered to file written submissions in the matter both sets of submissions were filed. Shortly after this order was made the Civil Court Room was found to be infested with mold and closed down with the files therein including the two files in this matter. Eventually the file was retrieved in October 2019 and there was a further hearing thereafter the court's decision was reserved.

Case for the defendants/applicants

Abuse of process:

[8] It was submitted on behalf of the defendants that an abuse of process was stated to be:

“... Re-litigating of a matter that has been decided and bringing a second action based on the same cause of action as forms the basis for proceedings in existence at the time of filing the second action.” **St Kitts, Nevis, Anguilla National Bank –v- Caribbean 6/49 Limited**¹

[9] Learned counsel Ms. Lando on behalf of the defendants submitted further that, *“the court is enjoined to dispose of matters in a manner which is aimed at discouraging multiplicity of legal proceedings. It does this by refusing to entertain repeated claims regarding identical issues among the same parties.”*²

[10] Learned Counsel cited and relied on the case of **Henderson –v- Henderson** where Sir James Wigram stated:

“...the court requires the parties to that litigation to bring forward their whole case, and will not, except under special circumstances, permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.”

[11] Counsel also cited and relied on the learning taken from Halsbury's Laws of England which states:

“The doctrine of res judicata provides that, where a decision is pronounced by a judicial or other tribunal, with jurisdiction over a

¹Civil Appeal No.6 of 2002 at paragraph 35 per Barrow JA

² Submissions filed in support of the application by the defendants dated February 5 2019 at paragraph 15

particular matter, that same matter cannot be reopened by parties bound by the decision, save on appeal.³

[12] Counsel further cited and relied on the statements made by Master of Rolls Sir Thomas Bingham in **Barrow –v- Bankside Members Agency Ltd**⁴:

“.. it is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed.”

[13] It was submitted that the claimant has claimed in previous suits against the defendants that he was constructively and wrongfully dismissed. That the issue of his wrongful dismissal pursuant to constructive dismissal is already before the court and awaiting judgment and appeal.

[14] Counsel then made reference to the various matters already brought before the court by the claimant and the details of the claimant's claims.

[15] In **DOMHCV2011/0139** – the claimant brought Judicial Review Proceedings for constructive dismissal and there was a trial before Cottle J and a judgment has not been handed down in that matter to date; In that claim the claimant relied on the same facts relied on in the case at bar and he also sought various declarations regarding failure to promote him and that he was constructively dismissed from the Police Force and for damages including special, general, aggravated and exemplary damages and for damages also damages for breach of and infringement of his constitutional rights. The claimant also made claims relative to his not being recruited by the Royal Bermuda Police Force.

³ Fifth Edition Volume 11 at paragraph 1603

⁴ [1996] 1 ALL E R 981 at 983

[16] In **DOMHCV2012/021** the claimant filed a claim for Judicial Review for wrongful dismissal on April 23 2012 where as in the case at bar, he raised the same issues regarding his alleged wrongful dismissal, wrongful deduction of his salary the alleged refusal to promote him in the Police Force, the deprivation of his being recruited by and elevation in the ranks of the Royal Bermuda Police Force and claiming his entitlement to gratuity and pension. That the claimant in that matter claimed special, general aggravated and exemplary damages in both claims.

[17] Learned Counsel submitted a trial was held in that matter⁵ and the judgment is still pending.

[18] In **DOMHCV2009/0054** the claimant made a claim against the same defendants for the tort of misfeasance in public office and Assessment of Damages. This matter was heard by Justice Cottle who dismissed the matter. On appeal it was found that the PSC was in breach of the PSC regulations and the matter was remitted to the High Court for Assessment of Damages.

[19] The matter which was remitted to the High Court was dealt with by the court as currently constituted. In that claim the claimant sought damages in the total sum of \$48,000,000.00 (48 million) dollars plus pre and post judgment interest, after an extensive written judgment the court made the following orders:

- a) The claim for loss of earnings from 1985 to the compulsory retirement/pension age (which included loss of earnings due to the alleged denial of promotions and appointment in the Bermuda Police Force), Misfeasance in public office, were all *dismissed*; The claimant's claims for accumulated leave, gratuity and pension benefits, damages for injuries suffered, aggravated and exemplary damages for the conduct of the defendants were all denied and dismissed. Damages for breach of constitutional rights were awarded in the sum of \$20,000.00 with interest on the said

⁵DOMHCV2012/0021

damages from the date of judgment to the date of payment was awarded. The claimant's claim for constructive dismissal was dismissed and the court found that the claimant had in fact abandoned his job. The claim for pre judgment interest was also not granted.

[20] Learned Counsel further submitted that all the issues raised in the current claims for constructive and wrongful dismissal were raised in the previous matter and dealt with.

[21] Learned Counsel submitted that the claimant since appealed the matter which was to be heard in February 2019 and submitted that the issues having being decided and not successfully appealed by the parties remains binding on the parties.

[22] Learned Counsel Ms. Nadira Lando also submitted that there are no new developments or points raised in the current suits thus in the matters are *Res Judicata* and counsel relied on the ruling in **Henderson –v- Henderson**.⁶

[23] In conclusion, Counsel on behalf of the defendants submitted that following the authorities and the excerpt from Halsbury's Laws the filing of the two claims by the claimant are an abuse of the court and should be dismissed.

[24] Learned counsel also drew to the court's attention that the claimant also previously filed two claims for constructive and wrongful dismissal on the 21 July 2018 which were identical in nature to the claims at bar save and except that the quantum of damages claimed were increased. These claims were withdrawn in open court by the claimant on the 15th November 2019.

[25] The defendants therefore submit that the claims brought by the claimant are an abuse of process and should be struck out.

⁶ (1843) 3 Hare 100

The Submissions Filed by the Defendant

[26] In his lengthy written submissions before the court the claimant sought to make out a case that the application to strike out the claims which he has brought should not be granted on the ground that his case has a realistic prospect of success.

[27] To the court's mind the claimant has totally missed the point of the application to strike out his cases which has been brought by the defendants.

[28] He also in his submissions makes reference to the failure of the defendants to file a defence or answer the case brought against them and to his right to know what is their defence.

[29] The claimant maintains in his submissions that the evidence in support of his claims before the court is overwhelming and the facts are not being disputed by the defence in any way. He further submitted that his claims for damages for breaches of his tenure of office are indefensible and that they are bound to succeed and that the defendants have no prospect of success in defending the case. The claimant asks for the defences to be struck out. It is noted that there are no defences filed in the matter.

[30] The claimant also asks the court to enter summary judgment against the defendants.

[31] The court is unable to accede to the claimant's application and submissions in this regard as even if, the court were to consider the supposed preponderance of evidence he has sought to adduce to show that he has a good and arguable case and that the defendants have no defence, he has failed to adduce any evidence to this court of service of the proceedings on the defendants in this matter which is necessary before the court can consider any judgment in default of acknowledgment of service of defence (Re: parts 12.4(a) and 12.5(a) of CPR⁷.)

⁷Conditions to be satisfied – judgment for failure to file acknowledgment of service

[32] This court has read the claimant's lengthy and somewhat prolix submissions and unfortunately they are of no help or assistance to this court in dealing with the defendants' application that the matters be struck out as an abuse of process on the grounds of *res judicata*.

Considerations by the Court

[33] The defendants seek to have the matters as currently commenced by the claimant struck out on two grounds, firstly that the matters have been decided on by the court previously and are therefore *res judicata* and secondly in any event the claim brought by the claimant for wrongful or constructive dismissal are claims out of time and statute barred as they are claims based on the assertion of contractual rights and breach of an employment contract the cause of action which arose over six years ago thereby making the claim statute barred.

[34] I will first deal with the application that the matters brought by the claimant are *res judicata* and should be struck out as an abuse of process.

[35] Part 26.3 of the Civil Procedure Rules 2000 (CPR) empowers the court to strike out a statement of case ...on the ground that the claim discloses no reasonable cause of action or is frivolous or vexatious or otherwise an abuse of the process of court.

[36] The principles upon which this court exercises its powers to strike out are now well established and have been followed by this court. Under the rules of CPR, the court is empowered to strike out an action in a summary way if the court is

12.4 The court office at the request of the claimant must enter judgment for failure to file an acknowledgment of service if –

(a) the claimant proves service of the claim form and statement of claim; and

...

12.5 The court office at the request of the claimant must enter judgment for failure to defend if –

(a) (i) the claimant proves service of the claim form and statement of claim;

convinced on a balance of probabilities that the action is frivolous or vexation or is otherwise an abuse of the process of court. (supra)

[37] The court's power has been called the nuclear weapon of the court and is to be utilised in only clear and obvious cases when it can be clearly seen on the face of it that as is being contended by the defendants in the case at bar that the case is res judicata and an abuse of the process of court.

[38] *Res Judicata* is considered under two heads; cause of action estoppel and issue estoppel. It is necessary that there is a judicial decision by a competent court or tribunal. In the case at bar there has been a judicial decision by this court as currently constituted.

[39] The case of **Johnson –v- Gore wood & Co (A firm)**⁸ is an authoritative case when the issue of abuse of Process is to be considered. This case established that where there is an application or claim of abuse of process of court, the court ought to carefully examine all the facts and circumstances of the case before coming to a conclusion that the claim is an abuse of process leading to the case being struck out. The court must be very careful before concluding that there is an abuse of process because the reason for the existence of courts is to resolve disputes between parties who are unable to resolve their disputes themselves.

[40] In **Mills v Cooper**⁹ Lord Diplock said this about the doctrine of *Res Judicata*:

“... a party to civil proceedings is not entitled to make, as against the other party, an assertion, whether of fact or of the legal consequences of facts, the correctness of which is an essential element in his cause of action or defence, **if the same assertion was an essential element in his previous cause of action or defence in previous civil proceedings between the same parties** or their predecessors in title and was found by a court of competent jurisdiction in such civil proceedings to be incorrect, unless further material which is relevant to the correctness or incorrectness of the assertion and could not by reasonable

⁸ [2002] 2 AC 1

⁹ [1967] 2 All ER 100. There, Diplock LJ said (at page 104):

diligence have been adduced by that party in the previous proceedings has since become available to him."

[41] In the Locus Classicus **Henderson v Henderson**¹⁰ Sir James Wigram V-C said:

"... I believe I state the rule of the court correctly, when I say, that where a given matter becomes the subject of litigation in, *and of adjudication by*, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. *The plea of res judicata applies*, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."¹¹

[42] In the case at bar it is a simple issue of fact as to whether or not the issues which the claimant is seeking to engage the court in were already litigated and decided on by the High Court between himself and the COP, PSC and the AG. were that issues raised by him dealt with and finally and conclusively determined by the High Court (which was a court of competent jurisdiction)?

[43] Having reviewed the facts as litigated between these same parties, I have no doubt that my judgment in **DOMHCV2009/0054** creates an estoppel. I would go further and say that it would be an abuse of the process of court to allow the claimant to re-litigate these issues which he is now seeking to bring before the court, as it is these very same issues which has already been investigated and for which there has been a finding made by the learned trial judge and a judgment handed down dismissing most of his claims and awarding him \$20,000.00 damages for breach of his constitutional rights with judgment interest from the date of judgment to the date of payment.

¹⁰(1843) 3 Hare 100,

¹¹ Ibid at pages 114-115

[44] Learned Counsel mentioned in her submissions that this judgment of the court was appealed by the claimant. On the 7th May 2019 the Court of Appeal handed down its judgment dismissing the claimant's appeal and awarding costs to the respondents to be two thirds of the assessed costs in the court below.

[45] Not being satisfied with the ruling of the court of appeal the claimant appealed to the Caribbean Court of Justice. This matter was heard in March this year and the claimant's application for leave to appeal to the CCJ was refused¹². The judgment of this court was not overturned.

Conclusion:

[46] This court is minded to refuse to allow the claimant to re-litigate questions which have already been decided and appealed which appeals have been decided and refused.

[47] The claimant states that having not succeeded in his claim for damages via the route of Judicial Review and Constitutional redress he is now seeking to make the identical claims in Tort. That just cannot be allowed. To allow this would be to allow him to re-litigate the same substantive issues.

[48] This court is aware of and bears in mind its role to prevent abuse of its processes. This court is satisfied that the claimant is not being shut out from bringing forward a genuine subject of litigation. It is clear from this court's examination of the fixed date claim with affidavit in support that has been filed in each matter the cases at bar and the previous claims brought by the claimant are all one and the same claim. The claimant is without a doubt seeking to re-litigate the following issues and recover damages for:

¹²CCJ Appeal No. DMCV2019/002 DM Civil Appeal No. 3 of 2017 Final Order dated 10th March 2020

- a. the denial of his opportunities to be promoted upwards in the ranks of the Commonwealth of Dominica Police Force;
- b. the denial of opportunity to be recruited by the Royal Bermuda Police Force and the possibilities of his upward elevation in that force to the office and rank of Commissioner of Police of the said force;
- c. loss of earnings for his alleged wrongful dismissal from the Commonwealth of Dominica Police Force and related damages allegedly arising there from;
- d. infringement of his constitutional rights; and
- e. aggravated and exemplary damages.

[49] The defendants have been made to defend these various actions brought by the claimant on numerous occasions and before different courts and judges. His actions have travelled the course of litigation from the High Court here in Dominica (a couple of times) to the Court of Appeal (a couple of times) and to the Caribbean Court of Justice where he has failed in his effort to recover the extraordinary large quantum of damages he seeks to recover.

[50] This case is clearly an example of the defendants being put to multiple “*vexations*” by the same claimant, which just cannot be allowed to continue. The course of action embarked upon by the claimant is to this court’s mind clearly an abuse of process and oppressive.

[51] In the case at bar not only are the claims brought by the claimant a repeat of previous matters and actions brought by him and dealt with by the court and the Courts of Appeal and the Caribbean Court of Justice the matters are also brought against identical defendants.

[52] In these circumstances this court is satisfied that even though the claimant now seeks to attempt to couch his claim in the Law of Tort there is no doubt that the claims brought are identical. All of his claims are the same as the case brought

before the court previously and have been fully ventilated before the court as currently constituted and decided on¹³which decision was appealed¹⁴. The appeal was denied and the Court of Appeal handed down its decision on the 7th May 2019.

[53] I repeat, Mr. Maximea's claims have without a doubt have been fully ventilated before the court and decided on and he is therefore estopped from litigating these issues and causes before the court.

[54] There is a public interest to be served in the finality of litigation and for defendants not to be vexed multiple times in the same matter. Judging the matter broadly and taking into account all the public and private interests involved, the answer to the question whether the claims currently before the court brought by the claimant against the same defendants on the identical issues and facts amounts to an abuse and misuse of the court's process? The resounding answer is yes and accordingly the court has no other alternative but to dismiss both the claims here in as being an abuse of the court's process.

[55] This being said the court sees no need to address the issue of whether or not the matters claimed are statute barred.

[56] The court's order therefore is as follows:

- i. The civil suites numbers **DOMHCV2018/0247** and **DOMHCV2018/0248** are hereby struck out and dismissed as an abuse of the court's process;
- ii. Cost is awarded to the defendants to be assessed if not agreed.

¹³(DOMHCV2009/0054)

¹⁴(DOMHCVAP2017/0003)

[57] I thank Counsel Miss Nadira Lando and the defendant acting pro se Mr. Maximea for their submissions filed herein.

M E Birnie Stephenson
High Court Judge

[SEAL]

BY THE COURT

REGISTRAR