



[2023] JMSC Civ. 50

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2022CV00242

BETWEEN	SILVERA ADJUDAH	CLAIMANT
AND	ATTORNEY GENERAL OF JAMAICA	1st DEFENDANT
AND	SOUTH EAST REGIONAL HEALTH AUTHORITY (SERHA)	2nd DEFENDANT
AND	DONALD FARQUHARSON	3rd DEFENDANT

IN CHAMBERS

Mr. Silvera Adjudah Claimant in person

Louis Jean Hacker instructed by the Director of State Proceedings for the Defendants

January 23rd, 2023 & March 16th, 2023

Civil Procedure – Striking out – Application to strike out claimants’ statement of case – Whether the claimants’ statement of case ought properly to be struck out – The Doctrine of Res Judicata- Whether the claimants’ statement of case as framed constitutes an abuse of the process of the court – Whether the claimants’ statement of case is frivolous and vexatious – Whether the claimants’ statement of case discloses any reasonable grounds for bringing the claim

WOLFE-REECE, J

INTRODUCTION

[1] The Court has two applications before it for determination, firstly, the Defendants Notice of Application for Court orders filed on March 9, 2022 for the Claimant's statement of case to be struck out or in the alternative for the Court to grant them an extension of time to file and serve their defence. **(1st Application)** Secondly is the Claimant's Notice of Application for Court Orders filed on March 15, 2022 for default judgment to be entered against the Defendants on the grounds that they have failed to file and serve an acknowledgement of service and/ or a defence to the claim. **(2nd Application)**

[2] The Claimant filed a claim form and a particulars of claim on January 26, 2022 seeking full compensation for the unlawful, wrongful termination of employment using illegal documents of fraudulent performance appraisal and fraudulent memorandum of complaint without a hearing. He is also seeking damages be awarded to him in the following terms-

(i) Breach of my constitutional rights to due process

(ii) Breach of duty of care by Donald Farquharson who acted in dereliction of duty

(iii) Breach of Duty of care of Donald Farquharson who acted in gross negligence

(iv) Breach of my rights under the laws of natural justice in denying me the right to know the reasons I was fired

(v) Special Damage

(vi) General damage

(vii) Punitive Damage

(viii) Aggravated Damage

(ix) Breach to my rights to legitimate Expectation of job

(x) Malicious Discrimination Against me for reporting mismanagement practices to the Ministry of health

(xi) Damage to my professional career for twelve (12) years and ongoing with unemployment

[3] On 28th January, 2022 an acknowledgment of service was filed on behalf of the 1st and 2nd Defendants, which indicated that service was effected upon them on 26th January, 2022. No Defence has been filed by any of the defendants. The Claimant on this evidence has filed his Notice of Application for Court Orders to have this Court enter judgment in default in his favour against the Defendants.

1st Application

[4] The Defendants contend that the Claimants statement of case does not disclose any reasonable grounds for bringing the claim and the claim is frivolous vexatious, or otherwise an abuse of process of the Court. By way of a Notice of Application for Court orders supported by the affidavit of Scott Mullings, both filed on March 9, 2022 they seek the following orders:

1. *The Claimant's statement of case is struck out*
2. *Further and or in the alternative: The Defendants be granted an extension of time to file and serve their Defence.*
3. *Costs*

[5] The Claimant failed to file an affidavit in response, however in his oral submissions he refuted that his claim should be struck out because it is frivolous and vexatious. He submitted that the Defendants application and affidavit were served late and out of time.

Issues on 1st Application

- (i) **Whether Claim SU2022CV00242 is frivolous and vexatious and or an abuse of process**

(ii) Whether doctrine of Res Judicata applies to the 2022 Claim

(iii) Whether the 2022 Claim is an abuse of process

(iv) Whether there are reasonable grounds for the Claimant to have brought the 2022 Claim

The Law

[6] Rule 26.3 (1) of The Civil Procedure Rules (CPR) empowers the court to strike out the statement of case of a party in certain circumstances. It specifically states that the Court has the power to 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 is 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.

I have noted and considered all the submissions made by both the Claimant and the Defendants in regard to both Applications before the Court.

Discussion & Analysis

[7] It has been stated that the Court must take such a step cautiously as the action of striking out a statement of case is a draconian step as it brings to an end a litigants' right to be heard and to have his issues litigated before a competent and fair

tribunal. The power is discretionary, it therefore should only be exercised in what is deemed to be plain and obvious cases. It was noted in ***Williams & Humbert Limited v. W & H Trade Marks (Jersey) Ltd***¹ & ***Three Rivers District Council v. Bank of England***²:

“that the starting point is that the Courts first recourse is not to strike out a statement of case but should be used as a sanction or consequence of last resort considering the finality and severity of the striking out measure.”

[8] However, the Court will exercise its jurisdiction and employ the power of striking out of a claim where it deems it necessary to do so if the Defendant can demonstrate on the evidence or pleadings that the claim is one that is frivolous and vexatious, and an abuse of process or fails to disclose any reasonable grounds for bringing the claim.

[9] In ***Branch Developments Limited (t/a Iberostar Rosehall Beach Hotel) v. The Bank of Nova Scotia Limited***³ McDonald Bishop, J (as she then was) stated at paragraph 29 that;-

“Striking out of a party’s case is the most severe sanction that may be imposed under the court’s coercive power. It is draconian and so the power to do so must not be hurriedly exercised as it has the effect of depriving a person access to the courts which could result in the denial of justice”

Is the 2022 Claim frivolous and vexatious

[10] Mr. Adjudha submitted that this Claim is not frivolous or vexatious. He has indicated that he has not had an opportunity to be heard and that the Court failed to understand and address the difference between the Statute of Limitations and the Statute of Repose. He argued that although he was terminated in 2010, he

¹ [1986] AC368

² [2001] 2 All ER 513

³ 2014 JMSC Civ 002

discovered the fraud which led to his termination in 2016 and time should run from the date of his discovery of same.

[11] Mr. Hacker submitted that those issues have been raised and decided by the Court in Claim 2017HCV01103 and the 2022 claim should be deemed to be frivolous and vexatious.

[12] To determine whether this claim is frivolous and vexatious in nature a comprehensive assessment must be made of the pleadings of Claim Number 2017HCV01103⁴. The Defendants contend that the 2022 claim is a replica of the 2017 claim which was determined by a judgment of Master Mason which was upheld by the Court of Appeal.

[13] The claim form filed on March 31, 2017 sought to obtain full compensation from the Court for unfair and unlawful termination of employment contract as Hospital Administrator of the Bellevue Hospital on November 15, 2010. He sought compensation award for the following

- *Special damages*
- *General damage*
- *Punitive damage*
- *Discrimination*
- *Malicious and Vindictive action*
- *Serious defamation of my character and professional career*
- *Breach of my rights under the access to information act to obtain information from SERHA*
- *Breach of my constitutional rights and rights under the laws of Natural Justice*

⁴ Silvera Adjudah v. The Attorney General of Jamaica, SERHA & Donald Farquharson

- [14] The Claim Form filed in 2017 by the claimant has all the same parties as the 2022 claim. It sought compensation for unfair and unlawful termination of employment contract as Hospital Administrator of the Bellevue Hospital on November 15, 2010. When a comparison is made between both claim forms and the particular of claims filed by the Claimant in each matter it is apparent that both claims arise out of the same facts concerning his termination, and raises the same cause of action of unfair dismissal.
- [15] The Claimants statement of case was struck out in the 2017 claim as Master Mason ruled that the claim was statute barred. I find that the 2022 claim is in fact a reformulation of the 2017 claim and an attempt by the Claimant to re-litigate the very issues that have been decided by the Court in the 2017 Claim. This is further emphasized in the 2022 Particulars of claim at paragraph 14 where he stated;

“the claim is not statute barred and cannot be confused with the statute of repose. The statute of Limitations begins when I uncovered the concealment of damage from Exhibit 34 letter from SERHA new HR Manager dated 2016 August 17”

This statement is a clear indication of the Claimants attempt to re-litigate the issues decided by Master Mason which has also been determined by the Court of Appeal as having no real prospect of success.

- [16] In the case ***Anthony Tharpe & Successors in the Interest of Business Ventures Solutions Inc. and Anor v Alexis Robinson and Others***⁵. The Defendants applied to strike out the Claimant’s statement of case: (i) for being frivolous and vexatious or an abuse of process or (ii) for disclosing no reasonable grounds for bringing the claim. Nembhard J., took the position that the claim was frivolous and vexatious and an abuse of the process of the Court and struck out the Claimant’s claim. She based this determination after carefully analysing the pleadings and concluded that the Claimant’s statement of case amounted to a

⁵ [2022] JMSC Civ 66

collateral attack on a previous 2010 decision, as the pleadings in the 2019 claim demonstrated that the new claim filed in 2019 was no more than a repackaging of the issues that were already litigated on and determined in the 2010 claim.

- [17] The authorities suggest that where a party brings a claim before the Court and the issues are finally determined; and the Claimant later brings a new claim in respect of the same facts, cause of action, issues and parties, the new claim may be deemed to be of a frivolous and vexatious nature. In the case at bar I adopt the language of Nembhard, J and find that Mr. Adjudha has merely repackaged the issues raised in the 2017 claim and put them before the Court in the 2022 Claim. The conclusion of the 2017 claim is that it is barred in law as the period with which to bring such a claim has expired. I find that the new claim filed in 2022 is frivolous and vexatious in nature.

Res Judicata

- [18] The Defendants submitted that the doctrine of Res Judicata applies in the instant case. Res Judicata is a common law doctrine which seeks to prevent re-litigation of the same issues or issues already decided except by means of an appeal. In the case ***Fletcher & Company v. Billy Craig Investment Limited and Scotia Investments Limited***⁶ McDonald- Bishop J, dealt extensively with the law on Res Judicata. She cited the case of Gordon Stewart v Independent Radio Company Limited and Wilmot Perkins [2012] JMCA Civ. 2 where the Court of Appeal stated;

[29] “The doctrine of res judicata is to protect courts from having to adjudicate more than once on issues arising from the same cause of action and to protect the public interest that there should be finality in litigation and that justice be done between the parties...”

- [19] The Claimant has submitted that the merits of his claim has not been dealt with and the doctrine of Res judicata cannot apply. In ***Sydnia Matheson v Lelieth***

⁶ [2012] JMCA Civ 128

Watts⁷, an instructive authority cited by Counsel for the Defendant, Pusey J, J. noted⁸:-

“.... anything that is germane, relevant and/or instructive to the issue raised in the earlier matter and which through inadvertence or otherwise was not raised cannot now be invoked to re-litigate the same issue. This ensures finality between these particular parties on this particular issue.”

[20] The evidence before the Court is clear, based on the pleadings, there is no indication, from the Claim Form or Particulars of Claim that this new and present 2022 claim is a different claim from the claim litigated and decided on in the 2017 claim. The Claimant would have to surpass the hurdle of limitation as was raised by the Defendant.

[21] The 2017 claim having been determined on the basis that it was statute barred, precludes the claimant on the same facts and circumstances from raising that cause of action again. In this instance the very same evidence and issues placed before Master P. Mason in ***Silvera Adjudah v The Attorney General of Jamaica and Others***⁹ is now being placed before this Court but with a different claim number.

Is the 2022 claim an abuse of process

[22] In addition to this present 2022 claim being frivolous and vexatious, the facts and evidence also support the Defendant's position that this present 2022 claim is an abuse of process of the Court. Based on the affidavit evidence of Mr. Scott Mullings, the following facts are established: -

- (i) The Claimant filed a claim form and particulars of claim (Claim No. 2017HCV0113) on March 31, 2017 seeking damages against his former

⁷ [2018] JMSC Civ 144

⁸ Paragraph 39

⁹ [2019] JMSC Civ 142

employer for unfair and unlawful termination by way of letter from South East Regional Health Authority dated November 15, 2010;

(ii) Claim No. 2017HCV001103 was heard by Master P. Mason who dismissed the claim on the ground that the claim was statute-barred as it fell outside the required limitation period. The learned master struck out the claim pursuant to R. 26.3(1)(b) of the CPR as an abuse of process of the Court;

(iii) The Claimant filed an application for stay of execution of court orders and for permission to appeal (in the Supreme Court) on July 23, 2019. Hutchinson J. heard and refused the application. Judgment was delivered in ***Silvera Adjudah v The Attorney General*** [2021] JMSC Civ 64;

(iv) The Claimant filed an application for permission to appeal in the Court of Appeal (COA2021APP0073) on April 22, 2021. The application came before Williams JA., Dunbar-Green JA., and Brown JA. (Ag.). The application for permission to appeal was heard and refused;

[23] The Claimant having pursued 2017 claim as far as the Court of Appeal. I find that the 2022 claim is an unjustified and unreasonable use of legal proceedings and amounts to an abuse of process.

Is there reasonable grounds from bringing the 2022 claim

[24] In the Court of Appeal judgment in *Silvera Adjudah v The Attorney General and Others*¹⁰, which emanated from the Claimant's 2017 claim. Brown JA. noted that on the authority of ***Bartholomew Brown v Bridgette Brown v Jamaica National Building Society***¹¹ the Court has no power to extend the limitation period, and did not disturb the Master's decision, as there was no basis on which to do so. The Court found that in light of the length of the expiration of the limitation period, once

¹⁰ [2022] JMCA App 24

¹¹ [2010] JMCA Civ 7

the defence raises the defence that the claim is statute bared, the claim or application is considered as having no chance of success or in other words hopeless.¹²

[25] This attempt to rehash the very substance of the decision (the expiry of the limitation period) of the 2017 case is sufficient basis for the Court to conclude that the Claimant's claim must fail for having no reasonable ground for bringing the claim. Furthermore, to permit the Claimant to proceed with the new 2022 claim, and argue this issue, which goes to the substance of the Learned Master's decision would be putting into disrepute and endangering the finality of the administration of justice within our Courts. ***In the Secretary of State for Trade and Industry v. Birstow Re Queens Moat House Plc*** Sir Andrew V-C stated¹³

“(a) A collateral attack on an earlier decision of a court of competent jurisdiction may be but is not necessarily an abuse of the process of the court... (i) it would be manifestly unfair to a party to the later proceedings that the same issues should be relitigated or (ii) to permit such relitigation would bring the administration of justice into disrepute.”

[26] I conclude that the present proceedings are frivolous and vexatious. It amounts to an abuse of the process of the court. The statement of case is a reformulation of the claim filed in 2017 and discloses no reasonable grounds for bringing the claim as the Claimant cannot circumvent the fundamental issue that the Court has determined which is that the limitation period has expired on this cause of action.

[27] This Court is of the view that even if the doctrine of res judicata does not apply the 2022 claim as it stands is in breach of the provisions of the statute of limitations and the limitation period of six years has expired. This claim is therefore statute barred and should be struck out.

¹²[2022] JMCA App 24 Paragraph 50

¹³ [2004] 4 All ER page 325 para 38

[28] The Claimant had submitted that the Court should not entertain the Defendants' application as they had failed to file a Defence and therefore had no basis to make an application to strike out the Claimants case. I do not find any merit in this submission. Litigants have a right to seek the Courts intervention at the earliest to weed out claims that are frivolous and have no reasonable prospect of success. This is especially so in cases such as this where the claim is nothing more than a "collateral attack" on a judgment of the Court. In light of the reasoning and findings there would be no logical reason for this court to explore the details of the Defendants alternative application for an extension of time within which to file a defence or the application for default judgment by the Claimant (**2nd Application**).

DISPOSAL

1. The Claimants Claim Form and Particulars of claim filed on 26th January 2022 are Struck out.
2. As a consequence of Order Number 1 The Defendants Application for Judgment in Default filed on March 15, 2022 is refused.
3. Costs are awarded to the Defendants to be agreed or taxed.