COMMONWEALTH OF THE BAHAMAS **2022/CLE/gen/00923**

IN THE SUPREME COURT

Common Law & Equity Division

B E T W E E N:

DION MILLER

Respondent/Claimant

AND

PAUL A. ROLLE

(In his capacity as Commissioner of The Royal Bahamas Police Force)

AND

THE HON. RYAN PINDER

(In his capacity as Attorney General of The Commonwealth of The Bahamas)

Applicants/Defendants

Before: **The Honorable Senior Madam Justice Deborah E. Fraser**

Appearances: **Kirkland Mackey and Randolph Dames for the Applicants**

David Cash for the Respondent

Hearing Date: **26th June 2024**

Civil Law – Civil Procedure – Striking Out -Part 26 of the Civil Procedure Rules 2022 – Rule 26.3(1)(b & c) of the Civil Procedure Rules 2022 – Constitutional Redress –Limitation Act 1995 Ch83 – Statute Barred - Frivolous, Vexatious, Abuse of the Court's Process

RULING

Fraser Snr. J,

Introduction

[1.] This is an application brought on behalf of the Defendants requesting that the Claimant's Statement of Case be struck out: (i) pursuant to Part 26.3(1) (c) of the Supreme Court Civil Procedure Rules, 2022 (**"CPR 2022"**) as being frivolous, vexatious and being an abuse of the Court's process; (ii) pursuant to section **12(2) of the Limitation Act, Ch83** as the action is statute barred; and (iii) under the inherent jurisdiction of the Court.

[2.] The Applicants filed on 20th February 2024 an application to strike out the Writ of Summons of the Respondent, Dion Miller. This strike out application is made on the basis that the Respondent did not commence the action against the Applicants within the statutory period of twelve months after the act complained, in accordance with **Section 12(2) of the Limitation Act Ch 83.**

[3.] The Applicants seek the following relief from the Court: that the Respondent's claim be struck out; and that the Respondent bear the Applicants' costs to be taxed if not agreed.

[4.] Upon the conclusion of a case management hearing in January 2024, the Applicants were allowed to seek redress under **Part 26.3 of the CPR 2022** concerning the preliminary point regarding the limitation of the Respondent's substantive action.

Background

[5.] The Respondent, Mr. Dion Miller (**"Mr. Miller"**) is a citizen of the Commonwealth of The Bahamas.

[6.] The First Defendant, Mr. Paul A. Rolle, in his capacity as Commissioner of The Royal Bahamas Police Force, is responsible for the overall guidance and direction of the police, including maintaining law and order, preserving peace, and enforcing all laws within The Bahamas.

[7.] The Second Defendant, The Hon. L. Ryan Pinder, 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.

[8.] On the 18th November 2018, Mr. Miller and his wife Vanessa Miller were instructed by police officers to go to the Carmichael Road Police Station after the Police received information that the married couple was engaged in a violent domestic dispute. The Respondent, a police officer, was alleged to have been disorderly and insubordinate while at the station and was thus detained until his release on 19th November 2019.

Submissions

The Applicants

[9.] The Applicants submit that the Respondent's claim should be struck out on the basis that it is frivolous, vexatious and an abuse of the court's process. Furthermore, the Applicants ask that the Court dismiss the Respondent's prayer for damages.

[10.] In support of their application, the Affidavit of Perry McHardy was filed 20th February 2024.

[11.] The Applicants aver that the Respondent had until 19th November 2019 to file his writ of summons and bring an action against the Applicants in accordance with the twelve month period set by the Limitation Act. Furthermore, the Applicants assert that there were no extenuating circumstances to justify the Respondent's delay in pursuing his claim and that to allow the Respondent to proceed would constitute an abuse of the court's process.

The Respondent

[12.] The Respondent submits, solely, that a part of his claim concerned the issue that his constitutional rights were breached. Therefore, the limitation period of twelve months afforded to the Respondent by the Limitation Act does not apply.

Issues

[13.] The central issues are:

a) Whether the Respondent is entitled to constitutional redress arising from the alleged wrongful arrest and detention?

b) Whether the limitation period set out in the Act is applicable to claims founded on constitutional breaches?

c) Whether the Respondent's Writ of Summons should be struck out on the ground that it is frivolous, vexatious and an abuse of the process?

Law

[14.] Having read the submissions of counsel and considered them along with the relevant law and evidence in this application. I will now provide my analysis.

[15.] Firstly, the Court relies on **Section 12 of the Limitation Act 1995 Ch 83**:

> **"(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 <u>within twelve months next after the act,</u> neglect or default complained of or in the case of a continuance of injury or damage within twelve months next after the ceasing thereof."**

[16.] The Court is also guided by **Part 26.3 of the CPR 2022:**

"(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;

(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;

(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; or

(d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10."

[17.] In the Barbadian matter of **Guadeloupe Investissement S.A.S v Alvarez et al [2013] BD 2013 HC 39** the High Court dealt with striking out provisions very similar to **Part 26.3 of the CPR 2022**. Kentish J provided instructive dicta & authorities:

"[24] There is no dispute that the powers of the court to strike out a statement of case are wide. The amplitude of the court's discretion is best expressed in the White Book 2011 at para. 3.4.1 where the authors state commenting on the equivalent provisions of English Civil Procedure Rules state: Grounds (a) and (b) cover statements of case which are unreasonably vague, incoherent, vexations, scurrilous or obviously ill-founded and other cases which do not amount to a legally recognisable claim…. This power can be exercised by a judge acting on their own initiative at the stage of issuing a claim … and thus defendants against whom an ill-founded action is sought to be brought will be spared needless expense in having to initiate "strike out" proceedings…"

"[25] It is clear from the Privy Council case of Ingraham and Others v. Glinton and Another (2006) 69 W.I.R. 20; [2007] 2 L.R.C. 142 that the power of the court to strike out a claim applies equally to claims for constitutional redress. At issue before the Privy Council was whether the Supreme Court of the Bahamas had jurisdiction to strike out the respondents' writ alleging a breach of the Bahamian Constitution and instituted under Art 28 thereof (corresponding to s. 2.4 of the Barbados Constitution on the basis that it disclosed no reasonable cause of action."

"[26] Lord Brown of Eaton-under-Heywood in delivering the advice of the Board stated at para. [11]: …the Court of Appeal was right to direct itself that claims should only be struck out in plain and obvious cases and, of course, courts should look with particular care at constitutional claims, constitutional rights emanating from a higher order law. But constitutional claims cannot be impervious to the strike-out jurisdiction and it would be most unfortunate if they were. It cannot be right that anyone issuing proceedings under Art. 28 of the Constitution is guaranteed a full hearing of his claim, irrespective of how ill-founded, hopeless, abusive or vexatious it may be."

[18.] To emphasize the dicta expressed in **Guadeloupe [2013],** a direct reading of the stated passage from the Privy Council in **Ingraham [2006]** is instructive:

"[14] Essentially , therefore, the Court decided that because at common law a constitutional challenge was not available, it cannot be a cause of action and ex hypothesi, therefore, cannot fall for consideration as to whether it is reasonable or not under Order 18 Rule 19(1)(a). Their Lordships have difficulty with this reasoning. It could be said equally of actions for breach of statutory duty that they too do not arise at common law. But surely no one doubts that those causes of action are amenable to the courts' strike-out jurisdiction. Of course , the court of appeal was right to direct itself that claims should only be struck out in plain and obvious cases and, of course courts should look with particular care at constitutional claims, constitutional rights emanating from a higher order law. But constitutional claims cannot be impervious to the strike-out jurisdiction and it would be most unfortunate if they were. It cannot be right that anyone issuing proceedings under article 28 of the Constitution is guaranteed a full hearing of his claim irrespective of how ill-founded , hopeless, abusive or vexatious it may be."

[19.] In **Bannister v Public Health Authority [2014] 3 BHS J. No. 9** , Barnett CJ (as he then was) provides instructive authorities on the limitation defence:

> **"[16] In Walkley v Precision Forgins Ltd [1979] 1 WLR 606 at p618 Lord DIplock said: Despite the use of the phraseology 'an action shall not be brought', it is trite law that technically a Limitation Act does not prevent the commencement of an action by the plaintiff after the limitation period has expired. What it does is to provide the defendant with a castiron defence if he chooses to avail himself of it; which he may do either by pleading it or, in a case where the action is indisputably statute-barred, by taking out a summons to have it dismissed as vexatious."**
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> **"[17] In Ronex Properties Ltd v John Laing Construction Ltd [1983] Q.B. 393 Lord Donaldson M.R. said 'where it is thought to be clear that there is a defence under the Limitation Acts, 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. But in no circumstances can he seek to strike out on the ground that no cause of action is disclosed."**

[20.] In **Adrian Paul Gibson et al v The DPP [2024] SCCrApp No. 46 of 2024**, Evans JA (P) was concerned with whether the appellants had standing to appeal the lower court's decision pursuant to Article 104(1) of the Constitution. The learned President of the Court of Appeal, provides instructive discussion on the practice and procedure of constitutional redress:

> **"[17] It is beyond dispute that the Appellants filed no application before the Court. At paragraph 3 (ii) of her ruling the learned Judge clearly states that "Mr. Ducille, KC never filed a Notice of Motion as is the required practice in order to bring a Constitutional claim." This statement was not challenged by either Mr. Gomez or Mr. Ducille before us. They both assert that Mr. Ducille made the application on his feet. We have been provided with no transcript of the proceedings but what I have been able to glean from the ruling and the submissions before us is that there was no application made."**
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> **"[19] In my view the Appellants reliance on the line of cases beginning with Olive Casey Jaundoo v Attorney General of Guyana [1971] AC 972 does not assist them. Mr. Gomez submitted that as Parliament nor the Rules Committee has made any provision with respect to the practice and procedure of the Court while exercising the Article 28(1) jurisdiction, parties are free to approach by any method.**
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> **"[20] In Jaundoo the Board considering similar provisions of the Guyanese Constitution held that- " The right to apply to the high Court for redress conferred by Article 19(1) was expressed to be subject to paragraph (6) of that article, and since neither Parliament nor the rule making authority of the Supreme Court had exercised their power under article 19(6) to make provision with respect to practice and procedure the method was unqualified and the right wide enough to cover applications by any form of procedure by which the high Court could be approached to invoke its powers, and an Originating Motion was one of the ways by which that could be done."**
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> **"[21] It is clear that the approach to the Court under Article 28 although not specified to be by way of any particular process, the process chosen must be one by which the Supreme Court could be approached. However, as noted earlier I am satisfied that the Appellants did not make an application pursuant to Article 28 of any kind. All submissions were in response to the application by the Crown.**

Discussion & Analysis

Issue A Whether the Respondent is entitled to constitutional redress arising from the alleged wrongful arrest and detention?

[21.] The Respondent filed, on 15th June 2022, his Writ of Summons setting out his complaint against the Commissioner of the Royal Bahamas Police Force and the Attorney General.

[22.] It is trite law that an individual, who alleges that any of the provisions of Articles 16 to 27 of this Constitution has been contravened can apply to the Supreme Court for redress under Article 18 of the Constitution.

[23.] In reviewing his Writ of Summons, it is clear and obvious that the Respondent failed to set out his claim for constitutional relief properly. The Respondent asserts, briefly, in his writ of those constitutional breaches alleged:

"AND THE PLAINTIFF CLAIMS: -

1. **Damages for unlawful arrest and detention.**
2. **Exemplary damages for breaches of constitutional rights.**
3. **Costs.**
4. **Such further or other relief as this Honourable Court deems just.**

Dated the 11th day of June, A.D., 2022"

[24.] In the Respondent's brief written submissions, the only mention of a breach of the Respondent's constitutional rights is stated below:

"Submission of the Plaintiff

That the claim involves a matter of a breach of constitutional right pursuant to Articles 15,17, and 19 , and 26 of the Constitution of The Commonwealth of The Bahamas."

[25.] When taking into consideration the dicta of Evans JA in **Gibson [2024]**, the Respondent's application to the Court for redress of alleged breaches to Articles 15,17,19 and 26 of the Constitution was laid down insufficiently in his Writ of Summons and written submissions. The Respondent failed to particularize the constitutional breaches he alleges. It is accepted that there is no specific practice and procedure established by any Act of Parliament or the Constitution itself that establishes how one should seek constitutional redress. Case law establishes that constitutional redress must be sought through an application that enables the Court to exercise its jurisdiction to determine both the existence of a constitutional breach and the appropriate remedy. Such claims should be framed in a manner acceptable to the Court. In practice, allegations of constitutional breaches in The Bahamas are typically particularized in a style similar to pleadings in personal injury matters.

[26.] Like the Court in **Gibson [2024],** where counsel seeking constitutional redress did so improperly on his feet without laying over submissions, this Court finds the attempts by the Respondent to seek constitutional redress pursuant to Article 18 of the Constitution to be insufficient to invoke the Court's jurisdiction.

[27.] Thus, the Respondent is not in this instance entitled to constitutional redress arising from his alleged unlawful arrest and detention on the ground that the Respondent has not provided the Court with sufficient pleadings for the Court to invoke its jurisdiction appropriately.

Issue B Whether the limitation period set out in the Act is applicable to claims founded on constitutional breaches?

[28.] The Respondent brought an action against the Royal Bahamas Police Force, a public body, and is granted by **Section 12 of the Limitation Act** twelve months to bring an action against said body from the day the alleged breach occurred. The Respondent has failed to bring an action in that stipulated period of time and in reaction to the Applicants' intention to invoke a limitation defence, the Respondent avers that the Limitation Act imposes no limitation period on matters involving constitutional breaches.

[29.] The law is settled on this issue and is set out by the Board of the Privy Council in **Ingraham [2006]** and the High Court in **Guadeloupe [2013]** that the inherent jurisdiction of the Court to strike out applies to applications concerning constitutional redress.

[30.] The Court has great difficulty in accepting the Respondent's authority of **Ramon Lop v The AG et al [2024] SCCivAPP 118 of 2022**. In which the Respondent avers that the there is no limitation period, that statute can construe, to circumstances where a person's constitutional right has been breached. To further complicate matters for this Court, the Respondent, in his written submission, failed to clearly identify or articulate the legal principles from **Ramon Lop [2024]** on which he relies. It is noted that Crane-Scott JA, at paragraphs 125 and 126, asserts that **Section 12 of the Limitation Act** does not establish any limitation. The learned Justice of Appeal elaborated on the Court of Appeal's reasoning at paragraphs 128 to 142. However, with due regard to the dicta set out at paragraph 14 of **Ingraham [2006],** this Court is bound to defer to the authoritative guidance of the learned jurists of the Privy Council.

Issue C Whether the Respondent's Writ of Summons should be struck out on the ground that it is frivolous, vexatious and an abuse of the process?

[31.] The Applicants submit that the Respondent's claim should be struck out on the basis that it is frivolous, vexatious and an abuse of the court's process and invokes the jurisdiction of the Court according to **Part 26.3(1)(c) of the CPR 2022**.

[32.] The Applicants contend that the Respondent's claim is frivolous and vexatious because the Respondent cannot overcome their limitation defence under **Section 12 of the Limitation Act.** According to Barnett CJ in **Bannister [2014]**, the Applicants can rely on this defence as it is a "castiron defence." It has been established that the Respondent has failed to file and serve his claim against the Applicants within the requisite twelve months. Moreover, the Respondent has not provided this Court with sufficient reasons for why he brought his claim four years later from the day of his alleged unlawful arrest and detention.

[33.] The commentary, as relied upon by Barnett CJ in **Bannister [2014]** , from Lord Donaldson in **M.R Ronex Properties Ltd v John Laing Construction Ltd [1983] Q.B. 393** encapsulates the Applicants' circumstances succinctly:

> **"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."**

[34.] The matter before this Court illustrates a very clear case where the Applicants, in reliance of the Affidavit of Peter McHardy, have invoked the statutory defence of limitation. A further continuation of this matter would be an abuse of process on the basis that the Respondent's substantive claim is now vexatious and frivolous due to the operation of law invoked by the Limitation Act.

Conclusion

[35.] Based on the facts, evidence before me and the present state of the law, I accede to the Applicants' application and exercise my powers under **Part 26.3(1)(c) of the CPR** and strike out

the Respondent's Statement of Case as being vexatious, frivolous and an abuse of the Court's process.

[36.] The Respondent shall pay the Applicants' costs, to be assessed by this Court if not agreed.

Senior Justice Deborah Fraser

Dated this 5th day of June 2025