

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

2022/CRI/CON/00002

BETWEEN

SHAVON BETHEL

Plaintiff

AND

THE COMMISSIONER OF POLICE

Defendant

Appearances: Mrs Tai Pinder Mackey for the Plaintiff
Ms Darnell Dorsette for the Defendant

Hearing Date: 2nd June, 2022

DECISION

DARVILLE GOMEZ, J

1. The Plaintiff applied by Summonses filed on April 6, 2022 and April 26, 2022 pursuant to Order 41, rule 5, and /or rule 6 of the Rules of the Supreme Court (“RSC”) and /or under the inherent jurisdiction of the Supreme Court seeking an Order to strike out all or substantial parts (and accompanying exhibits) of the affidavits of Patrick Sweeting filed herein on March 23, 2022 and Raymond Hanna filed herein on April 11, 2022 both filed on behalf of the Respondent on the grounds of being hearsay and/or scandalous and/or irrelevant and/or oppressive and/or an abuse of the process of the court, or alternatively inadmissible under Order 41 Rule 5 of the RSC for non-compliance with that Order.
2. The offending paragraphs are 5-30; 32-37; 40; 54-56 in the Patrick Sweeting affidavit and paragraphs 4-13 of the Supplemental Affidavit sworn by Superintendent Raymond Hanna.
3. The Court’s jurisdiction to strike out any pleading at any stage of the action on the ground that it is scandalous, frivolous or vexatious or may prejudice, embarrass or delay a fair trial of the action or it is otherwise an abuse of the process of the court is


contained in Order 18, rule 19 and applies to an originating summons. This rule is applicable to the instant case because the proceedings have been commenced by Originating Motion.

4. Order 38 rule 2 confirms that evidence in relation to an Originating Motion may be given by affidavit.
5. Therefore, it is undisputed that the Court has the jurisdiction to hear and determine this matter.
6. I do not intend to set out the plethora of cases that have been cited in support of the Applicant's contention that the numerous paragraphs referred to paragraph 2 are offensive or do not comply with the RSC. Counsel for the Applicant and the Respondent have helpfully provided authorities which has greatly assisted the Court in reaching its decision in this matter.
7. I find insightful the dicta of Hall, J in **McMillen Trust v Rawat [1991] BHS J No. 42** where he considered the authorities with respect to the admissibility of evidence in affidavits as follows:
 - (a) An affidavit must comply with the ordinary laws of evidence; accordingly, it may exceptionally contain hearsay evidence only when the sources and grounds are disclosed.
 - (b) An affidavit must not contain matters which is scandalous and/or irrelevant and/or oppressive. Irrelevant material includes opinion, conclusions and submissions.
 - (c) Where an affidavit which is filed contains any matter which it ought not to contain, the court need only ignore the offending matter unless the breach is egregious.
 - (d) Where an objection is taken by a party to material contained in an affidavit filed by another party, the court may instead of proceeding as at (c) order the offending material to be struck out...
8. I also note the case of **Hal Nominees Ltd. V Steadman Labier Investments Ltd. [1995] BHS J No. 39** where Thorne, J (as he then was) referred to affidavits sworn in proceedings that are not interlocutory and said as follows:

“In the instant case the affidavits sworn were not being made in interlocutory proceedings, so that the exception under rule 5 did not apply, and since the applicant needs to know what evidence, it must respond to, and an objection has been taken to the contents of the affidavits, it is necessary for the court to decide at this stage whether or not such evidence is admissible.”

9. The instant proceedings are not interlocutory.
10. Counsel for the Respondent submitted that the purpose of some of the “offending” paragraphs was to provide the Court with a chronology of events or a history of the action and to demonstrate an intention by the Respondent to proceed with the case against the Applicant.
11. Further, Counsel for the Respondent conceded that several paragraphs were in fact submissions on the law and was done in the interest of time and while there may have been other paragraphs that did not comply with the rules on affidavits, they did not in her words “do any violence” to the Applicant.
12. However, I must recite the following dicta taken from **Alfred Dunhill Ltd. V Sunoptics S.A.:**
- “It must not be forgotten that affidavits are a means whereby (largely for convenience and to facilitate hearings of a certain nature) evidence is placed before a court for its consideration. With this in mind, an affidavit is not a conduit by which uncontrolled material is permitted to flood into court: affidavits must be viewed according to the rules of court and in the context of the law of evidence: Phipson on Evidence, 13th Edition, para 34-02.**
13. Having considered all of the authorities cited by both parties and in particular the dicta of Hall J, set out in paragraph 7, I order the strike out of the following paragraphs on the grounds inter alia, that they do not disclose the sources or grounds of belief or are submissions:
- (i) Paragraphs 12; 13; 16; 30; 31; 48; 49; 50; 51; 52; 54 ;55; 56 in the Affidavit of Patrick Sweeting filed on March 23, 2022.
 - (ii) Paragraphs 9 and 10 contained in the Affidavit of Superintendent Raymond Hanna filed on April 11, 2022.
14. To the extent that any of the remaining paragraphs referred to in the Applicant’s Summonses contain information which does not comply with the RSC; I am of the view that the breach is not egregious and that I can ignore the offending matter.
15. Accordingly, I award reasonable costs to the Applicant which costs will be fixed after hearing the parties.

Dated the 29th day of July, 2022


Camille Darville Gomez
Justice