

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2016/0005

BETWEEN

JOHN BAYLISS FREDERICK

Legal Representative and Managing trustee for St. Paul's Sanctuary

CLAIMANT

AND

ATTORNEY GENERAL

FIRST DEFENDANT

AND

THE CHAIRMAN AND PROPER OFFICERS OF CABINET

JOINTLY FOR THE PERIOD 25th Aug 2015 – 25th Nov 2015

SECOND DEFENDANT

AND

THE CHIEF SURVEYOR

THIRD DEFENDANT

Appearances:

Mr. John Bayliss Frederick, the claimant in person.

Mr. Grahame Bollers and Mr. Kezron Walters for the first and third defendants.

2016: Apr. 11 & 14

DECISION

BACKGROUND

- [1] **Henry, J.:** Mr. John Bayliss Frederick as Legal Personal Representative and Managing Trustee for St. Paul's Sanctuary, ('John Frederick') has filed a claim¹ against the Attorney General, the Chairman and proper officers of Cabinet jointly for the period 25th August 2015 to 26th November 2015 ('the Cabinet') and the Chief Surveyor. The claim form and statement of claim were not served on the Cabinet. He seeks the sum of \$26,722.00 being the aggregate sum ordered to be paid to him as compensation for land compulsorily acquired. He also claims punitive costs and other remedies.
- [2] The Honourable Attorney General and Chief Surveyor have applied² for an order striking out Mr. Frederick's claim form as an abuse of the court's process. They contend that he should utilize an enforcement method prescribed by the Civil Procedure Rules 2000, ('CPR'). Mr. Frederick submits that the enforcement mechanisms in the CPR are not available against the Crown. The application to strike out Mr. Frederick's claim form and statement of case is granted for the reasons outlined below.

ISSUE

- [3] The only issue is whether John Frederick's claim form and statement of claim should be struck out.

ANALYSIS

Issue – Should John Frederick's claim form and statement of claim should be struck out?

- [4] The court may strike out a statement of case or part of it, if it appears to be an abuse of the process of the court.³ When considering such an application, the court must give effect to the overriding

¹ On 15th January, 2016.

² By Notice of Application filed on 26th February, 2016.

³ Civil Procedure Rules 2000, ('CPR') 26.3(1)(c).

objective to deal with cases justly.⁴ The court will strike out a statement of case only in the most clear and obvious cases⁹ and not merely because the case is weak and unlikely to succeed. At this stage, the court does not concern itself with deciding whether the claimant can prove his case.⁵ While the court does not need to carry out a detailed examination of allegations in the statement of claim and the documentary exhibits, it must evaluate them to ascertain if a cause of action is made out. If they disclose a cause of action or raise a live issue, the statement of case will not be struck out. These guiding principles and rules will be applied in consideration of the instant application.

[5] In this case, Mr. Frederick seeks payment of the sums awarded to him in Claim No. 357 of 2007, for compensation and damages for compulsory acquisition of land at Chatea, Owia. The Honourable Attorney General has sworn an affidavit⁶ in which she acknowledged that the judgment debt of \$26,722.00 remains wholly unsatisfied. The three parties before the court in the case at bar were parties to that claim. The claimant in that suit was John Bayliss Frederick as Legal Personal Representative and Managing Trustee for St. Paul's Sanctuary. The first defendant was the Attorney General, the second defendant, the Chief Engineer, the third defendant the Minister of Transport and Works and the Chief Surveyor was the fourth defendant. The parties accept that a consent order was made by the court on 11 March, 2015 in that matter. Mr. Frederick exhibited a copy to his statement of claim.

[6] The body of that order states:

'It is hereby ordered by consent that:

1. The second and fourth defendants pay the sum of Twenty three Thousand Two Hundred and Twenty Two dollars (\$23,222) as per the accepted valuation of Christopher Browne for the value of the Claimant's Land used in the road construction of prescribed costs in that amount. (sic)

⁴ CPR 1.2.

⁵ *Wenlock v Maloney* [1965] 2 All E.R. 871, (CA).

⁶ On 26th February, 2016.

2. The second and fourth defendant pay prescribed costs of Three Thousand Five Hundred dollars (\$3500.00) to the Claimant.
3. Payments of all sums to be made forthwith.'

[7] The Honourable Attorney General and chief surveyor submit that it is an abuse of the court's process for Mr. Frederick to institute constitutional proceedings to recover the sums awarded in that judgment and that there are alternative enforcement proceedings available for this purpose under the CPR. Mr. Grahame Bollers on behalf of the first and third defendants submitted that Mr. Frederick's statement of case should be struck out as being frivolous and vexatious and an abuse of the court's process. He cited in support the case of **Malcolm Johnatty v Attorney General of Trinidad and Tobago**.⁷ Mr. Frederick contends that the **Johnatty** case does not apply to the circumstances of this case.

[8] The CPR has laid out procedures under which a judgment creditor may enforce a judgment. CPR 43.4 provides:

'A judgment creditor who has judgment with costs may enforce the judgment and the costs separately.'

Parts 44 to 53 of the CPR make provision for enforcement of most judgments and court orders. However, those rules do not apply to enforcement against the Crown. CPR 59.7 (1) expressly states that those Parts 'do not apply to any order against, or money due and accruing due, or alleged to be due and accruing due from the Crown.'

[9] The procedure for enforcement of money judgments against the Crown is outlined in CPR 59.7 and the Crown Proceedings Act⁸. A litigant who has obtained a money judgment against the Crown may avail himself of those provisions. There is no known impediment to Mr. Frederick invoking those provisions to secure satisfaction of the court order. The only outstanding aspect of that case is

⁷ [2008] UKPC 55.

⁸ Cap. 124 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

payment of damages and costs. This can be achieved very effectively and expeditiously under the enforcement provisions of the Crown Proceedings Act.

- [10] Should the instant claim remain on the court's docket and be processed as a claim in the usual manner under the CPR court resources will have to be allocated to ventilate and resolve an issue which it has already determined conclusively. This would be contrary to the clear strictures of the Supreme Court Act and the CPR. It would also be an abuse of the court's process. In carrying out its functions, the court is enjoined to dispose of matters in a manner which is aimed at discouraging multiplicity of legal proceedings.⁹ It does so by among other things refusing to entertain repeated claims regarding identical issues among the same parties. The claim form and statement of claim do not disclose a new cause of action or a reasonable ground for bringing the claim. It amounts to an abuse of the court's process. For these reasons, the claim form and statement of claim are accordingly struck out.

ORDER

- [11] It is therefore ordered:

- (1) The Attorney General's and chief surveyor's application for an order striking out John Frederick's claim form and statement of claim is granted.
- (2) John Frederick's claim against the Attorney General, the Chairman and proper officers of Cabinet jointly for the period 25th August 2015 to 26th November 2015 and the Chief Surveyor is dismissed.
- (3) No order as to costs.

⁹ Section 20 of the Eastern Caribbean Supreme Court Act, Cap. 24 of Revised Laws of Saint Vincent and the Grenadines, 2009 ('Supreme Court Act').

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Esco L. Henry
HIGH COURT JUDGE