

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2014/0049

**IN THE MATTER OF THE ST. VINCENT AND THE GRENADINES CONSTITUTION ORDER CAP. 10 OF
THE LAWS OF ST. VINCENT AND THE GRENADINES 2009 REVISED EDITION (“THE
CONSTITUTION”)**

AND

**IN THE MATTER OF AN APPLICATION FOR REDRESS PURSUANT TO SECTION 16 OF THE
CONSTITUTION FOR CONTRAVENTIONS OF SECTIONS 1(a), 3(1), 5, 8 and 12 THEREOF**

AND

**IN THE MATTER OF AN APPLICATION FOR DECLARATORY AND OTHER RELIEF PURSUANT TO
SECTION 16 OF THE CONSTITUTION**

AND

**IN THE MATTER OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT ACCEDED TO BY ST. VINCENT AND THE
GRENADINES ON 1st AUGUST, 2001 (“THE CONVENTION”) AND IN PARTICULAR ARTICLES 1, 2, 4,
5 and 16 THEREOF**

AND

**IN THE MATTER OF AN APPLICATION FOR REDRESS FOR CONTRAVENTIONS OF THE
CONVENTION**

AND

**IN THE MATTER OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
ACCEDED TO BY ST. VINCENT AND THE GRENADINES ON 9th NOVEMBER 1981 ARTICLE 7
THEREOF**

AND

IN THE MATTER OF AN APPLICATION FOR REDRESS FROM CONTRAVENTIONS OF THE
INTERNATIONAL COVENANT

BETWEEN:

HON. DANIEL E. CUMMINGS

CLAIMANT

and

(1) THE ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES

(2) HON. HENDRICK ALEXANDER

(SPEAKER OF THE HOUSE OF ASSEMBLY)

(3) ASST. SUPERINTENDENT OF POLICE CHRISTOPHER BENJAMIN

(4) ASST. SUPERINTENDENT OF POLICE ARNON KING

(5) ASST. SUPERINTENDENT OF POLICE WILLISFORD CAESAR

(6) POLICE CORPORAL NO. 632 BENZIL MORRIS

(7) POLICE CORPORAL NO. 695 SEDAN SEARLES

(8) POLICE CORPORAL NO. 488 CUTHBERT SAMUEL

DEFENDANTS

Appearances:

Mr. Keith Scotland for the claimant.

Mr. Richard Williams with him Ms. Danielle France for the 1st, 2nd, 3rd, 4th, 5th, 6th and 8th defendants.

Mr. Ronald Marks with him Ms. Chantal Belmar for the 7th defendant.

2019: Feb. 14
Mar. 6

DECISION

BACKGROUND

[1] **Henry, J.:** Honourable Member of Parliament Mr. Daniel Cummings has accused several police

officers of assaulting him violently. He alleged that they were doing so in course of complying with a direction of the Honourable Speaker of the House of Assembly on March 3rd, 2011, to remove him from the Chamber of Parliament. He identified police Corporal Sedan Searles as one of those police officers.

- [2] On 3rd March 2014, Mr. Cummings initiated a claim against several defendants including the police officers, for redress under the Constitution of Saint Vincent and the Grenadines for alleged breaches of several constitutionally guaranteed rights and freedoms including the right to liberty and protection from degrading and inhuman treatment. On 4th July 2014, Corporal Searles filed an affidavit in response to the claim. He denied being present at the House of Assembly on March 3rd 2011, or being involved in the events which took place there on that day.
- [3] He alleged that he was present at the Questelles police station on that day and during the relevant times was at the station and earlier at the West Saint George Secondary School. He averred that he remained stationed at Questelles police station until 9.20pm that night. By Notice of Application filed on 18th January 2019, Corporal Searles applied for an order for summary judgment and costs.
- [4] He contended that Mr. Cummings cannot succeed on the claim against him because his case is implausibly and inherently flawed, by reason that he (Searles) was not present at the time of the 'Parliamentary Incident' and was therefore incorrectly named as a defendant. He set out his alibi in the supporting affidavit. Mr. Cummings resisted the application.

ISSUE

- [5] The issue is whether summary judgment should be entered for Corporal Searles?

ANALYSIS

Issue No. 1 – Should summary judgment be entered for Corporal Searles?

- [6] Corporal Searles' application for summary judgment was made on the grounds that:
- '1) the Claimant has no real prospect of succeeding on the claim against the seventh Defendant for the following reasons:

- a) The case put forward by the claimant is implausible and inherently flawed due to incorrectly naming the 7th named defendant who was not present at the time of the alleged “Parliamentary Incident” as a Defendant in the proceedings.
- 2) Further, I am unaware of any other reason why the claims against the seventh Defendant should be disposed of at trial.’

- [7] In his supporting affidavit he averred that the details of his whereabouts at the relevant times should be contained in the station diary which would have been found at the station or base where he was assigned or can be found in the archives of the central police station. He deposed further that he has never been assigned to parliamentary duties during his time as a member of the Royal Saint Vincent and the Grenadines Police Force.
- [8] Hearing of the Application was scheduled for February 14th 2019. Corporal Searles’ legal practitioner Mr. Ronald Marks was present. Mr. Cummings’ legal representative Mr. Keith Scotland was engaged before another court and was not present when the matter was called. The court dispensed with oral submissions. The parties were ordered to file skeleton arguments and list of authorities and transmit electronic copies in MS WORD format to the court on or before February 25th 2019. Corporal Searles filed none. Mr. Cummings filed his on 27th February 2019 but did not transmit electronic copies to the court office, even though a verbal request was made for them on March 1st 2019.
- [9] The Civil Procedure Rules 2000 (‘CPR’) at rule 15.2 empowers the court to grant summary judgment on one or more issues in a claim, if it considers that the claimant has no real prospect of succeeding on the claim or issue. CPR 15.3 lists 8 types of proceedings in which the court may not grant summary judgment. Those are admiralty proceedings in rem; probate proceedings, proceedings by Fixed Date Claim; proceedings for claims against the Crown, defamation, false imprisonment, malicious imprisonment and redress under the Constitution of any Member State or Territory.
- [10] The instant proceedings involve claims against the Crown and redress under the Constitution of

Saint Vincent and the Grenadines. In the premises, these proceedings are not amenable to the grant of an order of summary judgment. The Court is precluded from granting summary judgment on Corporal Searles' behalf. I therefore dismiss the application for summary judgment.

Costs

[11] Mr. Cummings filed comprehensive written submissions comprising 7 pages. He outlined the general principles which guide the court in appropriate cases, when it considers an application for summary judgment. He highlighted the cases of **Swain v Hillman**¹, **Royal Brompton NHS Trust v Hammond (No 5)**², **Three Rivers District Council v Bank of England (No 3)**³, **Saint Lucia Motor and General Insurance Co. Ltd v Peterson Modeste**⁴, **Cargill International Trading Pte Limited v Uttam Galva Steels Limited**⁵ which all rehearse those principles. Mr. Cummings also mentioned the cases of **Bolton Pharmaceutical Co 100 Ltd d Doncaster Pharmaceuticals Group Ltd and Others, ED and F Man Liquid Products Ltd v Patel [2003]** and **Co-operative Society Ltd v Corrin Ammon**⁶.

[12] It was unnecessary for the court to consider those principles in the instant case. Mr. Cummings could have limited his submissions to the contents of CPR 15.3. He did not refer to it. In deciding whether to award costs and to whom costs should be awarded, the court must take into account the general rule that costs goes to the successful party⁷. Mr. Cummings would have had to instruct his legal practitioner. He is entitled to his costs to be assessed if not agreed.

¹ 2 All ER 91.

² [2001] EWCA Cave 550.

³ [2001] UKHL 16.

⁴ SLUHC VAP2009/008.

⁵ [2018] EWHC 2977 (Comm).

⁶ No citation provided.

⁷ CPR 64.6 and 64.11.

ORDER

[13] It is ordered:

1. Corporal Sedan Searles' application for summary judgment is dismissed.
2. Corporal Sedan Searles shall pay to Mr. Daniel Cummings pursuant to CPR 65.11, costs to be assessed, on application to be filed and served on or before 28th March 2019, if not agreed.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar