

**IN THE SUPREME COURT OF  
THE TURKS AND CAICOS ISLANDS**

**2016 NO.78**

**BETWEEN**

**JENESTA C. MESSAM**

**PLAINTIFF**

**AND**

**THE COMMISSIONER OF POLICE  
OF THE ROYAL TURKS AND CAICOS**

**PT DEFENDANT**

**ISLAND POLICE FORCE AND  
SPECIAL INVESTIGATION AND**

**ATTORNEY GENERAL**

**2" DEFENDANT**

**OFFICE OF THE PREMIER AND  
MINISTRY OF TOURISM, TRADE,  
INVESTMENT AND DISTRICT  
ADMINISTRATION**

**3" DEFENDANT**

**Heard** on 7- October, 2016

Before John J (Ag)

**Appearances**

Mr. C. Clarke for the Plaintiff

Mrs C. Hippolyte for the Defendants/Applicants

1           During the period August 9, 2006, to 2009 the plaintiff was employed as the Chief  
Protocol Officer in the Turks and Caicos Islands. She was later seconded to the Office of  
the Premier.

2           On the 18<sup>th</sup> January 2011, police officers attached to the Special Investigation and  
Prosecution Team (hereinafter referred to as 'SIPT') executed a search warrant at her  
home and seized several documents. During the period January 11, 2009, through 21<sup>st</sup>  
March 2012 the plaintiff was arrested on six separate occasions by officers attached to  
SIPT. No charges were ever preferred against her.

3           By a Writ of Summons accompanied by a Statement of Claim filed on 9th May  
2016, the plaintiff brought proceedings against the defendants claiming, *inter alia*,  
damages for false imprisonment, damage to her reputation, damages for wrongful and/or  
unfair dismissal. The defendants duly filed an acknowledgement of service on the 24th  
May 2016.

4           By a Summons dated 18<sup>th</sup> October 2016 and filed on the 24<sup>th</sup> October 2016, the  
plaintiff filed an application pursuant to **Order 19, r (3)** for final judgment and damages  
to be assessed. **0.19, r.3** provides as follows: "*Where the plaintiff's claim against the  
defendant is for unliquidated damages only, then, if that defendant fails to serve a  
defence on the plaintiff the plaintiff may, after the expiration of the period fixed by or  
under the rules for service of the defence, enter interlocutory judgment against the  
defendant for damages to be assessed and costs and proceed with the action against the  
other defendant if any.*"

5           None of the defendants filed a defence within the time fixed by the rules or at all.  
However, on the 25<sup>th</sup> October 2016, they filed an application pursuant to **0.18, r.19** to

strike out the Statement of Claim. That Order provides that: "*The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—*

(a) *it discloses no reasonable cause of action or defence, as the case may be;*

**or**

(b) *it is scandalous, frivolous or vexatious; or*

(c) *it may prejudice, embarrass or delay the fair trial of the action; or*

(d) *it is otherwise an abuse of the process of the court;*

*and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be."*

The application was supported by several grounds.

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### **The Application Under 0.18, r.19**

The application came on for hearing before me on Monday, 7<sup>th</sup> October 2016. Mr. Clinton Clarke, counsel for the plaintiff, took a preliminary objection. He submitted that since the defendants had failed to file a defence to the plaintiff's claim, they were estopped from invoking the provisions of **0.18, r.19**. In further support of his submission, Counsel relied on the provisions of **0.19, r.3** (*supra*). Mrs. Hippolyte on behalf of the defendants submitted that there was no obligation on the part of the defendants to file a defence and **0.18, r.19** may be invoked by a defendant "*at any stage of the proceeding*"

7 The Court was satisfied that, notwithstanding the failure of the defendants to file a defence, they could properly invoke the provisions of **0.18, r.19**. The mischief behind **0.18, r.19** is to permit a party to examine the other party's pleading and come to court and ask for it to be struck out on one or more of the several grounds set out in **0.18, r.19**. Accordingly, I overruled the submission of counsel for the plaintiff.

8 **The Defendants' / Applicants' Submissions**

**Ground (1)**

**Failure to establish the liability of the Crown:** Counsel submitted that it was imperative for the plaintiff to establish a causal link between the plaintiff and the first and second defendants. That is to say, she averred that the failure of the plaintiff to plead that the first defendants were at the material time servants or agents of the second defendants was fatal to the claim. She further submitted that unlike the position in the United Kingdom where liability for wrongful acts of attaches to the Chief Officer of police for a police area, the situation is different in the Turks and Caicos Islands (see **Police Act 1996 (UK)** section 88).

g **Ground (2.)**

**The Statement of Claim is frivolous, vexatious and there are no reasonable grounds for maintaining the claim for wrongful arrest and/or false imprisonment:** Counsel submitted that the plaintiffs pleadings failed to establish whether the acts were without reasonable and probable cause. The tort of false imprisonment **is only** made out where the victim was imprisoned without reasonable and probable cause and the failure so to plead is fatal to the claim. Reference was made to the case of **Hicks v Faulkner**

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**Ground (3)**

**Was the claim filed within the time stipulated by the legislation?**

In support of that submission, Mrs. Hippolyte relied on the **Public Authorities Protection Ordinance, Chapter 21:10**, in particular, section 2 of the Act: "*Where after the coming into operation of this Ordinance any action, prosecution or other proceeding is commenced against any person for any act done in pursuance, or execution, or intended execution of any Ordinance or any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Ordinance, duty or authority, the following provisions shall have effect —*

*(a) "the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of or, in case of a continuance of injury or damage, within six months next after the ceasing thereof."*

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Counsel submitted that in light of the plaintiff's pleading, the first occasion on which the plaintiff was arrested was on the 1<sup>st</sup> January 2011. The plaintiff was arrested on five other occasions culminating in her final arrest on the 25<sup>th</sup> January 2012. Accordingly, Counsel averred that time began to run from 25<sup>th</sup> January 2012.

**Ground 4**

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**The claim for unfair dismissal:** Counsel submitted that the High Court has no jurisdiction to entertain a claim for unfair dismissal. Relief in such cases, she said, is an application under the **Employment Ordinance 2004**.

13 The Response to the Submissions

(1) At the request of the Court, Mr. Clarke was asked to first address the question whether the action was statute barred having regard to section 2(a) of the Public Authorities Protection Ordinance. He submitted that the Ordinance did not apply to actions brought against the Crown. It was restricted, he said, to claims against statutory bodies. He placed reliance on his right to maintain the action notwithstanding the Public Authorities Protection Ordinance on section 10 of Part III of the Crown Proceedings Ordinance. That section provides as follows: *"Subject to the provisions of this Ordinance, all such civil proceedings by or against the Crown as are mentioned in the First Schedule are abolished, and all civil proceedings by or against the Crown in the Supreme Court shall be instituted and proceeded with in accordance with the Civil Procedure Ordinance or any rules of court"*

(ii) In answer to the defendants' submission that his failure to plead that the first defendants were servants or agents of the second defendant and acting as such at all material times, Mr. Clarke submitted that paragraph 2 of the Statement of Claim met the criteria. With respect to the claim for defamation, he submitted, that the mere acts of arrests and detention were sufficient to establish a claim for defamation. Accordingly, he submitted, the Court ought to dismiss the defendants' summons.

14 The Legal Position - Discussion

It is well settled that the primary purpose of a Statement of Claim is to plead a reasonable cause of action against the defendant. Accordingly, a Statement of Claim must follow the rudimentary rule of pleading and so contain in a summary form all the

material facts on which the plaintiff relies for his claim (see **0.18, r.7/1**). The word 'material' means necessary for the purpose of formulating a complete cause of action and if any one 'material' statement is omitted, the Statement of Claim is bad (per Scott LT in **Bruce v Odhams Press Ltd. 1963 3 All ER p 294**).

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**Must the plaintiff establish a nexus between the first and second defendants?**

A writ which begins civil proceedings against the Crown must include, in addition to the matters required in the normal way in respect of the particular claim made, a statement of the circumstances in which the Crown's liability is alleged to have arisen. In the plaintiff's Statement of Claim there is no averment as to how or why the first and second defendants are linked. Accordingly, I uphold the submission of counsel for the defendants to that extent.

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**Is the claim for defamation, false imprisonment and imprisonment properly pleaded?**

**False imprisonment and wrongful arrest:** There is no onus on the plaintiff to allege in the Statement of Claim that the arrest or imprisonment was unlawful since the burden of proof is on the defendant to show that it was lawful. On the other hand, if the plaintiff desires to contend that the imprisonment was or became unlawful because he did not know and was not told what the charge was on which he was being arrested or because the imprisonment was endured longer than was justifiable, he should allege the facts, which are material in the Statement of Claim (see **Christie v Leachin**sv 119471 **AC 573**).

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In the case of **Williamson v Attorney General of Trinidad and Tobago (2014)** **85 WIR**, a decision of the Privy Council, Lord Kerr said, *inter alia*, at **paragraph 23**:

*"While in a false imprisonment claim the onus of establishing that the detention is justified rests with the detaining authority, the Board is satisfied that, for that onus to arise, it is necessary for a person detained on Jinn of an admittedly valid arrest to raise the issue of the legality of his detention during a specific period..."*

In the instant case the Plaintiff had to plead that there was no reasonable cause or justification for the arrest. That is what lies at the heart of the tort. It must be the driving force behind the action.

18

Defamation: Defamatory matter means matter which would "tend to lower the plaintiff in the estimation of right thinking members of society generally" (**Sim v Stretch** | **1936** | **2 All ER 1237 at 1240.** per Lord Atkin). The definition extends to matter which tends to make the claimant shunned or avoided by right thinking members of society, even though it may not be to the claimant's moral discredit, In so far as libel is alleged the words must be set out verbatim in the Particulars of Claim. It is not enough to set out their substance or effect, In cases in which the material complained of is so long that it cannot be reasonably pleaded in the body of the Particulars of Claim, the material may be included as a schedule to the Statement of Claim (see **Bullen & Leake & Jacob's Precedents of Pleadings, 14<sup>th</sup> Edition at 508, 28-14**). It is unclear for what purpose the plaintiff in the instant case relies on the material pleaded in paragraph 11 of the Statement of Claim. If, however, it were to establish a claim for defamation, it has fallen woefully short of what is required in law. Accordingly, paragraph 11 is struck out.

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**Wrongful Dismissal:** The plaintiff has pleaded in paragraph 15 "that she was dismissed from her job as Chief Protocol Officer without reason. Is that sufficient to sustain a claim for wrongful dismissal? It must be remembered that wrongful dismissal is



not a tort. It is a claim based in contract and accordingly it cannot be maintained in this action. The issue of unfair dismissal must be addressed in the **Employment Ordinance 2004**. Section 93 provides that disputes are first to be reported to the Commissioner or Inspector. Section 96 goes on to state that the Labour Tribunal may refer any question of law to the Supreme Court.

20 Finally, I come to the defendants' final ground. That is to say, is this action statute barred? The short submission of counsel for the defendants was that the alleged tortious acts complained of were during the period January 2011 to January 2012. To be more specific, in paragraph 12(f) of the Statement of Claim, the plaintiff pleaded that the last arrest was on the 25th January 2012. Accordingly, counsel submitted, in light of section 2(a) of the Public Authorities Protection Ordinance, Chap 21:10 the claim must fail.

21 The Ordinance came into force on 18th January 1969 to make **Statutory Provisions for the Protection of Persons Acting in the Execution of Statutory and Other Public Duties**. As has been stated in paragraph 9 (*supra*), "*The action...shall not lie or be instituted unless it is commenced within six (6) months next after the act...complained of*"

22 It is quite clear that section 10 of the Crown Proceedings Ordinance does not assist the plaintiff. What the Ordinance does is to allow the Crown to rely on any limitation of time for bringing proceedings (see section 26). That section states: "*Nothing in this Ordinance shall prejudice the right of the Crown to rely upon the law relating to limitation of time for bringing proceedings against public authorities.*"

I hold therefore that the Crown is a "Public Authority" for the purpose of the Public Authorities Protection Ordinance. See Smith v Commissioner of Police and Another 51 WLR 409.

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### Conclusion

In seeking to bring together these various strands so far as is necessary for the purposes of this case. I must confess to having had great difficulty in reconciling the submissions of Counsel for the plaintiff with those of the defendant. I am satisfied that section 2(a) of the Public Authorities Protection Ordinance precludes the plaintiff from initiating this action against the Crown. Accordingly, for that reason only 1 would dismiss the application. If, however, I am wrong in that regard, I have given careful consideration to paragraphs 2, 3, 4, 5, 11, 12 and 15 and find that they all fall short of the criteria set out in 0.18 r.19. It is for all these reasons that I must accede to the applicants/defendants application to strike out the Statement of Claim. In the light of my findings in this case I am convinced beyond peradventure that the Statement of Claim discloses no reasonable cause of action.

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It is accordingly hereby ordered that the-Statement of Claim be struck out, and the plaintiff shall pay the defendants costs to be taxed in default of agreement.

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Before 1 leave this matter I must express my disquiet at the level of assistance given to the Court by the Counsel. Whilst Counsel have a duty to their clients, it must also be borne in mind that they owe a duty to the Court. That duty to the Court includes providing assistance to the judge so that the Court will arrive at a fair and just decision. That is usually done by providing the Court with the necessary authorities and skeleton

arguments prior to the day of the hearing. Regrettably, in the instant case, notwithstanding a promise by Counsel for the defendants, the Court received limited assistance from Counsel. I trust that going forward Counsel will appreciate their crucial role and duty to the Courts.

Dated this 23<sup>rd</sup> day of November, 2016

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Stanley John J. (Ag)