

11/20/07

**CLAIM NO. CL 1999/M-238**

<b>BETWEEN</b>	<b>ELKANAH McLEISH</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>DET. SGT. LINCOLN CASTLE</b>	<b>1<sup>st</sup> DEFENDANT</b>
<b>AND</b>	<b>SUGAR INDUSTRY AUTHORITY</b>	<b>2<sup>nd</sup> DEFENDANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL FOR JAMAICA</b>	<b>3<sup>rd</sup> DEFENDANT</b>

**CONSOLIDATED WITH**

**CLAIM NO. CL 1999/R-112**

<b>BETWEEN</b>	<b>DEVON RUSSELL</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>DET. SGT. LINCOLN CASTLE</b>	<b>1<sup>st</sup> DEFENDANT</b>
<b>AND</b>	<b>SUGAR INDUSTRY AUTHORITY</b>	<b>2<sup>nd</sup> DEFENDANT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL FOR JAMAICA</b>	<b>3<sup>rd</sup> DEFENDANT</b>

Bert Samuels and Akilah Anderson for Claimants instructed by Knight, Junor, Samuels

Curtis Cochrane and Lisa White for 1<sup>st</sup> and 3<sup>rd</sup> Defendants instructed by Director of State Proceedings.

**Heard: July 3<sup>rd</sup> and 4<sup>th</sup>, 2007**

**Cor: Rattray J.**

- (1) Elkanah McLeish and Devon Russell filed separate legal proceedings in the latter part of 1999 against Detective Sergeant Lincoln Castle and the Attorney General for Jamaica claiming damages for false imprisonment, which proceedings were subsequently consolidated.

- (2) Both litigants complain in their respective pleadings that in or about the end of May 1994, they were falsely imprisoned by Detective Sergeant Castle - in Elkanah McLeish's case, for nine (9) days from the 30<sup>th</sup> May to the 9<sup>th</sup> June, 1994, and as regards Devon Russell from the 5<sup>th</sup> to the 10<sup>th</sup> June, 1994. A Defence was filed on behalf of Detective Sergeant Castle and the Attorney General denying liability and Orders were made at the Case Management Conference and the action set down for trial.
- (3) At the commencement of the trial yesterday morning, Counsel for the Defendant Mr. Cochrane, in reliance on a Notice of Intention To Take Preliminary Point, submitted that the claims for False Imprisonment were statute barred under and by virtue of the Public Authorities Protection Act. The relevant section of that Act, prior to its amendment on the 30<sup>th</sup> March, 1995 reads:

Section 2 (1) "Where any action, prosecution or other proceeding, is commenced against any person for any act done in pursuance, or execution, or intended execution of any law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such law, duty, or authority, the following provisions shall have effect –

(a) the action, prosecution, or proceeding, shall not lie or be instituted unless it is commenced within one year next after the act, neglect or default complained of, ..."

- (4) Counsel Mr. Cochrane submitted that based on the pleadings filed in this matter, at the time Detective Sergeant Cassell was alleged to have falsely imprisoned the Claimants in May/June 1994, the applicable

statute was the Public Authorities Protection Act. He further submitted that pursuant to Section 2 (1)(a) of that statute, which has already been referred to, any action commenced as a consequence of Detective Sergeant Cassell's actions ought to have been brought within one year of the actions complained of.

- (5) He pointed out that the Writ of Summons filed on behalf of Elkanah McLeish was dated the 5<sup>th</sup> November, 1999 and was served on the Attorney General on the 23<sup>rd</sup> November, 1999. A perusal of the Writ of Summons relating to Devon Russell disclosed that the Writ of Summons was filed on the 27<sup>th</sup> October, 1999. Counsel therefore submitted that the claims for false imprisonment ought to have been filed, at the latest, some time in June, 1995. Not having been so filed by that date, he argued that the claims for false imprisonment were statute barred.
- (6) Mr. Cochrane also drew the Court's attention to the amendment to the Public Authorities Protection Act in March 1995, which deleted Subsection (1)(a) of section 2 of that Act, the effect of which removed the one year limitation period within which such actions were to be instituted. He contended however that the amendment did not in anyway assist the Claimants in this matter. He went on to refer to and rely on the case of Wilbert Christopher vs Attorney General of Jamaica Motion No.26 of 2001, a decision of the Jamaican Court of Appeal handed down on the 19<sup>th</sup> November, 2001. It was held in that case that the amendment to the Public Authorities Protection Act, as referred to earlier, was not to have retrospective effect.

- (7) Langrin J.A. in delivering the Judgment of the Court referred to **Lemuel Gordon vs. The Attorney General for Jamaica** SCCA No: 96 of 1994 where he said that Carey J.A. in that case noted:-

“that the proper approach to the amending enactment is not to determine whether it is procedural or substantive but to see whether, if applied retrospectively, it would impair existing rights. The Crown’s agents when acting in the execution of their duties acquire a vested right by reason of the statutory limitation period of 12 months and should be able to assume that they are no longer at risk from a stale claim. There is an accrued right to plead the lapse of a limitation period which is in fact, an absolute defence.”

- (8) Langrin J.A. went on to state that in the **Wilbert Christopher case:-**

“The appellant’s cause of action arose in 1994. The relevant limitation period for bringing a claim against the respondent is one year from this date as expressed by Section 2 (1) (a) The Public Authorities Protection Act 1942. The Amendment Act 1995 cannot be applied retrospectively because it would deprive the respondent of the vested right of the limitation period derived from the statute. Therefore, the Claim filed on the 29<sup>th</sup> June, 1999 is far beyond the limitation period of one year, from 1994.”

Mr. Cochrane relied heavily on the dicta in this case as well as on the decision of the Privy Council in **Yew Bon Tew vs. Kenderaan Bas Mara** 1982 3 ALL ER 833 in support of his contention that the claims for false imprisonment before this Court were statute barred.

- (9) Counsel for the Claimants Mr. Samuels in his concise reply, cited the recent Privy Council decision of **Balteano Duffus vs National Water Commission** Privy Council Appeal No.13 of 2006, an appeal from the

Court of Appeal from Jamaica, delivered on the 17<sup>th</sup> May, 2007. He referred to the dicta of Lord Scott of Foscote where he said at page 8 in paragraph 15:-

“...The cause of action for wrongful dismissal upon which Mr. Duffus was suing had accrued on 28 May, 1990. The action had not been commenced until 9 March 1992. The interval was in excess of one year. So the action was barred by section 2(1) of the Public Authorities Protection Act.”

- (10) At first blush it may appear that the passage cited and relied on by Mr. Samuels seemed to support the position of opposing Counsel, Mr. Cochrane. However Mr. Samuels directed and urged the Court to focus on when the cause of action accrued. He argued that the present case is one claiming damages for the tort of false imprisonment and although the dates pleaded in the respective Statement of Claim indicate that his clients were taken into custody in May/June 1994, he suggested that the cause of action did not accrue until their acquittal. In the case of Elkanah McLeish, this occurred after the trial of the criminal proceedings, while in Devon Russell’s case, after his acquittal by the Court of Appeal. Counsel indicated that his clients, in their evidence before the Court at trial, would testify as to the respective dates on which they were acquitted. Mr. Samuels further argued that it was their acquittals which gave rise to the tort of false imprisonment, as the Claimants would not and could not have brought this action had they been convicted.
- (11) I have carefully considered the interesting submissions of Counsel Mr. Samuels on the preliminary point, and though for a short while intrigued by the approach taken, I do not find myself in agreement

with the arguments he has advanced. In the unreported case of **Kerron Campbell vs. Kenroy Wilson and Attorney General of Jamaica** Suit No. CL C-385 of 1998, Sykes J (Ag.) as he then was, relied on the dicta of Carey P (Ag.) in **Flemming vs. Myers** (1989) 26 JLR 525 and stated:-

“The tort of false imprisonment is committed whenever a person is detained against his will without legal justification.”

Sykes J. (Ag.) went on to state that the restraint must be total.

- (12) The learned authors of **Halsbury Laws of England 4<sup>th</sup> Edition Re issue**, Volume 45 (2) at paragraph 442, page 299 state:-

“A claim for false imprisonment lies at the suit of a person unlawfully imprisoned against the person who causes the imprisonment. Any total restraint of the liberty of the person for however short a time, by the use or threat of force or by confinement is an imprisonment...”

The gist of the claim of false imprisonment is the mere imprisonment.”

- (13) After carefully considering the authorities cited by Counsel as well as the passages referred to above, I am satisfied that the cause of action in respect of the tort of false imprisonment accrues at the time of the Claimants’ detention or imprisonment. I am further of the view, in the circumstances of the present case, that a ruling of an acquittal is not a prerequisite to the filing of action claiming damages for false imprisonment. Such a finding is one of the preconditions required for the institution of an action for malicious prosecution – but not so in the case of false imprisonment.

- (14) The wording of section 2 (1)(a) of the Public Authorities Protection Act ought also to be carefully examined. That provision obliges a litigant who is seeking to initiate legal proceedings against any person for any act done in pursuance or execution of any law or public duty, to institute such proceedings within one year after the act, neglect or default complained of. Failure to do so shuts the access door of the corridor to the Courts of this land in the face of such a litigant, as the action becomes statute barred.
- (15) In the present case, the acts complained of are the acts of imprisonment of the Claimants by an officer of the Crown in May/June 1994. On the clear and literal interpretation of that section, this action should have been instituted or on before May/June 1995. The Claimants not having done so, these proceedings having been filed in 1999, I find that their claims for damages for false imprisonment are statute barred.
- (16) As a consequence of this ruling, Judgment is entered in favour of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. No order as to costs.

