

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN COMMON LAW**

**SUIT NO. C. L. A-195/1997**

<b>BETWEEN</b>	<b>ADMINISTRATOR GENERAL</b>		<b>PLAINTIFF</b>
	<b>(Administrator of the Estate of Elaine Evans, Deceased)</b>		
<b>A N D</b>	<b>ATTORNEY GENERAL</b>	<b>1<sup>ST</sup></b>	<b>DEFENDANT</b>
	<b>MINISTRY OF LOCAL GOVT. &amp; WORKS</b>	<b>2<sup>ND</sup></b>	<b>DEFENDANT</b>
<b>A N D</b>	<b>JAMES WELLINGTON</b>	<b>3<sup>RD</sup></b>	<b>DEFENDANT</b>
<b>A N D</b>	<b>DONOVAN VASSELL</b>	<b>4<sup>TH</sup></b>	<b>DEFENDANT</b>

**Mrs. Symone Bryan-Mayhew for the plaintiff instructed by Patrick Bailey & Company.**

**Miss C. Lewis and Miss A. Lindsay for the 1<sup>st</sup> defendant instructed by the Director of State Proceedings.**

**Heard October 17, 20, 2000 and January 26, 2001**

1. Summons for extension of time to file Statement of Claim.
2. Summons to strike out action as it discloses no cause of action.

**RECKORD, J**

The first of the these two summonses is by the plaintiff and the second by the 1<sup>st</sup> defendant.

Arising from a fatal motor vehicle accident which occurred on the 14<sup>th</sup> March, 1993 wherein Elaine Evans met her death, the plaintiff, as the administratrix of her estate, filed this action by a Writ of Summons on the 30<sup>th</sup> day of July, 1997 claiming damages for negligence against the 4th defendant under the Fatal Accidents Act and under the Law Reform (miscellaneous Provisions) Act.

The plaintiff acknowledges that in the claim under the Fatal Accidents Act, the period of three (3) years after death had passed before the action commenced, but is asking the Court that in the interest of Justice, to allow a longer period to include the date of filing on the 30th of July, 1997.

Again the plaintiff acknowledges that the statement of claim which should have been filed within ten days after the appearance, on the 3<sup>rd</sup>

September, 1997 has not yet been filed due to an oversight.

The defendant has not agreed to the statement being filed out of time on the grounds that the action is statute barred, and has filed a summons to strike out the action for that reason.

Section 2 (1) of the Law Reform Act, provides that all causes of action subsisting against or vesting in her, shall survive against or for the benefit of the estate.

Section 2(3) provides that actions against the estate should be taken not later than 6 months after letters of administration is granted.

However, no mention is made in that sub-section or any other for that matter about causes of action vested in her. The presumption therefore, is that the common law period of six (6) years should apply.

The plaintiff has submitted that in order to rely on the Public Authorities Protection Act, the defendant has to show that when the negligent act complained of was done, it was in pursuance of a public duty or authority. The affidavit in the instant case does not disclose the

circumstances of this case and these will only be revealed in a trial of the issues.

The defendant has asked the Court to dismiss the action on the ground of prejudice. In Birkett v James (1977) 2 AER P. 801, at 899 Lord Diplock had this to say on prejudice.

“To justify dismissed for want of prosecution some prejudice to the defendant additional to that inevitably flowing from the plaintiff’s tardiness in issuing his writ must be shown to have resulted from his subsequent delay.”

In support of this view, the Privy Council in Warshaw vs Drew P/C Appeal No. 18 of 1998, said

“The onus is on the defendant to file evidence to establish the nature and extent of the prejudice occasioned by him by such delay.”

No such evidence having been established, the defendant’s application to strike out the action for want of prosecution is refused and the summons is dismissed.

The plaintiff is granted leave to file its statement of claim out of time within fourteen (14) days from the date hereof.

There will be no order as to costs.