

EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

SKBHCVAP2012/0029

BETWEEN:

REGINALD ANTHONY HULL

Appellant

and

[1] THE ATTORNEY-GENERAL OF ST. CHRISTOPHER
AND NEVIS
[2] THE SOCIAL SECURITY BOARD

Respondents

Before:

The Hon. Mr. Don Mitchell

Justice of Appeal [Ag.]

On written submissions:

Mr. Garth L. Wilkin for the Appellant

Mr. O'Neil St. A. Simpson for the First Respondent

Mr. Leon Charles for the Second Respondent

2013: June 10.

Civil appeal – Tort – Wrongful arrest – False imprisonment – Magistrate's Code of Procedure Act – Crown Proceedings Act – Warrant for Commitment – Bailiff executing warrant – Whether bailiff was discharging responsibility in connection with the execution of judicial process – Whether Crown entitled to immunity from suit

Two Warrants of Commitment ("the Warrants") directed to the arrest of a company of which the appellant was a director, was executed by a Bailiff on the appellant. The appellant was committed to prison where he was held for two days and eventually released by an order of the High Court. Thereafter, the appellant brought a claim against

the Social Security Board ("the Board") as procurers of the signature of the magistrate to the Warrants and against the Crown as employer of the Bailiff seeking damages and aggravated damages for the torts of wrongful arrest and false imprisonment. The claim form was filed on 15th June and served on the two respondents more than six months later. The appellant's claim was that the Attorney-General was liable for the acts and omissions of the Bailiff as an employee of the Federal Government and therefore a servant of the Crown. He claimed further that he lost his liberty for 47 hours due to the actions of the Bailiff on the request of the Board.

Both respondents failed to file a defence to the claim. They however filed an acknowledgement of service and further filed an application that the claim be struck out for various reasons. The Attorney General's application was supported by an affidavit of the Solicitor General which disclosed inter alia that the claim offended the provisions of section 4(5) of the **Crown Proceedings Act** which ousts liability of the Crown for anything done by a person while purporting to discharge any responsibilities which he has in connection with the execution of judicial process, and it was improper and unreasonable for the Crown to be called upon to attempt a defence to it. The Board's application urged that the appellant had not complied with section 2(a) of the **Public Authorities Protection Act** which required him to institute his claim against the Board within the period of six months. The appellant then filed an application for default judgment due to the respondents' failure to file a defence.

The matter came on for hearing before the master who found that the defendant to the Warrants was the company; this made the Warrants invalid as a warrant of arrest must be issued against a living person and not a company. This in turn made the arrest of the appellant illegal. Nonetheless, the Bailiff fell within the category of persons who attract a clear judicial mandate to allow them to carry out their function, which is to carry out the direct orders of the court. That being the case, the Crown was not liable for anything done by the police or prison officers who arrested and detained a person while discharging their responsibilities in connection with the execution of a judicial process. The master granted the striking-out orders sought by the Board and the Crown, dismissed the appellant's application for default judgment and awarded costs to the respondents to be paid by the appellant.

The appellant filed an appeal seeking an order that judgment in default of defence be entered against the Board; in the alternative he seeks an order that his claim against the Board and the Crown shall continue as pleaded and for the respondents to file and serve their defence within 28 days.

Held: dismissing the appeal and awarding costs to the respondents in the amount of two thirds of any sum assessed in their favour in the court below, that:

1. The effect of filing a strike-out application must be to prevent the entering of judgment in default. It is indeed proper procedure for applications to be dealt with in the order that they are filed. The appellant's application for the default judgment

was filed after the respondents' application to strike out the claim. A litigant who makes a genuine application to strike out a claim, regardless of the rule under which he applies, ought not to be required, purely to stop time from running, to incur the expense of filing a defence to the very claim that he is asking the court to strike out.

St. Kitts Nevis Anguilla National Bank Ltd. v Caribbean 6/49 Limited Saint Christopher and Nevis High Court Civil Appeal SKBHCVAP2002/0006 followed.

2. Section 4(5) of the **Crown Proceedings Act** states that no proceedings shall lie against the Crown 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 her, or any responsibilities which he or she has in connection with the execution of judicial process. A Bailiff executing a warrant of commitment on a judgment summons would be a person discharging a responsibility in connection with the execution of judicial process. Accordingly, the appellant's case was statute barred and the master was correct to so hold.

Section 4(5) of the **Crown Proceedings Act** applied.

JUDGMENT

- [1] **MITCHELL JA [AG.]:** Reginald Anthony Hull¹ was arrested by a Bailiff of the Basseterre Magistrate's Court² on two Warrants of Commitment³ issued by the magistrate. He was committed to prison, where he was held for two days before his attorneys secured his release in habeas corpus proceedings. Alleging he was wrongfully arrested and falsely imprisoned, Mr. Hull instructed his attorneys to sue the Crown as employer of the Bailiff and to sue the Social Security Board⁴ as the person who had procured the signature of the magistrate to the Warrants on which he was arrested. He sought damages and aggravated damages for the torts of wrongful arrest and false imprisonment. The gist of Mr. Hull's claim was that the Board had obtained two civil judgments against the company of which he was a director, the Warrants had been directed to the arrest of the company, and the Bailiff had instead illegally arrested him.

¹ Hereinafter "Mr. Hull".

² Hereinafter "a Bailiff".

³ Hereinafter "the Warrants".

⁴ Hereinafter "the Board".

- [2] Mr. Hull was arrested and imprisoned on 11th December 2011, and his claim form was filed on 15th June 2012 and served on the two respondents on 20th June 2012, more than six months later. From his attached statement of claim it appears that the Board is a body corporate created by the **Social Security Act**.⁵ A bailiff of the Magistrate's Court is a person appointed by the Governor-General to perform the duties prescribed by the **Magistrate's Code of Procedure Act**.⁶ This includes the execution of a Warrant for Commitment issued by a magistrate under that Act.
- [3] Two warrants under the judgment summons procedure were prepared by the Board and filed in the Magistrate's Court on 2nd November 2009. The parties to the Warrants were described to be the "Director of Social Security" as plaintiff and the "National Supply Ltd. c/o Anthony Hull, Conaree, St Kitts" as defendant. National Supply Ltd. was a company registered under the laws of St. Christopher and Nevis as a separate legal entity, and Mr. Hull was a director of it. Though the company was the defendant named on the Warrants, Mr. Hull's name as part of the address was highlighted. There is a suggestion that at the time of the Warrants the company had been struck off the Register and was "defunct". The imprisonment term stated in the Warrants was to be one month. The Warrants were duly signed by a magistrate, who does not appear to have been concerned that the draft Warrants presented to him/her for signature were for the arrest of a company.
- [4] At about 2:00 p.m. on Monday 12th December 2011 a Bailiff of the Magistrate's Court, whose name is not stated, attended at Mr. Hull's home accompanied by one Mr. Delvin Thompson, an employee of the Board. The Bailiff told Mr. Hull that unless he paid a sum of money due and owing under the Warrants he would be imprisoned. The Bailiff thereafter arrested him and he was taken by motor vehicle

⁵ Cap. 22.10, Revised Laws of Saint Christopher and Nevis 2002.

⁶ Cap. 3.17, Revised Laws of Saint Christopher and Nevis 2002.

to Her Majesty's Prison in Basseterre. He was only released at about 1:00 p.m. on Wednesday 14th December 2011 by an order of the High Court.

- [5] Mr. Hull's claim was that the Attorney-General was liable for the acts and omissions of the Bailiff as an employee of the Federal Government and therefore a servant of the Crown. He joined the Attorney-General in the proceedings pursuant to section 13(2) of the **Crown Proceedings Act**.⁷ In Mr. Hull's particulars in support of his claim for aggravated damages against both respondents, he pleaded that he was 64 years old at the time of his arrest, a diabetic, and a well-known businessman in St. Christopher having been the manager of National Supply for approximately fourteen years. He had not been given an opportunity at the time of his arrest to review the Warrants. His arrest took place in the presence of his neighbours. He was, he claimed, indiscreetly taken into Her Majesty's Prison in the view of the general public. While he was being processed at the Prison he was not provided with food or water for approximately five hours.
- [6] In support of his claim for aggravated damages, Mr. Hull pleaded that he lost his liberty for 47 hours by the actions of the Bailiff on the request of the Board. The Board filed the Warrants in an attempt to make a monetary gain for its benefit. The Board deliberately highlighted his name in the Warrants to defer attention from the real defendant, the company National Supply Ltd.
- [7] The Board and the Attorney-General duly filed and served an acknowledgment of service, but they filed no defences to the claim served on them. Their defences were due to be filed and served by 19th July 2012.
- [8] Instead of filing a defence, on 18th July 2012, the Attorney-General filed an application supported by an affidavit sworn by the Solicitor General. This application sought the dismissal of the claim against the Crown either pursuant to rule 26.3(1)(b) of the **Civil Procedure Rules 2000** ("CPR") as not disclosing any

⁷ Cap 5.06, Revised Laws of Saint Christopher and Nevis 2002.

reasonable ground for bringing his claim, or CPR 26.3(1)(c)⁸ as being an abuse of the process of the court. The Solicitor General's affidavit in support asserted that the claim revealed (a) no reasonable or legitimate cause of action against the Crown and (b) no allegations to which the Crown can properly respond. Further, the claim offended the provisions of section 4(5) of the **Crown Proceedings Act**,⁹ which ousts liability of the Crown for anything done by a person while purporting to discharge any responsibilities which he has in connection with the execution of judicial process, and it was improper and unreasonable for the Crown to be called upon to attempt a defence to it. Further, Mr. Hull had failed to comply with the provisions of CPR 59.3(1),¹⁰ which required his claim to contain reasonable information as to the circumstances in which he alleged that the liability of the Crown had arisen.

[9] On 19th July 2012 the Board filed and served a similar application. The Board urged that Mr. Hull failed to comply with CPR 8.7(1)¹¹ in that the claim against the Board did not disclose any cause of action, and his claim ought to be struck out pursuant to CPR 26.3(1)(b). Further, Mr. Hull had not complied with section 2(a)

⁸ **Sanctions – striking out statement of case**

- 26.3 (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –
- (a) ...
 - (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
 - (c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;

⁹ 4. **Liability of the Crown in tort.**

(5) 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 her, or any responsibilities which he or she has in connection with the execution of judicial process.

¹⁰ **Proceedings by and against the Crown**

Claimant's duty to give particulars

59.3 (1) If a claim is made against the Crown, the claim form or statement of claim must contain reasonable information as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the government department and officers of the Crown involved.

¹¹ **Claimant's duty to set out case**

8.7 (1) The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.

of the **Public Authorities Protection Act**,¹² which required him to institute his claim against the Board within the period of six months. The Board's application was supported by an affidavit of its Compliance Manager. He deposed that he was advised that (a) the claim did not disclose any cause of action against the Board, and (b) the time frame for making the claim had expired rendering the claim statute barred. He asked that the claim be struck out. On 31st July 2012, the parties appeared before a master who directed that the applications be adjourned due to short service.

[10] On 14th August 2012, Mr. Hull filed a request for entry of judgment in default of defence against the Board. On 9th October 2012, the parties appeared before Master Christine Phulchere and argued oral and written submissions in support of their various applications.

[11] The master's ruling was delivered on 19th November 2012. The master found that the defendant to the Warrants was the company National Supply Ltd., a person with a separate legal identity to its director, Mr. Hull. She found that the Warrants were invalid since it has long been the law that a warrant of arrest must be issued against a living person and not a company.¹³ The Bailiff's arrest of Mr. Hull was, therefore, illegal. However, she was of the view that the Bailiff fell within the category of persons who attract a clear judicial mandate to allow them to carry out their function, which is to carry out the direct orders of the court. She found the **Crown Proceedings Act** and the authorities presented to her conclusive of the issue.¹⁴ The Crown was not vicariously liable in tort for anything done by a judge or magistrate while discharging or purporting to discharge any responsibility of a judicial nature vested in him. Nor was the Crown liable for anything done by the police or prison officers who arrested and detained a person while discharging their responsibilities in connection with the execution of a judicial process. She

¹² Cap 5.13, Revised Laws of Saint Christopher and Nevis 2002.

¹³ Leach v Money [1765] 19 St Tr 1001.

¹⁴ Ramesh Lawrence Maharaj v Attorney General of Trinidad and Tobago, [1978] UKPC 3 per Diplock LJ.

therefore granted the striking-out orders sought by the Board and the Crown. She dismissed the claims against the two respondents and she dismissed Mr. Hull's application for default judgment. She awarded costs to the respondents to be paid by Mr. Hull.

- [12] On 21st February 2013 Mr. Hull received the necessary leave to appeal to the Court of Appeal against the ruling of Master Phulchere. Mr. Hull filed his notice of appeal on 12th March 2013. He seeks an order that judgment in default of defence be entered against the Board. Alternatively, he seeks an order that his claim against the Board and the Crown shall continue as pleaded and for the respondents to file and serve their defence within 28 days. This appeal, being an interlocutory one, has been passed to me as a single judge of the Court for hearing and determination on written submissions pursuant to CPR 62.10(5).¹⁵ Mr. Hull argues two principal grounds of appeal. I will take them one after the other.

The Application for Judgment in Default of Defence against the Board

- [13] Mr. Hull's first argued ground of appeal is in essence that the master erred in dismissing his application for judgment in default of defence to be entered in his favour against the Board pursuant to CPR 12.5.¹⁶ He had served his claim on 20th June 2012, so that the deadline for the filing of the defence was 19th July 2012.

¹⁵ **Interlocutory appeal**

62.10 (5) The general Rule is that an interlocutory appeal is to be considered on paper by a single judge of the court.

¹⁶ **Conditions to be satisfied – judgment for failure to defend**

12.5 The court must enter judgment for failure to defend if –

- (a) (i) the claimant proves service of the claim form and statement of claim; or
- (ii) an acknowledgment of service has been filed by the defendant against whom judgment is sought;
- (b) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;
- (c) the defendant has not –
 - (i) filed a defence to the claim or any part of it (or the defence has been struck out or is deemed to have been struck out under rule 22.1(6)); ...

The Board had failed to file a defence to his claim in breach of CPR 10.3.¹⁷ Instead, on 19th July 2012, the Board filed and served an application to strike out his claim for failure to disclose any cause of action. A defendant's application to strike out a claim, he submitted, is not a stay of the defendant's obligation to file a defence unless the application is grounded in CPR 9.7.¹⁸ The court office was required by law pursuant to CPR 12.5 to enter judgment in default against the Board on his request. The Board's response to this submission is that Mr. Hull's filing an application for judgment in default in the face of a strike out application was completely inappropriate and not in line with the judicial authorities on the issue.

[14] As Barrow JA has previously stated in the **St. Kitts Nevis Anguilla National Bank Ltd. v Caribbean 6/49 Limited** case,¹⁹ the effect of filing a strike-out application must be to prevent the entering of judgment in default. I see no reason why this consequence should be limited to an application under CPR 9.7, which deals with a dispute as to the court's jurisdiction. The effect of filing an application to strike out a claim as an abuse of the process of the court must be to oblige the court office to refuse to deal with a subsequently filed application to enter default judgment. It is proper procedure for applications to be dealt with in the order that they are filed. Besides, a litigant who makes a genuine application to strike out a claim, regardless of the rule under which he applies, ought not to be required, purely to stop time from running, to incur the expense of filing a defence to the

¹⁷ **The period for filing defence**

10.3 (1) The general rule is that the period for filing a defence is the period of 28 days after the date of service of the claim form.

¹⁸ **Procedure for disputing court's jurisdiction**

9.7-(1) A defendant who disputes the court's jurisdiction to try the claim may apply to the court for a declaration to that effect.

...

(8) Where a defendant makes an application under this Rule, the period for filing a defence is extended until the time specified by the court under paragraph (7)(b) and such period may be extended only by an order of the court.

¹⁹ Saint Christopher and Nevis High Court Civil Appeal SKBHC VAP2002/0006 per Barrow JA at para. 39.

very claim that he is asking the court to strike out. I see no merit in this ground of appeal and I accordingly dismiss it.

The Crown Proceedings Act

[15] Mr. Hull's remaining submissions revolve around the provisions of section 4(5) of the **Crown Proceedings Act**.²⁰ The section provides in essence that no proceedings shall lie against the Crown in tort for anything done by a person purporting to discharge any responsibilities which he has in connection with the execution of judicial process. He submits that the master misinterpreted the provision and failed to apply it to his case. His argument is that it was an error for the master to hold that the Bailiff fell within that category of persons, as the section creates an immunity only for persons with responsibilities of a judicial nature.

[16] None of the authorities put forward by Mr. Hull in support of his submission supports his interpretation of the section. The Privy Council decision in the **Kirvek Management and Consulting Services** case²¹ involved the payment into court in Trinidad of a sum of money by Kirvek, a Canadian company, as security for costs. Kirvek's payment was accompanied by a request that the money be put into an interest-bearing account. The Registrar did not place the money in an interest-bearing account. It is noteworthy that in Trinidad and Tobago a statute requires that money paid into court be invested in one of a variety of ways, including, where there are no directions how the money is to be invested, payment into the Government Post Office Savings Bank. Instead of paying the money into the Post Office Savings Bank, the Registrar simply paid the money into Treasury where no interest accrues. When the case was settled and the money was repaid Kirvek found that it was without interest. Kirvek commenced an action against the Attorney-General claiming damages based alternatively on negligence, breach of statutory duty or breach of trust. The Attorney-General applied for the case to be

²⁰ See note 9 above.

²¹ *Kirvek Management and Consulting Services Ltd v Attorney General of Trinidad and Tobago* [2002] UKPC 43; [2002] 1 WLR 2792.

struck out under the Trinidad and Tobago equivalent of our section 4(5). The master dismissed the strike-out application on the ground that the Registrar was not acting in a judicial capacity or in connection with the execution of judicial process. The Court of Appeal disagreed and held that the Registrar was performing a responsibility in connection with the execution of judicial process. The Privy Council disagreed with the Court of Appeal and held that the Registrar had acted in breach of a statutory duty to invest the funds. The Registrar in paying the funds into Treasury had not been enforcing or giving effect to any judgment or any order of the court. The order of the Court of Appeal was therefore set aside and the order of the master restored. It is clear that this decision does not support Mr. Hull's submissions. The issues that arise in Mr. Hull's case were not included in the **Kirvek** case, and none of the learning in that case can be extended to Mr. Hull's case.

- [17] Mr. Hull also faulted the master for her reliance on the Privy Council decision in **Ramesh Lawrence Maharaj v Attorney-General of Trinidad and Tobago (No. 2)**.²² It will be recalled that a Trinidadian barrister, Mr. Maharaj, had been arrested on a citation for contempt by order of a High Court judge who deprived him of his fundamental right to a fair hearing and ordered him to be imprisoned. He brought a constitutional case against the state claiming declarations and compensation, and he succeeded in the Privy Council. The master relied on certain dicta of Lord Diplock to the effect that the Crown was not vicariously liable in tort for anything done by the judge while discharging his judicial responsibilities; nor for anything done by the police or prison officers who arrested and detained Mr. Maharaj while discharging their responsibilities which they had in connection with the execution of judicial process. Mr. Hull urged that that decision was distinguishable from the case at bar and that the dicta quoted by the master was simply obiter dicta and not based on reasoned analysis. Additionally, in the **Maharaj** case, the action was not brought by way of a civil claim but was a constitutional motion. The validity of

²² [1979] AC 385; [1978] UKPC 3.

Trinidad and Tobago's equivalent of section 4(5) did not arise in the **Maharaj** case as it did in the **Kirvel** case. I entirely agree with Mr. Hull's submissions. Lord Diplock was merely pointing out that Mr. Maharaj's claim was based on a breach of the constitution and was not on tort. That does not however assist Mr. Hull whose case was one based on tort. His argument on the inapplicability of the **Maharaj** case, while correct, takes him nowhere.

[18] Mr. Hull's reading of section 4(5) to the effect that the Bailiff's tortious actions are not covered by the section can be accomplished only if the clear language of the section is misread. The section does not apply only to judicial officers performing either judicial functions or functions related to the execution of judicial process, as he urges. It applies to either (i) any person discharging a judicial responsibility or (ii) any person discharging a responsibility in connection with the execution of judicial process. The latter would clearly cover a Bailiff executing a warrant of commitment on a judgment summons. Mr. Hull has brought a claim in tort against the Crown for a cause of action which the master was right to hold was clearly statute barred. In the circumstances, there was no point in the master considering Mr. Hull's alternative submission that she had the power under CPR 56.6 to order that the case against the Crown proceed as an application for leave to commence administrative proceedings.

[19] I would therefore dismiss Mr. Hull's appeal with costs to the Crown and to the Board in the amount²³ of two thirds of any sum assessed in their favour in the court below pursuant to the master's order relating to costs.

Don Mitchell
Justice of Appeal [Ag.]

²³ Pursuant to CPR 65.13.