

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO. 220 of 2001

BETWEEN:

JOHN PIERRE

Claimant

and

ST. LUCIA AIR & SEA PORTS AUTHORITY

Defendant

Appearances:

Ms. Lorraine B. Williams for the Claimant.

Mr. Hilford Deterville for the Defendant.

2002: February 06
February 13

JUDGMENT

[1] **HARIPRASHAD-CHARLES J:** By Writ of Summons indorsed with a Statement of Claim filed on the 8th day of March 2001, the Claimant commenced the current proceedings against the Defendant, his former employer claiming damages for wrongful dismissal and breach of contract of employment.

[2] On 16th day of October 2001, the Defendant applied for an Order to set aside the Writ of Summons issued herein on the ground that the Claimant has failed to comply with the requirements of Section 90 of the Saint Lucia Air and Sea Ports Authority Act No. 10 of 1983. The Summons was supported by a duly sworn affidavit of the General Manager, Mr. Vincent Hippolyte.

[3] Section 90 of the Saint Lucia Air and Sea Ports Authority Act provides that:

“Where, after the commencement of this Act, any legal proceedings is commenced against the Authority for any act done in pursuance, or execution or intended execution of this Act, or regulations or of any public duty or authority imposed or conferred by this Act or any regulations, or in respect of any alleged neglect or default in the execution of this Act, such regulations or of any such duty or authority, the following provisions shall have effect notwithstanding anything contained in any enactment, that is to say –

- (a) the legal proceeding shall not be commenced until at least one month after written notice containing the particulars of the claim, and of the intention to commence legal proceeding, have been served upon the General Manager by the plaintiff or his agent;
- (b) the legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default or damage complained of, or in the case of a continuing injury or damage within six months next after the cessation thereof.”

[4] At paragraph 5 of his affidavit, Mr. Vincent Hippolyte deposed that no written notice containing the particulars of the claim and the intention to commence legal proceedings have been served on the Authority. This critical bit of evidence remained uncontradicted.

[5] However, Mrs. Williams, Counsel for the Claimant cleverly sought to introduce a letter dated 25th day of February 2000 but was estopped from doing so by the vigilant Mr. Hilford Deterville, Counsel for the Defendant.

[6] It is crystal clear that the Claimant has violated the provision of Section 90 (a) of the Saint Lucia Air and Sea Ports Authority Act [supra]. It logically follows that the Writ of Summons issued herein should be set aside.

[7] An ancillary issue however arises: does the Court have discretion in this matter? Section 90 (a) states that “ the legal proceeding ‘**shall**’ not be commenced...” and Section 90 (b) states that “the legal proceeding ‘**shall**’ not lie or be instituted...” The question whether provisions in a statute are directory or imperative has frequently arisen in our courts, but it has been said that no general rule can be laid down, and that in every case the object of

the statute must be looked at. While this issue was not actively canvassed, I am of the view that the word “shall” in the statute is mandatory and not directory and therefore, the Court has no discretion.

[8] In case I was wrong to conclude that the Court has no discretionary power, the Defendant’s alternative argument is that subsection (2) of Section 90 has not been complied with. At paragraph 4 of the Claimant’s Statement of Claim, he alleged inter alia that by letter dated the 22nd day of September 1999, he was summarily dismissed from the Defendant’s employment.

[9] The Defendant convincingly argued that the claim is statute-barred since the Writ of Summons was issued some seventeen months after the alleged dismissal took place whereas the Statute expressly provides that *“the legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default or damage complained of...”*

[10] Mrs. Williams, on the other hand submitted that the Claimant’s case is not frivolous or vexatious but it is merely a failure to comply with a procedural rule. In support of her argument, Counsel referred to Part 26.3 of CPR 2000 and the cases of **Finnegan v Parkside Health Authority [1997] 1 WLR 411** and **Costellow v Somerset County Council [1993] 1 WLR 256**. In the **Finnegan’s case**, the issue was what is the principle underlying the exercise of the court’s discretion when an extension of time is sought under R.S.C., Ord. 3 r. 5. In the **Costellow’s case**, the plaintiff was seeking an extension of time for the service of his writ, claiming damages for personal injuries, which had been issued within the three-year limitation period but was not served until after the expiry of the four-month period allowed for service. Both of these cases involve procedural default and I agree entirely with Mrs. Williams on that aspect of the law. However, I disagree with Counsel that the instant case concerns a procedural default. With greatest respect for Counsel, I find the submission to be specious.

[11] The present case centers on the expiry of the limitation period. Section 90 relates to a right and not to practice and procedure. The Defendant Authority has a right to hold that once twelve months has passed, the claim is dead. However, this is not the sole and principal issue of the case. The Defendant submitted that no written notice containing the particulars of the claim and the intention to commence legal proceedings have been served on the Authority and that the claim arose some seventeen months after the alleged dismissal of the Claimant rendering it statute-barred. I agree with the two-pronged submissions of the Defendant.

[12] Accordingly, my Order will be that the Writ of Summons issued herein on the 8th day of March 2001 is hereby set aside and that the Claimant will pay to the Defendant the Costs of \$1,000.00 no later than 13th day of August 2002.

INDRA HARIPRASHAD-CHARLES
High Court Judge