

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV1999/0475

BETWEEN: PETER CLARKE

Claimant

And

- 1.The Attorney General**
- 2.The Commissioner of Police**
- 3.Police Constable Bruce Gregg**
- 4.Police Constable Labadie**
- 5.Police Constable Lesfloris**
- 6.Danny Dariah**

Defendants

Appearances:

Ms P. Nelson for Claimant

Ms J. Drysdale and Mr. D. Lay for Defendants

2004: April 5, 19

JUDGMENT

1. **EDWARDS J.** by an application filed on the 6th November 2003, the first defendant the Attorney General has asked the court to make an order to include the following:

(1) That the statement of case filed on the 1st June 1999 discloses no reasonable ground for bringing the claim.

In the alternative-

(2)...

(3) That the Commissioner of police as the second named defendant be struck out as a party to this action in so far as he is not a proper party.

2. This action was brought by Mr. Peter Clarke who since the 21st November 1990 had been making maintenance payments for his daughter Lovena, pursuant to the Court Order made in the First District Magistrate's Court.
3. The third, fourth and fifth Defendants Police Constables Bruce Gregg, Labadie and Lesfloris (the 3 Police Officers), were in December 1998 attached to the Writ and Prosecution Department at the Central Police Station.
4. Mr. Danny Dariah the sixth Defendant, at the material time was a Clerk at the Court Office of the First District Magistrate Court.
5. All of the defendants were at the material time public officers to whom section 28 of the Civil Code of Procedure, Chapter 243 (the CCP Cap, 243) applies.

THE BACKGROUND FACTS

6. While fulfilling his public duty as a Clerk of Court, Mr. Dariah issued a Warrant of Apprehension for Disobedience of Order, signed by Magistrate Nigel Toussaint, to be forwarded to the Writ Department of the Police Force for execution against Mr. Clarke.
7. The 3 Police Officers, while discharging or purporting to discharge their responsibilities in connection with the execution of this Warrant, arrested Mr. Clarke and took him to the Central Police Station.

8. By Notice dated 26th February 1999 the Attorney General and the Commissioner of Police were informed, that proceedings would be instituted against them and the 3 police officers.
9. Mr. Clarke has claimed damages for false and wrongful imprisonment and assault against the persons mentioned in the said Notice of Intention to Institute Legal Proceedings, and Mr. Dariah
10. On the 5th April 2004, I heard submissions from Counsel for the parties and reserved my decision. I shall deal first with the submissions relating to the joinder of the Commissioner of Police

The Commissioner of Police as a Party

11. The pleadings do not establish why the Commissioner was joined. By paragraph 3 of the Statement of Claim the 3 police officers are acknowledged as public servants and servants of the Attorney General. In these circumstances Counsel Ms Drysdale simply argued that since the Commissioner was not the employer of the 3 Police Officers, there could be no case against him.
12. The duties of the police officers do not depend on the mandate of the Commissioner but on Statute. Section 21(1) of The Police Ordinance No.30 of 1965 as amended states:

“Every police officer shall have throughout...[St. Lucia]...all such authorities, privileges, protection and advantages, and be liable to all such duties and responsibilities as any police officer duly appointed now has or is subject or liable to or may hereafter have or be subject or liable to either by the common law of England, or by virtue of any law which now is or which may here after be in force in [St Lucia]”
13. Police officers therefore do not carry out their duties for the Commissioner but for the State.
14. Counsel Mrs. Nelson sought to rely on Section 7 of the Police Ordinance as the basis for joining the Commissioner Section 7 provides for the Commissioner to have command and superintendance of the Force. He is responsible to the

appropriate government official for the efficient administration and government of the Force.

15. The commissioner is also empowered by Sections 18, 16 (2) and 9 of the Ordinance, to appoint, terminate the services of, and discharge subordinate officers and constables.
16. In my opinion, these provisions without more impose no civil liability on the Commissioner, where the police officers under his command commit wrongful acts, in the performance of their duties
17. A provision similar to section 7 of the Ordinance was considered by the Court of Appeal in **Ramson v Barker** (1982) 33 W.I.R. 195-196
18. It was held that this provision could not make the Commissioner of Police liable for the tortious or other unlawful acts of those under his command unless the Commissioner personally sanctioned or directed them. It was further observed that “At Common Law and under the Police Act the power of a police officer are exercisable by virtue of his office and cannot be exercised on the responsibility of any other person than himself” (**Ramson v Barker Supra**)
19. The Police Constable’s status was explained by Griffith C.J. in the Australian case **Enver v R.** (1906) 3 CLR 969 at page 977 thus:

“...a constable therefore when acting as peace officer [or performing any other official duty] is not exercising a delegated authority but an original authority and the general law of agency has no application.”
20. In the observance of any allegations therefore, that the Commissioner was personally involved, or that he approved or directed the 3 police officers to do the wrongful acts alleged in the pleadings, I conclude that the Commissioner of Police has been improperly joined as a defendant.
21. I move on now to consider the other submissions

No Reasonable Grounds For Bringing the Claim.

22. The crucial preliminary questions raised as to whether or not the Claim is sustainable involve Section 28 of The CCP Cap. 243, and Sections 4 (3) and 4(5) of the Crown Proceedings Act Cap, 13. But before considering Counsel's submissions on this, it is necessary to dispose of Miss Drysdale's well prepared submissions on section 35 of The Police Ordinance.

23. Section 35 of The Ordinance provides:

“(1) When any Action shall be brought against any police officer for any act done in obedience to the Warrant of any Magistrate or Justice of the Peace, the party against whom such actions shall be brought shall not be responsible for any irregularity in the issuing of such warrant, or any want of jurisdiction of the Magistrate or Justice of the Peace issuing the same but may give, such warrant in evidence at the trial, and on proving that the signature there to is the hand-writing of the person whose name shall appear subscribed there to and that such person was reputed to be and acted as a Magistrate for the district or Justice of the Peace and that the act or acts complained of was or were done in obedience to such warrant, there shall be a verdict in such action for the defendant.”
(My emphasis)

24. In my view it is obvious from the wording of Section 35 that the Court should discourage the use of it to raise preliminary issues as to whether or not the claim is sustainable.

25. The presence of the words underlined by me in the above stated provision suggests that a police officer may rely on this provision only at the trial in normal circumstances.

26. I endorse the submissions of learned Counsel Mrs. Nelson. The facts and the law are mixed up .It is undesirable to pre-empt the trial process, and deal with section 35 as a preliminary issue.

27. Article 28 of the CCP Cap.243 was invoked as a Defence. It was alleged that the Notice of Intention to Institute Legal Proceedings was not within the provisions of this Article which provides:

“No public officers, or other person fulfilling any public duty or function, can be sued for damages by reason of any act done by him in the exercise of his functions nor can any judgment be rendered against him, unless notice of such suit has been given to him at least one month before the issuing the claim form.

Such notice must be in writing, it must specify the grounds of the action, must be served on him personally or at his domicile and must state the name and residence of the Claimant”

28. The said notice was addressed to the Attorney General, carbon copied to the Commissioner of Police, referred to the names of the 3 police officers, and specified the grounds for the action.

29. But it is defective because:

- a) It was not personally served on the 3 police officers and Mr. Dariah, or left at their domicile; and
- b) It did not state the name and residence of Mr. Clarke

30. It was submitted by the learned Counsel Ms Drysdale, that these defects are fatal to the claim. That the Court has no jurisdiction to determine the claim. Counsel relied on 2 cases in support of her contention:

Cumberbatch v Weber(1965)9WIR.143;

Castillo v Corozal Town Board and another (1983) 37 W.I.R. 86)

31. In the first case the defendant raised a special defence that no Notice had been served on the Commissioner of Police in compliance with Section 8 (2) of the Justice Protection Ordinance Cap. 18[B.G.], a provision similar to section 28 of the CCP Chap. 243.

32. The trial judge ruled that the action must fail since no prescribed notice was given. On appeal it was held that it was obligatory on the Plaintiff to give notice of the action and the claim is barred in the absence of such notice.

33. In the **Castillo case**, it was held that Section 3(1) of the Public Authorities Protection Ordinance (similar to section 28 of the CCP Cap 243) makes provision for a mandatory condition precedent to the institution of the suit.

Where the plaintiff fails to prove that he has given such notice, a trial judge has no discretion and must enter judgment for the defence with costs.

34. Learned Counsel Mrs. Nelson relied on sections 14 and 28 (2) (b) of the Crown Proceedings Ordinance Cap. 13 in response to these submissions

35. Section 14 of Cap.13 states that all documents required to be served on the Crown in connection with any proceedings brought against the Crown Attorney shall be served on the Crown Attorney. In my opinion this provision ought not to be interpreted as a substitute for Section 28 of the CCP Cap. 243. These provisions supplement each other.

36. Section 28 (1) of Cap.13 deals with the rules to be made by the appropriate official for having effect to this Ordinance. "Such rules may contain provisions to have effect in relation to any proceedings by or against the Crown in substitution for or by way of addition to any of the provisions of the Code of Civil Procedure...."

37. Section 28 (2) provides that such rules may amend modify or vary the Code of Civil Procedure. Section 28 2(b) states that such Rules shall contain provisions "for securing that where any civil proceedings are brought against the Crown in accordance with the provisions of this Ordinance the plaintiff shall, before the Crown is required to take any step in the proceedings provide the Crown with such information as the Crown may reasonably require as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments of officers of the Crown concerned"

38. Mrs. Nelson did not direct my attention to any Rules that have been made pursuant to section 28 (2) (b) of Cap 13 containing a provision which in effect is a substitution for or an addition to Article 28 of the CCP Cap.243.

39. In the absence of any statutory modification of this Article the Ruling in the 2 authorities mentioned above apply.

40. It is evident therefore that the consequences of giving a defective Notice or no Notice is fatal to Mr. Clarke's action against all of the defendants.
41. I now wish to deal with Section 4 of the Crown Proceedings Ordinance Cap. 13, although it is no longer obligatory, in light of my previous findings. I shall do so because of the vigorous opposing arguments advanced by both Counsel, concerning the Attorney General being joined as a defendant.
42. The Attorney General was made a party to the action pursuant to section 4 of Cap.13. By their pleadings the Claimant alleged and the defendants denied that the Warrant was unlawfully issued, and that the 3 Police officers and Mr. Dariah misconducted themselves and acted maliciously in the exercise of their respective functions.
43. Section 4 (1) (a) specifies that the Crown shall be liable "in respect of delicts or quasi delicts committed by its servant or agents."
44. Section 4 (3) States:
- "Where any functions are conferred or imposed upon an officer of the Crown as such by any enactment having the force of law...and that officer commits a delict or quasi-delict while performing or purporting to perform these functions, the liabilities of the crown in respect of such delict or quasi-delict shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown."
45. Section 2(2) of Cap 13 defines "officer" in relation to the Crown to include "any servant of Her Majesty in right of her Government of the Colony"
46. Counsel Ms Drysdale questioned the appropriateness of joining the Attorney General to the actions given the substance of the allegations that the 3 police officers and Mr. Dariah exceeded their authority and acted unlawfully.
47. On examining the Statement of Claim and the amended Reply, I agree with the submissions of Ms Nelson. I have concluded that the pleadings as a whole suggest an implication that the action was brought against the 3 police officers and Mr. Dariah both in their official and private capacity.

48. Generally speaking, unauthorized acts by public officers may be the subject of actions against them in their personal capacity, unless the law provides otherwise: (Per the President in **Inland Revenue Commissioner & A G vs. Lilleyman and another** (1964) 7 W I R 496, 522)
49. It appears to me on a close look at Sections 4 (3) of Cap 13 that it is a provision which is an example of the law providing otherwise.
50. I say this because in my view it seems to make the Crown absolutely liable in every respect for the conduct of its servants provided their wrongful acts were done in the course of performing their official functions.
51. Counsel Ms Nelson relied on a Privy Council case as her authority for saying that the Crown might be liable for the acts of police officers on the principle of Superior Respondent if they were not acting bonafide in the execution of their duty: (**Gordon (Lemuel) vs. Attorney General** (1997) 51 W.I.R.280)
52. Applying this case to Section 4 (3) I have concluded that the principle alluded to in this Privy Council decision is reflected in Section 4 (3) of Cap. 13. In the circumstances, I find that Section 4 (3) permitted the Attorney General to be joined as a party to the action even if the police officers and Mr. Dariah acted wrongfully and unlawfully while performing or purporting to perform their official functions.
53. Though this was not canvassed by learned Counsel. Ms Drysdale, Section 4 (5) of Cap 13 is also relevant to these proceedings.
54. Section 4(5) provides:
- “No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.”
55. Notwithstanding my conclusions on sections 4(3), it would seem that the 3 police officers were executing a warrant which is a judicial process. In such circumstances barring any other considerations the Attorney General should not

joined pursuant to section 4(5) of The Crown Proceedings Act Cap 13 in my view.

56. Finally for completion I wish to note that Mr. Dariah while functioning as a Clerk of Court would be performing ministerial acts, carrying out the orders and judgments of the Court.

57. The law is that “no liability is incurred by an officer who simply forwards the process of the court in the ordinary course of business, without exercising any judgment of his own in the matter. It is nothing to him that the process itself is ill-founded or illegal”: (**Clerk and Lindsell on Torts** 12th paras 1803 to 1804)

58 it is important to note also that the remedy of a person arrested unlawfully under a warrant is against the Magistrate who issued the warrant (**Clarke v Woods** (1848) 2 Ex 395)

59. In light of this law, had the claim not been barred the questions for the Court would have been:

- a. Whether or not Mr. Dariah was exercising any judgment of his own when he prepared and forwarded the warrant; and
- b. Whether or not Mr. Dariah was acting in good faith

60. **CONCLUSION**

For the reasons stated above at paragraphs 20,26,40,52 and 55, of this Judgment, the claim is struck out. The question of costs is reserved for determination on a date to be set aside by the Court.

Dated this 19th day of
April, 2004

**OLA MAE EDWARDS
HIGH COURT JUDGE**