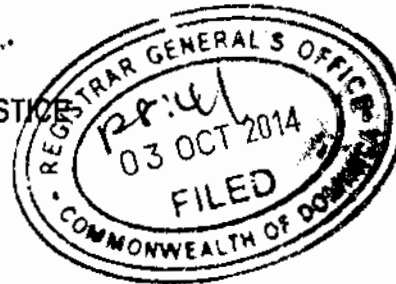


EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE



[CIVIL]

SUIT NO. DOMHCV2013/0017

BETWEEN:

[1] JOHN- ROSS REGISTE

Claimant

and

[1] POLICE OFFICER MERVIN CHARLES #258

[2] THE ATTORNEY GENERAL OF

[3] THE COMMONWEALTH OF DOMINICA

Defendants

Appearances:

Mrs. Dawn Yearwood-Stewart with Ms. Saudia Cyrus for the Claimant

Ms. Pearl Williams with Ms. Tara Leevy for the Defendants

2014: May 20th
October 3rd

JUDGMENT

[1] **THOMAS, J: [AG]** In this Claim, filed on January 17 2013, the Claimant, John- Ross Registe, Station Manager of Air Sunshine Airlines and of Antrizle, in the parish of St. David, claims against Police Officer, Mervin Charles of the Commonwealth of Dominica Police Force and the Attorney General of the Commonwealth of Dominica the following:

a) Damages including aggravated and exemplary damages for:-

- i. Assault and battery
- ii. False imprisonment

- iii. Malicious prosecution
- iv. Such further or other relief as may be just
- v. Costs.

Pleadings

- [2] In his Statement of Claim, the claimant pleads that he is the Station Manager of Air Sunshine Airlines and that at all material times he was the driver of a motor vehicle bearing the registration number PM 229. He pleads further that the first defendant is a Police Officer by profession and that at all material times he was attached to the Marigot Police Station, being part of the Dominica Police Force. And as far as the second defendant is concerned, it is pleaded that he is the Chief Legal Adviser of the State and as such is representing the State pursuant to the **State Proceedings Act**¹ and is vicariously liable for the actions of members of the Dominica Police Force while they are acting in the execution of their duties.
- [3] The claimant's case is that on April 15, 2012 at about midnight he was issued a ticket by the first defendant for parking less than 15 feet from a corner, and that after exchanges with the first defendant, he was handcuffed and thereafter arrested, taken to the Wesley Police Station, searched and placed in a cell for about 9 hours and later on the said day he was charged with refusing to give his name and granted station bail in the amount of \$1000.00.
- [4] The claimant pleads further that the sum of \$75.00, being a fixed penalty by law was paid on April 17, 2012 and that on the same day he attended court on the charge of failing to give his name, pleaded not guilty and the matter adjourned to October 3, 2012 when the matter was dismissed as no evidence was offered.
- [5] The claimant contends that: the prosecution was brought maliciously and without reasonable cause, and was actuated by malice jealousy, spite and ill will and clearly designed to humiliate the claimant and to tarnish his good name.
- [6] In support of his case, the claimant pleads particulars of injury sustained, particulars of assault and battery and special damages.

¹ Chap. 7:80

Defence

- [7] In their Defence², the defendants aver that on the night of April 15, 2012 the first defendant while on mobile patrol approaching the Exotic Bar and Grill in Marigot noticed a vehicle PM229 parked less than 15 feet from the corner and was causing an obstruction. The further averment is that the first defendant issued a ticket to that vehicle, pursuant to his lawful duties which was conveyed to the driver of the said vehicle. However, the first defendant's contention that he said he will pay the ticket is denied. Rather, the first defendant avers that while he was writing the ticket the claimant behaved in a manner to deter him from issuing the ticket.
- [8] With respect to whether the first defendant knew the claimant, the first defendant deposed that he did not know the claimant very well and that they are not well acquainted with each other, even though they both attended the same school, and further the first defendant did not know the claimant's name as alleged.
- [9] The alleged conduct of the first defendant as described in paragraph 7 of the claimant's Statement of Claim is denied by the first defendant. Instead the first defendant contends that: the claimant walked away from the first defendant while the first defendant was executing the ticket and had asked the claimant his name and address; in the circumstances the first defendant used reasonable force when he took the claimant's arm; but did not use an exaggerated police lock as reasonable force was used. It is also admitted that the claimant was handcuffed but the rough handling and pushing of the claimant is denied.
- [10] At paragraph 16 of the Defence, the defendants aver that the first defendant had reasonable and probable cause to lawfully arrest the claimant since the claimant refused to give his name when he was lawfully required to do so and walked away from the first defendant.
- [11] The particulars of injury and particulars of assault and battery as pleaded are denied by the defendants.

² Filed 21st February, 2013

- [12] At paragraph 24 of the Defence the defendants plead that the claimant's Claim is statute barred by virtue of section 2 of the **Public Authorities Protection Act**³ since the alleged incident occurred on April 15, 2012 and the Claim was filed on January 20, 2013 being more than six month thereafter.

Reply to Defence

- [13] In their Reply to Defence⁴ the following are pleaded: the first defendant knew the claimant's name; at the material time the first defendant was never composed, cool, calm nor collected; the first defendant never cautioned the claimant; the claimant never walked away while the first defendant was speaking to him, the claimant attended the St. Andrew's High School with the first defendant and saw each other on the road on several occasions and tagged each other; and there was a connection among the mother of the first defendant's child, her roommate, Stacy Common, the first defendant and the claimant in relation to a residence at King's Hill.

- [14] With respect to paragraph 24 of the Defence, the claimant contends that "the limitation defence is not maintainable under the authority of **Bryan v. Lindo**⁵ where it is stated that: "...the Public Authorities Protection Act did not protect public officers who were guilty of a malicious act or a felonious tort or crime."

Evidence

John-Ross Registe

- [15] John- Ross Registe, the claimant, in his Witness Statement⁶ gives his occupation, his knowledge of the first defendant as a result of both of them attending the St. Andrew's High School.
- [16] At paragraph 3 to 13, the claimant outlines the events which led to exchanges with the first defendant on Sunday April 15, 2012. These included: the first defendant indicating to him that he was issuing him a ticket for parking less than 15 feet from the corner; the claimant being handcuffed and shoved in the police vehicle, taken to Wesley Police Station and placed in a cell;

³ Chap. 7:60 of the Revised Laws of Dominica

⁴ Filed 11th March, 2013

⁵ [1986] 44 WIR 295

⁶ Filed 2nd July, 2013

the Claimant being charged with the offence of refusing to give his name to a Police Officer; the claimant appearing in court on April 17, 2012 and October 3, 2012 to answer the charge; and on the latter occasion the matter was dismissed for want of prosecution.

- [17] Under cross-examination the claimant admitted that he was wrongly parked and that P.C Charles was acting lawfully in issuing the ticket. In further evidence John-Ross Registe testified that the first defendant asked him for his name and he told him that he (the first defendant) should know his name.
- [18] Based on certain propositions put to Registe, he denied that: he never expected the first defendant to issue him the ticket; he was angry or embarrassed.
- [19] When cross-examined on the St. Andrew's High School, the following pieces of evidence emerged: it is impossible to go to school there and know the names of all the students since it is a big school; that a student's alias may be known but not his last name or you may know the last name but not the first; the first defendant had a right to ask him for his name; he finished at the school eleven years ago and in that time a person can change his name or address; his grades were not in the news or in the newspaper; his results were not shown to the first defendant; the first defendant could not know his (the claimant's) results; the first defendant could not know of his academic success; and he was being truthful when he said that the first defendant was jealous.
- [20] Under further cross-examination, the claimant said that on the night of the incident he was playing dominoes but he was not drunk and did not injure himself.
- [21] In re-examination, the claimant testified that he did not show his driver's license to the first defendant as he came up in his face, asked his name, and that at the time he (the claimant) took a step backwards. It is also the claimant's evidence that he and the first defendant are not best friends but know each other's names and meet in certain places and greet each other.

Hazim Georges

- [22] In his Witness Statement⁷ Hazim Georges says he is an Engineer and has known John-Ross all his life. He says that he also knows the first defendant's face but not personally.
- [23] According to his evidence he played dominoes with John-Ross on April 14, 2012 during the night at a bar in Atkinson and then went to the Exotic Bar to get food. He says that whilst waiting for the food he was told something and that as a result John-Ross and himself went outside and he saw young Officer Mervin Charles writing a ticket whereupon John-Ross asked him what was happening. According to the witness, the Officer asked John-Ross his name and the Officer went on to say he was giving John-Ross a ticket for parking close to a corner.
- [24] In further evidence the witness details the events after he saw the Officer come to John-Ross' face which led to the Officer placing handcuffs on John-Ross and then placing him in a police vehicle.
- [25] The witness also gives evidence of his attendance at court in Portsmouth on one occasion when the matter was adjourned.
- [26] Under cross-examination Hazim Georges testified that prior to the incident he knew the Officer by face but did not know his name.
- [27] As regards John-Ross' entry into the police vehicle, the witness said that he did not do so on his own.
- [28] With respect to being paid to appear in court, this was denied by the witness, Hazim Georges, and he went on to testify that he does not lose a day's pay if he has to come to court. The witness ended his evidence by saying that he came to court to support his good friend John-Ross.
- [29] There was no re-examination.

⁷ Filed 1st July, 2013

Devon James

- [30] Devon James in his Witness Statement⁸ says he knows both the claimant and the first defendant, but John-Ross was his friend.
- [31] At paragraph 3 of his Witness Statement, the witness gives an account of the events outside Exotic Bar involving the claimant and the first defendant and the issuing of a ticket to the claimant.
- [32] The witness also said that the Officer asked the claimant his name but he did not answer. He said he next saw the Officer hold the claimant to arrest him and ended up handcuffing him and then pushing him into the police vehicle and taking him away.
- [33] Under cross-examination James agreed that the Officer asked John-Ross for his name on more than one occasion, and there was no compliance with the request. The witness went on to say that he saw John-Ross hold out something to the Police but he was not sure but it looked like a driver's license.
- [34] Finally the witness admitted that we were given bus fare of \$14.00 for coming to court. The witness also maintained that he was only given bus fare and that he was not paid to support John-Ross in court.

Mervin Charles

- [35] Mervin Charles is the first defendant who is a Police Officer who at the material time was stationed at the Marigot Police Station.
- [36] The first defendant's evidence⁹ is centered on his approach to the Exotic Bar and Grill when he noticed a jeep with the registration number PM229 parked less than 15 feet from the corner thereby causing an obstruction to other users of the road. In the circumstances he started to write a ticket for parking less than 15 feet from the corner.

⁸ Filed 24th June, 2013

⁹ Filed 1st July, 2013

- [37] At paragraphs 6 to 10 of his witness statement, the First Defendant details the exchanges between himself and the claimant, after the claimant was told of the issuing of the ticket. In this connection the first defendant says the claimant was asked his name but this was not given with the claimant insisting that the first defendant knew his name and began walking away.
- [38] It is the first defendant's further evidence that in the circumstances reasonable force was used to arrest the claimant; while at the same time informing him of the reason for his arrest. He says also that the claimant was handcuffed.
- [39] In the remainder of the Witness Statement, the first defendant says that the claimant entered the police vehicle after the door was opened, without the help of Officer Adams or himself and taken to the Wesley Police Station and placed in a cell for 9 hours after he was searched.
- [40] In cross-examination, the first defendant testified that he knew the claimant from school but could not remember playing cricket with him. Nor could he remember the claimant being a visitor to a house in King's Hill where the mother of his child lived.
- [41] When cross-examined on the matter of the arrest, the first defendant testified that the claimant committed an offence by refusing to give his name. He also said that he had the right to issue the ticket to John-Ross, but he was not the only person issued a ticket. The witness went on to say that a ticket can be issued without knowing the person's name but he needed to know the claimant's name.
- [42] On being cross-examined in relation to the document¹⁰ at page 34 of the Trial Bundle, the first defendant said that the ticket does not provide for the name of the driver, only the registration number of the vehicle.
- [43] In further evidence the first defendant said that the claimant called his name but he did not tell the claimant that he did not know his name. He then added the following denials: he was not embarrassed and did not come up in the claimant's face or jack him up so that he fell on his vehicle; did not see the claimant with anything in his hand; he did not put the claimant in the police

¹⁰ Traffic ticket dated 1 April, 2012

vehicle which was a double cab; he did not see the claimant's head hit the top of the door; he did not cause the injuries identified by Dr. McIntyre; and he did not want to teach the claimant a lesson.

- [44] In re-examination the first defendant said that the first time the claimant gave his name was at the Wesley Police Station. And concerning the issuing of a ticket, the Officer said that if the person is not present it is affixed to the vehicle but if he is present you ask for his name and address and enter the information on the ticket.

Mervin Adams

- [45] Mervin Adams in his Witness Statement¹¹ says he is a Corporal of Police and was stationed at the Marigot Police Station on April 15, 2012. He says also that he knows the claimant and that on the said day he, along with other Police Officers were on mobile patrol.

- [46] At paragraphs 4 to 7 the witness gives the events surrounding the issuing of a ticket to the claimant by Officer Charles and the refusal of the claimant to give his name when asked to do so by the said Officer Charles. According to Corporal Adams, Officer Charles informed the claimant that his refusal to give his name was an offence and that he was going to arrest him. Further, that Officer Charles placed the claimant's hands behind his back and handcuffed him. He was then cautioned and escorted to the police vehicle and transported to the Wesley Police Station.

- [47] In cross examination the witness said he had no issue with the manner in which the claimant spoke to the first defendant. He added that Officer Charles was not vexed and that he did not hear the claimant tell Officer Charles he was in his space. Further that the claimant was not shoved into the vehicle by Officer Charles.

- [48] There was no re-examination of the witness

Issues

- [49] The following are the issues that fall to be determined:
1. Whether the arrest of the claimant was lawful?

¹¹ Filed 1st July, 2013

2. Whether the claimant's action is statute barred by virtue of Section 2 (1) of the **Public Authorities Protection Act?**
3. Whether the defendants are liable for assault and battery, false imprisonment or malicious prosecution?
4. Whether the claimant is entitled to damages, including aggravated damages and exemplary damages?
5. Who is liable in costs?

Issue No. 1

Whether the arrest of the claimant was lawful?

[50] It is the claimant's pleading that his arrest by the first defendant was unlawful.

Submissions

[51] The submissions¹² on behalf of the claimant is that there was no need to arrest in the circumstances since the claimant walked towards the first defendant while he was in the process of writing the ticket and then walked away, yet he was not charged with obstruction. The submissions continue in this way:

"30.. notwithstanding the Claimant's alleged behavior (which is denied) the First Defendant could have proceeded to issue the ticket and moved on. He did not require the Claimant's name to issue the ticket. The circumstances are vastly different with regard to **[Moore v The Queen¹³]** case where he was riding a bicycle and seen committing an infraction, the peace officer clearly needed his name to prefer the charges. A bicycle does not have a number plate unlike a motor vehicle.

31. We ask the court to find that in the case at bar, the First Defendant, motivated by malice, spite and ill will towards the Claimant for embarrassing him in the presence of his superior officer and trivializing the issuance of a ticket in the presence of his friends, used unlawful force against the Claimant and unlawfully arrested him, falsely imprisoned him and maliciously prosecuted him in a fit of rage.

32. As a result of the First Defendant's action while in the execution of his duties the Claimant sustained injury, loss and damage."

[52] On the other hand, it is the contention on behalf of the defendants that the arrest was lawful by saying that:

¹² Filed 12th June 2014

¹³ [1979] 1 S.C.R. 195

"Police Officers have all the powers of summary arrest (without warrant) granted to private citizens and more. In general, a Police Officer has the power to arrest without warrant anyone he suspects, with reasonable cause, is about to commit an indictable offence (or arrestable offence or whom he suspects has committed such an offence. This would obviously include someone whom he sees committing such an offence."

- [53] Various statutes with various powers of arrest are also cited and detailed. Included is section 116 of the **Vehicles and Road Traffic Act**¹⁴ which creates an offence of refusing to give a name and address on being requested so to do by a member of the Police Force:-

"116. A driver or conductor of a motor vehicle who commits an offence under this Act and-

- (a) refuses to give his name and address on being required to do so by a member of the Police Force; or
- (b) gives a false name or address.

commits an offence and is liable on summary conviction to a fine of five hundred dollars and to imprisonment for twelve months."

Reasoning

- [54] While Section 116 of the **Vehicles and Road Traffic Act**¹⁵ makes it an offence for a driver or conductor of a motor vehicle to refuse to give his name and address on being required to do so by a member of the Police Force, this must be taken in the context of this case. And the context is that while the first defendant was issuing the ticket the question of the claimant's name arose followed by the assertion by the claimant that the first defendant knew him from school.
- [55] The first defendant did admit under cross-examination that for the purpose of the issuing of a ticket the driver's name was not a requirement, but he needed to know the claimant's name. Even further the first defendant admitted that the document at page 3 of the Trial Bundle (being a copy of the ticket issued to the claimant) does not provide for the driver's name but only the registration number of the motor vehicle. Thus the hand writing of the claimant's name on the side of a prescribed form is unlawful.
- [56] But beyond that, the legal position is that the first defendant purported to arrest the claimant for his refusal to give him his name which is not a requirement of the law in the context of part viii of the Act and at sections 102, 103 and 104 thereof. Section 104 (3) of the **Vehicles and Road Traffic**

¹⁴ Chap: 46:50

¹⁵ *ibid*

Act¹⁶ simply provides for a fixed penalty which Parliament considered as a time and resource saving method to deal with less serious traffic offences. As such the power of arrest in section 116 of the Act cannot arise as the procedure regarding the issue is patent.

- [57] It is, therefore, the determination of the court that the first defendant had no jurisdiction to require the claimant's name in the context of the issuing of a traffic ticket. As such the arrest of the claimant was unlawful.

Issue No. 2

Whether the Claim filed by the claimant on January 17, 2013 in respect of an alleged act on April 16, 2012 is statute barred by virtue of Section 2 (1) of the **Public Authorities Protection Act**, Chap. 7:60?

- [58] At paragraph 24 of their Defence the following is pleaded:

"24. The Defendants further plead that the Claimant's Claim is statute barred pursuant to section 2 of the **Public Authorities Protection Act**. The alleged incident occurred on the 15th day of April, 2012 and the claim was filed more than six months later on the 20th of January, 2013."

- [59] In his reply the claimant pleads the following at paragraph 8:

"8. With regard to paragraph 24 of the Defence, the Claimant says that the limitation defence is not maintainable under the authority of **Bryan v Lindo** [1986] 44 WIR 295 where it is stated the **Public Authorities Protection Act** did not protect public officers who were guilty of a malicious act or a felonious tort or crime."

- [60] The **Public Authorities Protection Act**¹⁷ is: "AN ACT to provide for the protection of person acting in the execution of statutory or other public duties." And Section 2 (1) is in these terms:

"2 (1) Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Act, or of any public duty or authority, or of any alleged neglect or default in the execution of any such act, duty or authority, the following provisions shall have effect..."

¹⁶ Chap: 46:50

¹⁷ Chap. 7:60 of the Laws of Dominica

The first of these provisions is paragraph 2 (1) (a) and it has effect in relation to:

"The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of or, in case of a continuance of injury or damage, within six months next after the ceasing thereof."

Reasoning

- [61] The first defendant in his Witness Statement says he is a member of the Commonwealth of Dominica Police Force and that on April 15, 2012 he was on mobile patrol in the execution of his duties as a Public Officer. This leads to the common ground that the Police Officers derive their authority to act as Police Officers from the **Police Act**¹⁸, but it is also common ground that the protection provided is not unlimited.
- [62] It is the claimant's contention that by virtue of the decision in **Byron v Lindo**¹⁹, the **Public Authorities Protection Act** does not provide protection to Public Officers who are guilty of a malicious act or a felonious tort or crime.
- [63] The case cited concerned a soldier who shot a civilian and sought to exclude liability under the equivalent legislation in Jamaica. The lower court found in favour of the Plaintiff/Respondent and on appeal the findings were confirmed.
- [64] In the Court of Appeal of Jamaica, Justice of Appeal Carberry in giving his decision, with which the other judges concurred, reasoned in part thus:

"In the instant case, on the facts found by Downer J on the evidence before him, this was a case of deliberate and gratuitous shooting of the plaintiff, for no other reason than that the defendant was responding to the jeering of the police personnel present. It was not an act done in pursuance, or execution, or even intended execution of any law, or a public duty, or authority. It was clearly a case in which the defendant was using his pretended authority for some improper motive, whether spite, or for a purpose entirely outside the statutory or other justification.

The answer to the second question therefore is that the act complained of here, although done by a person prima facie entitled to the protection of the Act, was one which was not protected by the Act and fell outside the cover that the Act

¹⁸Chap. 14:01

¹⁹ [1986] 44 WIR 295

provides. This defence therefore failed, and the defendant was rightly found to be liable, the action having been filed within the ordinary period of limitation."

- [65] In the course of the judgment, Justice of Appeal Carberry referred to a number of cases in which the circumstances which would exclude the cover of the legislation was discussed. Principally, it was the issue of malicious action.
- [66] One of the principles emerging from the case of **Bryan v Lindo**²⁰ is that even if the action is commenced within six months, an improper motive by the Defendant removes the limitation.
- [67] The mischief of the legislation is that it has two mandatory and conjunctive conditions. The first is that if a Public Officer is sued the commencement of the action is limited to six months from the date of the alleged action. After the six months the limitation comes into play and the claimant cannot commence the action. The other condition of the protection is that the Public Officer must be acting within the scope of his duties to rely on the limitation. That is why the action of the soldier in the **Bryan v. Lindo** case did not have the protection or limitation as the court found that he was acting outside the scope of his duties as he was seeking revenge when he shot the claimant.
- [68] In this case, it is common ground that the event took place on 15th April, 2012 and the action was commenced or filed on 20th January 2013, being 9 months after the event. This puts the action outside of the limitation period. And even if the first defendant's action was done in vexation thereby making the unlawful arrest this does not help the claimant as the action was commenced outside of the six month period. Stated otherwise, the unlawful action does not remove or alter the limitation period.
- [69] It is therefore the determination of the court that the claimant's action is statute barred since it was not commenced within six months of the action sought to be litigated.

Disposals of issues No. 3 and 4

²⁰ *Loc cit*

- [70] The conclusion reached by the court on the limitation period means that issues nos. 3 and 4 do not arise for consideration. There was, however, a full trial within the meaning of Part 65.5 and Appendix C of CPR 2000.

Issue No. 5

Who is liable to pay costs?

- [71] The claimant must pay the defendants costs in the amount of \$1500.00, unless otherwise greed.

ORDER

IT IS HEREBY ORDERED as follows:

1. The claimant's action having been filed 9 months after the alleged event of 15th April 2012, rather than the prescribed period of 6 months, is statute barred by virtue of section 2 (1) of the **Public Authorities Protection Act**, notwithstanding the fact that the first defendant acted unlawfully in arresting the claimant.
2. Having regard to paragraph 1 above, Issues Nos. 3 and 4 do not arise for consideration.
3. The claimant must pay the defendants \$1500.00 in costs.



Justice Errol L. Thomas
High Court Judge (Ag.)