



[2019] JMSC Civ 141

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2019CV00592

BETWEEN

ARLEEN McBEAN

CLAIMANT

AND

SHELDON GORDON

**1ST
APPLICANT/
DEFENDANT**

PATRAE ROWE

**2ND
APPLICANT/
DEFENDANT**

THE POLICE FEDERATION

**3RD
APPLICANT/
DEFENDANT**

IN CHAMBERS

Mr Hugh Wildman for the Claimant

**Mrs Symone Mayhew and Miss Rushelle Johnson for the 1st and 2nd
Applicants/Defendants**

**Mrs Jacqueline Samuels-Brown and Miss Althea Grant for the 3rd
Applicant/Defendant**

June 19, 2019

Legal personhood – Capacity to sue and be sued – Can unincorporated bodies be parties?

L PUSEY J

- [1]** On each side of this application, counsel is confident that counsel for the other side has made a rather basic error.
- [2]** This Claimant was elected Chairman of the Police Federation in May of 2018 for a one-year term. The 1st Defendant was elected as the General Secretary. In January 2019 at a meeting of the Federation, a resolution was passed removing the Claimant as Chairman. The 1st Defendant was subsequently installed as Chairman and the 2nd Defendant as the General Secretary in his place.
- [3]** The Claimant sought relief from the court by way of Fixed Date Claim Form for declarations that she was still the Chairman, that her removal was contrary to the Constabulary Force Act which established the Police Federation, that it was null and void and that she remained the Chairman of the Police Federation. She also sought an injunction restraining the Defendants from taking any steps from preventing her from performing her functions as the Chairman of the Federation. The claim sought damages to be assessed for removing her as the Chairman of the Federation.
- [4]** The Claimant obtained an Interlocutory Injunction from the court in or around February of 2019.
- [5]** At the hearing of this application the court was told that the new elections were set for the end of May 2019. This means that the declarations will only be advisory when this decision is handed down.
- [6]** The 1st and 2nd Defendants applied to strike out the action as disclosing no cause of action because the Police Federation is not a proper party as it has no legal

persona. Additionally, the 1st and 2nd Defendants have not been sued in a representative capacity but in their own right as individuals.

- [7] The 3rd Defendant has joined the application and also asked for the claim to be dismissed.

Applicants' case

- [8] Mrs Mayhew for the 1st and 2nd Defendants candidly admits that this application would best be made at the time that the matter first came before the court, however in the excitement of contesting the urgent injunction, this issue was not raised.

- [9] The Police Federation is established by section 67 of the Constabulary Force Act which states:

(1) For the purpose of enabling the Sub-Officers and Constables of the Force to consider and bring to the notice of the Commissioner of Police and the Minister all the matters affecting their general welfare and efficiency, there shall be established in accordance with the Second Schedule an organization to be called the Police Federation which shall act through Branch, Boards, Central Conferences and a Central Committee as provided in that Schedule.

(2) No representations shall be made by the Federation in relation to any question of discipline, promotion, transfer, leave or any other matter, unless some question of principle is involved.

(3) The Police Federation shall be entirely independent of and associated with any body outside the Force.

(4)

(5)

- [10] Mrs Mayhew's argument is best encapsulated in the decision of Morrison JA (as he then was) in **Andrew Hamilton v Assets Recovery Agency** [2017] JMCA Civ 46. Morrison JA referenced **L.C. McKenzie Construction Ltd v The Minister of Housing and the Commissioner of Lands** (unreported Supreme

Court Suit No E200/1972) delivered 13 November 1972, where Duffus CJ determined that although the Minister of Housing was a corporation sole under the Housing Act and could hold land he was still a servant of the Crown and importantly could not sue or be sued in his own name. Suits against the Minister of Housing had to be prosecuted against the Attorney General under the Crown Proceedings Act.

- [11] Morrison JA also discussed **Linton Thomas v The Minister of Housing and Ivanhoe Jackson v the Minister of Housing** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal Nos 60 & 61/1983, judgment delivered 22 June 1984, in which Rowe JA (as he then was) specifically approved the decision of Duffus CJ in **L.C. McKenzie Construction Ltd.** Rowe JA indicated that each statute had to be considered in determining whether or not the corporation sole had the power to sue or to be sued. Morrison JA also referred to the judgment of F Williams J (as he then was) in **Nichola Bryan and Others v St. Mary Parish Council, National Works Agency and The Attorney General** (unreported), Supreme Court, Jamaica, Claim No 2011HCV06108, judgment delivered 3 February 2012, which considered the status of the National Works Agency which had been created under the Executive Agencies Act. F Williams J indicated that the legislative intent to create a separate legal persona is shown in clear terms in the statute. Without these clear terms, he reasoned that the National Works Agency was a body created for administrative expediency without a separate legal existence.
- [12] Morrison JA summarised these and other cases in paragraphs 54 and 55 of the judgment where he said:

[54] There can be no question that, in order to institute and maintain proceedings, all litigants must have legal status of some kind, some sort of separate legal existence or persona. But it is clear that there is no fixed route to such status. In every case in which it is said to derive from statute, it will be necessary to consider the particular statute relied on in order to discern the intent of parliament. At one end of the spectrum, there will be clear cases, such as, for instance, a company incorporated under the Companies act which "has the capacity ... rights, powers and

privileges of an individual” Equally clear will be the case of a body corporate established by statute to which section 28 of the Interpretation Act applies, which will have the power to, among other things, sue in its corporate name.

[55] However, as the cases show, even the designation by statute of a body as a corporation sole does not necessarily vest in that body the right to sue or be sued in its own name. Every case calls for careful scrutiny of the particular statute in order to determine the legislative intent with regard to the particular body under consideration.

- [13] Mrs Mayhew also cited the case of the **Junior Doctors Association and another v The Attorney General for Jamaica** (unreported), Court of Appeal, Jamaica, Motion No 21/2000, Suit No E127/2000, judgment delivered 12 July 2000, in which the Court of Appeal set aside an injunction issued by the then Chief Justice restraining the Junior Doctors’ Association from taking industrial action. The Court of Appeal held that the Junior Doctors’ Association was an unincorporated body and therefore the action against them was a nullity.
- [14] Mrs Samuels-Brown, QC adopted the submissions of Mrs Mayhew and reinforced the point that an inspection of sections 67 to 72 of the Constabulary Force Act and the Second Schedule of the Act which establishes and determines the procedures of the Police Federation do not in any way suggest that the Police Federation has the capacity to sue or be sued. Learned Queen’s Counsel points out that the mandate of the Federation is severely limited. It has to communicate with The relevant Minister or the Commissioner of Police in strictly defined statutory circumstances.
- [15] Mrs Samuels-Brown reiterated the point that the Act would have needed express language to grant the Federation the capacity or legal personality to be sued. It seems that the implication of Mrs Samuels-Brown’s observation of the narrow definition of the powers granted to the Federation is that Parliament was so restrictive in its formulation of the Police Federation that even if legal personality could be implied, there is no basis for such an implication in this matter.

Respondent’s case

[16] Mr Wildman was vehement in his opposition to the application. He argued strenuously that the application was "... misconceived, frivolous, vexatious and should be struck out ...". He confirmed that the remedy sought in this matter was not one of judicial review but a claim in private law. In paragraph 20 of the claimant's written submissions counsel goes on to state:

The Claimant is contending that the individual Defendants acted illegally in breach of the statute under which she was elected and removed her from her post as the duly elected Chairman of her standing and status of the duly elected Chairman of the Police Federation. ... The Claimant has simply come to the Court seeking declarations of her standing and status as the duly elected Chairman of the Police Federation and to ask the court to declare that the Defendants ... usurped power in having the Claimant removed and to install themselves as the Chairman and General Secretary of the Police Federation.

[17] Mr Wildman adds that there were no questions of representative Defendants as the two personally named Defendants were brought before the court as "usurpers of power". In relation to the Federation, counsel argues that the Federation had to be joined as a Defendant so that the orders sought by way of declaration could be effective in having her reinstated as Chairman of the Police Federation. Moreover, the Federation is a creature of statute and its composition, functions and powers are defined by statute.

[18] Counsel submitted that:

The Police Federation is a creature of statute and can be sued like any other statutory body. [emphasis added] (paragraph 22 of Claimant's submission)

[19] Mr Wildman also relies heavily on the doctrine of ultra vires and points out that where a public authority acts outside its statutory power then those acts are null and void and the court will declare them so. He observes that this position is the same in public law and private law. He relies on the case of **Credit Suisse v**

Allendale Borough Council [1997] QB 306 where the Council created a limited liability company to assist in obtaining financing of a project. The Council had no express power to create a company for that purpose and the guarantee given to the company so created was deemed to be null and void. Mr Wildman posits this case as support for the position that the principle of nullifying acts done ultra vires to statute is also applicable to private law cases as it is to public law matters.

[20] Counsel also argues that the 1st and 2nd Defendants in their personal capacities are liable for their actions in acting outside the Constabulary Force Act. He states that:

Any member who usurps the power of the Constabulary Force Act, including the Defendants, resulting in the removal of the duly elected Chairman of the Federation, can be sued in their private capacity by the Chairman for breach of the statute in removing her from office...by this reasoning, any individual who takes part in the decision of any statutory entity is personally liable for their actions even when the decision is made by the corporate body.

[21] Procedurally Mr Wildman posits that the action that was instituted is similar to the Originating Summons under the old rules set out in the Civil Procedure Code. Under that process a party could seek the court's intervention to determine the powers, rights and functions of persons under a statute. He argues that the Fixed Date Claim Form is the successor to this type of application and that what is sought is the court's interpretation of the Constabulary Force Act and whether the 1st and 2nd Defendants had the power to remove her from her post.

Capacity to sue

[22] The first question to be determined is whether the Police Federation has the capacity to sue. Despite Mr Wildman's assertion that every statutory authority has the legal persona to be sued, this contradicts the reasoning of the Court of Appeal in **Andrew Hamilton** referred to above where Morrison JA expressly indicated that the statute must be looked at to determine the capacity that statutory bodies have. This is what the Court of Appeal did in **The Police**

Federation v the Commissioner of the Independent Commissions of Investigations [2018] JMCA Civ 10 in determining that although the Commission had the power to investigate matters it was not a juristic person and did not have the right to indulge in private prosecutions.

- [23] There are no provisions or words in the Constabulary Force Act that would grant the Police Federation the power to exist as a separate legal entity. The Police Federation is an entity created under the Constabulary Force Act to grant the members of the Force a rather circumscribed means to communicate with the leadership of the Force about “matters affecting their general welfare and efficiency”.
- [24] Therefore, it is my view that the Police Federation has no legal persona and does not have the capacity to be a party in a private legal action.

Can unincorporated bodies be parties

- [25] There is no doubt that unincorporated bodies can participate in legal actions. None of the parties to this application suggest otherwise as it is well known that unincorporated associations such as clubs or professional associations have usually taken action by way of representative action. The Civil Procedure Rules (CPR) in Part 21 provide for representative actions for groups of persons with a common interest and for the estates of deceased persons among other things.
- [26] Additionally, statutory entities which are not juristic persons can apply for and be parties to judicial review applications. CPR 56.2 states

(1) An application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application.

(2) This includes:-

(a) any person who has been adversely affected by the decision which is the subject of the application;

(b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);

(c) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;

(d) any statutory body where the subject matters falls within its statutory remit;

(e) any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application; or

(f) any other person or body who has a right to be heard under the terms of any relevant enactment or the Constitution.

[27] Therefore, although unincorporated entities can be parties to judicial review or they can appear by way of representatives the issue in this case is whether the Police Federation which is not a juristic person can be sued in a private law action which seeks declarations as to whether there have been actions taken by the Police Federation which are contrary to the Constabulary Force Act.

[28] When the court makes a declaratory judgment it pronounces the legal rights and responsibilities of the parties. These parties are bound by the court's declarations and ought to act in compliance with these declarations. For example, the most frequent declaration made by the Supreme Court may be declarations as to the rights of parties under the Property (Rights of Spouses) Act. When such a declaration is made the interest in the property in question is determined and the former spouses are bound by and can act according to the court's pronouncement.

[29] It is my view that both parties to an action seeking declaratory relief in a private law action must have legal personality. Private law actions must be between two existing legal entities. It is also my view that the Police Federation is not a juristic person and cannot be a party to an action in private law.

[30] Therefore, this court is of the view that it would be impossible for the Claimant to seek orders against the Police Federation.

The individual defendants

- [31] Mr Wildman has argued that the 1st and 2nd Defendants may have orders made against them as they have acted contrary to the Constabulary Force Act and the court can determine whether their acts are null and void and also whether they ought to pay damages for their illegal acts
- [32] I am not making any determination about the success or otherwise of the substantive action.
- [33] However, even if Mr Wildman is correct that the action taken at the Police Federation meeting was in fact illegal and void, I am not of the view that the 1st and 2nd Defendants could be held responsible in their personal capacity. My understanding of the Claimant's evidence is that on the fateful day in January 2019 there was a vote on a motion to remove the Claimant as Chairman. Even if the 1st and 2nd Defendants orchestrated or benefitted from this decision it was not a decision of them as individuals but of the Central Committee of the Police Federation.
- [34] Therefore, any action against the 1st and 2nd Defendant should be against them as representatives of the Police Federation and not in their personal capacity. I am unaware of any legal principle that confers personal liability for the acts of individual members of a decision making body or committee in the absence of fraud, deception or criminal illegality. Had the Claimant acted against the 1st and 2nd Defendants on behalf of the Central Committee or the Police Federation, I do not think that there could be a challenge to the action.
- [35] However, as presently formulated I am of the view that an action against the 1st and 2nd Defendants in their personal capacity ought not to be maintained.

Conclusion

- [36]** I am of the view that the Police Federation is not a juristic person and cannot sue or be sued and that this action seeking declarations in private law against the Federation fails because private law actions must be between legal persons.
- [37]** The claim against the 1st and 2nd Defendants also fail because they have been sued in their personal capacity for actions of the Committee of which they were members. They were not sued in a representative capacity therefore the claim against them cannot stand.
- [38]** The claim is struck out against the 1st and 2nd Defendants as disclosing no reasonable claim and against the 3rd Defendant because it has no legal capacity.
- [39]** This decision takes effect as of the day of this judgment. It does not in any way disturb the decision of Bertram-Linton J to grant an injunction in this matter, I note that the order of Bertram-Linton J was made until the end of the period for which she was elected and therefore that injunction is spent.
- [40]** Costs of this application and of the claim except for any matters covered by any previous costs order made to be paid to the Defendants by the Claimant.