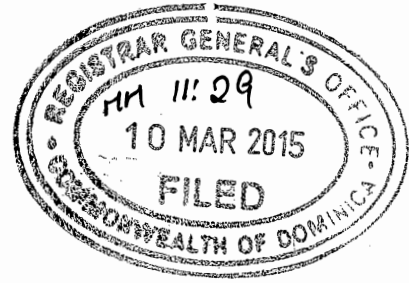


IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA



(CIVIL)

Claim No. DOMHCV2009/0054

BETWEEN:-

LEVIE MAXIMEA

Claimant

-and-

**THE CHIEF OF POLICE
THE POLICE SERVICE COMMISSION
THE ATTORNEY GENERAL OF DOMINICA**

Defendants

Before Justice Birnie Stephenson in Chambers

Dated the 30th day of January 2015

Appearances:

Claimant/Respondent in person

Miss Pearl Williams with Mrs. Joanne Xavier-Cuffy and Ms. Tara Leevy State Counsel on
behalf of the Defendants

ORAL RULING:

- [1] **STEPHENSON J:** The claimant in this matter represents himself. On the 6th April 2009, he filed an amended fixed date claim form which after a trial on the issue on the 13 July 2013 Justice Cottle

declined to grant the reliefs sought by the claimant. He successfully appealed the learned trial judge's decision and on the 14th November 2014, the Court of Appeal made the following order:

- a. A declaration that the Chief of Police was in breach of the Police Service Regulations in so far as he failed to forward to the Secretary of the Police Service Commission and the Permanent Secretary responsible for the Police Service a report each year in relation to the Appellant.
- b. The matter is remitted to the lower Court for a determination as to whether or not the Appellant is entitled to damages resulting in breach of regulation 31 and if so, in what quantum.
- c. Costs to the Appellant in the sum of \$2500.00.

[2] On the 3rd December 2014, the defendants sought an order for directions of the Court. At the hearing of the application the learned Judge based on the submissions presented, made the order that both parties file and exchange written submissions on the question as to whether the claimant is entitled to introduce new evidence for the purposes of assessment of damages by the 23rd January 2015.

[3] Both parties filed documents pursuant to the Court Order. The claimant filed his on the 13th January 2015 and the defendants filed theirs on the 23rd January 2015. The matter is now before me for ruling.

[4] I have perused the submissions filed by the claimant which I must say appeared to be very lengthy and thorough; however, his submissions were in support of his application for damages. He addressed at length the injustices meted out to him by the Commissioners of Police over the years and his damage, hurt and loss. He also submitted at length on the quantum of damages which should be awarded to him with detail and full authorities. The claimant also made submissions with authorities as to why he is entitled to be awarded aggravated damages. The claimant failed however to address the issue which the learned judge ordered, that is, as to whether he is entitled to introduce new evidence for the purposes of assessment. His submissions were therefore of no assistance to the Court on the issue.

[5] I now turn to the submissions made by the defendants in the matter.

[6] Learned Counsel, Ms. Pearl Williams, for the defendants submitted that there were two issues which fell to be decided by the Court as follows:

- (i) Whether the fresh evidence which was filed by the claimant in support of his application for damages was available for trial at the lower Court;
- (ii) Whether the Claimant should be allowed to rely on the evidence that came about after the claim was instituted and not pleaded.

[7] The Defendant relied on the case of **Ladd –v- Marshall**¹ which held that in order to justify the reception of fresh evidence or a new trial, three conditions must be satisfied:

- a. It must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial;
- b. The evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive;
- c. The evidence must be such as is presumably to be believed or in other words it must be apparently credible though it need not be incontrovertible.

[8] On the issue as to whether the fresh evidence in the affidavit (which paragraphs were identified by counsel in her submissions) was available when the trial came up for trial at the lower courts, learned counsel submitted that the evidence which the claimant is seeking to adduce by his own words, that is the words of the claimant occurred during the period 2003 to 2008 and was therefore known to the claimant at the time his claim was instituted and that based on the first limb of **Ladd –v- Marshall**² it has failed to meet the conditions which must be satisfied. Further that based on this authority it is not fresh evidence and the claimant should not be allowed to rely on it as it is due to his own neglect, accident or inadvertence he left out his evidence.

[9] Miss Williams further submitted that the claimant should not be allowed to rely on evidence that was never pleaded and she identified those paragraphs which contained the new evidence not pleaded. Counsel further submitted that it is an elementary rule of pleading that a party is bound by his pleading and unless he is allowed to amend them he is therefore bound by the fact/evidence which he has pleaded and is not allowed, as he did not seek nor obtain the courts leave to amend

¹ [1954] EWCA CIV. 1 (29 November, 1954)

² Supra

his affidavit to include the new evidence which came to his knowledge and attention after the commencement of the proceedings.

- [10] The defendants submitted that in the circumstances the claimant should not be allowed to rely on the new evidence for purposes of assessment of damages.

Courts considerations:

- [11] The claimant who is not represented by learned counsel has sought to file an affidavit in support of his claim at this juncture setting out the circumstances which, he is of the view entitles him to an order for not only damages but aggravated damages. In so doing he is seeking to introduce facts which were not included in his various affidavits which were filed prior to his affidavit of the 1st November 2014. The defendants are in essence objecting to the introduction of facts which they claim were in the claimant's knowledge at the time of filing having occurred prior to 2008 and the defendants are also objecting to the claimant's introduction of new facts and is asking this court to disallow the claimant, from adducing or relying on these facts in his claim.

- [12] All the remedies available in judicial review proceedings are subject to the discretion of the court. A number of different and various orders can be made in such proceedings including but not limited to remedies normally granted in private law such as damages. In the case at bar the Court of Appeal remitted this matter for decision as to whether or not damages could be awarded and if so what quantum.

- [13] Part 56 (1)(4) of CPR 2000 states:

"In addition to or instead of an administrative order the court may, without requiring the issue of any further proceedings, grant –
(a) an injunction;
(b) an order for the return of any property, real or personal; or
(c) restitution or damages."

- [14] In the case at bar the Court of Appeal made its findings as to the actions of the first named defendant as it relates to the claimant and remitted the matter to this court for determination as to

whether or not the appellant is entitled to damages resulting in breach of regulation 31 and if so, in what quantum.

- [15] Part 56.8 (2)(a) states that “... the court may on a claim for judicial review (*inter alia*) ... award damages

if the –

(i) claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates; or

(ii) facts set out in the claimant’s affidavit or statement of case justify the granting of such remedy or relief; and

(iii) court is satisfied that, at the time when the application was made the claimant could have issued a claim for such remedy.”

- [16] **Part 56.8.(3)** goes on to give the court case management powers which is to be exercised at any stage and the court pursuant to sub paragraph (b) can give “**appropriate directions**” under **parts 26 and 27 of CPR 2000**.

- [17] **Part 26 (1)** of CPR states the general powers of the Court as it regards case management. And at sub paragraph (w) the court can give directions or make an order for the purpose of managing the case and further the overriding objective.

- [18] Damages arising from any matter to which a Judicial Review Claim relates may be awarded if the court is satisfied that they would have been awarded in an ordinary claim stated at the same time as the judicial review claim and a person who has suffered loss as a result of unlawful administrative conduct has to claim and establish liability under a recognizable cause of action to claim damages³.

- [19] *It is noted that damages are not available simply because an application for judicial review is successful. Re: R –v- Metropolitan Borough of Knowsley*⁴.

- [20] According to **Blackstones**⁵ a claim for damages in Judicial Review matters should conform to the requirements of part 16 of the **UK CPR** which part deals with the Statements of Case including the

³ Blackstones Civil Practice 2009 para 74.58

⁴ Ex parte Maguire [1992] COD 499

⁵ Supra

contents of the claim form, contents of particulars of claims which is similar to Parts 8 and 10 of the CPR 2000 particularly parts 8.6 and 8.7 which address what must be included in the claim form and the claimant's duty to set out his case.

- [21] **Part 8:7(1)** CPR 2000 says that *"the claimant must set out all the facts upon which he relies, and, at **Part 20** a party may amend his statement of case with or without the leave of the court ..."* this section makes reference to case management conferences. In the case at bar because of the nature of the proceedings there was no case management conference as it regards the claim for damages, this has now come to the fore upon the order of the Court of Appeal.
- [22] Accordingly, in the circumstances, of the case and to do full justice to the case, I am not minded to grant the defendants' application, however, relying on the provisions of Part 56.8.3 and parts 26 & 27 of CPR 2000 I propose to give case management directions which will manage the further action to be taken in this court.
- [23] I wish to indicate to the parties it is my intention to micromanage the conduct of the further conduct of this matter based on what I perceive to be the claimant's tendency to prolixity.

