

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. C.V. 2008-03386

BETWEEN

IVAN NEPTUNE

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Honourable Mr. Justice des Vignes

Appearances:

Mr. Sawh holding for
Mr. Ramlogan for the Claimant

Ms. R. Ali
Instructed by Mr. V. Maharaj for the Defendant

R E A S O N S

1. On the 9th December 2009 I heard two applications by the Defendant, both filed on the 30th September 2009. The first application was to strike out certain statements contained in the witness statement of the Claimant and the second application was to strike out certain reliefs sought in the Statement of Case.

2. In respect of the application to strike out reliefs, I struck out paragraphs (b), (c), (d) and (e) of the Statement of Case herein and ordered the Claimant to pay the costs of the applications certified fit for Counsel. These costs were agreed in the sum of \$1,500.00 for each application.
3. The grounds of the Defendant's application to strike out reliefs were as follows:
 - (i) That the relief sought at paragraph (b) of the statement of case be struck out as an abuse of the process of the Court and should have been brought under the alternative common law remedy of detinue;
 - (ii) That the claims for constitutional relief at paragraphs (c), (d) and (e) of the Statement of Case be struck for failure to comply with the provisions of Part 8.1 (4)(1)(d) of the CPR 1998 and/or an abuse of the process of the Court.

History of proceedings

4. These proceedings were commenced on the 3rd September 2008 by the filing of a Claim Form and Statement of Case. The reliefs sought by the Claimant as set out in the Statement of Case were as follows:
 - (a) Damages including aggravated and/or exemplary damages for false imprisonment, assault and battery and/or unlawful arrest and detention of the Claimant;
 - (b) A declaration that the Claimant is entitled to the return of motor vehicle registration number TAJ 5948;
 - (c) A declaration that the Claimant was denied and/or refused his right to retain and/or instruct without delay a legal adviser of his choice and to hold communications with him was unconstitutional and illegal contrary to section 5(2) (c) (ii) of the Trinidad and Tobago Constitution;

(d) A declaration that the Claimant was not promptly and with sufficient particularity informed of the reason for his arrest and detention which was unconstitutional, illegal and contrary to section 5 (2)(c) (ii) of the Trinidad and Tobago Constitution;

(e) A declaration that the Claimant was denied his constitutional right to a telephone call to a relative or friend.

Relief (b)

5. In respect of the relief sought at (b), the Claimant alleged that while driving his vehicle, TAJ 5948 along Golden Grove Road, Arouca he was hit from behind by a marked police vehicle in the vicinity of the corner of the Eastern Main Road and Golden Grove Road, Arouca. As a consequence of the collision, the Claimant lost control of the vehicle which went over the pavement and into the car park of Kentucky Fried Chicken outlet. The Claimant got out of his vehicle and walked towards the police officers who all began to beat him. The Claimant was placed in another police vehicle and taken to the Arouca Police Station.

6. There is no further reference in the Statement of Case to the said motor vehicle and there is certainly no allegation made that the police officers took control or custody of the Claimant's motor vehicle at any time after it went over the pavement into the KFC car park. Further, there is no allegation that the Claimant called upon the Police to return the said motor vehicle and that the Police refused and/or neglected to return same to him. In fact, the rest of the Statement of Case focused on the alleged mistreatment meted out to the Claimant by police officers. In the circumstances, without any such pleading, I was of the opinion that the Claimant was not entitled to seek the relief sought at (b) and for this reason, I struck out the same.

Reliefs (c), (d) and (e)

Rule 8.1(4)(d) provides as follows:

“Form 2 (fixed date claim) must be used-

(d) where by any enactment proceedings are to be commenced by originating summons or motion.”

7. Section 14 (1) of the Constitution provides that *“if any person alleges that any of the provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Court for redress by way of originating motion.”*

8. Further, Part 56 of the CPR 1998 deals with applications for an administrative order which includes applications by way of originating motion under section 14(1) of the Constitution. Rule 56.7 sets out the procedure for applications for an administrative order as follows:

“56.7 (1) An application for an administrative order must be made by a fixed date claim identifying whether the application i—

(a) for judicial review;

(b) under section 14(1) of the Constitution;

(c) for a declaration;or

(d) some other administrative order (naming it).

(2) The claim form in the application under section 14(1) of the Constitution shall serve as the originating motion mentioned in that section and shall be headed “Originating Motion”.

(3) The Claimant must file with the claim form an affidavit.

Sub-rule (4) then set out what must be stated in the affidavit.

9. Rule 56.9 also provides for the joinder of claims for other relief in a claim for an administrative order:

“56.9 (1) The general rule is that, where permitted by the substantive law, the applicant may include a claim for any other relief or remedy that arises out of or is related or connected to the subject matter for an application for an administrative order.

(2) The court may, however, at any stage—

(a) direct that any claim for other relief be dealt with separately from the application for an administrative order; or

(b) direct that the whole application be dealt with as a claim and give appropriate directions under Parts 26 and 27; and

(c) in either case, make any order it considers just as to costs that have been wasted because of the unreasonable use of the procedure under this rule.”

10. In my opinion, the clear and unambiguous language of both Rule 8.1 (4)(d) and Rule 56.7(1) makes it mandatory for a person claiming constitutional relief to apply for an administrative order by a fixed date claim. Although Rule 56.9 permits an applicant for an administrative order to include a claim for other relief in the application for the administrative order, this rule does not permit the converse option of including a claim for constitutional redress under section 14 (1) of the Constitution in a claim instituted by way of a claim form and statement of case. Further, the powers given to the Court by Rule 56.9 (2) may be exercised where an applicant for an administrative order has included a claim for other relief in that application.

11. Accordingly, since the claims for constitutional redress made by the Claimant at (c), (d) and (e) of his Statement of Case are claims for constitutional relief and were not made by way of a fixed date claim for an administrative order with an affidavit in support, I was of the opinion that these claims were improperly brought.

12. I also took into account the decision of my sister, Madam Justice Pemberton in *Claim No. CV2008-02435, Antonio Webster v. The Attorney General of Trinidad and Tobago.* I agree with the learned Judge that where the plain language of a rule constrains how the powers of the court are to be exercised or applied, then the plain effect of the rule will prevail and that the obligation imposed upon the Court by Rule 1.2 to give effect to the overriding objective of the Rules in interpreting the meaning of any rule does not confer upon the court the power to ignore the plain language of a rule or to exercise a discretion where none exists.

13. I also bore in mind that, in response to the Defendant's application to strike out, Counsel for the Claimant did not point me to any rule or substantive law which permitted this Court to override the clear language of the rule and to include the claims for constitutional reliefs in the Claim Form and Statement of Case.

14. For these reasons, therefore, I granted the application of the Defendant and struck out the reliefs sought at (c), (d) and (e) of the Statement of Case. I also ordered the Claimant to pay the costs of the application, certified fit for Counsel and these costs were agreed by the parties in the sum of \$1,500.00 for the application to strike out.

Dated this 25th day of January 2010.

**André des Vignes
Judge**