



IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF
THE EASTERN CARIBBEAN SUPREME COURT (DOMINICA)

CCJ Application No DM/A/CV2021/001
DM Civil Appeal No DOMHCVAP2020/0013

BETWEEN

LEVI MAXIMEA

APPLICANT

AND

THE CHIEF OF POLICE
THE POLICE SERVICE COMMISSION
THE ATTORNEY GENERAL

RESPONDENTS

Before the Honourable:

Mr Justice A Saunders, PCCJ
Mr Justice J Wit, JCCJ
Mr Justice W Anderson, JCCJ

On Written Submissions

Mr Levi Maximea on his own behalf

Ms Nadira Lando for the Respondents

Tort – Misfeasance in public office – Res judicata – New application for special leave claiming issues different from previous proceedings – Whether provision in rules authorising court to strike out a claim for abuse of process is unconstitutional – Whether bringing action of misfeasance is statute-barred – Eastern Caribbean Supreme Court Civil Procedure Rules 2000, r 26.3(1) – Eastern Caribbean Supreme Court (Dominica) Act, s 11(1) – Limitation Act 1980 (UK), s 2.

Cases referred to

Hunter v Chief Constable of the West Midlands Police [1982] AC 529; *National Bank of Dominica Ltd v Purple Turtle Development Co Ltd* (ECSC HC, 14 March 2014).

Legislation referred to

Dominica – Eastern Supreme Court (Dominica) Act Chap 4:03, Police Service Commission Regulations; **United Kingdom** – Limitation Act 1980, Eastern Caribbean Supreme Court Order 1967.

Other Sources referred to

Eastern Caribbean Supreme Court Civil Procedure Rules 2000.

JUDGMENT
of
The Honourable Justice Saunders, President and The Honourable Justices Wit
and Anderson, Judges

Delivered by The Honourable Justice Saunders, President
on 19th day of July 2021

- [1] Levi Maximea, appearing in person, sought special leave to appeal a High Court decision made against him and the Court of Appeal's judgment refusing his application for leave to appeal that decision.
- [2] The case has a long history. Mr Maximea, a former police officer, first launched court proceedings in January 2005 when he alleged that he was wrongly denied prospects for promotion. His statement of case was struck out and his appeal against that decision was unsuccessful. Four years later, on 24 March 2009, he brought proceedings for judicial review seeking several administrative orders against the Chief of Police, the Police Service Commission, and the Attorney General ("the Respondents"). He amended this claim to allege against the Respondents as well the tort of misfeasance in public office.
- [3] His case was tried on 21 October 2011. His claims were dismissed by the trial judge. He appealed to the Court of Appeal ("the First Appeal"). That court resolved the appeal by determining that the Chief of Police had breached Regulation 31 of the Police Service Commission Regulations and that as a result Mr Maximea was entitled to damages. The case was sent back to the High Court for an assessment of the damages that should be paid to him.
- [4] Mr Maximea was apparently satisfied with that judgment of the Court of Appeal. He did not appeal any aspect of it further to this Court. Moreover, in a subsequent affidavit filed by him, he indicated that he had obtained then the relief he was seeking. His case therefore went back before the trial judge, as ordered by the Court of Appeal, for an assessment of the damages due to him.
- [5] The trial judge assessed his damages at EC\$20,000.00 and ordered that this sum, together with interest from the date of judgment and costs, be paid to Mr

Maximea. He was not satisfied with this outcome. He appealed the trial judge's Order to the Court of Appeal ("the Second Appeal"). He argued that the trial judge erred in not finding that the conduct of the Chief of Police had caused him to lose his chance of promotion through the ranks right up to the office of Chief of Police. He also contended that the damages awarded were inordinately low. In addition, he again raised the issue of misfeasance in public office.

- [6] The Court of Appeal rightly took the view that this renewed claim of misfeasance in public office, a live matter before the Court of Appeal in the First Appeal, was outside of the remit of the trial judge. The Court of Appeal did not consider that the damages awarded by the trial judge were inadequate in the circumstance of the case. The Court of Appeal dismissed the appeal.
- [7] Mr Maximea sought special leave of this Court to appeal the Court of Appeal's treatment of the Second Appeal. This Court refused special leave on 2 March 2020. We decided that Mr Maximea did not have a reasonable chance of success as no evidence had been produced by him to justify an increase in the award of damages.
- [8] That should have been the end of this matter. Mr Maximea, however, filed new proceedings before the High Court on 29 June 2020, again alleging against the Chief of Police misfeasance in public office. The trial judge, Stephenson J, took the view that his claims were *res judicata* and, in any event, statute barred. The judge struck out his claims for abuse of process. An appeal to the Court of Appeal was unsuccessful for the same reasons given by Stephenson, J.
- [9] Mr Maximea now seeks special leave to appeal to this Court. He claims that the issues in this case are different from those in the previous proceedings. He makes the extraordinary submission that Rule 26.3(1) of the Eastern Caribbean Supreme Court Civil Proceedings Rules 2000 ("the CPR") is unconstitutional and void. Rule 26.3(1) is the provision that authorises the court to strike out a claim for abuse of process. On the issue as to whether his present action is statute-barred, Mr Maximea states that neither the Constitution nor the CPR provides any time limit for bringing an action for misfeasance.

- [10] Once again, we deny the application for special leave. The claim of misfeasance in public office was already argued in the proceedings that culminated in the First Appeal. The Court of Appeal did not then give any relief on that claim. Having not appealed that ruling (assuming that there would have been any merit in such an appeal, which assumption we do not make) Mr Maximea is not entitled now to re-litigate that matter. The claims which were before that court became and are *res judicata*. They cannot be re-litigated again among the same parties in respect of the same dispute.
- [11] The CPR are made under and by virtue of s 17 of the Eastern Caribbean Supreme Court Order (“the Court’s Order”). The Court’s Order has constitutional effect in the Commonwealth of Dominica. Section 17 of the Court’s Order authorises the Chief Justice and two judges of the court to regulate the practice and procedure of the High Court and the Court of Appeal in relation to their respective jurisdiction and powers. There is nothing unusual, irregular, or unconstitutional about a superior court taking upon itself the power to strike out a claim for abuse of process. Indeed, even without Rule 26.3, such an entitlement is an inherent feature of all superior courts to prevent misuse of their procedures¹. The claim that Rule 26.3(1) of the CPR is unconstitutional lacks merit. Justice Stephenson was entitled and right to strike out the claim.
- [12] Mr Maximea’s claim is for the tort of misfeasance. He is misguided in seeking to elevate this claim in tort to a constitutional infringement. The Respondents submit that section 11(1) of the Eastern Caribbean Supreme Court (Dominica) Act,² by implication, incorporates section 2 of the Limitation Act UK 1980. Section 2 provides that an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued. It is unnecessary for the Court to rule on that submission although the Court observes that in *National Bank of Dominica Ltd v Purple Turtle Development Co. Ltd*³ the point was taken for granted in the judgment of the High Court. The fact is that Mr Maximea’s complaints are about events occurring before

¹ See: *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529, 536.

² Chap 4:02.

³ (ECSC HC, 14 March 2014).

he brought his first case in 2005. Quite apart from being *res judicata* claims in tort will not be entertained after such a prolonged lapse of time since the claimant became aware of them.

- [13] The application for special leave is therefore dismissed. Mr Maximea shall pay to the Respondents the costs of this application to be taxed if not agreed.

/s/ A Saunders

The Hon Mr Justice Saunders (President)

/s/ J Wit

The Hon Mr Justice Wit

/s/ W Anderson

The Hon Mr Justice Anderson