

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

AT COMMON LAW

SUIT NO. C.L. 1980 - M.171



BETWEEN

BYRON MOORE

PLAINTIFF

A N D

THE ATTORNEY GENERAL FOR
JAMAICA

DEFENDANT

Raphael Codlin for Plaintiff.

Noel Fraser for Defendant.

Heard on: May 3, 1984 and June 21, 1984

JUDGMENT

ORR, J:

The plaintiff is a businessman and Commissioner of the Universal Negro Improvement Association (hereinafter referred to as the U.N.I.A.) for Latin America and the West Indies.

In 1979, he was arrested on a charge of murder and appeared before the Resident Magistrate's Court at Half-way-tree on several occasions pursuant to the charge.

On one such occasion while he was on bail, the Resident Magistrate indicated that he would have to surrender his Passport as a condition of the grant of bail. The plaintiff agreed to this, surrendered his Passport, and a receipt was issued to him which reads as follows:

" 22/2/79
Received from Mr. Byron Moore one Passport
578290 for safe keeping in accordance
with condition of bail.

D. Reynolds Det. Atg. Insp.
22/2/79".

On the 29th February, 1980, the case was adjourned sine die due to the non-attendance of witnesses for the prosecution. The plaintiff in the absence of his attorney, applied to the Court for the return of his passport. The learned Resident Magistrate told him that his attorney should make the application.

Subsequently the attorney made application to another Resident Magistrate who made no order but, according to the plaintiff, said that the matter was out of the Court's jurisdiction and was for the police.

Thereafter the plaintiff made several unsuccessful applications for the return of his passport to Inspector Reynolds, and officers at the office of the Commissioner of Police. No evidence was adduced of any reason for the failure to return the passport.

In August 1980, the plaintiff was invited in his capacity as Commissioner for the U.N.I.A. to attend the unveiling ceremony of the statue of the Honourable Marcus Garvey in the O.A.S. Hall of Fame, Washington, D.C., U.S.A. This was a unique occasion, so he wrote the Minister of National Security and Justice and the Attorney General but failed to get the passport. As a consequence he was unable to attend the ceremony.

On the 27th October 1980, on the application of the plaintiff the Master made an Order for the return of the passport. This Order was carried out.

The plaintiff now seeks damages for his injured feelings and embarrassment occasioned by his inability to attend the unveiling ceremony as also loss of profits in his business. This loss was not pleaded nor particularised in the Statement of Claim.

The defence filed, admitted the capacity in which the defendant had been sued and that the passport had been returned by order of the Master. Paragraph 3 thereof reads:

" Save that on the date mentioned in the Statement of Claim a charge which was pending in the Resident Magistrate's Court for the parish of St. Andrew against the plaintiff was adjourned sine die by the Resident Magistrate for that parish, and the plaintiff's passport was surrendered to the police on the orders of the said Resident Magistrate as a condition of being admitted to bail paragraph 3 of the Statement of Claim is not admitted. The defendant will contend at the trial that at the adjournment of the aforesaid charge no application was made by the plaintiff, and no order was made by the Resident Magistrate for the return of the plaintiff's passport".

Paragraph 3 of the Statement of Claim is as follows:

" That on the 29th February, 1980 a charge which was pending in the Resident Magistrate's Court for the parish of Saint Andrew against the plaintiff was adjourned sine die by the Resident Magistrate for that parish, and therefore the passport of the plaintiff which was surrendered by the plaintiff as a condition of bail became returnable to the plaintiff".

No evidence was called on behalf of the defence.

Mr. Fraser submitted that the police were in possession of the passport by virtue of an order of the Court and as such the detention was covered by Section 3(5) of the Crown Proceedings Act which reads:

" No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process".

He submitted further that although the Indorsement on the Writ alleged detention without reasonable and probable cause by members of the Police Force, this allegation was not repeated in the Statement of Claim. As a result the plaintiff had abandoned the allegation and was out of Court.

Mr. Codlin sought to distinguish between an order and a request by a Resident Magistrate for the surrender of a passport as a condition of bail. He submitted that the Resident Magistrate had no power to make such an order and there was a mere request in this case. In any event once the bail had ceased to be in force the condition for surrender of the passport likewise ceased and the police had no authority to detain the passport.

He submitted further that the defence could not now plead the Crown Proceedings Act. He relied on Section 216 of the Civil Procedure Code.

As regard the question of reasonable and probable cause he submitted that the defendant's pleadings operated as a waiver. He relied on Order 2 ¶2 of the Supreme Court Practice U.K. 1976. He submitted that the Writ and the Statement of Claim constituted one Claim and it was unnecessary to state the allegation in the Statement of Claim: There was no abandonment of a separate claim.

Section 178 of the Civil Procedure Code stipulates, inter alia, that the pleadings must raise all grounds of defence.

In Re Robinson's Settlement, Gant v. Hobbs /1912/ 1 Ch. 717, Order xix Rule 15, which is identical to Section 178, was discussed.

Buckley L.J. said at page 727:

" Order xix., r. 15, provides that the defendant must by his pleading do various things, but it names no consequence if he does not do those things. It is not confined, as Mr. Cave contended, to a case where a statute is the thing to be pleaded, it applies to all cases of grounds of defence or reply which if not raised would be likely to take the opposite party by surprise or raise issues of fact not arising out of the pleadings. Where the defendant ought to plead things of that sort the rule does not say that if he does not the Court shall adjudicate upon the matter as if a ground valid in law did not exist which does exist. If in the course of the proceedings it was proved that the deed sued upon was a forgery and the defendant does not plead it or did not know it was a forgery, the Court would not give judgment upon the deed on the footing that it was a valid deed. The effect of the rule is, I think, for reasons of practice and justice and convenience to require the party to tell his opponent what he is coming to the Court to prove. If he does not do that the Court will deal with it in one of two ways. It may say that it is not open to him, that he has not raised it and will not be allowed to rely on it; or it may give him leave to amend by raising it, and protect the other party if necessary by letting the case stand over. The rule is not one that excludes from the consideration of the Court the relevant subject-matter for decision simply on the ground that it is not pleaded. It leaves the party in mercy and the Court will deal with him as is just".

In the instant case it is clear that the plaintiff surrendered his passport pursuant to an Order of the Court. The police were mere custodians pending the further order of the Court.

It is difficult to appreciate the failure of the Resident Magistrates to order its return. The detention falls squarely within the ambit of Section 3(5) of the Crown Proceedings Act, and I respectfully adopt the dictum of Buckley L.J. supra and rule that the defence is entitled to rely on the Act.

Section 33 of the Constabulary Force Act states, inter alia:

" And in the declaration it shall be expressly alleged that such act was done either maliciously or without reasonable and probable cause; and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant".

This allegation is expressly alleged in the indorsement to the writ, which is a statement of the nature of the claim made. I hold that

this is sufficient compliance with the provisions of the section.

In any event the plaintiff must prove the allegation. What does the evidence disclose? The passport was delivered to the police on the order of the Court: Two Resident Magistrates refused to order its return and to date the case has not finally been disposed of.

In the circumstances I hold that there was no absence of reasonable and probable cause for the retention of the passport by the police.

The decision in Maharaj v. Attorney General of Trinidad and Tobago (No. 2) [1978] 2 All. E.R. 670 was referred to by Mr. Codlin in support of the claim. This decision in my view, is wholly inapplicable to the instant case as there was no interference with any fundamental right of the plaintiff which is protected by the Constitution.

There will therefore be judgment for the defendant with costs to be agreed or taxed.