



[2023] JMSC Civ. 35

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. SU2006HCV01145**

<b>BETWEEN</b>	<b>ROBERT FOSTER</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>CORPORAL HAYE</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN CHAMBERS**

**VIDEO CONFERENCE**

Mr. Raymond Samuels instructed by Samuels Samuels appeared for the Claimant

Ms. Nicola Richards instructed by the Director of State Proceedings appeared for the First and Second Defendants.

Heard: December 16<sup>th</sup> 2022 and January 13<sup>th</sup> 2023

**Civil Procedure Rule. – Whether amendments in respect of claim for remedies and constitutional relief amounts to new causes of action – Whether to amend the Claim Form and Particulars of Claim after the Limitation Period to include Remedies - Application of Civil Procedure Rules (CPR) 2002: Rules 8.7, 20.1, 20.4, 20.6, 64.2 and 64.3**

**MASTER CARNEGIE (Ag)**

This is an oral decision delivered on January 13<sup>th</sup> 2023, and which I have now reduced to writing.

## Introduction

- [1] On or about 11 October 2001, the 1<sup>st</sup> Defendant stopped the vehicle driven by the Claimant, emptied the bus of passengers and conducted a search. The 1<sup>st</sup> Defendant thereafter seized the motor vehicle, arrested the Claimant and preferred the charges against the Claimant of possession of ganja and dealing in ganja. The Claimant pleaded not guilty to the charges. The charges were determined in favour of the Claimant.
- [2] The Claimant now claims against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for damages for malicious prosecution; false imprisonment; and unlawful arrest, arising out of the 1<sup>st</sup> Defendant stopping and seizing the motor vehicle the Claimant was driving.
- [3] The procedural history of the matter thus far:
- i. Claim Form and Particulars of Claim were filed March 6<sup>th</sup> 2006
  - ii. Acknowledgment of Service of Claim on behalf of the 2<sup>nd</sup> Defendant was filed April 27<sup>th</sup> 2006, indicating they were served on April 12<sup>th</sup> 2006
  - iii. Request for Default Judgment was filed October 17<sup>th</sup> 2007
  - iv. A Court Order dated February 26<sup>th</sup> 2009 that the Claims in respect of suit number 2006 HCV 01145 be consolidated with suit number 2006 HCV 01659
  - v. Defence was filed on behalf of the Defendants on March 4<sup>th</sup> 2009
  - vi. Referral for the parties to attend mediation was issued on June 29<sup>th</sup> 2012
  - vii. Notice of Application for Court Orders was filed September 3<sup>rd</sup> 2018
  - viii. Amended Notice of Application for Court Orders bearing filing dates September 27<sup>th</sup>, 2020 and October 27<sup>th</sup>, 2020 (the former date the Attorneys-at-Law accepted as the filing date) which sought orders for:

- a) The court to dispense with the need for the Mediator to file the Mediator's Report;
  - b) The court to set a date for the Case Management Conference;
  - c) Alternatively, the hearing herein be treated as the Case Management Conference
  - d) The Claimant be granted leave to Amend the Claim Form inter-alia breach of constitutional rights; aggravated damages; and exemplary damages; damages for breach of constitutional damages; costs; Interest on Damages at such rate and at such times as this Honourable Court deems fit.
- ix. Hearing of the Application filed September 27<sup>th</sup> 2020 was adjourned to allow for –
- a) the parties to liaise with the Dispute Resolution Foundation as it relates to the Mediator's Report; and
  - b) the Defendants to file written submissions in response to the Notice of Application filed 27<sup>th</sup> September 2020.
- x. Mediation was dispensed with following the parties being invited to amend the Application to Dispense with Mediation on December 16<sup>th</sup> 2022.
- xi. The Amended Notice of Application filed September 27<sup>th</sup> 2020 was heard on December 16<sup>th</sup> 2022.

**[4]** The Application before the court, is in relation to the Amended Notice of Application filed September 27<sup>th</sup> 2020, and for which submissions on behalf of the Parties are summarised accordingly.

Submissions on Behalf of the Claimant

**[5]** Counsel for the Claimant premised his submissions in the background to the Claim which occurred in 2001. Counsel submitted that the passengers were taken off the bus, which resulted in the Claimant losing fare, placed in custody and locked up for seven (7) days by the 1<sup>st</sup> Defendant. The Claimant was subsequently

summoned to court to answer to the charges laid against him, which was decided in his favour.

- [6] Counsel submitted that, in respect of the Application at bar, an Application under Part 20.1 of the CPR may be brought without the permission of the court, however any subsequent amendments thereafter, only with the permission of the court. The point was made by Counsel that the Claim Form and Particulars of Claim can be further amended thereafter, only in respect of a mistake.
- [7] The Application at bar, Counsel submitted, was for the reason that the court needs to have all the material before it so that the matter can properly be decided. On this point Counsel submitted that there being no new cause of action pleaded, the amendments sought is to ensure a full presentation and determination of all involved in this Claim thereby allowing for the Claimant's Claim to be properly advanced.
- [8] In relying on the case of **National Recovery Limited v Attorney General [2020] JMSC Civ 125, p. 16**. Counsel submitted that the Court has the necessary powers to grant the amendments sought. The facts of that case are that the Claimant's statement of case was silent as regards the cause of action and the basis for the remedy sought, and therefore made an application to amend their Statement of Case on this basis. The Defendant in that case did not apply to strike out the claim for inadequate particulars. The court granted the orders to amend their Statement of Case. Hart Hines J (Ag), as she then was, concluded that amendments are permissible to determine real questions of controversy and a proper exercise of the judge's discretion, so long as it does not constitute a new cause of action.
- [9] Counsel continued his submission by stating that the Claimant will be severely prejudiced if the orders are not granted. Conversely, the Defendants would not be prejudiced if the orders are granted. Counsel argued that the proposed amendments to the Claim Form and Particulars of Claim, do not surprise or

prejudice the Defendants in any way, and it is in the interest of justice for the amendments to be allowed.

[10] Counsel submitted that in **National Recovery Limited v Attorney General of Jamaica (supra)** it was further held that where new causes of actions were added to the original claim, they may be allowed if they arose out of substantially the same facts and it would be in the interest of justice to allow such amendments.

[11] Counsel further submitted that such were the circumstances in the decision of **The Attorney General of Jamaica and Hutchinson v Cleveland Vassell [2015] JMCA Civ 47**. In that case, Dukharan, JA (as he then was) relied on the decisions of **Times Savings and Investment Limited and Fincken [2001] EWCA CA; The Jamaica Railway Corporation v Mark Azan (unreported) SCCA 115/2005, Delivered on February 16 2006**.

[12] I will set out the full text of the reference relied by Counsel. Dukharan JA held:

*“17. In assessing whether a proposed amendment in fact amounts to a new cause of action it is necessary to consider the statement of case as a whole. To determine whether a proposed amendment introduces a new cause of action for the purposes of the Act, it is necessary to examine the duty alleged, the nature and extent of the damage claimed. If the new plea introduces an essentially distinct allegation it will be a new cause of action.-  
--*

*22. (a) If the new plea introduces an essentially distinct allegation, it will be a new cause of action. If factual issues are in any event going to be litigated between the parties, the parties should be able to rely upon any cause of action which substantially arises from those facts.*

*(b) where the only difference between the original case and the case set out in the proposed amendment is a further instance of breach or the addition of a new remedy there is no addition of a new cause of action.*

*(c) A new cause of action may be added or substituted if it arises out of the same facts, or substantially the same facts, as to give rise to a cause of action already pleaded.”*

[13] Counsel submitted that the amendments in relation to a Claim for breach of constitutional rights should be allowed. In support of this point, Counsel relied on the case of **Durity v Attorney General of Trinidad and Tobago [2003] 1 AC 405**,

where a claim for constitutional relief was allowed; and also in the case of **Morris v Attorney General of Jamaica & Anor [2021] JMSC Civ 20**, where the court held that a claim for breach of constitutional rights could be added albeit some twenty years later.

- [14] Counsel submitted that at this point the amendments are just pleadings, and it is for court, at the appointed time, to determine whether on the Claimant's case for constitutional damage, the amendments could be granted. Counsel submitted that amendments in respect of the constitutional relief was reiterating what transpired and what freedoms were violated which all arose from same facts.
- [15] Counsel submitted that certain things were gleaned, when the Defence was filed and it was felt best that the Claim Form and Particulars of Claim be amended so that certain dates could be reflected. In this regard, Counsel averred that the amendments are a better particularization of what has been pleaded already and is made consequent on the filing of the Defence.
- [16] It was Counsel's further submission that the amendments would not cause any prejudice as there has been no Case Management Conference or trial date set and the Defendants would still be in the same position they are in now. Giving a background, Counsel submitted, is not a new cause of action and what transpired prior would still be relied on in the witness statement. Counsel continued by stating that the trial has not yet started, and that any likely trial date can still be met as the Court should strive for furthering the overriding objective.
- [17] Counsel further submitted that delay is not of relevance because amendments can be made at any time despite the limitation period having already passed. This, Counsel argued, would not be prejudicial as the Defendant would have enough time to consider the amendments as it is the same facts which give rise to the cause of action.

[18] Counsel's final submission was that the amendments are not new causes of action which the Defendants have not provided a response to, and therefore seeks to amend the Claim Form and Particulars of Claim as prayed.

Submissions on behalf of the Defendants

[19] It was Counsel for the Defendants submission that the amendments were made twenty-one (21) years after the incident, and sixteen (16) years after filing the Claim. The submission made on behalf of the Defendants was that, in this context the amendments should be considered in light of whether:

- (i) there are further and better particulars being proposed;
- (ii) it is one which seeks to introduce a new Claim; and
- (iii) the amendments should be allowed after twenty (20) years in the face of no explanation as to the delay in making the amendments.

[20] In this regard, whereas Counsel for the Defendants did not object to paragraphs 4 (a) (ii) (iii), (which are editorial in nature and seeks to correct a date and the insertion of the word "the") all other amendments to the Claim Form and Particulars of Claim were opposed. Counsel relied on CPR Part 20 and the decisions of **Judith Godmar v Ciboney (unreported) SCCA 144/2001 delivered 11<sup>th</sup> April 2003** and **Gloria Moo Young et al v Geoffrey Chung et al SCCA 177/99 (unreported) delivered 23<sup>rd</sup> March of 2003**, in opposing the application.

[21] Counsel in referencing CPR 20.6(2) submitted that case law permits amendments to a statement of case. In relying on the case of **Gloria Moo Young (supra)**, Counsel referred to page 6 of the judgment of Harris J (as she then was) where the learned judge stated that the court will exercise its discretionary power quite liberally, as long as it will not do any injustice to the opponents of the party seeking the amendment, particularly if the said opponent may be adequately compensated in costs on such amendments.

[22] The facts of **Gloria Moo Young (supra)** are such that the Appellants sought to have the Court of Appeal overturn the Supreme Court's decision to allow amendments to the Respondents' statement of case on the basis that the amendments gave rise to a distinctly new defence inter- alia. The Court of Appeal allowed the Appeal on the basis that the amendments gave rise to a new defence and it would not be in good faith and the interest of justice to allow it.

[23] Counsel submitted that the principle in **Godmar v Ciboney (supra)** recognised in the decision of **Peter Salmon v Master Blend Feeds Limited (unreported) Suit Number C.L. 1991/S 163 delivered on the 26<sup>th</sup> October 2007**, that there is a distinction between disclosing more about an injury pleaded during the limitation period, and a claim for an injury that was not pleaded during the limitation period.

[24] Counsel relied on the decision of **Hutchinson v Salmon [2017] JMSC Civ. 91**. In this case, the Claimant sought to amend his statement of case to include additional injuries and further sums of special damages. The Court was of the view that the Claimant was attempting to claim for entirely new injuries after the limitation period, and as such did not grant the amendments in this regard. Harris J stated:

*“(iii)The court in interpreting and applying that rule must give effect to the overriding objective of the CPR which is to deal with cases justly and by taking a multi-dimensional (or liberal) approach as distinct from a narrow approach.*

*(iv)Dealing with cases justly in an Application of this nature, also incorporates the principles that an amendment may be allowed where it is necessary to decide the real issues of controversy; it will not create any prejudice to the other party (such as presenting a new case) and is fair in the circumstances.*

*(v)There is a distinction between amendments to disclose greater details or Particulars about an injury pleaded during the limitation period and making a claim for an injury that was not pleaded during the said period. The former may be allowed while the latter will not be.”*

[25] It was Counsel's submission that in the case at bar, to allow the amendments after the passage of twenty (20) years goes against the overriding objectives as the Notice of Application in respect of same should not be viewed as expeditious.



- [26]** Further, in the present case, Counsel submitted that the Claimant is proposing to introduce new causes of action to include claims for breach of constitutional rights, aggravated damages, exemplary damages, costs and interests that were not pleaded in the initial Claim. It was the submission of Counsel on this point that these proposed amendments are new remedies for which the Defendants did not provide a response, and are not necessary to decide any issue of controversy as the Defendants filed a full Defence to the initial Claim.
- [27]** Counsel submitted that allowing the amendments would be severely prejudicial to the Defendants for the reasons that the 1<sup>st</sup> Defendant is no longer a member of the Jamaica Constabulary Force; and there are no contact details for him to facilitate getting additional instructions from him to respond to these further allegations raised in the amendments.
- [28]** Counsel submitted that allowing the amendments would cause prejudice to the Defendants and are not necessary to decide an issue of controversy. Counsel indicated that paragraph 4(b) of the Amended Statement of Case speaks to the condition of the cell and Corporal Hays would have to provide instructions in relation to that paragraph.
- [29]** Counsel submitted that if the amendments are allowed the 2<sup>nd</sup> Defendant will be required to respond to these new averments that were not made against them even during the limitation period. Additionally, the initial instructions that were sought by the 2<sup>nd</sup> Defendant in the matter was only in relation to the allegations that were pleaded in the Claim filed on March 29<sup>th</sup> 2006, and not in relation to these new proposals. Furthermore, the statement received from the 1<sup>st</sup> Defendant would be insufficient to respond to any of these new allegations that are in the proposed Amended Claim and Particulars of Claim. Counsel submitted that the 2<sup>nd</sup> Defendant would not be in a position to get additional instructions to respond to these new causes of action causing significant prejudice the Defendants.

- [30] Counsel submitted that the delay in making the Application is not one that should go unnoticed. Counsel argues that the court should refuse the orders sought because it is not furthering the overriding objective. On this point, Counsel submitted that it is important to note that the Claimant is being represented by the same Chambers since the filing of the claim and as such they were equipped with the relevant instructions that would have enabled them to file their substantive Claim since inception.
- [31] Counsel submitted that the incident occurred on the 11<sup>th</sup> day of October 2001 and the Claim was filed in March 2006 which was four (4) years and five (5) months after the incident. It is twenty-one (21) years since the date of the incident and sixteen (16) years since the filing of the Claim that Counsel is now seeking to amend the Statement of Case to further particularize his Claim for false imprisonment, malicious prosecution and particulars of absence of reasonable cause and to include new cause of actions and remedies thereto. Counsel relied on **Godman v Ciboney (supra)** to support their arguments that the affidavit does not include explanations for the amendments being made twenty-one (21) years later and that the same should provide the explanation as to why now.
- [32] Consequently, the court should refuse the orders being sought for the amendment to the Claimant's Statement of Case, as it is not in the interest of the overriding objective of the CPR and such would cause prejudice to the Defendants involved in the matter.

#### Law and Analysis

- [33] Counsel's submissions intersect at the point of whether the amendments sought amount to a new cause of action and whether same would further the overriding objective, in particular whether prejudice would obtain, and if the amendments are necessary to decide the real issues of controversy. I agree with Counsel in respect of same and therefore the issues to be decided are:

1. Whether the amendments amount to a new causes of action.

2. Whether the amendments should be allowed.

Whether the amendments amount to a new cause of action

- [34] In determining whether the amendments sought amounts to a new cause of action, it is necessary to determine the nature of the amendments which are in respect of: False Imprisonment; Aggravated/Exemplary Damages; Constitutional Relief; Damages, Interest and Costs.
- [35] It is important therefore to determine whether the amendments being sought were previously pleaded. I have determined the relief being sought arises out of the Claim for false imprisonment which on review of the Claim Form and Particulars of Claim, was originally pleaded.
- [36] I agree with Counsel for the Claimant that the amendments seek to give further particulars of what was already pleaded and therefore, further expanded on what has already been included in the Claim Form. In such circumstances, the amendments being sought do not give rise to issues of limitation as the amendments arise from what was previously pleaded within the limitation period.
- [37] I have determined that the false imprisonment was pleaded initially and given the amendments in respect of aggravated/exemplary damages, constitutional relief, interests and costs such flow from the Claim of False Imprisonment. The Claim Form filed on March 29<sup>th</sup> 2006 against the Defendants reflect damages for malicious prosecution; false imprisonment; and unlawful arrest, but these heads of damages were not expanded on.
- [38] Furthermore, the addition of a new remedy is not the addition of a new cause of action as established in the case of **Lloyds Bank Plc v Rogers [1999] All ER (D) 808**, where Lord Justice Auld discussed the difference between adding a new remedy and a new cause of action. The well-founded understanding of the decision in the case of **Lloyds Bank Plc v Rogers (supra)** is that the addition of a new remedy arising out of the claim initially pleaded does not constitute a new claim nor does it create a new cause of action. However, adding a new a cause of action

may create a new claim for which different pleadings may be required. It cannot be said that that is the case in the application before me.

[39] I refer to the case of *National Commercial Bank Ltd. and Another v Scotiabank Jamaica Trust and Merchant Bank Ltd* (unreported) SCCA 22/2008, delivered on the 19<sup>th</sup> December 2008, where the court considered the issue of amendments for the addition of Claims for negligence which amounted to a new cause of action outside the statute of limitation. Harris JA, determined that a new amendment would not be granted if it offended the statute of limitation. He further stated, in relying on the case of *Weldon v Neal* [1887] 19 QBD 394 it was held that the particulars of negligence imperfectly pleaded were admissible.

[40] In the case of ***Attorney General of Jamaica v Abigaile Brown (By Next of Friend Affia Scott)*** [2021] JMCA Civ 50, Brown JA giving the leading judgment concluded that even if an amendment made outside the limitation period may result in a new cause of action, it may be granted if founded upon that which the claim was originally filed. The court held that this amendment if granted would allow the plaintiff to plead an injury long after the expiration of the limitation period. The court relied on the principle established in ***Weldon v Neal (supra)***. The court held that a court should not allow a plaintiff to amend its statement of case by setting up a fresh claim in respect of a cause of action that has been statute barred.

[41] Phillips JA cogently demonstrated in ***Sandals Resorts International Limited v Neville L Daley & Company Limited*** [2018] JMCA App 24 that our Courts have consistently applied the position laid down in ***Weldon v Neal (supra)***. The learned judge indicated, in applying ***Weldon v Neal (supra)***, that a new cause of action should not be allowed after the expiration of the limitation period as this would unjustly deny the Defendant an accrued Defence under the limitation of actions statute. The learned Judge came to this conclusion based on his review of ***National Commercial Bank Jamaica Limited and Another v Scotiabank Jamaica Trust and Merchant Bank Ltd (supra)***, ***The Jamaica Railway Corporation v Mark Azan (supra)*** and ***The Attorney General of Jamaica and Hutchinson v***

**Cleveland Vassell (supra)** which also applies the principles emanating from **Weldon v Neal (supra)**. Equally, these cases demonstrate that although an amendment may result in a new cause of action, it may be granted if founded upon the same facts or substantially the same facts upon which the claim was originally filed.

[42] **Sandals Resorts International Limited v Neville L Daley & Company Limited (supra)** concerns the order made by the learned judge to grant the amendments in the further Particulars of Claim of the Respondent. The Respondent's case was in negligence. The averments were that the Appellant was negligent in its delivery and care of the Respondent child resulting in paralysis of her right arm. The amendments sought were for Particulars of injuries and loss of amenities. These injuries included depression, anxiety and diminished self-confidence, negative views of herself and low self-image which arose out of the same facts that were already pleaded before the court.

[43] The Court of Appeal in **Sandals Resorts International Limited v Neville L Daley & Company Limited (supra)** held that the cause of action remained one in negligence. Further, that there was no new claim or new facts or any injustice or prejudice suffered by the Appellant who at all times was aware of the nature of the matter against it and filed an Defence in that regard. Hence, the Court of Appeal was of the view that there was no new cause of action added after the limitation period. Further, that the amendments proceeded by way of Particulars of Injuries on the same facts. Therefore, the Court of Appeal ruled that the learned judge correctly exercised her discretion by granting the amendments. Consequently, the Court of Appeal ruled that this ground of appeal must fail.

[44] It is therefore settled that the court has a discretion to allow an amendment, even where the amendment would constitute a new cause of action – if it arises on the same facts of the original claim, and the amendment is made outside the limitation period.

[45] In the case at bar, the limitation period is six (6) years for which an action should be brought for the Tort of Malicious Prosecution and False Imprisonment as provided in section 2 of the Limitation Act 1980 (see **Wedderburn v Red Stripe Brewing Company Trading as Redstripe and The Attorney General of Jamaica [2019] JMSC Civ 215**). Though the amendments being sought are decidedly after the limitation period, it is my view that the amendments do not give rise to a new cause of action but rather an expansion of the original pleadings made within the limitation period.

[46] Therefore, I have determined that the amendments do not constitute a new cause of action. Further, the amendments being sought by the Claimant is in respect of remedies arising out of what was initially pleaded. In this vein, I must also state that I do not agree with Counsel for the Defendants that the constitutional relief sought amounts to a new claim (see: **Savings and Investment Bank Limited v Fincken (supra)**). The amendments as reflected seeks to claim for constitutional relief not to bring a constitutional claim – the former attracting no period of limitation for seeking such relief.

Whether the amendments should be allowed

[47] Having determined that the amendments do not amount to a new Claim, I now consider whether the amendments should be allowed. Case law suggests that in the absence of a criteria to amend claims outside the factors provided in CPR 20.4, the test for determining whether amendment after the limitation period should be allowed is whether allowing such amendments furthers the overriding objective. In the Application at bar the consideration is one of prejudice. However, of utmost importance in determining whether the amendments should be allowed is the nature of the amendments – the application at bar being one for remedies. The nature of remedies is to relieve the claimant rather than to punish (see: **Burrows, Remedies for Torts and Breach of Contract, 2<sup>nd</sup> Edition p. 7**).

[48] The CPR allows for the amendment of a statement of case as prescribed under CPR 20.1; 20.4 and 20.6 (See: **Peter Salmon v Master Blender Feed (supra)**).

In that case, the application for court orders to amend the statement of case fell to be decided at the stage of assessment. Sykes J (as he then was) explained that the Applications for the amendment of the Statement of Case outside the limitation period is not governed by CPR 19.4 and 20.6. I find it useful to reiterate the following portions of the judgment of Sykes J:

*“20. I am not sure that the rule 19.4 (Jam) can be applied without an Act of Parliament expressly conferring the power to sue the defendants after the end of the limitation period.*

*21. The submission that the only amendments permitted after the end of the limitation period are those specifically mentioned in rules 19.4 and 20.6 ignores 20.4 in its current form...*

*22. The amended 20.4 ... confers power of amendment on the court... The amended rule has not laid down any precondition or stated any criterion for the exercise of the discretion. This means that the application of the rule is governed exclusively by the overriding objective.”*

**[49]** The CPR 20.1 provides:

*“20.1 A party may amend a statement of case at any time before the cases management conference without the court’s permission unless the amendment is one to which either –*

*(a) rule 19.4 (special provisions about changing parties after the end of a relevant limitation period); or*

*(b) rule 20.6 (amendments to statement of case after the end of a relevant limitation period), applies.”*

**[50]** The Notice of Application, therefore, is within the application of CPR 20.4 given the nature of the amendments. CPR 20.4 is reflected thus –

*“20.4 (1) An application for permission to amend a statement of case may be made at the case management conference.*

*(2) Statements of case may only be amended after a case management conference with the permission of the court.*

*(3) Where the court gives permission to amend a statement of case it may give directions as to –*

*(a) amendments to any other statement of case; and*

*(b) the service of any amended statement of case.”*

The overriding objective is therefore the overarching principle and paramount in the application of CPR 20.4 (see: **Peter Salmon v Master Blender Feeders (supra)**).

[51] Counsel for the Claimant in his submissions argued that given the stage of proceedings, it will not cause an injustice to grant the amendments, and that the Defendants will have time to amend their statement of case.

[52] Counsel for the Claimant indicated that after the filing of the Defence, the permission would have been sought to amend the Claim Form and Particulars to reflect same and that late amendments can be made. Having regard to the stage of proceedings where the Defence was filed in 2009 and the application to amend is being made in 2020, and considering that this is not a case of late discovery, the analogy made by Counsel for the Claimant is not one that is applicable in this case. However, I will consider this point made by Counsel for the Claimant as it is a pivotal step to arriving at my decision in respect of case management considerations and furthering the overriding objective.

[53] This application at bar is unlike the decision of **Cook & Carlton Communications Limited v News Group Newspaper Ltd (No. 2)[2002] EWHC 1070 (QB)**. However, in that case, substantial amendments were accommodated where proposed amendments related to matters emerging at a late stage with the discovery of evidence which previously had been genuinely unavailable. Justice Eady stated, having regard to case management considerations:

*“An amendment may be refused where it will only enlarge the litigation with little potential benefit (Clarke v Bain [2008] EWHC 2636 QB. It is preferable as a matter of case management to allow amendments which sets out details of a party’s allegations, rather than simply let matters take their natural course at trial based on general allegations Three Rivers District Council v Bank of England [2003] EWCH 1269 (Comm).”*

*“Where the late amendments were extensive and bound to result in costly diversions from the existing issues in the litigation, one is bound to scrutinize such an application with care to see whether they could or should have been made earlier and whether they can be categorized as “more of the same”*



- [54] The amendments to the Claim Form and Particulars of Claim, seemingly extensive, are being made at a stage where case management orders have yet to be given. The Claimant is seeking to particularize his case at this stage consequent on the Defence being filed and served. This will only assist in the efficient disposal of the claim moving forward as the Claimant is seeking to give full Particulars of his claim, which the Defendants will benefit from.
- [55] The principles set out in **Attorney General of Jamaica v Abigaile Brown (By Next of Friend Affia Scott) (supra)** provides that the Court will consider the overriding objective and the general principles of case management; prejudice to the other party; interest of justice as well as the history of the matter before the court, as being necessary factors to be taken into account.
- [56] Lord Griffiths in **Ketteman v Hansel Properties Ltd [1987] AC 189 at p. 220** said that many and diverse factors will bear upon the exercise of the court's discretion, when determining the balance of factors to find where justice lies and that it is not possible or wise to attempt to enumerate them all. Nevertheless, factors regarded as relevant include –
- (a) The strain of litigation, particularly for personal litigants;
  - (b) anxieties caused by needing to face fresh issues;
  - (c) The effect on the other applicants and delays caused to them;
  - (d) Whether the need to amend arose from some recent disclosure or other good reason explaining the delay
  - (e) The effect on the length of the trial.
- [57] These factors while not exhaustive, formed part of my consideration among others in arriving at a position. Indeed, consideration of such factors is in the context of weighing the prejudice on both parties.
- [58] It is useful to state the contents of CPR 8.7 which prescribes what must be included in the Claim Form –

*“8.7 (1) The claimant must in the claim form (other than a fixed date claim form) –*

*Specify any remedy that the claimant seeks (though this does not limit the power of the court to grant any other remedy to which the claimant may be entitled)----*

*A claimant who seeks aggravated damages and/or exemplary damages must say so in the claim form.*

*A claimant who is seeking interest must –*

*Say so in the claim form, and ---”*

- [59]** Hence in order for the Claimant to realise remedies same must be specifically pleaded.
- [60]** I will restate and summarize the Defendants’ position on this issue for emphasis. Counsel for the Defendants submitted that the claim having been filed sixteen (16) years ago and the cause of action arising twenty (21) years ago is a very long time to begin with. Further, their Defence was filed in 2009 and it was not until 2020, some eleven (11) years after that, the Claimant is now seeking to amend the Claim Form and the Particulars of Claim without proffering a reason for the delay.
- [61]** Additionally, Counsel for the Defendants has indicated that not only is there an inordinate delay in seeking the amendments which should not be allowed, but that the 1<sup>st</sup> Defendant is no longer with the Jamaica Constabulary Force and has migrated. It is for this reason counsel submitted that there would be prejudice as the Defendants would be unable to get additional instructions in respect of the amendments.
- [62]** In my mind, should the amendments be allowed, the submissions advanced by Counsel for the Defendant does not in and of itself give rise to prejudice given the nature of the amendments. The amendments, though greater in detail, are information that is already known by the Defendants. Therefore, in these circumstances, Counsel for the Defendants would not need to get additional

instructions in respect of the amendments as the Defendant would have already been aware of same given the initial pleadings.

**[63]** Further Counsel for the Defendants has not provided evidence to suggest that the 1<sup>st</sup> Defendant is no longer with the Jamaica Constabulary Force and for that matter no longer available in respect of the proceedings.

**[64]** I do agree with Counsel for the Defendants that no cogent reason has been offered for the delay on the part of the Claimant's attorney-at-law, which is a consideration in furthering the overriding objective. However, though no cogent reason has been given for the delay in seeking the court's permission to make the amendments, it must be highlighted that the proceedings are at the stage where a case management conference has been set (consequent on mediation being dispensed with) to give case management orders in preparation for trial. Therefore, the amendments which further set out the Particulars of damages sought arises out of facts initially pleaded, will enable the Defendants and the court to ascertain in greater detail the Claim being brought at an earlier stage and prior to the start of the trial.

**[65]** I do not agree with Counsel for the Defendants that in these circumstances there is prejudice to the Defendants, but rather allowing the amendments furthers the overriding objective in having all the information for a determination of the issues at bar: (See: **Cook & Carlton Communications Limited v News Group Newspaper Ltd (No.2) (supra)**).

**[66]** On the question of interest becoming statute barred, I borrow the words of Sykes J who stated that it is a legal impossibility in the absence of legislation for a claim for interest to be barred (see: **Peter Salmon v Master Blender (supra)**). Sykes J stated that the proper way to deal with Claims that seek to add a Claim for interest is to grant the amendment. Thereafter, the learned judge at the trial of the Claim or the assessment of damages examines all the circumstances of the case and then awards an appropriate rate of interest for a specified period he believes is

appropriate. There are wide powers vested in the judge to do justice between the parties on the question of interest (see: **Peter Salmon v Master Blender (supra)**). Therefore, the amendments which seek to add a Claim for interest will be allowed.

**[67]** The amendments make reference to costs and is defined in the CPR 64.2 to include an attorney-at-law's charges and disbursements, fixed costs, basic costs, summarily assessed costs and taxed costs. Having regard to the court's power to make orders about costs including requiring any person to pay the costs of another person arising out of or related to all or any part of any proceedings (see CPR 64.3), I see no prejudice in allowing the amendment in respect of costs.

### **Conclusion**

**[68]** Having addressed the relevant issues, the amendments sought as reflected in the Claim Form and Particulars of Claim are granted, despite the fact there is a long delay in seeking the amendments. The delay in the circumstances is not condoned and in the interest of justice, costs should be awarded to the Defendants.

**[69]** Therefore, I make the following orders:

1. The Amendments as reflected in paragraph 4 of the Notice of Application filed September 27<sup>th</sup> 2020, in respect of the editorial corrections, the Particulars of False Imprisonment, Malicious Prosecution, Particulars of Absence of Reasonable Cause, Particulars of Exemplary or Aggravated Damages, Breaches for Constitutional Rights, Costs and Interest on Damages as such rate and at such times as this Honourable Court deems fit - are granted.
2. Costs to the Defendants to be agreed or taxed.
3. Claimant's Attorney-at-law to file and serve amended Claim Form and Amended Particulars of Claim on or before February 3<sup>rd</sup> 2023.
4. CMC is set for March 13<sup>th</sup> 2023 at 11:00 am for ½ hour.

5. Claimant's attorney at law to prepare file and serve orders herein.