

SALATHIEL THOMPSON

Plaintiff

AND

THE COMMISSIONER OF POLICE
THE DIRECTOR OF PUBLIC PROSECUTION
THE ATTORNEY GENERAL

Defendants

Before: The Honourable Madam Justice Camille Darville Gomez

Appearances: Mr. Alton McKenzie for the Plaintiff
Mrs. Sophia Thompson Williams for the Defendants

Hearing Date: 17th January, 2023

DECISION ON STRIKE OUT APPLICATION

Darville Gomez, J.

1. This action was brought by the Plaintiff by Writ of Summons filed on April 12, 2021. The claim is for general damages for:
 - (i) False arrest;
 - (ii) False imprisonment;
 - (iii) Abuse of process and malicious prosecution;
 - (iv) Constitutional breaches of Articles 19, 20, 25;
 - (v) Vindictory damages;
 - (vi) Aggravated damages;
 - (vii) Exemplary damages;
 - (viii) Interest;
 - (ix) Costs;
 - (x) Such further or other relief as the court deems just.

The Facts

2. On January 9, 2018 the Plaintiff was repatriated to the Bahamas after serving 28 years in the United States Federal Prison System. He remained in the custody of the Police until April 20, 2018 when he was granted bail of \$20,000 with 2 suretors by Justice Gregory Hilton with certain conditions including reporting to the police station, prohibition against travel and the wearing of an electronic monitoring device ("EMD").
3. On January 12, 2018 he was charged with four (4) offences of armed robbery. On November 18, 2018 and June 9 2019 he applied to vary his conditions of bail to remove the EMD and to reduce the amount of his bail bond to \$9,500 respectively.
4. On January 16, 2020 the Plaintiff filed a constitutional motion challenging the constitutionality of the manner which the First and Second Defendants brought charges against him. It was heard on February 18, 2020 and on May 8, 2020, Justice Gregory Hilton declared that the Plaintiff's right to a fair hearing and security of the law guaranteed under Article 19 of the Constitution had been breached and stayed any further proceedings.
5. On May 22, 2020 the Second Defendant appealed the decision and on December 10, 2020 withdrew its appeal and the Court of Appeal dismissed the matter.
6. The Plaintiff sought the relief as set out in paragraph 1.

The Law

7. This strike out application was made pursuant to ***Order 18, rule 19 of the Rules of the Supreme Court*** which are no longer in effect as noted above. The rule reads as follows:

"19(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case maybe.

(2) No evidence shall be admissible on an application under paragraph (1) (a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading."

8. According to **section 12 of the Limitation Act, Chapter 83:**

"12. (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 written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the provisions of subsection (2) shall have effect.

(2) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or in the case of a continuance of injury or damage within twelve months next after the ceasing thereof."

Application to Strike Out by the Defendants

9. The application to strike out the action was made and heard prior to the coming into force of the Civil Procedure Rules, 2022.

10. By a Case Management Order filed on January 17, 2023 (which had been heard on September 16, 2022) this action had been scheduled for trial; however, the Defendants by Summons filed on September 23, 2022 applied to strike out the entire action on the following basis:

(i) The Plaintiff did not commence the action against the Defendants within the statutory period of twelve (12) months after the act complained of as provided by and in compliance with Section 12(2) of the Limitation Act.

(ii) That this matter is statute barred.

11. The Summons was supported by an affidavit of Antoine Thompson filed on September 26, 2023. I set out below the relevant portions:

"3. That the Plaintiff was arrested by officers of the Royal Bahamas Police Force on or about the 9th day of January, 2018 and thereafter, he was charged with Armed Robbery contrary to sections 339 of the Penal Code Chapter 84, under four (4) separate indictments.

4. That on or about the 12th day of January A.D. 2018 the Plaintiff was arraigned before Chief Magistrate Mr. Samuel McKinney on the said charges and remanded to the Bahamas Department of Corrections. The Plaintiff remained on remand for approximately three (3) months before being released on bail.

5. That on the 8th May 2020, the Plaintiff was discharged and acquitted of all charges by Justice Gregory Hilton.

6. *That on the 12th April, 2021 the Plaintiff filed a specially indorsed Writ of Summons alleging that the Defendants named herein committed tortious acts and violated his constitutional rights.*
7. *That more than twelve (12) months lapsed between the arrest of the Plaintiff and the filing of the said Writ of Summons. The Plaintiff was arrested on the 9th January, 2018 and the specially indorsed Writ of Summons was filed on the 12th April, 2021.*
8. *That more than twelve (12) months lapsed between the discharge and acquittal of the Plaintiff and the filing of the Writ of Summons in the matter herein. All of the indictments/proceedings against the Plaintiff were stayed by Order of Justice Hilton. The proceedings were stayed on the 8th May, 2020 and again, the Plaintiff filed his specially indorsed Writ of Summons on the 12th April, 2021.*
9. *That based upon the foregoing provisions, it is submitted that this matter is statute barred and the Plaintiff have sought to circumvent the twelve (12) month time period prescribed by bringing this matter under the guise of breaches of the Constitution. We say that adequate means have been available to the Plaintiff, but the Plaintiff did not utilize the available means of redress within the specified statutory period."*

12. The Plaintiff objected.

13. The Plaintiff submitted that the Defendants have grossly miscalculated the time between 8th May, 2020 and 12th April, 2021 because that amounts to 11 months and 4 days.

14. I agree.

15. Notwithstanding the above, the Court must consider each of the relief being sought by the Plaintiff to determine whether they are in fact statute barred.

False Arrest

16. The Plaintiff in his Writ of Summons stated that he was wrongly arrested and taken into police custody on January 9, 2018. He further stated that he was taken before the Magistrates Court and charged with four matters.

17. The Plaintiff did not commence this action until April, 2021.

18. Therefore, given the effluxion of time his claim for false arrest clearly falls outside the limitation period of twelve (12) months.

False Imprisonment

19. The Plaintiff averred in his Writ of Summons that he was in the custody of the First Defendant from January 9, 2018 to January 12, 2018 and on remand at the Department of Corrections from January 12, 2018 to April 20, 2018 until he was granted bail by the Supreme Court.
20. Further, he stated that he was falsely imprisoned for one hundred and ten (110) days.
21. However, in the Plaintiff's submissions at paragraph 17, his counsel submitted that the Plaintiff was falsely imprisoned from January 18, 2018 to May 8, 2020. I refer to his submissions:

"17. It is submitted and it is pleaded that the Plaintiff was falsely imprisoned from 18th January, 2018 to 8th May, 2020 (the pleadings with respect to continuation of confinement during the periods when bail was granted until the continuation of trial were mistakenly omitted in the Particulars of False Imprisonment). However, it is clear from the factual account set out in the writ and also the particularization of the claims for Loss of Opportunity that the loss resulted directly from the fact that the Plaintiff's freedom of movement was restricted to a confined area because of his bail conditions that remained in place until the charges were stayed on 8th May, 2020."

22. The Plaintiff's Counsel never pleaded that despite the grant of bail, the restriction of the Plaintiff's movement (due to his reporting to the police station and the fitting of an EMD as conditions of bail) amounted to false imprisonment.
23. It is plain that on the pleaded particulars of false imprisonment, that it is statute barred.
24. The issue of whether the restriction on the Plaintiff's freedom due to the bail conditions imposed upon him amounted to false imprisonment does not arise in my view. This was not pleaded and there was no application to amend the Writ of Summons to include it.
25. In any event, the case cited by the Plaintiff's Counsel in his submissions of **Bird v Jones (1845) 7 Q.B. 742** makes it clear that being placed on bail and subject to restrictions of movement does not amount to false imprisonment.

Malicious prosecution

26. That on the 8th May 2020, the Plaintiff was discharged and acquitted of all charges by Justice Gregory Hilton, therefore, the Plaintiff's claim for malicious prosecution does not fall afoul of the twelve (12) month limitation.

Constitutional Breaches of Articles 19, 20, 25

27. These claims for constitutional reliefs are not subject to the twelve month limitation period and at this early stage it is inappropriate to make findings of fact in relation to whether the proviso to Article 28 applies. The alleged application of the proviso to the facts of the instant claim is a triable issue.

28. In the Court of Appeal judgement of ***Sandy Port Homeowners Association Limited v. Bain [2015] 2 BHS J. No. 102***, Crane-Scott, JA at paragraph 14 prescribed that:

"Case law also shows that the discretion to strike-out a pleading should be exercised with extreme caution and only in clear and obvious cases. The discretion to strike may be exercised if it is clear and obvious on the pleadings that no reasonable cause of action is disclosed (meaning a cause of action with some chance of success) or if it is obvious that the pleadings are so bad that no legitimate amendment could cure the defect in its pleadings."

29. Therefore, I have only struck out those claims where it is clear and obvious that there is no reasonable cause of action.

30. The Plaintiff's claim for malicious prosecution and breaches of the constitutional will be fully ventilated at the trial.

Conclusion

31. Accordingly, I make the following orders:

- (iii) The claims for false arrest and false imprisonment as set out in the Writ of Summons filed on April 12, 2021 are hereby struck out pursuant to Order 18 Rule 19(1)(d) of the Rules of the Supreme Court in that the Plaintiff did not commence the action against the Defendants within the statutory period of twelve (12) months after the act complained of as provided by and in compliance with Section 12(2) of the Limitation Act.
- (i) I refuse to strike out the claim for malicious prosecution and constitutional breaches pursuant to Article 28 in relation to the alleged breaches of Articles 19, 20 and 25.
- (ii) Costs in the cause.
- (iii) The action will proceed to trial on a date to be determined.

Dated this 8th day of August A. D., 2023


Camille Darville Gomez
Justice