[2024] JMSC Civ 61

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV01111

BETWEEN	**SILVERA ADJUDAH**	**CLAIMANT**
AND	**MINISTRY OF JUSTICE**	**1ST DEFENDANT**
AND	**DELROY CHUCK - MINISTER OF JUSTICE**	**2ND DEFENDANT**
AND	**ANDREW HOLNESS - PRIME MINISTER OF JAMAICA**	**3RD DEFENDANT**

IN CHAMBERS

Claimant in person

Romario Miller and Dimitri Mitchell instructed by the Director of State Proceedings for the Defendants

Heard: 1st and 22nd May 2024

Civil Procedure - CPR 26.3(1) (b) and (c) - Application to strike out statement of case - Whether claim which alleges that the failure of public functionaries to accede to an entreaty to re-examine and amend the Limitation of Actions Act discloses a reasonable ground for bringing a claim in negligence or a claim for breach of the constitutional rights to life, equality before the law and to equitable and humane treatment by a public authority in exercise of any function - Whether such a claim commenced by claim form is an abuse of the process of the court.

Application for Default Judgment - Part 12 CPR - Whether default judgment can be entered for failure to serve Acknowledgment of Service and to file defence and serve defence in the face of an application to strike out claim or alternatively for an extension of time to file defence.

C. BARNABY, J

INTRODUCTION AND SUMMARY DETERMINATION

[1] On 1st May 2024, the two applications below came on for hearing before me:

(a) The Defendants' Notice of Application for Court Orders filed 3rd May 2023 (hereinafter called 'the Defendants' Application') which seeks the striking out of the Claimant's Statement of Case on the grounds that it does not disclose any reasonable grounds for bringing the claim, that it is frivolous or vexatious or otherwise an abuse of the process of the court pursuant to rule 26.3(1) (c) and (b) respectively of the Civil Procedure Rules (hereinafter called 'CPR'); further and in the alternative, that the Defendants be granted an extension of time within which to file and serve their defence; and costs; and

(b) the Claimant's Notice of Application for Court Orders filed 4th August 2023 (hereinafter referred to as 'the Claimant's Application') wherein the Claimant requests the entry of default judgment against the Defendants on the ground that no acknowledgment of service or defence had been served on him.

[2] The Defendants' Application had previously come on for hearing before me on 13th March 2024, of which the parties were advised by the Civil Registry via electronic mail sent on 15th February 2024. Instructions for collecting the sealed copy of the application with the hearing date affixed were also included in the email.

[3] The Claimant did not attend the hearing on 13th March 2024. On being advised by Counsel for the Defendants that their application had not been served; being advised by *"Requisition"* on file dated 4th December 2023 that the Claimant's

Application was considered on paper whereon it was indicated "*Acknowledgement of Service filed before the Request for Judgment"* and endorsed that *"There is also an application filed by the Defendants for the Claimant's case to be struck out which was filed before the request for Default";* there being no order that advised the self-represented Claimant of the fate of his application in the noted circumstances; having regard to the time which had already passed between the filing of both applications and 13th March 2024; and with a view to having the applications timeously determined, I adjourned the Defendants' Application and fixed the Claimant's Application for hearing on 10th April 2024.

[4] The Defendants having failed to serve their application on the Claimant, an oral application was made for permission to serve it by way of electronic mail at the email address which appears in the *"Filed by"* line of the Claimant's documents in the proceedings, including those by which the claim was initiated. The request was acceded to, and the Defendants were directed to serve the Application on or before 19th March 2024. Affidavit evidence in proof of service was required to be filed by 27th March 2024.

[5] For reasons outside of the control of the parties' or the court as constituted, the hearing of the applications scheduled for 10th April 2024 were rescheduled to 1st May 2024. The Registry advised the parties of the changed fixture by electronic mail dated 23rd April 2024.

[6] The applications were heard on 1st May 2024. After hearing the competing submissions and with the intention of reducing the orders of the court and reasons therefore into writing, a decision on both was reserved.

[7] For reasons which are set out subsequently, I find that the Claimant's statement of case should be struck out for failing to disclose any reasonable grounds for bringing the claim and as an abuse of the process of the court. I also find that the Claimant's Application for default judgment should be refused as the conditions precedent for entry of such a judgement have not been satisfied.

PRELIMINARY OBJECTIONS BY MR. ADJUDAH

[8] In summary and so far as is relevant, the Claimant at the commencement of the hearing on 1st May 2024 orally asked that I recuse myself from the matter on account that on 13th March 2024 when he was absent, I had made an order permitting the Defendants to serve their application and orders made by the court on the occasion, by electronic mail. He contended that the course adopted was a breach of CPR 11.11 (1) (a) and (b), and highly prejudicial to his interest to have the physical sealed copy of the application served on him personally.

[9] The Claimant was advised that the appropriate procedure to request my recusal had not been engaged and that in any event, his view that I had erred procedurally in making an order that he be served with the application by electronic mail was not a basis for recusal. Further and in any event, Mr. Adjudah's complaints as to breach of the rules of court or prejudice are without merit.

[10] As a general rule, CPR 11.11(1) provides that a notice of application must be served as soon as practicable after the date of its issue and at least seven (7) days before the court is to deal with the application. Although the Defendants' Application was filed 3rd May 2023, it is clear from the email sent by the Registry on 15th February 2024 instructing collection of the sealed copies, that the application had not been issued out as at the latter date.

[11] Soon after on 13th March 2023, in the circumstances and for reasons already indicated, I directed service of the application on the Claimant by electronic mail. He was so served more than seven (7) days before the adjourned hearing date of 10th April 2024 and the rescheduled hearing date of 1st May 2024.

[12] While a notice of application may be served personally on a respondent, that is but one method of service which may avail an applicant. Pursuant to rule 11.11 (5) of the CPR, a notice must be served in accordance with Part 6, unless a respondent is not a party (in which case the notice "must" be served in accordance with Part 5). Rule 6.2 permits documents other than a claim form to be served by any

means of service in accordance with PART 5; leaving the document at or sending it by prepaid post or courier to any address for service; FAX where the party's address for service includes a FAX number; or other means of electronic communication if permitted by a practice direction, unless a rule provides or the court orders otherwise.

[13] There is at present no practice direction permitting service by electronic mail. This notwithstanding, pursuant to rule 5.13, where a party chooses an alternative method of service instead of personal service, the court may permit steps to be taken on the documents served on the supply of affidavit evidence proving that the alternative method was sufficient to enable the party being served to ascertain the contents of the documents.

[14] I am advised by affidavit evidence sworn and filed 27th March 2024 that a copy of the Defendant's Application as well as a copy of the orders made on 13th March 2024 were served on the Claimant at his given email address on 19th March 2024.

[15] The following day on 20th March 2024 the Claimant swore and filed *"Affidavit in Response to Defendant's Representative Attorney General's Application filed on May 3, 2023 and was Scheduled for Hearing on Wednesday March 13, 2024."* As he did orally, the Claimant there complains of my adjourning without his permission the hearing of the application on 13th March 2024 when he was absent, and permitting the Defendants to serve the application by email, which he contends cannot be done "*as the recipient has to see and feel the court seal on the Application."*

[16] The object of service of a notice of application is not to enable the person served to see and feel any court seal affixed to the notice but is to advise the party of the existence and contents of the application, and the date and time fixed for its hearing. There is no evidence of Mr. Adjudah labouring under any disability which prevented him seeing the contents of the copy of the Notice of Application served on him via electronic mail, and of email correspondence from the Court's Registry which informed him of the hearing date of the Defendants' Application.

[17] In fact, Mr. Adjudah's affidavit filed on 20th April 2024 and his presence at the hearing on 1st May 2024 leaves me in no doubt that the method by which he was served with the Defendants' Application and notice of its hearing, as well as of the hearing of his own application for default judgment, and any adjournment or rescheduling thereof was sufficient to enable him to ascertain the contents of the Defendants' Application. There is accordingly no evidence of his being prejudiced in the application on account of being served with it at his email address.

[18] On the foregoing premises, it was determined that Mr. Adjudah's preliminary objections to my proceeding with the hearing of the applications on 1st May 2024 were without merit. Accordingly, the submissions on the substantive applications, to which attention is now directed, were heard.

THE DEFENDANTS' APPLICATION

[19] The Defendants filed an affidavit in support of their application; they were not permitted to rely on it at the hearing, however, as it was not served on the Claimant. An oral application was made by Counsel Mr. Miller for permission to serve the Claimant with the document following the court's observation during Counsel's submissions that there was no evidence of service of the affidavit. It was submitted by Counsel for the Defendants that the failure to serve the affidavit was not intentional but an oversight, and that the court had not specifically ordered service of the supporting affidavit.

[20] Mr. Adjudah objected to the application on the ground that the Defendants had had enough opportunities to serve the document and failed to do so. I agree with Mr. Adjudah's submission.

[21] While it is conceivable that a court could grant permission to serve a supporting affidavit which was not in fact served, in an appropriate case, the instant was not so regarded.

[22] Where a party intends to rely on affidavit evidence in pursuit of an application, the respondent to the application should be permitted a reasonable opportunity to consider the contents of any supporting affidavit and to respond to it, including by way of affidavit evidence if he thought it necessary. If service of the affidavit on Mr. Adjudah was permitted, a further adjournment of the hearing would have been to meet that end.

[23] The discretion reserved to me to grant an adjournment to enable service of the Defendants' affidavit was not exercised on the occasion however, as the hearing was proceeding a year after the filing of the supporting affidavit, and the Defendants had previously benefited from an adjournment to serve the application to which it was meant to aid. That I had not specifically directed service of the affidavit - to which no issue was taken by Mr. Miller when I directed service of the notice of application by electronic mail - is not a good or sufficient reason for failure to serve the supporting affidavit ahead of the hearing. Rule 11.11(4)(a) expressly prescribes that notices of application are to be accompanied by any evidence in support. The Defendants had had sufficient time to serve the affidavit if they intended to rely on it at the hearing and had not done so.

[24] Counsel for the Defendants took the view that the application to strike out the Claimant's statement of case could not be pursued where reliance on the supporting affidavit was not permitted by the court. This view was not shared by the court and Mr. Adjudah was accordingly permitted to respond to the application. It was Mr. Adjudah's submission, with which I am unable to agree, that the Defendants' Application to strike out his statement of case was speculative.

[25] Pursuant to CPR 26.3 (1) (b) and (c), which are among the grounds relied upon by the Defendants in their Application, the court may strike out a statement of case where it appears to it that the statement of case constitutes an abuse of the process of the court or discloses no reasonable grounds for bringing the claim, respectively. While the grounds for striking out may be established on evidence to which an affidavit would go in aid, it is well settled that these grounds for striking

out may be established on an examination of the pleadings, and as a matter of law.[1]

[26] While no authorities were relied on by either party, I believe it to be trite that among claims which are regarded as frivolous or vexatious, are claims which are obviously unsustainable; and that claims which constitute an abuse of process include those which involve the improper use of the court's processes or machinery.

[27] I think it is also well established, that for a claim to be regarded as having disclosed reasonable grounds for bringing a claim, a Claimant must plead facts which are supportive of the existence of a cause of action. It is not sufficient to simply plead a cause of action known to law.[2]

[28] In approaching the application, I am mindful of the severity and finality of an order to strike out a statement of case, and that in consequence, the discretion reserved to the court to impose this draconian sanction should only be exercised in plain and obvious cases. I am also guided by the fact that invocation of a breach of a constitutional right does not insulate a statement of case from being struck out where the claim is ill-founded and hopeless.[3]

[29] On an examination of the Claimant's pleadings, I find that there is a failure to plead any facts which are supportive of the existence of a cause of action and that it ought to be struck out as disclosing no reasonable grounds for bringing a claim; and that it constitutes an abuse of the process of the court. It is to those pleading which I now turn.

[30] In summary, the Claimant asks to be compensated in damages for what he terms *"breach of duty of care of"* the 2nd and 3rd Defendants *"for [their] dereliction and gross negligence of duty"*, *"discrimination and breach by [them] of his*

---

[1] See for example the dictum of Batts J in **City Properties Limited v New Era Finance Limited [**2013] JMSC Civ 23
[2] Ibid
[3] See for example **Maurice Glinton and Leandra Esfakis v. Rt. Hon. Hubert A. Ingraham, et al**. [2006] UKPC 40

Constitutional rights" which breaches he itemises as the rights to life, equality under the law, and to equitable and humane treatment by a public authority.

[31] It is contended by the Claimant that "*the 2nd Defendant is a servant of the 1st Defendant as the Minister of Justice who has constitutional responsibility for direction and control of the 1st Defendant's operations and responsibilities"*; and that *"the 3rd Defendant is the Prime Minister of Jamaica who is the Boss in charge of the 2nd Defendant under the constitution of Jamaica."*

[32] The allegations upon which the Claimant grounds his claim can be summarised thus.

(a) The failure of the 2nd and 3rd Defendants to address what he says are serious concerns about the *"Statute of Limitation"* which he communicated by letter dated 25th July 2019 and reminders thereafter to the 2nd Defendant, led to injustice to him in claims 2017HCV 01103 and SU2022 CV 00242. According to the Claimant, the *"Statute of Limitation"* is not a Jamaican concept but an international law one. In consequence he appears to suggest that domestic limitation legislation should provide for or be interpreted in a manner which permits the postponement or extension of limitation periods where there are acts of fraud, concealment or mistake by a defendant which prevent a claimant from identifying facts relevant to his right of action - as he says is the case under section 32 of the United Kingdom Limitation Act 1980, and apparently in the United States - in order to qualify as a true statute of limitations.

(b) That the 2nd Defendant has a duty as the Minister of Justice to address his concern and that the Minister's failure to reply to his correspondence was disrespectful and a dereliction of duty.

(c) That the 3rd Defendant has not given him the courtesy of a reply to his complaint dated 22nd September 2022 in respect of the 2nd Defendants *"dereliction of duty"*, a departure from what he describes as the prompt and

respectable replies he received from other Prime Ministers about matters he had written to them about.

(d) That the 3rd Defendant is malicious, vindictive and acts discriminatorily towards him because he is associated with persons who terminated his employment from a regional health authority, and that those persons are currently engaged in the Office of the Prime Minister; and that the 3rd Defendant knows that the National Housing Trust is exercising powers of sale in respect of his house because he is in arrears on his mortgage, and that the 3rd Defendant wants to see him homeless.

[33] No allegations are made against the 1st Defendant specifically.

[34] Under the **Constitution of Jamaica**, the person appointed as prime minister is the individual who, in the Governor-General's judgment, is best able to command the confidence of a majority of the members of the House of Representatives. Ministers are appointed from among members of the House of Representatives and the Senate by the Governor-General, acting in accordance with the advice of the Prime Minister. Similarly, a minister may be charged with the responsibility of a subject or department of government. When so charged, the minister exercises general direction and control over the work which relates to the subject, and over the department of government for which he is made responsible. This is the context within which I understand Mr. Adjudah's reference to the relationship between the Defendants.

[35] As it relates to the substance of the claim, it is now well settled that section 32 of the United Kingdom Limitation Act 1980 does not apply in Jamaica and that there is no comparable provision in our **Limitation of Actions Act**.

[36] Also settled is that in this jurisdiction, the equitable doctrine of fraudulent concealment does not apply to extend the limitation period in respect of actions in tort and contract, or common law claims, generally. Among the authorities which

make the point is the decision in **Sherrie Grant v Charles McLaughlin and Collin Smith** [2019] JMCA Civ 4, where it was observed that:

> *[39] The English Limitation Act, 1939 has ameliorated the situation with regard to claims in common law. Section 26 of that statute postpones the running of time until the victim of the fraud discovers the fraud [and section 32 of the 1980 Act]. The legislature of this country, however, despite nudges by this court in both* Melbourne v Wan *and* Brown and Another v Jamaica National Building Society*, has failed to pass a modern statute addressing limitations of actions. We, therefore, continue to struggle with the 400 year old, 1623 Limitation Act, received from England (see section 46 of the Limitation of Actions Act). [40] Section 27 of the Limitation of Actions Act, allows the postponement of the running of time in the case of concealment by fraud, but limits it to the recovery of land or rent. The section does not apply otherwise.*

[37] Accordingly, the general tenor of the Claimant's concern about the **Limitation of Actions Act** is not without support. Notwithstanding legitimate concerns about the failure of the legislation to ameliorate the position of common law claims generally, Mr. Adjudah encounters insurmountable challenges in maintaining his claim.

[38] In the first instance, under the **Constitution of Jamaica,** the responsibility or duty for making laws for the peace, order and good government of Jamaica is reserved to the Parliament of Jamaica. The Parliament is comprised of the Crown (represented by the Governor-General), the appointed Senate, and the elected House of Representatives. A prime minister and a minister charged with responsibility for a subject (portfolio) or department of government (which would include a Ministry) are not constitutive of the Parliament either individually or collectively.

[39] Second, while a member of either House of Parliament *"may"* generally introduce Bills, propose motions for debate or present any petition to a relevant House - subject of course to the provisions of the **Constitution** and the **Standing Orders** of the House for such introductions, proposals, and presentations - the power is

permissive and its exercise discretionary.[4] There is no duty or obligation imposed on a member of either House to introduce legislation, propose motions or present petitions to give rise to a breach of duty in those regards.

[40] Further, while the Claimant might be miffed at the absence of a response to his missives to the 2nd and 3rd Defendants, except where statute expressly so prescribes, I do not know of any general duty being owed by the holder of a public office to respond to correspondence from members of the public, however well-intentioned or otherwise its contents. In any event, the Claimant has not invoked any such statute in his pleadings.

[41] While the Claimant contends that previous prime ministers have responded to communications he has sent to them, there can be no reasonable expectation from the Claimant or indeed any other constituent, that a prime minister or minister will respond to every missive received, assuming that they are even made aware of them. A perceived absence of courtesy is not a ground, reasonable or otherwise for bringing a claim in negligence or for constitutional redress.

[42] With respect to the contentions that the 3rd Defendant has acted maliciously, vindictively and discriminatorily towards him, on my examination of the Claimant's pleadings, they have no factual basis and do not disclose any reasonable grounds for bringing a claim against the 3rd or any of the Defendants.

[43] In all these premises, I find that the Claimant's statement of case is to be struck out on the grounds that is does not disclose any reasonable grounds for bringing the claim premised on a breach of public duty and breach of his constitutional rights to life, equality under the law, and to equitable and humane treatment by a public authority. For reasons set out in consideration of the Claimant's Application for

[4] Section 55 (1) *"Subject to the provisions of this Constitution and of the Standing Orders of the House, any member of either House may introduce any Bill or propose any motion for debate in or may present any petition to that House, and the same shall be debated and disposed of according to the Standing Orders of that House."*

default judgment, I also find that his statement of case is an abuse of the process of the court.

[44] Having so found, a determination of the Defendants' Application relative to an extension of the time within which to file and serve a defence becomes unnecessary.

THE CLAIMANT'S APPLICATION

[45] The Claimant's Application for default judgment is premised on the failure of the Defendants to serve him with an acknowledgment of service or defence. It was submitted by Counsel for the Defendants that as a matter of law the default judgment could not be entered where the statement of case does not disclose a cause of action or any reasonable grounds for bringing the claim. It was contended that entry of a default judgment in those circumstances would be inconsistent with the overriding objective.

[46] For matters to which Part 12 of the CPR applies, when requests for default judgment are filed, they must be entered where the prescribed conditions for entry are satisfied, unless leave of the court is required to enter a judgment in default. There is no requirement for an enquiry to be made into the merits or otherwise of the claim filed. The relief for a defendant does not appear to lie in a refusal to enter the default judgment, but in an application to set it aside on the ground that there is a real prospect of defending the claim, pursuant to rule 13.3. That is not an issue in the circumstances of this case however, as the Defendants filed an acknowledgment of service and an application to strike out the Claimant's statement of case and/or alternatively to file a defence out of time, before the Claimant filed his application.

[47] The foregoing notwithstanding, for reasons which I will endeavour to demonstrate below, as a matter of law, the Claimant's Application cannot be granted.

[48] Mr. Adjudah's claim purports to challenge what he regards as the failure of public officials and a public authority to discharge duties owed to him. Challenges of this nature ought to proceed by way of judicial review for an order of mandamus to compel performance of the duty, for which leave of the court must first be sought and obtained.[5] That course was not adopted by the Claimant. In any event, for reasons already stated in concluding that the Claimant's statement of case does not disclose any reasonable grounds for bringing the claim, the court would be unable to find that the claim discloses any reasonable grounds for judicial review with a realistic prospect of success.

[49] Mr. Adjudah also claims redress for what he contends are breaches of his constitutional rights to life, equality under the law, and to equitable and humane treatment by a public authority. I have already found that the statement of case does not disclose any reasonable ground for bringing such a claim.

[50] Applications for judicial review and for relief under the constitution are both applications for administrative orders and must be made by a fixed date claim in form 2, pursuant to CPR 56.9(1). The Claimant commenced his claim by the issue of a Claim Form and Particulars of Claim.

[51] That a claimant chooses the incorrect initiating process does not by itself lead to the conclusion that his statement of case is an abuse of the process of court as the court is empowered, pursuant to rule 56.7, to direct that proceedings by way of a claim for damages or other relief other than an administrative order may be treated as an application for administrative orders where the facts supporting the claim are such that the main or only relief is for administrative orders. What is constitutive of an abuse of the court's process, however, is the circumvention of the established process for making applications for administrative orders to pursue entry of a default judgment where that relief is not available to a claimant.

---

[5] See **Simmons v Minister of Labour and Social Security and the Attorney General of Jamaica** [2022] JMFC Full 02

[52] Part 12 of the CPR under which the Claimant makes his application for default judgment expressly provides at rule 12.2 that a claimant may not obtain default judgment where the claim is a fixed date claim. Accordingly, the Claimant could not properly obtain default judgment on the claim if it had commenced as required by the rules.

[53] Further and in any event, even if the proper initiating process had been engaged by the Claimant, the requirements for the entry of default judgement have not been met.

[54] In an Affidavit of Service sworn and filed 1st May 2023, Mr. Adjudah avers that he served the 1st Defendant on 14th April 2023 with "*the Claim Form and Particulars of Claim*" and that he has not been able to serve the 2nd and 3rd Defendants because they have not made themselves available to be served. It is not necessary to inquire into the sufficiency of the Claimant's evidence as to service of the claim as no issue has been taken by the Defendants in this regard. In fact, the Defendants filed an Acknowledgment of Service of Claim Form and Particulars of Claim on 25th April 2023 where they acknowledge receipt of the documents referenced in the title on 20th April 2023. There was no failure to *"file an acknowledgment of service"* within the period limited by the rules to permit entry of a default judgment on that ground.

[55] The Defendants have not filed a defence to the claim but had filed an application seeking an extension of time to file a defence as an alternative to the order striking out the Claimant's statement of case. The Defendants' Application is only now being heard and determined. By operation of rule 12.5(e), no default judgment for failure to file a defence can be entered where there is a pending application for an extension of time to file the defence. The Defendants had filed their application within the period limited for filing a defence and in any event before the Claimant filed his application for default judgment.

[56] In all the foregoing remises the Claimant's Application for default judgment is refused.

ORDER

1. The Claimant's statement of case is struck out.
2. The Claimant's Application for default judgement is refused.
3. Leave to appeal is refused.
4. Costs of the applications to the Defendants to be taxed if not agreed.
5. The Claimant is to prepare, file and serve this order.

Carole Barnaby
Puisne Judge