

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2009/1045

BETWEEN:

SHAMAL CHARLES

Claimant

and

THE ATTORNEY GENERAL

Defendant

Appearances:

Mr. Horace Fraser for the Claimant

Mr. Dwight Lay for the Defendant

2012 : June 28;
2014 : December 10.

DECISION

- [1] **BELLE, J.:** This case provides an opportunity for the court to remind litigants who are arrested and detained by police of the proper way to vindicate those rights.
- [2] **The Facts:** The claimant claims that the defendant Attorney General is liable for damages caused to him by police officers who arrested and detained him at Richfond Police Station but later released him because no charge was proffered against him to justify the continuation of the arrest and detention.
- [3] There is some evidence that the police acted on a warrant to arrest the Claimant in response to the breach of a restraining order.

- [4] After the arrest and detention the Claimant sued the Attorney General for damages. The defendant Attorney General argues that the police have no knowledge of the arrest which the defendant claims to have suffered.
- [5] Indeed the only police officer named in the Claimant's witness summary did not attend the trial for cross examination and consequently his witness summary prepared on the behalf of the defendant was struck out.
- [6] The claimant did not produce a police station record of his arrest and since the police constable did not appear to be cross examined no further evidence of the alleged arrest could be produced. In addition the Attorney General argues that if the arrest did occur the police officers involved acted in good faith and had reasonable and probable cause for their actions.
- [7] The Defendant also claims that persons who are involved in effecting the court's process are protected by section 4 (5) of the Crown Proceedings Act Cap 2.05 of the Revised laws of Saint Lucia 2008. This statutory provision exempts the Defendant from any liability arising from anything done and also protects ay person while discharging or purporting to discharge any responsibilities which he or she has in connection with the execution of judicial process.
- [8] The defendant also denied that the claimant has suffered any loss and /or damage as alleged or at all in his statement of claim.
- [9] Counsel for the Defendant also argued in relation to the application of 14th March, 2012 that the Claimant/ Respondent's statement of claim filed on the 21st December, 2009 be struck out as disclosing no reasonable ground for bringing such a claim against the Defendant/Applicant. The Claimant's grounds are that the failure of the Claimant/Respondent to give notice of suit to the police officers, whose acts allegedly gave rise to the claim is fatal to the claim against the defendant/ applicant because of the provisions of Article 28 of the Code of Civil Procedure.
- [10] This aspect of the Defendant's defence which is based on Article 28 of the Code of Civil Procedure asserts that the claimant is required to serve notice of the claim (Writ of Summons) on the Defendants at least **thirty days** before the said claim is filed.

- [11] In this case the claimant failed to serve notice on the police officers who he alleged arrested him on 4th October, 2007 at about 9.45 p.m. The Defendant in fact has not served the police officers because they have not been named as defendants. The situation in this case is troubling because the Claimant would have had to identify the police officers involved in the alleged arrest by name and serve them notice of the intended claim one month before the claim is filed. All of this would have to be done before the claim becomes prescribed in 6 months pursuant to Article 2124 of the Civil Code unless the claimant is able to prove bad faith on the part of the Defendants.
- [12] In this case the claimant decided to proceed without naming the officers presuming that it was sufficient to name the Attorney General as the only Defendant.
- [13] Counsel for the Defendant is of the view that the claimant must be able to prove the charge against the police officers if he is to properly make a claim that the Attorney General is vicariously liable. Counsel for the defendant claims that this principle was established in the case of **Sonson v The Attorney General of Saint Lucia**, Civil Appeal No.5 of 2007 by the Court of Appeal but he is unable to produce a reasoned decision on the matter because the Court of Appeal did not deliver a written decision.
- [14] This court is therefore not truly guided by the Court of Appeal in this matter. Perhaps the Court of Appeal thought that this was a trite principle of law. But on the other hand the court may have thought that the principle had to be dealt with on a case by case basis and did not see the need to establish a precedent. Counsel for the Defendant relied on other authority to establish the point other than Halsbury's laws where the issue is discussed at page 700 of Wade and Forsyth, 10th Edition of the Text, Administrative Law, and based on which one may conclude that the Crown is able to rely on a defence belonging personally to a servant, pursuant to the provision in Section 4 (1) (a) of the Crown Proceedings Act. There was some discussion surrounding possible ambiguity of this proviso.
- [15] This court is left with these circumstances in relation to guidance on the state of the law. In my view we have to start on the premise that Article 28 of the Code of Civil Procedure and Section 4 of the Crown Proceedings Act must be read together to give a purposive meaning. Indeed it is presumed

that the need for notice before a claim is filed against the Crown is to provide the Crown time to investigate the matter even before a claim is filed. But this cannot be the only reason for the existence of Article 28 since in most cases the claimant's lawyer would have written to the Crown about the matter before filing a claim. In addition to this the Crown would be aware that there is limited time in which to communicate or negotiate prior to filing a claim. Hence there is quite a bit to be done before the Claimant can decide to give notice and file a claim.

- [16] It seems that the legal landscape is well weighted in favour of the Crown whatever may be the reasons for Article 28 and section 4 (1) of the Crown Proceedings Act. But ignorance of the law is no excuse therefore it is presumed that in contemplating the filing of a claim against the Crown the prospective Claimant is well advised of the law and is in position to decide whether they are able to overcome the strictures of the legal landscape. If they cannot they should not file the claim.
- [17] I am of the view that in a case where wrongful arrest and detention is alleged the Claimant should name the persons who are accused of having committed the unlawful act and include them as defendants. This is so because of the burden of proof which is always on the Claimant as a matter of law and pleading in one sense, the burden of establishing a case, but where in another sense the Defendant has the burden of adducing evidence which is relevant to this case.
- [18] It is clear that in this case the Claimant alleges that he was arrested and detained and was later released without explanation. He would be able to lead evidence of being arrested and being released without explanation. But the evidential burden would then shift to the Defendant to show that the arrest and detention was lawful. How would the Defendant be able to do that without being able to adduce the evidence which explains the circumstances of the arrest and detention.
- [19] When an arrest is made, many officers may be present but it may only be one or two who actually know why the person being arrested is being arrested and detained. If that officer is not named as a Defendant it would be impossible for anyone else to give first hand evidence which is not hearsay of the circumstances of the arrest. The persons responsible for the arrest should therefore be named as Defendants to provide the foundation for a fair trial and the proper basis for vicarious liability

[20] Part 8.7 (1) of the CP recognizes the need for this basic fairness when it states: "The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies."

[21] In this case the Claimant says no more than that certain officers came to his home assaulted and detained him. He was later released without any explanation. He does not name the police officers and state the role they played. How is the Attorney General to defend this case in circumstances where only one police officer who is alleged to have known about the arrest and detention is identified in the pleadings but not named as a defendant and therefore not required to deny the allegation or to give an explanation for the arrest?

[22] The evidential scenario in this kind of case is spelt out in Phipson on Evidence, twelfth edition, paragraph 95 on page 40:

"The onus probandi in this sense rests upon the party who would fail if no evidence at all, or no more evidence, as the case may be, were given on either side- i.e. it rests, before evidence is gone into, upon the party asserting the affirmative of the issue; and it rests after evidence is gone into, upon the party against whom the tribunal, at the time the question arises, would give judgment if no further evidence were adduced."

[23] I can understand that there may be circumstances in which the Crown admits that its officers have committed an unlawful act and have said so in correspondence or some other kind of communication, that the failure to compensate for loss may be followed by a Claimant against the Attorney General, without more, citing the communication that the alleged unlawful acts are not disputed. However where the circumstances of the alleged wrongdoing cry out for an explanation of which the Attorney General would be unaware unless appraised of the facts, the only just approach would be to name the persons who committed the wrong.

[24] In **Liversidge v Anderson** [1941] 3 All E.R 338 Lord Atkin speaks to the onus on the Defendant in a case involving false arrest in the following terms:

"The onus is on the person who arrested to prove the reasonable grounds, and the issue whether or not the cause is reasonable is to be determined by the judge."

.....
*I will refer to authority that the defendant in an action for false imprisonment based on unlawful arrest is entitled to succeed if he pleads and proves that the imprisonment was legally justifiable (**Allen v Wright** (1838) 8 C&P 522 and **Mure v Kaye** (1811) 4 Taunt 34),*

that he must show the cause of suspicion so that the court may judge of the reasonableness (**Stammers v Yearsly** (1833) 10 Bbing 35 and **Haynes v Mervis** (1826) 5 LJOS 47), that a man directing a constable to act on a suggestion of felony is bound to show probable cause of suspicion (**McClouhan v Clayton and Riding** (1816) Holt NP 478), that the plea must show reasonable and probable ground of suspicion, i.e. facts which raise a reasonable suspicion, not all the evidence (per Lord Campbell CJ), and it is for the court to say whether the facts pleaded show reasonable cause (per Whightman J in **Broughton v Jackson** (1852) 18 QB 378), that it is a good plea that the man was arrested on a reasonable suspicion of felony, but not enough that the suspicion was bona fide (**Sayer v Lichfold** (1854) 23 LTOS 324), that the civilian defendant must make out a reasonable ground of suspicion and that a felony has actually been committed (per Lord Tenterden CJ in **Beckwith v Philby** (1827) 6 B&C 635) , and more recent affirmation of the same principles in **Walters v W H Smith & Son Ltd** [1914] 1 KB 595). In all these cases, it is obvious that the courts were dealing with an objective fact to be proved before them by the defendant, and that their pronouncements would be nonsense if the inquiry had only been as to whether the defendant believed he had reasonable ground."

- [24] I am not prepared to hold however that Section 4 (4) of the Crown Proceedings Act requires that each alleged perpetrator of a wrong must be made a defendant. However where the Defendant would have to adduce evidence in his defence in order to properly defend the case, it is imperative that the alleged wrongdoers be named unless the parties have agreed otherwise. This principle would apply to all of the allegations made in the case namely assault, unlawful arrest and false imprisonment which are all connected by the alleged facts.
- [25] In the circumstances the claim must be struck out and costs are awarded to the Defendant pursuant to Part 65 of the CPR 2000. Consequently the issue of liability for the alleged assault, unlawful arrest and false imprisonment does not arise.


Francis Belle
High Court Judge