

SAINT LUCIA

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SLUHCV 2009/0214B

BETWEEN:

FREDERICK AUGUSTUS

Claimant

AND

THE MAYOR & CITIZENS OF CASTRIES

Defendants

Appearances:

Mrs. Cynthia Hinkson-Ouhla for the Claimant.
Ms. Esther Greene-Ernest for the Defendants.

2013: December 2nd.

JUDGMENT

[1] **WILKINSON J.:** On February 29th 2009, Mr. Frederick Augustus filed his origination motion and therein he sought the following relief:

- I. A declaration that the Castries Corporation bye-laws does not endow officers of the Castries City Council Constabulary with powers of arrest.
- II. A declaration that he was wrongly deprived of his liberty except by due process of law.
- III. A declaration that the Castries Corporation Bye-laws No. 87 of 2008 contains no powers of arrest.
- IV. A declaration that Mr. Augustus is entitled to redress under section 16 of the Saint Lucia Constitution Order 1978.
- V. Damages for malicious prosecution.
- VI. Any other relief the court deems fit.

Mr. Augustus filed an affidavit to support his originating motion and Corporal #16 Peter Cooper of the Castries City Council Constabulary filed an affidavit on June 23rd 2009, on behalf of the Mayor and Citizens of Castries (hereinafter "the Corporation").

The Issues

1. Whether Mr. Augustus' suit is an abuse of process in that Mr. Augustus has sought Constitutional redress rather than pursuing a civil action for false imprisonment.
2. Whether the Castries Corporation Bye-Laws S.I. No. 87 of 2008, provides for the power of arrest.
3. Whether Mr. Augustus has made out a case of false imprisonment.
4. Whether Mr. Augustus has made out a case of malicious prosecution.

The Evidence

- [2] There was no cross-examination as Counsel for the Parties informed the Court that they were of the view that the primary facts were more or less agreed. They asked the Court to proceed on the affidavits and submissions filed.

- [3] Mr. Augustus is a street vendor and for 3 years prior to the incident leading up to this suit, he vended through the streets of the City of Castries by pushing a cartload of ground provisions and seasonal fruits.
- [4] Prior to any street vendor vending in the City of Castries he/she must purchase from the Castries City Council (hereinafter "the Council") a vending permit (the document disclosed by Mr. Augustus and issued by the City Council was therein described as a 'ticket').
- [5] A vending permit/ticket can be purchased for various periods of monthly, quarterly, yearly, or temporary. The Court understands that the temporary permits include the daily permits and this was the nature of the permit/ticket disclosed by Mr. Augustus.
- [6] The vending permit/ticket was available from a clerk at the public market or a vendor could wait until the appointed collector moved around the City of Castries selling the permits/tickets to purchase his permit/ticket.
- [7] Mr. Augustus and the other holders of the Council's permits/tickets were only permitted to vend at the particular locations described on the permits/tickets.
- [8] Mr. Augustus exhibited a permit/ticket for the day of the incident, November 27th 2008, with a designated location "Castries Market Ticket". Other particulars on the permit/ticket were that it bore the stamp of the Council with the date of 27th November 2008, and a ticket fee of \$3.00 was stamped on it.
- [9] On November 27th 2008, at approximately 2:20 p.m. Mr. Augustus said that he was standing and leaning against his trolley outside the First Caribbean International Bank on Bridge Street, in the City of Castries when he was suddenly grabbed at the collar of his shirt by Police Constable 10 Desir of the Council's Constabulary and told that he was under arrest and "Let's go." According to Mr. Augustus he politely and respectfully responded: "If you are arresting me, let's go."

- [10] There was another vendor sitting in close proximity to Mr. Augustus when he was arrested but no inquiries were made of her and she was not arrested.
- [11] Mr. Augustus was taken to the offices of the Castries City Council and told to "sit down".
- [12] Mr. Augustus' Counsel, Mr. Tonjaka Hinkson arrived while he was at the Council's office and spoke with Police Constable 10 Desir and then he departed. Mr. Augustus was then charged under bye-law 27(c). He was released at approximately 4.30p.m after having been held for approximately 2 hours.
- [13] Mr. Augustus disclosed the Recognizance to Appear before the Magistrate's Court on December 18th 2008, and therein the charge read:
- "Charge with having on Thursday the 27th day of November 2008 at 2.30pm on Bridge Street in the City of Castries, first judicial district of this State did expose and offer for sale without a vendor's permit, in a location other than that designated by the Council a quantity of ground provision to wit: 'Dasheens' valued at \$100.00 E.C contrary to section 27(c) of the Castries City Council by-laws No. 87 of 2008."
- [14] On December 18th 2008, Mr. Augustus appeared before the Magistrate to answer the charge and at that time the charge against him was withdrawn. According to Mr. Augustus the charge was withdrawn because his Counsel, Mr. Tonjaka Hinkson informed Police Constable 10 Desir that Mr. Augustus was holding a vending permit/ticket for the day in question.
- [15] The witness for the Corporation, Corporal #16 Peter Cooper, a member of the Council's Constabulary said that it was he who arrested Mr. Augustus and not Police Constable #10 Desir as claimed by Mr. Augustus. This statement was not denied by Mr. Augustus in his reply affidavit. The Court accepts that it was Corporal #16 Peter Cooper and not Police Constable #10 Desir who was involved in the arrest of Mr. Augustus.

- [16] According to Corporal #16 Peter Cooper, on the day in question, he was on patrol of the City streets. He observed Mr. Augustus with a trolley containing ground provisions vending on Bridge Street next to the First Caribbean International Bank, an area where vending was prohibited.
- [17] This prohibition Corporal #16 Peter Cooper said was known to Mr. Augustus who on a daily basis obstinately refused to comply with the Council's vending rules pertaining to this particular prohibited vending area. To his knowledge the Council had ceased to issue Mr. Augustus with vending permits/tickets and this had led to Mr. Augustus filing suit SLUHCV 2008/0539 against the Corporation and therein he had alleged that since August 2008, the Council had denied him the opportunity to purchase daily vending permits/tickets.
- [18] He also said that while he agreed that Counsel for Mr. Augustus had spoken with him and informed him that Mr. Augustus was in possession of a permit for November 27th 2008, Mr. Augustus never produced the permit/ticket for him to view on November 27th 2008.
- [19] Corporal #16 Peter Cooper contradicted Mr. Augustus as to the reason for withdrawal of the charge before the Magistrate. He said the charge was withdrawn because the incorrect bye-law had been cited in the charge.
- [20] Mr. Augustus denied that he had been without vending permits/tickets since August 2008, and said that he was able to purchase vending permits/tickets since September 2008.

Law

- [21] The allegation by Mr. Augustus is one of unlawful arrest and in that regard he says that he relies on the **Saint Lucia Constitution Order 1978** which provides:

"CHAPTER 1

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

1. ...
2. ...
3. (1) A person shall not be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say:-
 - (a)...
 - (e) upon a reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law;...

16. ENFORCEMENT OF PROTECTIVE PROVISIONS

(1) If any person alleges that any of the provisions of sections 2 to 15 inclusive has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

(a) to hear and determine any application made by any person in pursuance of subsection (1); and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3),

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive):

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law. (My emphasis)

[22] While it is uncontestable the protection of the Constitution, however at the same time by the proviso at section 16 (2) of the Constitution, the Court is provided with a discretion as to whether to determine Mr. Augustus' suit under the Constitution or under any other provisions made in law.

[23] There are numerous cases addressing the issue of when cases such as Mr. Augustus' claim can be pursued pursuant to the Constitution and when they ought not to be allowed by the Court applying its discretion in the proviso at section

16(2). The cases state that when section 16(2) is applied and it is found that the suit ought not to have been pursued by way of Constitutional process then the Court of first instance is to act by striking out the claim as being an abuse of process.

- [24] On the exercise of the Court's discretion reference is made to **Kenrajh Harrikissoon v. Attorney General of Trinidad and Tobago** [1980] A.C. 265 where Lord Diplock said:

"These proceedings in which the appellant claims a declaration that human rights guaranteed to him by section 1 of the 1962 Constitution had been contravened and seeks redress from the High Court under section 6, are in their Lordships' view, wholly misconceived. ...

The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious.

The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under section 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom." (My emphasis)

- [25] In **The Attorney General of Trinidad & Tobago v. Siewchand Ramanoop** [2006] 1 AC 328 Lord Nicholls of Birkenhead said:

"17. Their Lordships view the matter as follows. Section 14 recognises and affirms the court's power to award remedies for contravention of chapter 1 rights and freedoms. This jurisdiction is an integral part of the

protection chapter 1 of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state's violation of a constitutional right. This jurisdiction is separate from and additional to ("without prejudice to") all other remedial jurisdiction of the court.

18. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation....

Misuse of the court's process

21. The Attorney General raised no objection to these proceedings taking the form of an originating motion seeking constitutional relief rather than a common law action for damages in respect of Mr. Ramanoop's unlawful detention and the assaults made upon him by PC Rahim. The Attorney General was right to do so. Police Officers are endowed by the state with coercive powers. This case involves a shameful misuse of this coercive power: compare the approach adopted by the Board in *Thornhill v. Attorney General* [1981] AC 61,74.

22. Had the facts set out by Mr. Ramanoop in his affidavit been disputed it might well have been appropriate for the court to direct that the proceedings should continue as though they had been by way of writ. An originating motion is a summary procedure. Satisfactory resolution of such disputes usually requires pleadings, discovery and oral evidence.

24. In *Harikissoon* the Board gave guidance on how this discretion should be exercised where a parallel remedy at common law or under statute is available to an applicant. **Speaking in the context of judicial review as a parallel remedy, Lord Diplock warned against applications for constitutional relief being used as a general substitute for the normal procedures for invoking judicial control of administrative action. Permitting such use of applications for constitutional redress would diminish the value of the safeguard such applications are intended to have. Lord Diplock observed that an allegation of contravention of a human right or fundamental freedom does not itself entitle an applicant to invoke the section 14 procedure if it is apparent this allegation is an abuse of process because it is made "solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action**

which involves no contravention of any human right”: [1981] AC 265, 268...

25. In other words, where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process. A typical, but by no means exclusive, example of a special feature would be a case where there has been an arbitrary use of state power. (My emphasis)

29. From an appellant's point of view this reason for seeking constitutional relief is eminently understandable. But this reason does not in itself furnish a sufficient reason for invoking the constitutional jurisdiction. In the ordinary course it does not constitute a reason why the parallel remedy at law is to be regarded as inadequate. Proceedings brought by way of constitutional motion solely for this reason are a misuse of the section 14 jurisdiction.”

[26] In **Jaroo v. Attorney General of Trinidad & Tobago** [2002]1 AC 871 Lord Hope of Craighead said:

“ABUSE OF PROCESS

29. Nevertheless, it has been made clear more than once by their Lordships' Board that the right to apply to the High Court which section 14 (1) of the Constitution provides should be exercised only in exceptional circumstances where there is a parallel remedy. In **Harrikissoon v. Attorney General of Trinidad & Tobago** [1980] AC 265, 268, Lord Diplock said with reference to the Trinidad & Tobago (Constitution) Order in Council 1962:... (My emphasis)

30. Lord Diplock repeated his warning against abuse of the constitutional motion in the context of criminal cases where there was a parallel remedy in **Chokolingo v. Attorney General of Trinidad & Tobago**... The same point was made recently in **Hinds v. The Attorney General** [2001] UKPC 56, where Lord Bingham of Cornhill said in paragraph 24 that Lord Diplock's salutary warning remains pertinent.

30. If, as in this case, it becomes clear after the motion has been filed that the use of the [originating motion] procedure is no longer appropriate, steps should be taken without delay to withdraw the motion from the High Court as its continued use in such circumstances will also be an abuse.”

- [27] Finally, in No. 40/1998 **Attorney General of Trinidad and Tobago v. Luciano Valley Vue Hotel (1998) Ltd. & Anr.** Chief Justice M de la Bastide said:

"This leads me to another aspect of this case which gives rise to some concern. It is that a complaint of what would appear on the face of it to have been a simple trespass to goods by the Comptroller of Customs should have been clothed in the garb of a constitutional motion.

It has become fashionable for anyone with a complaint, of whatever nature, against some organ of the State to bring their action as a constitutional motion alleging a breach of constitutional rights. The obvious attraction of this course is that in this way pleadings may be dispensed with and an early date of hearing obtained...

It is time, in my view, that this abuse of using constitutional motions for the purpose of complaining of breaches of common law rights, should be stopped. The only effective way of doing so is for the Court at first instance to dismiss summarily any process which on the face it seeks to force into the mould of a constitutional motion, a complaint of some tort or other unlawful act for which the normal remedy is an action at common law for damages or injunctive relief."

- [28] The Castries Corporation Bye-Laws S.I. No. 87 of 2008 were published on September 8th 2008. These bye-laws were made pursuant to section 142 of the Castries Corporation Act 1967. The applicable bye-laws are found under Part 4 of the Bye-Laws. At Part 4 it is provided:

**"PART 4
SALE OF FOODSTUFF**

Interpretation: Part 4

17. In this Part –

"Council" means the Castries City Council;

"Constable" means a police officer, member of the Council Constabulary;...

"vend" means to offer or expose for sale goods and services or to carry on a trade or business.

Prohibition on vending without permit

18.- (1) A person shall not be permitted to vend within the City of Castries unless he or she is in possession of a valid vending permit issued by the Council.

(2) A person who acts in contravention of this bye-law commits an offence.

Issuance of permit

20. (1) The Council shall issue a vending permit where it is satisfied that the applicant is a fit and proper person to hold such a permit and the vending site is suitable and appropriate for the purpose for which the permit is sought.

(2) A vending permit shall not be issued to any person who is under the age of eighteen years.

(3) A vending permit shall be subject to such-

(a) terms and conditions: and

(b) rules and regulations as laid down by the Council

(4) A vending permit shall specify the exact location within the City for which it is valid.

(5) A vendor who operates at a location other than that designated in the vending permit commits an offence.

(6) A constable may use force to remove from the vending area any person vending without a vending permit. (My emphasis)

Types of permit

21. A vending permit issued pursuant to bye-law 20 may be in any of the following categories:

(a) temporary;

(b) monthly;

(c) quarterly;

(d) yearly.

Fees

22....

Display of permit

23. A vendor shall display his or her permit in a prominent position at the designated location. (My emphasis)

Designation of vending zones and areas.

24. (1) The Council shall designate specific areas within the City as vending zones.

(2)

Part 5

Miscellaneous

Offence

36. (1) A person who acts in contravention of the provisions of these bye-laws commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars, and in default of payment to imprisonment, for any term not exceeding two years."

Findings and Analysis

- [29] Bearing in mind the learning cited on the first issue of when is it appropriate to apply for redress under the Constitution and when it is not, the Court could find nothing in the facts before it that show that Mr. Augustus had made out a case for seeking redress under the Constitution. The Court finds that no case has been made for the following reasons: (a) Mr. Augustus has nowhere pleaded or deposed that there was an abuse of power by the Council; (b) Mr. Augustus while admitting that he was in front of the First Caribbean International Bank on Bridge Street never asserts that that was a place where vending was permitted or designated for vending by the Council; (c) Mr. Augustus does not in his evidence depose that he had a right to be in front of First Caribbean International Bank on Bridge Street but rather says it was not him alone in front of the First Caribbean International Bank vending and that there was another lady vending who was not removed; (d) the matter of what was said before the Magistrate and so causing the case to be withdrawn remains disputed as the Court received 2 different versions of events from the 2 witnesses about what happened and without cross-examination the Court was not able to accept either; (e) even if the Court were to accept that Mr. Augustus' lawyer at the trial before the Magistrate told the prosecutor he had a permit/ticket for the day in question, the permit/ticket disclosed was for the vending area of the Castries Market and not for in front of the First Caribbean International Bank at Bridge Street; (f) there was no evidence that as was mandatory by the bye-laws that Mr. Augustus displayed his permit/ticket allowing him to vend in front of the First Caribbean International Bank on Bridge Street at any time on November 27th 2008; (g) Mr. Augustus at no time said that he offered to show Corporal #16 Peter Cooper his permit/ticket (since he failed to display it) either at Bridge Street or at the Council office where he was taken, rather a permit/ticket appeared only at December 18th 2008, some 3 weeks later in the Magistrate's Court.
- [30] On the Court's findings, the Court could at this juncture use its discretion and strike out Mr. Augustus' claim as being an abuse of process however, rather than striking out the suit the Court will use its discretion and proceed with the matter as

if it were filed by way of claim form alleging false imprisonment and malicious prosecution seeking relief by way of damages for same.

[31] Moving onto the second issue, that of whether the Corporation's Bye-Laws provides a power of arrest. Arrest has been described as "To restrain and detain a person by lawful authority."¹

[32] On the facts, Corporal #16 Peter Cooper is not a police officer but a Corporal defined at bye-law 17, a member of the Council's Constabulary. Not being a police officer he does not have the general power of arrest ascribed to police officers. The Criminal Code for example at section 570 provides that a police officer may arrest without warrant anyone who or whom he with reasonable cause, suspects to be in the act of committing or about to commit an offence.

[33] The Court refers to the Saint Lucia Air and Sea Ports Authority Act which too provides for specific officers described as port constables to assist in enforcing provisions of the Act.

[34] By section 74(3)(f) the port police are to generally assist with the enforcement of the provisions of the Act and its regulations and by section 86 the port police are given specific powers of arrest:

"86. POWERS OF ARREST

(1) Any person who commits any offence mentioned in sections 76,77 or 85 may be arrested without warrant by any officer authorised by the General Manager, police officer or port constable."

There is no similar provision for a constable such as Corporal #16 Peter Cooper who is strictly a member of the Council's Constabulary.

[35] Bye-law 20(6) by use of the word "may" appears to be giving Corporal #16 Peter Cooper a discretion as to whether or not to use force to remove persons from vending in areas where they are not permitted. The bye-law does not speak of

¹ L.B Curzon, A Dictionary of Law 2nd ed.

arresting such person who is deemed to be vending in a place not permitted or as the case may be, vending without a permit/ticket.

- [36] The Court also observes that by the use of the word “may” it appears as if bye-law 20(6) is giving a discretion to Corporal #16 Peter Cooper as to when and when not to enforce the bye-laws against vending without a permit/ticket. In the Court’s view enforcement of the Council’s bye-laws when breached cannot be discretionary.
- [37] The power to arrest in the Court’s view must be set out in legislation in clear and unambiguous language for persons such as Corporal #16 Peter Cooper and without such, given the nature of the power behind the action of an arrest, the Court finds that neither bye-law 20(6) nor any other provision in the bye-laws empowers members of the Council’s Constabulary such as Corporal #16 Peter Cooper to arrest any individual.
- [38] The Court therefore declares that there is no power of arrest provided to Corporals such as Corporal #16 Peter Cooper in the Castries Corporation Bye-Laws.
- [39] This brings the Court to the third issue of whether Mr. Augustus has made out a case for false imprisonment. The Court would have to answer “Yes” because of the Court’s earlier finding that the Corporation’s Bye-laws did not provide a power of arrest and therefore Corporal #16 Peter Cooper could not bring Mr. Augustus to the Council’s office in the manner that he did and hold him there.
- [40] In assessing what amount of damages to award Mr. Augustus for approximately 2 hours of false imprisonment, the Court believes that it must look at all the facts. It appears to the Court that Mr. Augustus was not exactly blameless in the events leading to his false imprisonment. He could be described as having triggered the events which transpired by vending in an area in which he has not before the Court proved that he had permission to vend; he failed as required by the bye-laws if he was in possession of a permit/ticket to display it; the permit/ticket he disclosed as stated prior allowed for vending at the Castries Market. Further, he

provided no evidence that outside the First Caribbean International Bank on Bridge Street was a place where vending was allowed but rather he said that while he was arrested and removed from the site, another female vendor was allowed to remain.

[41] Having regard to those factors, the Court awards Mr. Augustus \$2500.00 in general damages.

[42] This brings us to the final issue of whether Mr. Augustus has made out a case of malicious prosecution. Malicious prosecution, a tort, requires Mr. Augustus to prove that he has sustained damage, that he was prosecuted, that the prosecution ended in his favour, that the prosecution lacked any reasonable and probable cause, that the Council acted maliciously i.e with some other motive than a desire to bring to justice a person whom the Council believed to be guilty².

[43] Aside from Mr. Augustus saying to the Court that before the Magistrate the matter was withdrawn because his then Counsel told the prosecutor that he had a permit/ticket for the day in issue, and which version of events is disputed by Corporal #16 Peter Cooper, Mr. Augustus has not provided the Court with any evidence or particulars to fulfil any of the other requirements when alleging malicious prosecution.

[44] The Court therefore finds that Mr. Augustus has failed to make out a case of him being maliciously prosecuted by the Council or Corporation.

[45] There will be no award of costs Mr. Augustus having committed an abuse of process by bringing a Constitutional suit when he ought to have filed an ordinary claim.

² Brown v. Hawkes [1891] 2 QB 718.

[46] Court's Order:

1. The Corporation is to pay Mr. Frederick Augustus general damages in the sum of \$2500.00.
2. No order for costs.


Rosalyn E. Wilkinson
High Court Judge

