

SAINT LUCIA

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

Claim No. SLUHCV 2001/0242

BETWEEN:

PETER CLARKE

Claimant

AND

HONOURABLE ATTORNEY GENERAL
PC 492 MURTON DORNELLY

Defendants

Appearances:

Mrs. Petra Nelson for the Claimant
Mrs. Georgis Taylor Alexander Solicitor General for the Defendants

.....
2009: March 9th
April 8th
June 4th
July 13th
.....

JUDGMENT

Cottle J:

[1] The Claimant was walking along Bridge Street in Castries on 2nd November, 1998. He says the second Defendant, a uniformed officer of the Royal St. Lucia Police Force unlawfully assaulted and beat him causing him injuries. The Claimant was arrested and kept in custody until 4th November, 1998. He was charged with assaulting a Police Officer in uniform, making use of insulting language to the Officer and resisting arrest. After several adjournments for various reasons the charges against the Claimant were struck out for want of prosecutions on 30th November, 2000, when the second Defendant failed to attend.

P. C. Dornelly says he was not told of the adjourned hearing date and as a consequence he did not attend court on that date.

- [2] The Claimant gave notice to the Attorney General of his intention to institute proceedings. The notice was dated 5th December, 2000. The present claim was filed on 16th March 2001.
- [3] The sequence of events which occurred in Castries involving the Claimant and the second Defendant is hotly contested. According to the Claimant, there was a history of previous involvement with the second Defendant. The second Defendant had laid charges against the Claimant for certain traffic offences. The charges had been dismissed.
- [4] On the 2nd November, 1998, the Claimant went past the Second Defendant. He spoke to the Second Defendant enquiring if the latter were not "going to clear his conscience by withdrawing the cases". The second Defendant replied asking the Claimant why he wanted the Second Defendant to withdraw the cases. The Claimant continued on his way but returned shortly afterwards. Again he spoke to the Second Defendant asking him to relieve his conscience. The Second Defendant thereupon came up to the Claimant and held him by the wrist. A struggle ensued. The Claimant tried to hold the hand of the Second Defendant asking him to release him. The Claimant kept asking what he had done to cause the officer to be holding him.
- [5] During the struggle the officer punched the Claimant in the face causing him to bleed from the mouth. A second uniformed policeman was nearby. The Claimant called out to him but he came instead to the aid of the Second Defendant and assisted in taking the Claimant to the Police Station. The Claimant says that there were many people all around and the Defendant had no reason for his actions except that he did not like the Claimant and had a grudge against him.

- [6] At the station the Second Defendant continued abusing the Claimant by beating him causing him further injuries. The Claimant says that his protests were ignored by all the other policemen at the station.
- [7] Not surprisingly P. C. Dornelly tells a completely different story. He says that the Claimant was constantly taunting him calling him "crooked cop" and "corrupt police officer". On 2nd November 1998 the Claimant approached the Second Defendant and again taunted him saying "you crooked cop, you don't know what you are about. The Magistrate dismissed the case".
- [8] The Second Defendant asked the Claimant to stop harassing him. The Claimant said "you stupid, you cannot do me nothing" and swung his left hand towards the officer's head. The Second Defendant moved his head to avoid the blow and informed the Claimant that he was being arrested.
- [9] The Claimant refused. He struck the policeman. A second officer came and held the Claimant from behind. He was taken to the police station. He was there formally arrested and charged. The Second Defendant says that he used the minimum possible force to physically restrain the Claimant. He denies assaulting and beating the Claimant. He says that when he left the Claimant at the station on 2nd November, 1998 there were no injuries to the Claimant's face or head. The Claimant was kept in custody until he signed the recognizance to appear. The fact that he refused to sign the recognizance until two (2) days later is entirely the result of the Claimant's actions.
- [10] The court was called upon to choose between these competing versions. Having seen and heard the witnesses I do not accept the version given by the Claimant. There are several reasons why this is so. The Claimant says that this incident occurred in full view of many witnesses in the heart of the city. He did not call a single witness. I do not consider it likely that P. C. Dornelly would choose to physically abuse the Claimant in full view of the public.

- [11] The second Police Officer, P. C. Cherry saw what was happening. He came to the aid, not of the Claimant, but of the second Defendant. The Claimant does not say that P. C. Cherry had any reason to hold a grudge against him. He does not sue P. C. Cherry for assaulting him.
- [12] During the trial it emerged that the Claimant had, before this claim, brought suit against several other Police Officers for differing complaints. I do not go so far as to label the Claimant a vexations litigant but it is certainly unusual that at least four different Police Officers have now been Defendants of civil actions instigated by the Claimant.
- [13] As part of the defence of this matter the learned Solicitor General argued that the claim is prescribed by virtue of Article 2124 of the Civil Code:

"Actions against public officers in respect of acts done by them in good faith and in respect of their public duties are prescribed by six months"
- [14] It is common ground that this action is against a public officer in respect of his public duties. The only issue which was to be determined is the question of bad faith.
- [15] It is the duty of the Claimant to prove bad faith in the Defendant as good faith is always presumed. As indicated by my factual findings above the Claimant has failed to demonstrate bad faith. I simply do not find his evidence on this point to be credible. He also gave inconsistent versions. It was suggested to the second Defendant in cross examination that he was chatting with a young lady when the Claimant approached on that 2nd November, 1998 in Castries. The Claimant does not say so in his evidence in chief. This is but one more example of the unreliability of the Claimant's case that causes me to reject it.
- [16] The claim is dismissed. My finding of the absence of bad faith means that the claim prescribed by six months. In any event I also find that the Claimant has failed to prove that the Defendant lacked reasonable

grounds to arrest the Claimant or that he assaulted the Claimant or was actuated by malice in his prosecution of the Claimant.

[17] I award the Defendants costs, though not on the prescribed scale, as this claim was filed under the old Rules of the Supreme Court, 1970.

[18] I fix the sum of **\$3,000.00** as the costs to be paid by the Claimant to the Defendant.

BRIAN COTTLE
High Court Judge