

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(Civil)**

SLUHCV2015/0398

BETWEEN:

ELESIA CRISP

Claimant

and

THE ATTORNEY GENERAL

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Horace Fraser for the Claimant

Ms. Jan Drysdale for the Defendant

Claimant present

Constable 564 Isidore present

2017: July 6, 20.

JUDGMENT

[1] **CENAC-PHULGENCE, J:** The claimant, Ms. Elesia Crisp ('Ms. Crisp'), businesswoman and accountant by profession filed a claim on 12th May 2015 for breach of her constitutional right not to be deprived of her personal liberty guaranteed under section 3 of the **Constitution of Saint Lucia**¹ ('the Constitution').

¹ Cap.1.01, Revised Laws of Saint Lucia, 2008.

- [2] In this claim, Ms. Crisp claims (a) a declaration that she is entitled to the protection of the law in accordance with section 1 of the **Constitution of Saint Lucia**; (b) a declaration that her arrest and detention by the police acting on a warrant unjustifiably issued by the hand of a magistrate sitting in the First District Court violates her fundamental right to personal liberty guaranteed by section 3 of the Constitution; (c) an order awarding her damages for unlawful arrest and detention; (d) an order awarding her damages for distress and inconvenience; and (e) an order awarding her damages to reflect the public outrage at the intrusion and violation by the executive and of the lower judicial arm of the Crown of a private citizen's constitutional rights guaranteed by sections 1 and 3 of the Saint Lucia Constitution.
- [3] The brief facts are that Ms. Crisp was a passenger in a vehicle driven by her husband, Mr. Ross Bowring ('Mr. Bowring') when they were involved in a motor vehicular accident on 11th August 2011. Ms. Crisp claims that neither she nor her husband was aware that he had been charged, nor did she give a witness statement to the police nor did she indicate to Constable 564 Isidore, the investigating officer that she had any interest in being a witness for the prosecution.
- [4] The defendant claims that one month after the accident, typed statements from Mr. Bowring and Ms. Crisp as witness for Mr. Bowring were received by Constable Isidore. It is also noted that Ms. Crisp gives evidence that at the scene of the accident, she and Mr. Bowring gave detailed accounts of how the accident occurred.²
- [5] Constable Isidore stated in his affidavit that Mr. Bowring was contacted and advised that he would have been charged as having caused the accident and a complaint was subsequently lodged against Mr. Bowring. A copy of the complaint

² At paragraph 7 of her affidavit.

dated 20th January 2012 was exhibited to his affidavit. Constable Isidore said that after Mr. Bowring was informed that he would be charged several attempts were made to serve him which failed.

[6] Sometime in January 2012, a summons was issued to Mr. Bowring and Ms. Crisp to attend court on 8th February 2012. The summons was served on Ms. Crisp at her residence at Escap. At that time, Ms. Crisp informed Constable Isidore that Mr. Bowring had left the island and she was not aware of when he was due to return.

[7] Constable Isidore states that on the returnable date, Ms. Crisp alone attended court and the matter was adjourned due to the failure to serve Mr. Bowring. The matter apparently came up on a few occasions thereafter and was adjourned each time due to inability to serve Mr. Bowring. This is confirmed by Ms. Crisp as she indicated that she was asked to attend court on several occasions by Constable Isidore. In fact in her own words, 'the requests made of me to attend court came across to me that I had a duty to attend court and had no choice in the matter'.

[8] It would appear that when the matter was called in June 2012 Ms. Crisp had stepped out to get something to eat and in the circumstances, the Court after being informed of this issued a witness summons to Ms. Crisp for the adjourned date of 11th July 2012. Ms. Crisp was served with this summons. Constable Isidore said that a witness summons was only issued when Ms. Crisp was not present to be informed of the adjourned date. This was not denied by Ms. Crisp.

[9] The summons which is the subject of this claim was issued for Ms. Crisp to attend court on 6th February 2013. This summons Constable Isidore said was served on Ms. Crisp although at the time of service she was agitated and belligerent and refused to accept the summons. He says Ms. Crisp was served by placing the summons through her gate and it fell on the ground in front of her.

- [10] On 6th February 2013, Ms. Crisp did not attend court. Ms. Crisp in her affidavit confirmed this and said that 'having regards to all that took place in relation to the matter I decided not to attend court on 6th February 2013 as summoned'. The magistrate asked whether Ms. Crisp had been served and having so confirmed issued a warrant to arrest witness in relation to Ms. Crisp. This warrant was executed on Ms. Crisp on 6th March 2013 at her residence at Escap and she was taken to the Micoud Police Station from where she was then transported to the Gros Islet Magistrate's Court. Constable Isidore and the two other officers who gave evidence on affidavit state that at no time was Ms. Crisp handcuffed. Constable Isidore says at no time was the warrant invalidated.
- [11] Ms. Crisp had filed a claim for damages for false imprisonment and malicious prosecution on 17th September 2013 which claim she subsequently discontinued on 21st April 2015 because she said her chances of success appeared remote given the case presented by the defence.
- [12] Ms. Crisp gives an account of what happened on the morning of 6th March 2013. She says she was awakened at 6:00 a.m. by the ringing of her doorbell. When she looked through her window she saw 3 police officers one of whom informed her that they were there to arrest her. She said Constable 698 Samuels was pounding on her door and telling her that she had to come out. She said it created quite a scene which attracted the attention of her neighbours and guests staying at her villas.
- [13] Ms. Crisp says she called police emergency for assistance and Officer Faucher came with two uniformed police. She says that she was imprisoned in her home. She had to get her shoes and bag under police escort. Ms. Crisp in her affidavit states that she was detained in the area outside of the cell at the Micoud Police Station. She also recounts that she was accompanied by three officers back to

her home to get aspirin as there was none available at the Station and she had developed a headache.

- [14] Ms. Crisp says that when she was brought before the magistrate, he asked about the whereabouts of her husband and she said she did not know. She said she told him of her ordeal and he apologized to her 3 times. She said that the magistrate indicated that the information that caused him to sign the arrest warrant was not the information then before him and she said the magistrate berated Constable Isidore. I must confess that I do not know what this means.
- [15] Constable Isidore says the magistrate explained to Ms. Crisp the reason she was brought to court on a warrant of arrest being that she had been summoned and she did not appear on the date. He says the magistrate also informed Ms. Crisp that the reason she was summoned was to get clarity about the whereabouts of Mr. Bowring and after Ms. Crisp advised that she did not know, she was allowed to leave. He says at no time did the magistrate berate him or apologize to Ms. Crisp.
- [16] Ms. Crisp claims that the manner in which the arrest was carried out has been a source of embarrassment for her among her neighbours and guests. She says it has also impacted her business negatively but provides no evidence to support this statement.
- [17] Ms. Crisp says that Constable Isidore acted with malice, in bad faith and abused his office because (a) she never indicated that she was disposed to being a witness; (b) he never filed any charge against Mr. Bowring and had her to attend court in vain; and (c) he caused the magistrate to issue an arrest warrant on a false premise.

- [18] She also says that the magistrate issued a bench warrant without ascertaining whether a charge was filed and whether the matter was ready for trial and that he failed in his duty to satisfy himself that she was a witness for the prosecution who agreed to testify but was refusing to attend Court.
- [19] I have some difficulty with Ms. Crisp's evidence. The evidence of Constable Isidore that Mr. Bowring was charged with two offences has not been refuted by Ms. Crisp. In fact, she has not responded to this evidence at all. There is clear evidence that Mr. Bowring was charged and this was accepted by counsel for Ms. Crisp, Mr. Fraser.
- [20] Ms. Crisp says that Constable Isidore and the magistrate individually or collectively caused her to be arrested and detained for reasons the police or the magistrate are not permitted to cause a private citizen to be arrested and detained. I am not quite sure what this means.
- [21] The evidence of Officer Natalya Charlery ('Officer Charlery') is that she was part of the team which went to execute the warrant in relation to Ms. Crisp. Her evidence paints a picture of belligerent behaviour by Ms. Crisp whom she said was cursing and quarrelling with them. When shown the arrest warrant, she said Ms. Crisp threw it back at the officer after she had read it. Officer Charlery also states in her affidavit that she tried to explain to Ms. Crisp the purpose of the warrant but she said Ms. Crisp continued quarrelling and refused to listen. Officer Charlery said she called for assistance from the Micoud Police Station and Officer Faucher and two other officers came. Officer Faucher explained the warrant to Ms. Crisp and she was escorted to the Micoud Police Station and then to the Gros Islet Police Station.

- [22] Officer Roseline Edward was the female officer who accompanied Officer Isidore to escort Ms. Crisp to Court on the morning of 6th March 2013. The officer testified that they got to the Micoud Police Station at 8 a.m. and picked up Ms. Crisp. She said when she saw Ms. Crisp she was not handcuffed. She said on the way to Gros Islet she attempted to explain to Ms. Crisp why she was arrested and she just continued to quarrel.

Analysis

Whether the claimant is entitled to a declaration that she is entitled to the protection of the law in accordance with section 1 of the Constitution of Saint Lucia

- [23] The defendant submits that section 1 of the Constitution is an outline of the fundamental rights therein contained and that is of declaratory effect and does not confer rights capable of being breached. They argue that the fact that the Constitution makes provision for redress in relation to sections 2 to 15 suggests that section 1 cannot be breached. They rely on the case of **Olivier v Buttigieg**³ and the statement of Lord Morris at pages 461 - 462 where he says:

“It is to be noted that the section begins with the word “Whereas”. Though the section must be given such declaratory force as it independently possesses, it would appear in the main to be of the nature of a preamble. It is an introduction to and in a sense a prefatory or explanatory note in regard to the sections which are to follow. It is a declaration of entitlement—coupled however with a declaration that though “every person in Malta” is entitled to the “fundamental rights and freedoms of the individual” as specified, yet such entitlement is “subject to respect for the rights and freedoms of others and for the public interest”. The section appears to proceed by way of explanation of the scheme of the succeeding sections. The provisions of Part 2 are to have effect for the purpose of protecting the fundamental rights and freedoms, but the section proceeds to explain that, since even those rights and freedoms must be subject to the rights and freedoms of others and to the public interest, it will be found that in the particular succeeding sections which give protection for the fundamental rights and freedoms there will be “such limitations of that protection as are contained in those provisions”. Further words, which again are explanatory, are added. It is explained what the

³ [1966] 2 AER 459.

nature of the limitations will be found to be. They will be limitations “designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

The succeeding sections show that the promised scheme was followed. The respective succeeding sections proceed in the first place to give protection for one of the fundamental rights and freedoms (eg, the right to life, the right to personal liberty) and then proceed in the second place to set out certain limitations—ie, the limitations designed to ensure that neither the rights and freedoms of others nor the public interest are prejudiced.”

[24] In the Privy Council case of **Newbold v Commissioner of Police**,⁴ the Board examined section 15 of the Bahamian Constitution which is in similar terms to section 1 of the Saint Lucia Constitution. In that case the Board said:

“In these circumstances, it is no surprise that Jamaican courts up to and including the Board have under the (for relevant purposes identical) provisions of Chapter III of the Jamaican Constitution rejected the argument that the Jamaican equivalent of art 15 conferred separate and independent or freestanding rights that could be relied upon to provide redress not available under the subsequent provisions of Chapter III of the Jamaican Constitution (more particularly the article protecting against deprivation of property): *Campbell-Rodriques v Attorney General of Jamaica* [2007] UKPC 65. There is earlier authority to the same effect on a similarly worded article in the Constitution of Malta: *Olivier v Buttigieg* [1967] 1 AC 115...”

[25] The Board went on to say that:

“If article 15 had been understood as an independent enacting provision, the constitutional right of redress would have been extended to it. Similarly, to read article 15 as an enacting provision would undermine and make pointless article 30(1), the clear aim of which was that fundamental rights otherwise provided by the Constitution should not prevail over any contrarily expressed “existing law”. The Board therefore considers that article 15 has no relevance or application in this case, save as a preamble and introduction to the subsequently conferred rights.”

⁴ [2014] UKPC 12.

[26] I therefore agree with the defendant that section 1 does not create any free-standing rights separate and apart from those in the sections which follow. A declaration to the effect asked for by the claimant is of no effect as it is stated as it cannot be denied or disputed that the claimant is entitled to the protection of the law. It is what section 1 of the Constitution declares. The Court can only acknowledge this declaration. It is then for the claimant to show the specific right/s which he/she alleges have been infringed.

Whether the claimant's arrest and detention by the police acting on a warrant issued by the magistrate violated her fundamental right to personal liberty guaranteed by section 3 of the Constitution.

[27] Mr. Fraser submitted that the warrant of arrest issued by the magistrate is lawful and cannot be challenged at law in tort. However, a breach of an entrenched constitutional provision by a flagrant misuse or abuse of power is a different thing.

[28] Mr. Fraser further submitted that given the factual circumstances of the case, the claimant was not a party to the proceedings before the Magistrate's Court and therefore the warrant issued for her arrest amounted to a contravention by the Crown of her right not to be deprived of her personal liberty except by due process of law. Counsel, Mr. Fraser argued that given that the basis for the witness summons was unlawful, the warrant of arrest cannot stand as it is based on an illegality or unlawful action.

[29] Section 3 of the Constitution provides as follows:

"3. Protection of right to personal liberty

(1) A person shall not be deprived of his or her personal liberty save as may be authorised by law in any of the following cases, that is to say—

...

(c) **execution of the order of a court made to secure the fulfilment of any obligation imposed on him or her by law;**

(d) **for the purpose of bringing him or her before a court in execution of the order of a court;**

...

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his or her having committed or being about to commit an offence, he or she shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.”

[30] The relevant provisions of the **Criminal Code**⁵ are set out below:

“680. Issue of summons to witness

If, in the interest of justice, either before or on the hearing of any complaint, it appears to the magistrate, on the statement of the complainant or the defendant or otherwise, that any person is likely to give material evidence for the complainant or for the defendant, the magistrate may issue a summons requiring the person to appear before the Court at the time stated in the summons, to give evidence respecting the case, and to bring with him or her any documents or things relating thereto which may be in his or her possession, power or control.”

“682. Warrant for witness disobeying summons or avoiding service

Where a person summoned as a witness without reasonable excuse fails to appear before the Court at the time specified in the summons, then after the proof upon oath that the summons was duly served on him or her, or that he or she wilfully avoided service, if the Court is satisfied by proof upon oath that the person is likely to give material evidence, it may issue a warrant to bring him or her before the Court, at the time stated in the warrant, in order to testify.”

[31] Interestingly, in her claim, Ms. Crisp alleges that the magistrate issued the warrant when there was no charge against her husband but as has been shown, this is not the case. In oral submissions, Mr. Fraser argued that the witness summons was unlawful as it was issued in circumstances where Constable Isidore clearly knew that he had not served Mr. Bowring, the defendant and could not have served him because he was out of the State. Interestingly, Ms. Crisp in her evidence indicated that on one occasion she had been called by someone who informed her that he had just seen her husband and she immediately called Constable Isidore to tell him that. This to my mind suggests that Constable Isidore would still have continued to make enquiries to see if the position as it related to Mr. Bowring’s

⁵ Cap. 3.01, Revised Laws of Saint Lucia, 2013.

presence on island had changed. The fact that the matter had not commenced as the defendant had not yet been served and a witness summons had been issued for the attendance of a witness does not to my mind make that witness summons unlawful or illegal as argued by Mr. Fraser. One may wish to question the investigating officer's management of the case but certainly the witness summons having been issued in accordance with the law (section 680 of the **Criminal Code**) cannot be said to be unlawful.

[32] Section 3 of the Constitution clearly allows for a person to be deprived of his or her liberty for the purpose of bringing him before the court in execution of an order of the court. Section 680 of the **Criminal Code** provides for the issuance of witness summons to any witness in a matter. Clearly, Ms. Crisp had been summoned as witness in the matter. As I indicated, Ms. Crisp has not presented any evidence to show that she was not to serve as a witness except the bald statements made in her affidavit in support. The very summons with which Ms. Crisp was served stated that she was being summoned as a witness to give evidence before the court. The claimant, being an accountant and a businesswoman cannot claim to have not been clear about what she was being summoned before the Court for as it is clearly stated. She provided no evidence to show that at any time she objected to serving as a witness. There is no evidence that she did so even on the day when she was brought before the magistrate on the Warrant to Arrest Witness After Summons.

[33] The warrant was issued for failure of the claimant to attend court after she had been properly served with a summons to attend court on 6th February 2013. As submitted by Ms. Drysdale, counsel for the defendant, the claimant has failed to show that the warrant could not have been issued by the magistrate in the circumstances of this case. Section 682 of the **Criminal Code** clearly empowers the magistrate to issue a warrant to bring a person before the Court in cases where they have been properly served and they fail to appear. The defendant

submits that there is no evidence that there was a breach of natural justice or that Constable Isidore was actuated by malice. I cannot see any merit in Mr. Fraser's argument that the only reason Ms. Crisp was brought before the court was to find out the whereabouts of her husband. The face of the warrant clearly says why it is issued and Ms. Crisp admitted to not having attended court on 6th February 2013 even though she had been served and was aware of the date.

[34] The magistrate was well within the confines of the law when he issued the warrant to arrest witness and therefore there was no breach of the claimant's right to liberty. She gave up her right to liberty when she disobeyed the summons which had been duly issued by the court asking that she attend court. By her own evidence she decided not to attend court on the 6th February 2013. In the circumstances, the claimant has not established that her arrest was unlawful.

[35] Section 3(3) of the Constitution provides that 'any person who is arrested or detained for the purpose of bringing him before a court in execution of the order of a court and who is not released shall be brought before a court without undue delay and in any case not later than 72 hours after such arrest or detention.' The Court finds that there was no breach of this section as Ms. Crisp was brought before the magistrate within the time stipulated in the section.

Conclusion

[36] It is clear that the claimant's right to liberty has not been infringed and her arrest and detention was well within the circumstances provided for in the Constitution. She has not established a breach of her constitutional right to liberty and as such is not entitled to damages for wrongful arrest and detention and for distress and inconvenience.

[37] In the circumstances, the claimant's claim is dismissed. No order as to costs.

**Justice Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar