

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2018-01537

Between

JAIPERSAD BARRAN

CLAIMANT

AND

COMMISSIONER OF POLICE

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

DEFENDANTS

Before the Honourable Madame Justice Margaret Y Mohammed

Dated the June 28 2019

APPEARANCES:

Mr. N Ramnanan Attorney at law for the Claimant.

Ms. M Belmar-Williams instructed by Ms S Dass Attorney at law for the
Defendant

RULING-PRELIMINARY POINT

1. On the 11 March 2019 the Defendants filed an application (“the application”) seeking to strike out the Claimant’s Claim Form and

Statement of Case pursuant to Part 26.2(1)(c) of the Civil Proceedings Rules 1998, as amended (“the CPR”) as being an abuse of the process of the court; disclosing no grounds for bringing the claim; and failing to comply with the requirements of Part 8 of the CPR. The Claimant opposed the application.

2. Before I get into the substance to the application I will briefly set out the nature of the claim.

3. The Claimant is a Police Officer Regimental Number 16097. He was granted extended sick leave by the Official Police Medical Doctors, Dr. Tompack and Psychiatric Medical Officer Bonterre for the period 22 June 2007 to 1 January 2008 amounting to a total of 191 days. The extended sick leave was granted in accordance with Regulation 90(2) of the Police Service Regulations which stated:

“An officer who seeks an extension of sick leave under sub regulation (1) shall within the first three days inform, by any means, the Second Division Officer in charge of the police station where he is posted or the Head of Division, who shall communicate such information to the Commissioner.”

4. He proceeded on sick leave after it was accepted by the First Defendant acting in accordance with Regulation 90(3) of the Police Service Regulations which stated:

“Upon receipt of the application referred to in sub regulation (1), the Commissioner may grant an extension of sick leave with full pay, partial pay or no pay in accordance with the relevant guidelines issued by the Chief Personnel Officer.”

5. The Claimant continued to be paid his full salary and this was acknowledged as sick leave with full pay granted by the First Defendant. However, by memo dated 8 September 2011 the Director Human Resources classified his sick leave as full pay for 16 days for the period 6-21 June 2007 and No Pay for 175 days for the period 22 June 2007 to 1 January 2008.
6. The Claimant requested a reclassification in October 2011 which was done by the Police Medical Officer Dr. Clem Ragoobar on 10 October 2011. However, by letter dated 10 November, 2011 the Director Human Resources informed the Claimant that the reclassification was not approved and no reason was provided.
7. The Claimant caused Pre- Action Protocol letters dated 22 January 2013 and 17 July 2013 to the First Defendant seeking a review of the decision of the Human Resources Department but he did not receive any response.
8. On receiving his pay slip for the month ending 30 April 2014 the Claimant observed that the First Defendant had deducted from his salary and emoluments the sum of \$65,997.74. The Claimant caused another Pre-Action Protocol letter dated 22 September 2016 to be sent to the First Defendant seeking a reason for the deductions and an investigation into the matter but he did not receive any response.
9. The Claimant contends that despite attempts to have an explanation for the deduction, he has been unsuccessful and has accordingly initiated the instant action. Based on these facts the Claimant has instituted the instant action seeking the following reliefs against the Defendants:
 - (a) Payment in the sum of \$65,997.74;

- (b) Interest pursuant to section 25 of the Supreme Court of Judicature Act Chap. 4:01;
 - (c) Costs;
 - (d) Such further and/or other relief as the Honourable Court may deem just in the circumstances.

- 10. The grounds for the application Counsel for the Defendants submissions in support of the application were in essence the same.

- 11. In support of the application Counsel for the Defendants submitted that the Claimant's action is an abuse of the process since the claim is identified as a claim for breach of contract and/or monies due and owing. However the reliefs which the Claimant is seeking against the Defendants are based on a failure, refusal and/or neglect by the First Defendant and/or its servants and/or agents to provide an explanation for the wrongful and/or unlawful deduction of the Claimant's salary and/or emoluments. As such the heart of the Claimant's claim is the issue of the reasonableness and/or lawfulness of the First Defendant's decision to deduct the alleged sums from the Claimant's salary and his alleged failure to provide the Claimant with a satisfactory reason for making the said deductions (See paragraph 16 of Statement of Case). Counsel argued that the Claimant could have sought redress for these matters by making an application for judicial review upon learning that the sums were deducted in April 2014 when he received his salary slip. Counsel's position was that by filing the instant action 4 years later he is attempting to circumvent the time limit for making an application for judicial review which amounts to an abuse of process.

- 12. Counsel for the Defendants also argued that the Claimant's Statement of

Case disclosed no grounds for bringing a claim for breach of contract because the Claimant has failed to plead material facts which point to the existence of a contract and/or its alleged breach. He has, therefore, failed to comply with Rule 8.6 (1) of the CPR which requires a Claimant to include in his Claim Form and Statement of Case a short statement of all the facts on which he relies. And his pleadings has failed to establish any link between the alleged “wrongful and/or unlawful deduction of the Claimant’s salary and/or emoluments” and the Second Defendant.

13. In response it was submitted on behalf of Counsel for the Claimant that the Claimant alleges that he is in a contract of employment with the Police Service and he has not received payment of salary due under his contract of employment. As such it is not a claim that ought to have been brought in judicial review since the Claimant is suing under his contract of employment with the State and seeking damages only and not relief that would ordinarily be available or exclusive to public law proceedings. In support of the said submissions Counsel referred the Court to the learning of Dean Armor J in **Kevin John v The Attorney General of Trinidad and Tobago**¹; the Privy Council Judgment of **Malcolm Johnatty v The Attorney General of Trinidad and Tobago**² and Court of Appeal Transcript in **Ricky Pandohee v The Attorney General of Trinidad and Tobago & Ors.**³

14. The Court’s power to strike out a statement of case is set out in Rule 26.2 (1) of the CPR which states:
 1. “The court may strike out a statement of case or part of a statement of case if it appears to the court:

¹ CV 2011-02678

² 2008[UKPC] 55

³ CA P 058/2017

- a. that there has been a failure to comply with a rule, practice direction or with an order or direction given by the court in the proceedings;
 - b. that the statement of case or the part to be struck out is an abuse of the process of the court;
 - c. that the statement of case or the part to be struck out discloses no grounds for bringing or defending a claim; or
 - d. that 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.”

15. Rule 8.6(1) CPR mandates that a Claimant must include in the Claimant Form and Statement of Case a short statements of all the facts on which he relies and must identify or annex a copy of any document which he considers necessary.

16. In **Malcolm Johnatty v The Attorney General of Trinidad and Tobago**, the Claimant was a teacher by profession and he is also an attorney-at-law admitted to practice in the courts of Trinidad and Tobago. He was employed at the Chaguanas Senior Comprehensive School by the Ministry of Education as a chemistry teacher since September 1984. In that capacity he was entitled to payment of a monthly salary. In 1994 he was suspended from duty pending disciplinary proceedings because it had been alleged that he was not performing his duties as a teacher. No finding of misconduct was made against him, and he resumed his duties in 1999. In March 2003 disciplinary proceedings were once again brought against him. On this occasion it was alleged that he frequently signed the school’s attendance register and then left the school compound shortly afterwards,

not to return for the rest of the day. These proceedings remain pending before the disciplinary tribunal of the Teaching Service Commission.

17. In June 2004 Mr Johnatty discovered that his salary for that month had not reached his bank in the usual way. He made inquiries at the Paysheets Section of the Ministry of Education as to why his salary had not been processed. He was given a handwritten note by a clerk which indicated that his salary was to be stopped in July. On 1 July 2004 he wrote to the Permanent Secretary of the Ministry of Education (“the respondent”) informing her that as of that date no salary had been paid to him for June 2004. He asked for an explanation as to why his salary had been stopped and by whose decision that step had been taken. He gave the letter to Carl Morton, the acting principal of the school, for forwarding to the Ministry. Mr Morton forwarded it to the respondent the same day. The respondent did not reply to it, so Mr Johnatty received no answer to the questions that he had raised. Mr Johnatty assumed that the respondent had decided to cease paying his salary. He also assumed that this was because of allegations that had been made against him of which he had had no notice, to which he had had no opportunity to respond and on which no determination had been made by the tribunal. Mr Johnatty decided to apply for judicial review of the action that he believed had been unfairly taken against him.

18. On 27 June 2004 the post of Senior Legal Adviser in the Ministry of Planning and Development was advertised in the *Newsday* newspaper. Mr Johnatty decided to apply for it. He had been advised that applications by him for posts of that kind, which involved the transfer of a person in the public service from one Ministry to another, were to be sent to the Permanent Secretary of the Ministry in which the position was sought through the

school's Principal for forwarding by the Ministry of Education's Permanent Secretary. So he gave his letter of application which was dated 29 June 2004 to Mr Morton for forwarding to the respondent. Mr Morton forwarded it to her on 1 July 2004. The deadline for response to the advertisement was 9 July 2004. Later that month Mr Johnnatty enquired of the Ministry of Planning and Development whether his application had been received. He was told that it had not. Mr Johnnatty once again thought that he was being victimised.

19. On 26 July 2004 Mr Johnnatty applied by way of judicial review for the following reliefs: (a) an order quashing the respondent's decision to stop payment of his salary or alternatively to implement a decision to stop payment, (b) an order of mandamus directing the respondent to forward to the relevant authority his applications for employment as an attorney-at-law in the public service and (c) an injunction, including an interim injunction, restraining the respondent by herself or her servants or agents from implementing any decision to stop his salary unless any such decision resulted from disciplinary proceedings.

20. On 31 March 2005 the appellant filed an originating motion under section 14 of the Constitution of Trinidad and Tobago in which he sought a declaration that the stopping or reduction of his salary by the Ministry of Education without any finding of misconduct by the disciplinary tribunal and without giving him any opportunity to answer allegations against him amounted to an infringement of his constitutional rights. These were his right to enjoyment of his property, his right not to be deprived thereof except by due process of law and his right to the protection of the law, to a fair hearing and to such procedural provisions as were necessary for the purpose of giving effect and protection to those rights. He also sought an

order preventing the stopping or reduction of his salary except pursuant to disciplinary proceedings and an award of damages including exemplary damages. The issues which it raised were, in substance, the same as those in Mr Johnnatty's application for judicial review of the decision to stop his salary.

21. Mr Johnnatty's application for judicial review and his constitutional motion were heard together in April 2005 by Narine J (as he then was) who dismissed both. With respect to the judicial review Narine J (as he then was) found that there was no basis for the allegation that the respondent had failed to perform a duty that was required of her by public policy. With respect to the constitutional motion, Narine J (as he then was) observed that the same facts had been relied on in support of this motion, and that he had already found that there was no decision to stop the appellant's salary. In his opinion the decision to pay Mr Johnnatty based on his attendance at the school did not give rise to any constitutional issue.

22. Mr Johnnatty appealed the decision and it was dismissed by the Court of Appeal. He appealed to the Privy Council which dismissed his appeal. On the issue of abuse of process, Lord Hope of Craighead stated

“The courts below were agreed that the appellant's constitutional motion was an abuse of process, although for different reasons. Narine J said that he had an alternative remedy in the form of an action of damages against his employer for breach of contract. The Court of Appeal said that he had a parallel remedy in the proceedings for judicial review. Their Lordships agree with them both. It would have been open to the appellant to seek a private law remedy against his employer for non-payment of his salary. It was also open to him to seek judicial review, as is demonstrated by the fact that his

constitutional motion was based on the same facts as those in the proceedings for judicial review”⁴.

23. In **Kevin John v The Attorney General of Trinidad and Tobago**, the Claimant was enlisted as a private in the Trinidad and Tobago Defence Force on an initial contract for 6 years. He was discharged on the 1 March 2011 without any discussions, hearing, enquiry or tribunal. He sued the Defendant for arrears of salary, benefits for breach of contract of employment and wrongful dismissal. The Defendant applied to strike out the action on the basis of abuse of process as it ought to have been judicial review proceedings. Dean-Armorer dismissed the application to strike out the claim and stated at page12

“8. I then considered the defendant’s application to strike out the claim on the ground that the action constituted an abuse of process. As a matter of principle, the court will find the presence of an abuse of process where the claimant complains of a public authority’s infringement of public law rights by way of ordinary action.

9. The claimant in these proceedings did not seek orders which are required to be sought by way of judicial review. Although there had been an allegation of a breach of natural justice, the items of relief sought in these proceedings were those traditionally sought by way of writ. Had the claimant sought an order of certiorari for example, the defendant would have been correct in contending that there had been an abuse of the cause of action and the relief sought, the claim was properly instituted by way of a claim filed under Part 8.1 of the Civil Proceedings Rules. It was my view that the mere allegation of a breach of natural justice is not adequate to inject a public law element into

⁴ Malcolm Johnatty (Supra) at para 20

the cause of action or to require the claimant to proceed by way of judicial review”

24. Counsel for the Defendants argued in the submissions in response that in the **Kevin John v the Attorney General (supra)**, without proceeding to trial in the matter Dean Armorer J revisited her decision on the Defendant’s application to strike out the Claimant’s Statement of Case. Dean Armorer J revisited her decision in light of authorities that had since been brought to her attention, namely, **Ainsley Greaves v Attorney General**⁵; **Dion Samuel v the Attorney General**⁶; and **Russell Joseph v the Attorney General**⁷. On 16 December, 2015 Dean Armorer J dismissed the Claimant’s claim; awarded costs to the Defendant; and advised the Claimant to seek redress by virtue of administrative law proceedings. Counsel indicated that the Defendants did not have a written decision from the Court which reflected this position but instead relied on the order dated 16 December 2015 and the affidavit of Kevin John filed in subsequent administrative law proceedings. Counsel argued that the said order and the said affidavit confirmed that Madam Dean Armorer J revisited her decision and dismissed the Claimant’s claim. Copies of the said order and said affidavit were provided to the Court and Counsel urged the Court to take judicial notice of them.
25. The Defendants submitted that **Kevin John v AG** demonstrated, that despite the reliefs being reliefs available by way of ordinary action, the essence of the claim required that redress be sought in the context of administrative law proceedings and that this is the position in the present case and the Claimant has, sought to circumvent the time limit imposed

⁵ CV 2012-02753

⁶ CV 2012-03170

⁷ HCA No. 1500 of 1997

for seeking such redress by purporting to bring a claim for breach of contract which is an abuse of the Court's process.

26. The said order provided by Counsel for the Defendants stated that the action was dismissed after the trial. This meant that the Court had the benefit of the evidence before dismissing the action. While paragraph 4 of an affidavit filed by Kevin John in a subsequent constitutional motion referred to the Court advising him to seek redress in administrative law proceedings, I cannot make any assumptions for the reasons for the action being dismissed without the benefit of the written decision despite Counsel's submissions.

27. In **Ricky Pandohee v The Attorney General of Trinidad and Tobago and Anor** the Claimant was enlisted in the Trinidad and Tobago Prison Service and appointed a Prison Officer I on the 2 August 1995. Sometime between 1995 and 2014 he acquired his Legal Education Certificate. On the July 2015 the Second Defendant, the Prison Officers Association agreed to appoint and retain the Claimant as its full time legal officer. By letter dated the 30 October 2015 the Second Defendant terminated the Claimant from his position as its legal officer but the Claimant was only served with the letter on the 21 December 2015. On the 7 December 2015 the Claimant applied to the Commissioner of Prisons ("the Commissioner") for all his vacation leave of 140 days but he did not receive a response.

28. By letter dated the 18 January 2016 the Claimant wrote a pre-action protocol letter to the Commissioner and copied to the Minister of Labour, the Public Service Commission and the Registrar General.

29. On the 28 January 2016 ("the DPA letter") the Director of Personnel Administration ("the DPA") responded to the aforesaid pre-action protocol

letter which was addressed to the Commissioner. The DPA letter stated that the Commissioner had informed the DPA that the Claimant had been absent without official leave since the 1 October 2015 and that the Commissioner had recommended that the Claimant be declared to have resigned his posts in accordance with regulation 49 of the Public Service Commission Regulations. The DPA also indicated to the Claimant that the payment of salary and allowances do not fall under the purview of the Service Commissions Department and that such matters should be addressed to the Commissioner and/or the Minister of National Security.

30. Mr Pandohee's claim against the First Defendant was for breach of contract for salary and allowances; constructive dismissal and special damages for salary and allowances. This Court dismissed Mr Pandohee's claim on the grounds that it was an abuse of process. Mr Pandohee's appeal was upheld in the Court Appeal on the basis that he was entitled to pursue his action for breach of contract as it was for salary and allowances.

31. I am of the opinion that the Claimant has pleaded sufficient facts upon which he relies as a basis for the relief which he seeks namely the payment for a sum which he claims was his salary which was due to him. He has set out that he is a police officer; the period he was on extended sick leave; and the reason he was granted the extended sick leave. He has also set out the facts which caused him to be aggrieved which was the memorandum from the Director of Human Resources; his request for reclassification and that he was informed that his reclassification was not approved without any reason. In my opinion, the Claimant's action is not an abuse of process. It is for the Claimant to prove at the trial the facts in his pleaded case. I have also noted that despite the Claimant having written three letters

between the 22 January 2013 to 22 September 2016 to the First Defendant, he did not receive any response to them.

32. For these reasons, I dismiss the application and order the Defendants to pay the Claimant's costs of the application. I will hear the parties on quantum.

Order

33. The Defendants application filed 11 March 2019 is dismissed.
34. The Defendants to pay the Claimant's costs of the said application. I will hear the parties on quantum.

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Margaret Y Mohammed
Judge