

THE EASTERN CARIBBEAN SUPREME COURT
ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0162

BETWEEN:

KIYEH ANDERSON

CLAIMANT

AND

ATTORNEY GENERAL
THE COMMISSIONER OF POLICE
CPL 286 DERBY
PC 976 EDWARDS
PC 942 BARBOUR

FIRST NAMED DEFENDANT
SECOND NAMED DEFENDANT
THIRD NAMED DEFENDANT
FOURTH NAMED DEFENDANT
FIFTH NAMED DEFENDANT

Appearances:

Mr. Richard Williams for the Claimant
Mrs. Joezel Allen for the Defendants

2019: November, 26
2020: May, 15

DECISION

Burnett, M. (Ag.):

- [1] This is an application by the Attorney General on behalf of all the defendants for the following orders:
- 1) A declaration that the defendants are disputing the Court's jurisdiction and that the Court has no jurisdiction pursuant to Rule 9.7 of the CPR 2000.
 - 2) That the Claim against the defendants be struck out pursuant to Rule 9.7 (6) (c) and Rule 26.3 (1) of CPR 2000.
 - 3) That the claimant's action be dismissed or terminated pursuant to section 5 of the Public Officers Protection Act Cap 276 of the Revised Edition of the Laws of St. Vincent and the Grenadines 2009.
- [2] The grounds of the application are as follows:
- (i) The claim does not comply with the Public Officers Protection Act Cap 276 of the Laws of St. Vincent and the Grenadines.

- (ii) Section 3 of the Act was not complied with.
 - (iii) Section 5 (a) of the Act was breached.
 - (iv) The defendants are relying on the provisions of the Act as a statutory defence.
- [3] The application is supported by an affidavit sworn to by Justin Glasgow, the Office Attendant in the Attorney General's Chambers.

BACKGROUND

- [4] The claimant claims against the defendants for:
- a) Damages for assault and trespass to person
 - b) Such further or other relief as the Court thinks fits.
- [5] The claim was commenced with a Claim Form and Statement of Claim filed on the 10th day of October, 2019 and served on the Attorney General on the 17th October, 2019.
- [6] The Attorney General filed and served an Acknowledgment of Service on the 29th October, 2019.
- [7] This was then followed by a Notice of Application filed by the Attorney General on the 1st November, 2019, pursuant to Rules 9.7 (6) (c) and 26.3 (1) of CPR 2000.

THE DEFENDANTS' APPLICATION

- [8] The defendants contend, pursuant to Rule 9.7 of CPR; that they are disputing the Court's jurisdiction.
- [9] The defendants further contend that they are relying on the provisions of the Public Officer Protection Act as a statutory defence to the claim on the grounds that the claimant commenced her action by filing a Claim Form and Statement of Claim on 10th October, 2019, without first serving the Mandatory Notice of Intended Action on any of the named defendants pursuant to section 3 of the Public Officers Protection Act.

THE CLAIMANT'S RESPONSE

- [10] Learned Counsel for the claimant, Mr. Richard Williams in his response, submitted that the Public Officers Protection Act only apply to Public Officers that were acting in the due execution of their duty and that the defendants by assaulting, slapping and falsely imprisoning the claimant were not acting in the execution of their duty and as such, cannot benefit from the Protection of the Act.

THE LAW – CPR 2000

[11] CPR Rule 9.7 provides:

- (1) A defendant, who disputes the court's jurisdiction to try the claim, may apply to the court for a declaration to that effect.
- (2) A defendant who wishes to make an application under paragraph (1) must first file an Acknowledgment of Service.
- (3) An application under paragraph (1) of this Rule must be made within the period for filing a defence, the period for making an application under this Rule includes any period by which the time for filing a defence has been extended where the Court has made an order or the parties have agreed to extend the time as for filing a defence.
- (4) An application under this Rule must be supported by evidence of affidavit.

THE LAW: - THE PUBLIC OFFICERS' PROTECTION ACT CAP 276

[12] The relevant provisions of the Act are as follows: Section 3, Notice of Action Mandatory: "No action shall be brought against any public officer for anything done, or purported to be done, unless and until two (2) calendar months after notice in writing has been delivered to him or left at his usual place of residence with some person there, by the party who intends to bring such action or his legal practitioner or agent and in every such notice shall be clearly and explicitly stated:

- (a) the cause of action.
- (b) the name and address of the person who is bringing the action; and
- (c) the name and address of his legal practitioner or agent, if any, and no evidence of the cause of action shall be produced, except in so far as the cause of action has been spelt out in the notice."

[13] Section 4 Time Limits for Action: "Every action as set out in section 3 shall be brought within twelve calendar months next after the cause of action stated in the notice arise and no such action shall be maintained after the expiry of the said period."

[14] Section 5 Action to be Rejected in Certain Cases: "In every proceeding for an action as referred to in section 3, it shall be incumbent upon the party bringing the action to prove:

- (a) that the notice as required under section 3 has been given;
- (b) that the action has been brought within the time specified in section 4; and
- (c) the cause of action, and upon the failure to establish any of the same, the action shall be dismissed or otherwise terminated and a verdict shall be given against the person who brought the action, with or without costs."

[15] In the Act, "Public Officer" means any person who holding any public office (which shall include the office of a minister) in Saint Vincent and the Grenadines, whether permanent or temporary and whether with or without salary or remuneration.

- [16] The defendants contend that the Court should apply section 5 of the statute because the claimant has failed to prove service of the notice of action on the named defendants as public officers.

THE DEFENDANT'S LEGAL SUBMISSION

- [17] The defendants submitted that the Court is obliged to consider the question as to whether the claimant's failure to observe section 3 of the Public Officers Protection Act is fatal to the claim.
- [18] The defendants rely on section 3 and 5 of the said Act.
- [19] The defendants further submitted that there exists an abundance of case law to establish that failure to comply with the mandatory provisions of the legislation is fatal to a claim being brought against a public officer. They contend that the service of the aforementioned statutory notice as mandated in the legislation is a condition precedent to the filing of proceedings against public officers performing a public function.

THE DEFENDANT'S LEGAL AUTHORITIES

- [20] **Peter Clarke v the Attorney General**.¹ In that claim the claimant claimed damages for false and wrongful imprisonment and assault against the defendants, including three (3) police officers.
- [21] The notice of intention to institute legal proceedings was not personally served on the police officers or left at their domicile. Counsel for the defendants, arguing that the Court had no jurisdiction to determine the claim, relied on the case of **Cumberbatch v Weber**² and **Castillo v Corozal Town Board and Another**³.
- [22] The Learned Judge noted that, in the latter case of Castillo, the Court of Appeal held that the Public Authorities Protection Ordinance makes provision for a mandatory condition precedent to the institution of the suit. Where the plaintiff fails to prove that he has given such notice, a trial judge has no discretion in the matter and is bound to enter judgment for the defence with costs.
- [23] **Bryan James v the Attorney General**.⁴ In this case, the Attorney General filed an application to strike out the claimant's claim on the basis that the claimant had failed to serve the Attorney General with notice of the suit. The Learned Master found in favour of the defendant and struck out the claimant's case.
- [24] On Appeal, the Honorable Blenman, JA applying the case of **Peter Clarke v the Attorney General** (supra) and **Castillo v Corozal Town Board and Another** (supra) upheld the decision of the Learned Master and held that failure to comply with mandatory provisions that require notice is fatal. Costs were also awarded to the Attorney General.

¹ SLUHCv1999/0475

² (1965) 9 WIR 143

³ (1983) 37 WIR 86

⁴ SLUHCv1990/0475

- [25] The defendants also relied on the case of **Leonet Anderson v the Attorney General, the Commissioner of Police, Corporal 286 Derby and PC 976 Edwards**⁵.

THE CLAIMANT'S SUBMISSION AND LEGAL AUTHORITIES

- [26] Learned Counsel, Mr. Richard Williams, submitted that the issue for the Court's deliberation at this stage was whether the defendants were acting in the execution of their duty to benefit from the protection of the Public Officers Protection Act.
- [27] Counsel posited that the Public Officers Protection Act only applied to public officers that were acting in the due execution of their duty.
- [28] Counsel further posited that the defendants, by assaulting, slapping and falsely imprisoning the claimants were not acting in the execution of their duty and as such, cannot benefit from the protection of the Act. Counsel relied on the case of **Felix DaSilva v Hermine Griffith**⁶ and **Richard MacLeish v Donald John**⁷.
- [29] Counsel further submitted that the question as to whether or not the defendant were acting in the due execution of their office can only be determined after trial and a finding by the Court. Consequently, there are live issues to be determined by a Court.

ANALYSIS

- [30] Counsel for the defendants, in her supplemental submission in support of her application disputing the Court's jurisdiction and to strike out the claim, drew the Court's attention to the decision of the Honorable Justice Henry in the claim **Leonet Anderson v Attorney General et al** (Supra).
- [31] This case arose out of the same alleged incident which is the subject matter of the claim at bar.
- [32] Learned Counsel, Mr. Richard Williams submitted that the Public Officers Protection Act does not apply because the defendants were not acting in the execution of their duty. Counsel went on to submit that this conclusion is a matter to be determined at trial.
- [33] This issue was addressed in the **Leonet Anderson** case (supra) at paragraph 4 of the said Decision Henry J reasoned:
- [34] "Mr. Anderson highlighted certain pronouncements of the respective judges in both cases. In the **Felix DaSilva** case, Joseph J. outlined section 3 of the Act and opined:

⁵ SVGHCV2019/0161

⁶ Suit No: 300 of 1998 at page 6

⁷ Suit No: 305 of 1998 at page 9

- 'The question to be determined is whether the defendants can shelter under the umbrella of the Act. To succeed in convincing the Court that the defendants are not protected by the Act, the plaintiff has to show that the defendants acted outside of or in the excess of their jurisdiction.'
- [35] The learned judge held that the first defendant could shelter under the Act because he acted within his authorities in respect of the actions complained about by the plaintiff. She dismissed the claim against him. She found however that the second defendant acted on his own authority and was therefore unable to avail himself of the protection provided by the Act.
- [36] In the **Richard MacLeish** case, the learned Judge dismissed the claim against the defendants following a trial. He found that the plaintiffs had not complied with section 3 of the Act. He remarked that the defendants wasted time in allowing the matter to proceed to trial instead of raising the defence earlier. Consequently, he made no order as to costs.
- [37] Mr. Anderson submitted that a determination of whether the police officers in the instant case were acting in the execution of their office, can be made only after trial and a finding by the Court. He argued that those matters are therefore live issues for the Court. He contended that applicability of the referenced provisions of the Act, are not issues which can be resolved on the pleadings, but rather, must await trial when the claimant can provide the requisite proof of service. He referred to the **Richard MacLeish** case and the case of **Sharon Sprott v Corporal 599 Foster Scott et al** as authorities for that submission.
- [38] The learned Judge in the **Sharon Sprott** case opined:
 '...it would be for the claimant to prove at the trial that the requisite notice had been served. ... If the claimant fails to prove at the trial that she has given notice of the proceedings under section 3 of the Public Officer's Protection Act, the trial Judge will have no discretion in the matter and will be bound to enter judgment for the defendant with or without costs.
- [39] The learned justice in the **Richard MacLeish** case made similar pronouncement. He stated that the authorities:
 '... establish that section 5 of the Act is not a matter of pleading by the defence. It is a matter for evidence at the trial. Proof has to be provided at trial in the same way as proof of any fact in issue relevant to the action has to be given.'
- [40] At paragraphs 23 and 24 of the said **Leonet Anderson v the Attorney General**: Henry J. concluded:
- The decision in **Byran James** case illustrated that an application to strike out a claim for failure to serve the requisite notice under section 5 of the Act, maybe made before trial. Such an application may then be entertained and determined without the need for the parties to embark on a trial. This was recognized by the learned judge in the **Richard MacLeish** case when he sanctioned the defendants by ordering them to pay costs for their failure to take the point much earlier in the proceedings (i.e. before the trial).

- It is now well-established and codified principle of law and matter of procedure that the court in furthering the overriding objective to act justly and in furtherance of its case management functions, is empowered and has a duty to take appropriate steps to resolve disputes in an efficient, effective and expeditious manner. This includes deciding which issues need full investigation and trial and which can be disposed of summarily. In the view of the clear precedent set in the **Bryan James** case, it is beyond doubt that this court may decide before trial, whether this is an appropriate case to dispose of this point, in light of the available evidence.

- [41] The Court is very perplexed with the submissions of the claimant in the matter. Counsel is attempting to suggest that the defendants (third, fourth and fifth) acted outside of the scope of their duty and therefore are not covered by the Protection of the Act.
- [42] I find this to be inconsistent with the pleadings of the Claimant before this Court which reads:
 “The first defendant is liable for the acts and omissions of Police Officers referred below and a necessary party pursuant to the provisions of the Crown Proceedings Act.”
- [43] The second defendant is the Chief Officer of the Royal S.V.G. Police and in ultimate control of the third defendant
- [44] At no time in the statement of claim and the pleadings, did the claimant attempt to separate the third, fourth and fifth defendants from their public office.
- [45] It is therefore clear from the pleadings that the action before the Court is one where the defendants are sued in their public office. Consequently, the Public Officers Protection Act is applicable to these proceedings.
- [46] I agree with the findings and conclusions of Henry J in the **Leonet Anderson v Attorney General et al** case (supra) at paragraph 29 of the judgment which concluded.
- [47] Based on the learning in the **Richard MacLeish and Byran Adams** case, I find that it is not necessary to await trial to decide whether the statutory notice was served on the Hon. Attorney General, the Commissioner of Police and Police Officers Derby and Edwards I find that the Hon. Attorney General, the Commissioner of Police and Police Officers Derby and Edwards were not served with the statutory notice by Mr. Anderson, his lawyer or agent.
- [48] Learned Counsel, Mrs. Joezel Allen urged the Court to consider paragraph 39 of the judgment, that:
 “... Mr. Anderson was obliged to serve the Hon. Attorney General, the Commissioner of Police and the Police Officers Derby and Edwards with the statutory notice pursuant to section 3 and 5 of the Act⁸ he did not.
- [49] From the pleadings I agree with the defendants’ submission that in the matter at bar the claimant Kiyeh Anderson has failed to prove service of the notice of action on the named defendants who are public officers as required by section 5 of the said Act.

⁸ The Public Officers Protection Act

[50] I do not agree with Counsel for the claimant submission that the defendants are not shielded by the statutory provisions because their conduct was unlawful; as no separation was made of the defendants in their public office. The defendants have complied with CPR 9.7 by filing an Acknowledgment of Service and have filed their application within the period of filing their defence.

[51] As in claim no. 161 of 2019, I agree with the reasoned decision and conclusion of Henry J at paragraph 40 in her decision:

"In the premises, the Court does not have the necessary jurisdiction to proceed with the hearing. In accordance with sections 3 and 5 of the Act, the Court must refuse to entertain the claim against the Hon. Attorney General, the Commissioner of Police and Police Officers Derby, Edwards and Barbour. Their objection to this claim on the jurisdiction ground is upheld.

CONCLUSION

[52] Accordingly, the Court rules that the claimant is in contravention of the Public Officers Protection Act which establishes a mandatory condition precedent to the filing of a claim specifically section 3 and 5 (a). The claimant contention that the issue of whether or not the defendants were acting in the due execution of their duty of their office can only be determined after a trial can be determined at this stage of the proceedings.

[53] In effect this disposes of this claim before the Court.

ORDER

It is hereby ordered that:

1. This Court does not have jurisdiction to hear this claim.
2. The application by the Hon. Attorney General disputing the Court jurisdiction is granted.
3. No order as to cost.

**Rickie Burnett
MASTER (Ag.)**

By the Court

Registrar