



[2020] JMSC Civ 130

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2019CV04210

BETWEEN	LUEL RAS MESFIN HAILE SELASSIE I	CLAIMANT
AND	THE ATTORNEY GENERAL OF JAMAICA	DEFENDANT

CONSIDERED WITH

CLAIM NO. SU2020CV00468

BETWEEN	LUEL RAS MESFIN HAILE SELASSIE I	CLAIMANT
AND	THE HONOURABLE MRS JUSTICE THOMPSON- JAMES	DEFENDANT

IN CHAMBERS

The claimant self-represented

Carson Hamilton instructed by the Director of State Proceedings for the defendants

23 and 25 June 2020

Court's power to strike out a statement of case – Rule 26.3(1) of the CPR – Claim struck out – no reasonable grounds for bringing claim disclosed – an abuse of the process of the court – failure to comply with rule – Claimant has no real prospect of successfully prosecuting the claim

D. FRASER J

THE BACKGROUND

- [1] The claimant indicates that on September 11, 2019, he orchestrated a peaceful nonviolent human rights protest at King's House with members of the debt free Ecclesiastical Kingdom of Debre Zeit (Mount of Olives). He delivered a diplomatic letter of human rights intent to a JCF Sergeant on duty and was assured by Inspector Steele that His Excellency the Governor General would receive the letter and that he was to await a 7 days' timely response. After 12 days of waiting and receiving no response, he made a report at the Half Way Tree Police Station and was told that a follow up investigation would proceed. After a month long wait and no timely response, he sought "constitutional redress and diplomatic remedy" in the court.
- [2] He contends that he was denied a human rights diplomatic courtesy call with the Governor General by deceit, as he waited patiently for the timely response in order to peacefully negotiate for the fundamental prerequisites (diplomatic accreditation) indispensable for his full participation in the affairs of the country, whether great or significant. He asserts that moral corruption and political negligence was afoot as police officers were used to deceive him by malicious intent and that he is suffering undue hardships by the non-recognition of his indigenous identity as an Ethiopian Kristian faithful. He wishes the Governor General to give him diplomatic accommodations and to accredit him as a foreign head of a humanitarian institution in Jamaican territory.
- [3] He is also of the view that instead of the Governor General, the Chief Justice can give him the diplomatic accreditation which he seeks. In his view diplomatic accommodation is necessary to "secure and protect his inherent dignity as a lawful diplomatic remedy" under the UDHR and the Charter of Fundamental Rights and Freedoms. In paying the Governor General a courtesy call he also intended to negotiate for the implementation of diplomatic accreditation for the Kingdom of

Debre Zeit, his group's sovereign nation state, as he wishes to safeguard the dignity and integrity of the kingdom, as a sovereign land-locked nation state in east Kingston, Jamaica.

THE CLAIMS AND OTHER APPLICATIONS FILED

- [4]** The claimant having not received the responses he sought, on 24 October 2019 he filed a claim (claim no. SU2019CV04210) against The Attorney General, The Office of the Governor General and The Governor General in his private capacity for “general damages, gross negligence, breach of constitutional rights, violation of human rights, religious discrimination, defamation of character, arbitrary abuse of power, exemplary damages and vindictory damages...” In respect of this claim the claimant sought damages totalling \$317,500,000.00. On 10 February 2020 the claimant filed an “Amended Complaint” removing the Office of the Governor General and The Governor General in his private capacity as defendants.
- [5]** On 10 February 2020 the claimant filed a fixed date claim form (claim no SU202000468) against The Honourable Mrs Justice Thompson-James alleging breach of human rights under article 20 of the Universal Declaration of Human Rights (UDHR) Charter; violation against article 1 of the UDHR Charter of fundamental equality; denial of rights under section 13(3)(b) of the Charter of Fundamental Rights and Freedoms and political negligence.
- [6]** On 21 May 2020 counsel for the defendants filed in each case, a Notice of Application for Court Orders seeking the striking out of the claimant's statement of case.
- [7]** Up to 29 May 2020 the claimant filed a whole range of motions, amendments and other applications in relation to both claims.
- [8]** On 27 May 2020 all the applications filed in the two claims were set for hearing on 23 June 2020.

THE WITHDRAWAL OF CLAIM NO. SU2020CV00468

- [9] At the commencement of the hearing on 23 June 2020, the claimant indicated that he was withdrawing the 2nd claim that was filed, as it arose based on a misunderstanding. There was therefore no need for the court to hear the application to strike out the statement of case in that claim.
- [10] The court welcomes the withdrawal of that claim given that it is a fundamental principle of the common law that the defendant being a Judge of the Supreme Court is absolutely immune from personal civil liability in respect of any act done in her judicial capacity in a court of justice. This principle has been in existence from the 16th Century and serves to ensure that judges are able to discharge their duties impartially without fear of incurring personal civil liability in respect of persons aggrieved by the exercise of their judicial function. See **Halsbury's Laws of England Fourth Edition Reissue Vol 8(2)** Butterworths London 1996, at paragraph 304. In passing it is noted that section 7A of the Judicature (Parish Court) Act provides that "*Judges of the Parish Courts shall enjoy the same immunity from liability as Judges of the Supreme Court.*" Such claims as the action just withdrawn, should therefore not be brought or entertained.
- [11] Though counsel for the defendant had come prepared to argue this claim and would normally be entitled to costs associated with that preparation, in the circumstances of this matter, the court will exercise its discretion not to order any costs in respect of this claim.

THE APPLICATION TO STRIKE OUT THE CLAIMANT'S CASE IN CLAIM NO. SU2019CV04120

The Submissions

Counsel for the defendant

[12] After verifying with the court and the claimant that the relevant claim document was the "Amended Complaint" filed 10 February 2020, counsel for the defendant made the following submissions:

- a) **The claim discloses no reasonable grounds for bringing the claim.** Counsel relied on rule 26.3(1)(c) of the Civil procedure Rules (CPR) and the case of ***S & T Distributors Limited and S & T Limited v CIBC Jamaica Limited and Royal & Sun Alliance*** SCCA 112/04 (31 July 2007). He submitted that for the court to exercise the power to strike out the claimant's statement of case, it had to be a plain and obvious case that the claimant had no real prospect of successfully prosecuting the claim. He argued that this was an appropriate case for the power to be exercised as the amended complaint filed on February 10 does not disclose any cause of action known to law pleaded within the claim. To demonstrate this he referred to the list of damages claimed, to try to deduce the cause of actions raised and made the following observations on each as follows:
 - i) *Gross Negligence*: There were no allegations that could ground negligence in the Governor General towards the claimant. There was no indication of what duty of care was owed to the claimant by the Governor General and how that duty of care had been breached by the Governor General. The allegation was not even properly pleaded and did not have even a fanciful prospect of success;
 - ii) *Breach of Constitutional Rights/Religious Discrimination*: There is no allegation against the Governor General that would give rise to breach of constitutional rights and religious rights. Hence there is no cause of action;

- iii) *Defamation of Character*: There is no statement or publication disclosed that could lead to defamation. Hence there is no reasonable ground for bringing this claim;
- iv) *Arbitrary abuse of Administrative Power*. The fact that the claimant did not receive a response within the time frame that he thought he should have been responded to, assuming that there should have been a response does not give rise to the cause of action as pleaded;
- v) *Claims for exemplary and vindicatory damages*: These would necessarily have to flow from the above “causes of action”. Since none can be established then there would be no basis for damages to be paid.

Counsel also submitted that under the CPR, as opposed to the old rules which were more liberal, even if a cause of action is found within the pleadings (and there is none in this claim), it is for the court to determine whether there are reasonable grounds for bringing a claim upon those causes of action. Counsel emphasized that having gone through the amended complaint, he failed to see any cause of action at all within the pleadings and saw no reasonable grounds for bringing the claim upon what does not even amount to any causes of action. He cited in support the case of ***Sebol Limited and Selective Homes & Properties Limited v Ken Tomlinson (as Receiver of Western Cement Company Limited), National Investment Bank of Jamaica Limited, The Registrar of Titles, and Pan Caribbean Financial Services Limited (Formerly Trafalgar Development Bank Limited)*** SCCA 115/2007 (12 December 2008).

- b) **The claimant’s statement of case is prolix.** Counsel cited rule 26.3(1)(d) of the CPR. He submitted that the amended complaint is too wordy and is as difficult to understand as any he has read. It was difficult to determine what the claim is about. Counsel maintained that the defendant would find it almost impossible to respond to this complaint based on the way it has been filed. It was, he argued, difficult to

understand the causes of action and what it is alleged that any servant of the crown had done to affect the rights of the claimant.

- c) **The claimant's claim is an abuse of the process of the court.** Counsel relied on rule 26.3(1)(b) of the CPR. He submitted that if this matter was allowed to proceed on these pleadings it would be a waste of judicial time and would amount to an abuse of the court's process. He indicated that this ground was interrelated with ground (a) as if the claim discloses no reasonable ground for bringing the claim it amounts to an abuse of the process of the court.

- d) **The claimant has failed to comply with Part 8 of the CPR.** Counsel relied on rule 26.3 (1) (a) of the CPR, which gives the court power to strike out a statement of case where there has been failure to comply with a rule. He identified two areas in which he submitted the claimant's application failed to comply with Part 8. He argued that:
 - i) The "Amended Complaint" should not be treated as a claim form or a particulars of claim. The "additional contemporaneous document evidence", should not be treated as a claim form or particulars as it seems more akin to a notice to tender hearsay documents
 - ii) Even if the court were to treat the amended complaint as a claim form or particulars of claim, in breach of rule 3.12(1) of the CPR it has not been verified by a certificate of truth which should be in the form indicated by rule 3.12(7) of the CPR and hence by virtue of rule 3.13 of the CPR, the court may strike out the statement of case on the application of the defendant

- e) Counsel finally submitted that if the court decided not to strike out the claimant's statement of case the defendant would request the grant of time to file a defence to respond to the claim. Counsel indicated that the defence had not yet been filed, as to do so would be a waste of time given that the court has not yet ruled on this application to strike.

The claimant

- [13] The claimant submitted that he filed a motion for a quia timet injunction on October 24, 2019. He indicated that the May 25, 2018 protest on Afrikan Liberation Day led to the September 2019 demonstration. He stated that before the protest on May 25, 2018 Kings House had been contacted to say they were coming, but there was an unlawful arrest.
- [14] He outlined that he had renounced his citizenship and made an autonomous declaration as he was making a Kristos claim. He therefore had a new legal status and an autonomous diplomatic position with an autonomous diplomatic passport, just like how the Pope had status at the Vatican and is defender of the catholic faith.
- [15] He argued that the **Crown Proceedings Act** could set aside the CPR and the Governor General represents the Crown. He said his life was in jeopardy and he was therefore relying on section 19 of the Constitution. He also submitted that Article 8 of the UDHR indicates that there is a right to relief before a national tribunal, which would be the Supreme Court.
- [16] He further submitted that the state was responsible to accredit him and send him to the United Nations where he would seek to negotiate diplomatic rights deposit a Kristological Peace Treaty. He however emphasised that he wanted to enter the United Nations in an autonomous capacity as he had renounced his citizenship. He further submitted that under section 29(1) of the Constitution, the Chief Justice can undertake certain functions when the Governor General does not.
- [17] He maintained that his claim was not groundless as the matters he complained of affected his life and the Supreme Court had to deal with both local and international rights. He argued that striking out is an extreme measure and the court must be extra cautious. He maintained that the issue concerned his life and he must get accreditation as only ambassadors' dignity is protected. That was another reason he renounced his citizenship to get international status. He submitted that the

UDHR should take precedence over the Constitution and give us (he and his followers) the diplomatic protection that we are seeking. He said he did have any cases because this matter is unprecedented, but the court had the authority to set precedents. Finally, he indicated that the damages sought in his claim should be converted from J\$317,500,000 to US\$317,500,000.

Counsel for the defendant in reply

- [18] Counsel submitted that the court should disregard any reference to allegations of arrest as the matter should be dealt with on the statement of case, if it can be considered as such, as pleaded. If there had been an arrest there would have been a different cause of action. The court should therefore disregard that as it does not form part of the amended complaint as filed.
- [19] Counsel also submitted that as the claimant is seeking a declaration as an autonomous diplomat and human rights defender, this would not be the proper forum as such a claim would have to be brought under Part 56. Counsel similarly submitted that as the claimant sought constitutional relief the proper procedure was also to proceed under Part 56 which deals with administrative orders
- [20] Counsel also noted that the claimant in his amended complaint has not sought any declarations but has sought damages, which would not sound as a remedy for what he seeks.
- [21] Counsel also pointed out that section 29(1) of the Constitution deals with situations where there is an acting Governor General and that it did not mean that if the Governor General did not take certain action, it was open to the Chief Justice to execute that action.

DISCUSSION AND ANALYSIS

[22] Rule 26.3 (1) of the CPR outlines the circumstances in which a court may strike out the statement of case of a party. It provides that :

In addition to any other powers 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 –

- a) That there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings;
- b) That the statement of case or the part to be struck out is an abuse of the process of the court or likely to obstruct the just disposal of the proceedings;
- c) That the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim; or
- d) That the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10.

[23] In the ***S & T Distributors Limited and S & T Limited*** case Harrison P noted at page 29 that, “The striking out of a claim is a severe measure. The discretionary power to strike out must be exercised with extreme caution.” Having referred to the authorities of ***Nagle v Feilden & Others*** [1966] 2 Q B 633 and ***Drummond-Jackson v British Medical Association and Others*** [1970] 1 WLR 688, he concluded at page 29 – 30 that for a claim to be struck out as disclosing no reasonable cause of action it had to be obvious that the claimant had no real as opposed to a fanciful prospect of successfully prosecuting the claim.

[24] In the subsequent case of ***Sebol Limited and Selective Homes & Properties Limited*** which considered ***S & T Distributors Limited and S & T Limited*** and ***Drummond-Jackson v British Medical Association and Others***, Dukharan JA comparing the CPR with the Civil Procedure Code which preceded it, noted at paragraph 28 that:

The focus on the new rules is to deal with matters expeditiously and to save costs and time. If there are no reasonable grounds for bringing an action then the court ought to strike it out. Under the old rules once the pleadings indicated some known cause of action then it [sic] is hardly likely to be struck out

- [25]** Therefore under the present rules for a claimant to resist an application to have his statement of case struck out, he must demonstrate both that his claim is for a known cause of action and also that there are reasonable grounds for bringing the action.
- [26]** It is clear that the claimant's main grievance is that he has failed to obtain "accreditation" from the Jamaican State, recognition of his self-assumed status and certain perquisites which he is of the view would attach to such "accreditation" and recognition. The court is constrained to observe that while the claimant professes to have "autonomous" status, he is seeking "accreditation" from persons, agents or institutions within the same country in respect of which he has purported to renounce his citizenship, so that he can go to the United Nations. It should be plainly stated that what the claimant seeks cannot be done.
- [27]** As outlined in the detailed submissions of counsel for the defendant, which I entirely adopt, the actions or omissions alleged against the representative(s) of the state, under each of the several heads of complaint identified, do not support any of the causes of action on which the claimant seeks to ground the claim. There is no indication on the pleadings, to the extent they can be described as such, that gross negligence, breach of constitutional rights, religious discrimination, defamation of character or abuse of administrative power was committed by His Excellency The Most Honourable Governor General or any other agent of the state referenced in the amended complaint.
- [28]** The submissions of counsel for the defendant in respect of the claimant's failures to comply with Part 8 of the CPR are well founded and also provide a basis for the success of the defendant's application. Importantly of course, those breaches could, with amendment or refileing of the claim be cured. However the substantive

challenges which have revealed the absence of a foundation for the claim cannot be cured.

[29] Accordingly the court is constrained to hold that the defendant is entitled to succeed in this application — it being plain and obvious that the claimant has no real prospect of successfully prosecuting the claim as it is wholly misconceived, discloses no reasonable cause of action and is an abuse of the process of the court. Additionally the “Amended Complaint” and “Additional Contemporaneous Documentary Evidence” are not in compliance with Part 8 and the breaches identified, provide an additional basis for the success of the defendant’s application.

DISPOSITION

[30] In the premises the court makes the following orders:

- (1) The claimant has withdrawn claim number SU2020CV00468.
- (2) The claimant’s statement of case in claim number SU2019CV04120 is struck out.
- (3) No order as to costs in claim number SU2020CV00468.
- (4) Costs to the defendant in claim number SU2019CV04120 to be agreed or taxed.