

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2007/0866

BETWEEN:

JOSEPHAT SMALL

Claimant

and

[1] PC 711 LESTER BYRON

**[2] INSPECTOR MAYNARD (Both of Criminal
Investigation Department, Castries)**

[3] THE ATTORNEY GENERAL

Defendants

Appearances:

Mr. Colin Foster for the Claimant

Mrs. Brender Portland-Reynolds for the Defendants

2011: September 5.

JUDGMENT

- [1] **GEORGES, J. [AG.]:** This is an application for leave to appeal filed by the Defendant Honourable Attorney General of Saint Lucia.

Background

- [2] On 8th October 2007 the Claimant Josephat Small filed a notice of intended suit declaring his intention to bring proceedings against the 3rd named defendant in respect of misfeasance in public office malicious prosecution and false imprisonment. On 9th November 2007 he made good his intention by filing a claim form with accompanying statement of claim in which he sought special damages in the sum of \$20,000.00 general damages for pain suffering and injury to feelings, interests and costs.

- [3] His claim allegedly arose out of his arrest on 10th May 2007 by the police who he claimed wrongfully and intentionally and in abuse of the legal process caused or facilitated an assault on him by other detainees in his holding cell at Central Police Station.
- [4] On 18th January 2008 the defendants asked for the claim to be struck out on the grounds that it disclosed no cause of action. The matter was thereafter scheduled for case management conference on 28th September 2008. On that date Master Pearletta Lanns adjourned the case management conference to 23rd October 2008.
- [5] The learned master thereafter ordered at case management on 23rd October 2008 that the case management conference be adjourned to 28th November 2008 to allow Mr. Foster to file and serve written application to amend the statement of claim. On 23rd November 2008 leave was granted to the defendant to amend his statement of case and it was ordered that an amended statement of case be filed and served within 7 days.
- [6] It appears that the claimant around this time made an oral application to amend the statement of claim which he was ordered to put in writing by the learned master. A formal application in accordance with Part 6 CPR was not however made and the claimant filed a written submission on 21st November 2008 outlining the amendments he wished to make and the legal authorities in support.
- [7] This decision of the learned master is the trigger which set off the current application for leave to appeal. On 9th December 2008 the learned Attorney General filed a Notice of Application for leave to appeal the learned master's order. On 21st January 2009, Justice Brian Cottle ordered that the matter be brought to the attention of the Court of Appeal. The learned Attorney General brought a fresh application for leave to appeal.
- [8] Before venturing further I pause to say that this court had jurisdiction to hear and grant an application for leave to appeal. CPR 62.2(1) clearly states that the Court

of Appeal is not the only court of competent authority to grant leave to appeal as this can be done by the "court below".

- [9] Having accepted that this court has jurisdiction to hear the application to my mind the only issue that remains to be considered in light of the oral submissions of counsel for both sides is whether the application for leave to appeal is out of time on the basis that because the appeal is a procedural appeal the applicant has only 7 days to file his application for leave.

Submissions

- [10] Learned Counsel for the claimant/respondent opposed the application for leave on a number of grounds the most significant of which is that the application is out of time because the appeal is a procedural appeal which gives the applicant only 7 days in which to appeal. CPR 62.2(1) stipulates that:

"If an appeal may be made only with the leave of the court below or the court, a party wishing to appeal must apply for leave within 14 days of the order against which leave to appeal is sought."

- [11] CPR 62.1(2) defines procedural appeals in the following terms:

"Procedural appeal means an appeal from a decision of a judge, master or registrar which does not directly decide the substantive issues".

- [12] On this premise I am fully satisfied that the appeal here would be in the nature of a procedural appeal. The question to be answered therefore is whether by filing the application for leave to appeal on 8th December 2008 from the decision of the learned master made on 23rd November 2008 the applicant (defendants) are out of time. That is to say: Is the time period for applying for leave to appeal on a procedural appeal 7 days or 14 days?

- [13] It is my considered view that the period for making the application is 14 days after the decision from which the applicant seeks to appeal was made. CPR 62.2(1) (supra) is clear that where leave is required then 14 days is the prescribed period within which a party wishing to appeal must apply.

Conclusion

- [14] In light of the foregoing, leave is hereby granted to the defendants to appeal the decision of the learned master. Costs to the applicant in the sum of \$500.00.



Ephraim Georges
High Court Judge [Ag.]