

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT**

**COMMON LAW AND EQUITY DIVISION**

**2023/CLE/gen/00175**

**BETWEEN**

**CALVERT HART**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS**

**First Defendant**

**THE MINISTER OF NATIONAL SECURITY**

**Second Defendant**

**THE BAHAMAS DEPARTMENT OF CORRECTIONAL SERVICES**

**Third Defendant**

**THE COMMISSIONER OF POLICE**

**Fourth Defendant**

**Before: Her Ladyship The Honourable Madam Senior Justice  
Deborah Fraser**

**Appearances: Mr. Sidney Campbell and Mr. Cyril Ebong for the  
Claimant**

**Mrs. Olivia Pratt- Nixon and Ms. Nyanne Olander for the  
Defendants**

**Judgment Date: 08 April 2024**

**Striking Out – Rule 26.3(1)(a) and (c) of the Supreme Court Civil Procedure Rules,  
2022 – Sections 5, 9 and 12(2) of the Limitation Act, 1995 – Statute Barred –  
Frivolous, Vexatious, Abuse of the Court’s Process**

**RULING**

1. This is an application brought on behalf of the Defendants requesting that paragraphs 19-21 of the Claimant’s Amended Statement of Claimant be struck out: (i) pursuant to Rule 26.3(1)(a) and (c) of the Supreme Court Civil Procedure Rules, 2022 (“**CPR**”) as being frivolous, vexatious and being an abuse of the

Court's process; (ii) pursuant to section 12(2) of the Limitation Act, 1995 as the action is statute barred; and (iii) under the inherent jurisdiction of the Court.

### **Background**

2. The Claimant, Mr. Calvert Hart ("**Mr. Hart**") is a citizen of the Commonwealth of The Bahamas.
3. The First Defendant is the Attorney General of the Commonwealth of The Bahamas, whose function is to oversee, review and provide advice, as well as bring and defend any actions in all matters regarding the law and legal policies for the Government of The Bahamas. The office is sued as representing the Government of The Bahamas and its executive branches.
4. The Second Defendant is the Minister of National Security who is responsible for the oversight and management of all matters regarding the protection and safety of all nationals, residents, visitors and territorial sovereignty of the Commonwealth of The Bahamas.
5. The Third Defendant, The Bahamas Department of Correctional Services ("**BDOCS**") is a branch of the Second Defendant mandated to provide safe and secure custody for all inmates placed at the said Department and to prevent unlawful escapes and unauthorized entry of the facility.
6. The Fourth Defendant is the Commissioner of Police, an office responsible for the supervision and management of all protocols, policies and mandates regarding the conduct and discharge of duties/functions of members of the Royal Bahamas Police Force. Collectively, the First through Fourth Defendants shall be referred to as the "Defendants".
7. It is alleged that, on or about 04 January 2015, Mr. Hart was arrested for the alleged rape of Ms. Shavante Higgs. On 08 January 2015 he was allegedly imprisoned until 24 October 2016, when he was granted bail. He was fitted with an electronic monitoring device while out on bail, and had to report to the South East Police Station until 2020.
8. Mr. Hart was then remanded until 11 October 2022 when the proceedings against him in respect of the charge of rape was discontinued under the direction of the Director of Public Prosecutions. A Nolle Prosequi was presented to the Supreme Court, thus bringing the criminal proceedings against Mr. Hart to an end.
9. From 08 January 2015 to 24 October 2016, Mr. Hart alleges that he was beaten by prison guards during his incarceration at BDOCS. It is important to note that Mr. Hart pleads (in his Amended Statement of Claim filed on 08 May 2023) that the alleged beatings were done by prison guards acting in the purported execution of their duties.

10. Mr. Hart further alleges false imprisonment and breaches of his Constitutional rights due to alleged inhumane and degrading conditions he endured during his incarceration at BDOCS.
11. He also alleges that, due to his incarceration, his mortgage payments fell into arrears and he lost his property.
12. Based on the foregoing, Mr. Hart filed a Specially indorsed Writ of Summons on 24 February 2024 along with an Amended Statement of Claim on 08 May 2023 against the named Defendants for the alleged assault and battery, false imprisonment, breach of constitutional rights and loss of his property. He asks for the following reliefs:
  - (I) Damages;
  - (II) Special Damages (Cost of Land);
  - (III) Aggravated Damages;
  - (IV) Exemplary Damages;
  - (V) Vindictory Damages;
  - (VI) Compensation under Article 19(4) of the Constitution;
  - (VII) Damages for breaches of his rights under Articles 15, 17, 19(1), 19(3), and 20(1) of the Constitution;
  - (VIII) Interest on the foregoing pursuant to statute;
  - (IX) Costs;
  - (X) Such further or other relief as the Court may deem fit.
13. The Defendants filed an Acknowledgement of Service on 21 March 2023, a Defence on 17 April 2023 and an Amended Defence on 13 November 2023. They deny all the allegations made against them and put Mr. Hart to strict proof thereof. They aver that his detention was lawful and that there were no breaches of his constitutional rights. They also plead section 12(2) of the Limitation Act as a defence - specifically in relation to the allegations of assault and battery. They aver that Mr. Hart is statute barred by virtue of the aforementioned section and thus cannot pursue that aspect of his claim as the cause of action accrued approximately seven (7) years ago. Section 12(2) of the Limitation Act requires an individual aggrieved of any alleged wrongdoing by an individual executing a public duty or authority to bring such a claim within twelve (12) months from the date of the act, neglect or default or in the case of a continuance of injury or damage ,within twelve months (12) next after the ceasing thereof.
14. Subsequently, on 07 February 2024, the Defendants filed a Notice of Application to Strike Out paragraphs 19 to 21 of Mr. Hart's Amended Statement of Claim: (i)

pursuant to Rule 26.3(1)(a) and (c) of the Supreme Court Civil Procedure Rules, 2022 (“**CPR**”) the paragraphs are frivolous, vexatious and are an abuse of the Court’s process; (ii) pursuant to section 12(2) of the Limitation Act, 1995 that that aspect of the claim is statute barred; and (iii) under the inherent jurisdiction of the Court.

15. For completeness, paragraphs 19 to 21 of the Amended Statement of Claim reads as follows:

*“ASSAULT AND BATTERY*

*19 On numerous occasions during his incarceration at the Fox Hill Prison between 08 January 2015 and 24 October 2016 Calvert Hart was beaten by prison guards acting in the purported execution of their duties.*

*20 As [a] result of the constant beating Calvert Hart’s face was so swollen that he was transferred to the sick bay for about two weeks and was put on pain killers.*

*21 Calvert Hart was verbally threatened, beaten, pushed around and slapped by the prison officers in breach of his rights under the provisions of Article 17(1) of the Constitution.”*

16. The parties then laid over submissions in relation to the Striking Out application for the Court’s consideration.

**Issue**

17. The issue that the Court must determine is whether paragraphs 19-21 of the Amended Statement of Claim ought to be struck out (i) pursuant to Rule 26.3(1)(a) and (c) of the CPR, the paragraphs are frivolous, vexatious and are an abuse of the Court’s process; (ii) pursuant to section 12(2) of the Limitation Act, 1995 that that aspect of the claim is statute barred; and/or (iii) under the inherent jurisdiction of the Court?

**Evidence**

**The Defendants**

18. On 07 February 2023, the Defendants filed the Affidavit of Shanae Petty (“**Petty Affidavit**”) which provides that: (i) on 04 January 2015 around 6:17am, police officers went to Mr. Hart’s residence in relation to a complaint made by Shavantae Higgs (“**Ms. Higgs**”). On that same date, he was cautioned and arrested for the alleged rape of Ms. Higgs, contrary to section 6(a) of the Sexual Offence Act, 1991; (ii) He was booked into the Carmichael Road Police Station and on 05 January 2015, Mr. Hart was taken to the Central Detective Unit where he was interviewed by WDC 3585 Ashley Black. Mr. Hart denied any knowledge

of the allegations made against him; (iii) the police conducted an investigation into the matter and, after consultation with the Office of the Director of Public Prosecutions, Mr. Hart was formally charged with rape on 07 January 2015; (iv) on 08 January 2015, Mr. Hart appeared before a Magistrate and was remanded to BDOCS; (v) on 07 September 2016, Mr. Hart was granted bail; (vi) on 18 October 2016, the Forensic Section of the Royal Bahamas Police Force received a DNA report from DNA labs in Deerfield, Florida which revealed that the sperm detected on Ms. Higgs matched the DNA profile of Mr. Hart; (vii) Ms. Higgs advised the Office of the Director of Public Prosecutions that she no longer wanted to pursue the complaint made against Mr. Hart. Consequently, a Nolle Prosequi dated 11 October 2022 was entered into the court's record discontinuing the criminal proceedings against Mr. Hart; (viii) Mr. Hart was remanded for a period of approximately two (2) years from 08 January 2015 to 24 October 2016, during which time he alleges he was assaulted, threatened, slapped and pushed around by prison officers; and (ix) that more than twelve (12) months elapsed between the allegations of assault and battery made against the prison officers and the filing of Mr. Hart's claim.

Mr. Hart

19. Mr. Hart did not file any evidence.

**Discussion and Analysis**

20. I have read the submissions of counsel and considered them along with the relevant law and evidence in this application. I will now provide my analysis.

***Whether paragraphs 19-21 of the Amended Statement of Claim ought to be struck out (i) pursuant to Rule 26.3(1)(a) and (c) of the CPR, that the paragraphs are frivolous, vexatious and being an abuse of the Court's process; (ii) pursuant to section 12(2) of the Limitation Act, 1995 that that aspect of the claim is statute barred; and/or (iii) under the inherent jurisdiction of the Court?***

21. I note reference to **Rule 26.3(1)(a) of the CPR** is referred to in this application, however, it is unclear why this is relied on by the Defendants. In any event, I shall refer to it as it is being referenced. **Rule 26.3(1)(a) and (c) of the CPR** provide:

*"26.3 Sanctions – striking out statement of case.*

*(1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that —*

*(a) there has been a failure to comply with a rule, practice direction, order or direction given by the Court in the proceedings...*

*(c) the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings”*

**22. Section 12 of the Limitation Act, 1995 reads:**

*“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.”*

**23. In Ronex Properties Ltd v John Laing Construction Ltd. And others [1982] EWCA Civ J0722-4, Donaldson LJ opined:**

*“Where it is thought to be clear that there is a defence under the Limitation Act, the defendant can either plead that defence and seek the trial of a preliminary issue or, in a very clear case, he can seek to strike out the claim upon the ground that it is frivolous, vexatious and an abuse of the process of the court and support his application with evidence.”*

**24. It was also observed by Sawyer CJ (as she then was) in Girtten v Andreu [1988] BHS J No. 164 the significance of a limitation defence and pleading same. There, the learned judge opined:**

*“...I think it is now trite law that where it is clear from the statement of claim that the cause of action arose outside the current period of limitation and it is clear that the defendant intends to rely on the limitation defence and there is nothing before the court to suggest that the plaintiff could escape from the defence the claim will be struck out as being frivolous, vexatious and an abuse of the process of the court.”*

**25. Also, Winder J (as he then was) in Shepherd v The Attorney General of The Bahamas and others [2018] 1 BHS No. 6 at paragraph 13 referred to pronouncements of Bain J in Josephs v Bethel et al [2011] BHS J No. 6:**

*“...the plaintiff brought an action against the defendant police officer, claiming damages for an alleged assault. The matter was begun by Writ and not as a constitutional action. Further, in the prayer, the plaintiff sought damages for breach of his constitutional rights, without giving particulars of the breach, Bain J who relied on Durity, found that the constitutional motion was not properly grounded and the claims for breach of constitutional rights were merely an attempt to save the action.”*

26. It is, however, important to note the pronouncements made by the Court of Appeal in **Ramon Lop v The Attorney General of the Commonwealth of The Bahamas et al – SCCivApp. No. 118 of 2022 (“Ramon Lop”)**:

*“In the end, I am convinced that neither the Constitution, nor section 12 of the Limitation Act limits or curtails in any way the presently unrestricted right conferred by Article 28(1) on an aggrieved person to apply to the Supreme Court for redress. As I have said, Article 28 contains no limitational hindrance as to the time in which applications for the enforcement of fundamental rights and freedoms can be brought”*

27. I also find the pronouncements made by Evans J in **Felix Thompson v Fenton Strachan et al 2014/CLE/gen/0030 (“Thompson”)** quite helpful. There, the learned judge had to determine whether an action for damages resulting from injuries sustained by a car accident allegedly caused by the negligent driving of an agent of the Ministry of Youth Sports and Culture ought to be struck out due to it being statute barred.

28. In the case, the Defendants pleaded in their defence that the driver was driving the vehicle with the permission/authority of the Ministry of Youth Sports and Culture.

29. The learned judge referred to the case of **Gordon v The Attorney General for Jamaica (Jamaica) (1997) UKPC 21** where the Privy Council considered the meaning of the phrase “any act done in pursuance or execution or intended execution...of any public duty”. In that decision, the Court quoted from Lord Finlay in **Newell v Starkie (1919) LXXX111** who opined:

*“The second observation I have to make is that the Act necessarily will not apply if it is established that the defendant had abused his position for the purpose of acting maliciously; in that case he has not been acting within the terms of the statutory or other legal authority; he has not been bona fide endeavoring to carry it out. In such a state of facts he has abused his position for the purpose of doing a wrong, and the protection of the Act, of course, never could apply to such a case.”*

30. At paragraph 21 of the **Thompson** case, Evan J posited:

*“This authority clearly shows that because a party is in the employ of the crown does not automatically give him the protection of Section 12 of the Limitation Act. The question has to be decided whether he at the relevant time was so acting. This in my view is so as otherwise the Act would simply have said “any person employed by the Crown”. It also follows that the Crown cannot assert without more that the individual was acting pursuant to some law or public duty. The Court must still make a determination as to whether that is in fact so.”*

31. The Court then went through the exercise of analyzing the pleadings and the witness statements of the agent for the Ministry of Youth Sports and Culture to

determine if the agent's actions at the time of the alleged accident was indeed during the course of his employ as an agent of the government

32. The Court ruled that the agent was not acting pursuant to any public duty. The judge therefore dismissed the application as he ruled that the limitation period under Section 12(2) of the Limitation Act, 1995 did not apply to the facts of that case. It must also be noted that the agent was specifically named in that action.
33. In the instant case, Mr. Hart's counsel, in his submissions, assert that the acts of assault and battery to his person committed by the prison guards were not done in pursuance or execution of a written law or public duty, and that those acts of assault and battery raise a presumption of malice that needs to be determined. Mr. Hart, at paragraph 19 of the Amended Statement of Claim, uses the phrase "the purported execution of their duties" when describing the alleged assault and battery by the prison officers. Though he may be suggesting that the actions may not have been done in the execution of their public duties, the pleadings are silent on which prison officers were responsible for the alleged assault and battery. Furthermore, no prison officers were overtly named in the action. It is quite difficult to determine how the court is to address this issue at the substantial trial if we do not know who the prisoner officers were who allegedly committed the assault and battery against Mr. Hart.
34. Furthermore, the alleged assault and battery was said to have occurred between 08 January 2015 and 24 October 2016. If the allegations were based on the acts of prison officers during the course of their employ, the action would have to have been brought by 24 October 2017. It is, however, arguable if the alleged actions took place in the course of the prison officers' public duties.
35. Moreover, and most significantly, even if the actions were done by the prison officers outside of the ambit of their public duties, the action would still need to be brought within six (6) years from the date of the alleged assault and battery. **Section 5(1)(a) of the Limitation Act, 1995** provides:

*"5. (1) The following actions shall not be brought after the expiry of six years from the date on which the cause of action accrued, that is to say —*

*(a) actions founded on simple contract (including quasi contract) or on tort"*

36. Even if the claim were one for personal injury (which the alleged assault and battery appears to be), **Sections 9(1), (2) (a) and (b) of the Limitation Act, 1995** state:

*"9. (1) Subject to subsection (6), this section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by any written law or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.*



(2) Subject to subsection (3), an action to which this section applies shall not be brought after the expiry of three years from —

(a) the date on which the cause of action accrued; or

(b) the date (if later) of the plaintiff's knowledge.”

37. At its highest and based on the evidence and pleadings before me, the latest that the assault and battery claim could have been brought is 24 October 2022. The Writ was filed 24 February 2023, some four (4) months after the requisite limitation period. Therefore, the action for assault and battery would be statute barred in any event.

38. In the premises, I do not see how this aspect of the claim can survive. In the premises, I rule that paragraphs 19 to 21 of the Amended Statement of Claim be struck out as vexatious, frivolous and an abuse of the Court's process.

39. With respect to the inherent jurisdiction of the court, that is typically invoked where rules of court and/or legislation are silent or deficient on how the Court ought to proceed. It is to be invoked “*to supplement procedural law in cases not covered, or adequately covered, by procedural law itself*”. (**Belgravia International Bank & Trust Company Ltd v Bretton Woods Corporation BS 2022 CA 136**).

### **CONCLUSION**

40. Based on the facts, evidence before me and the present state of the law, I accede to the Defendants' application and exercise my powers under Rule 26.3(1)(c) of the CPR and strike out paragraphs 19-21 of the Claimant's Amended Statement of Claim as being vexatious, frivolous and an abuse of the Court's process.

41. The Claimant shall pay the Defendants' costs for this application, to be assessed by this Court, if not agreed.

**Senior Justice Deborah Fraser**

**Dated this 08 day of April 2024**