THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2018-04199

Between

PATRICK CHARLES

Claimant

And

HER WORSHIP MAGISTRATE SHERENE MURRAY-BAILEY

First Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: November 25, 2019

Appearances:

Claimant: Mr. B. Winter instructed by Ms. T. Lowe

Defendants: Mr. D. Byam and Ms. J. Mitchell instructed by Ms. N. Simmons

REASONS

1. On September 17, 2019 the claimant filed a Notice of Application seeking the following relief;

    i. The Defence filed on July 12, 2019 be struck out pursuant to the inherent jurisdiction of the court and Rules 26.2(1)(b) and 26.2(1)(c) of the CPR;

    ii. An order that the defendants have no realistic prospect of success on their Defence and the claimant is therefore entitled to summary judgment on the whole of his claim pursuant to Rule 15.2 of the CPR.

2. On November 20, 2019 the court disposed of the claimant's application in the following manner;

    i. The Defence filed on July 12, 2019 is struck out as is discloses no grounds for defending the claim.

    ii. The application for summary judgment is stayed until March 5, 2020 pending appeal.

    iii. A case management conference shall be held on March 5, 2020 at 9:40 am in POS 15.

3. The following are the reasons for this decision.

THE CLAIM

4. The claimant was a patient voluntarily admitted to the Caura Hospital ("the hospital") afflicted with the disease, tuberculosis. On May 2, 2018 Dr. Michelle Trotman, Medical Director of the Hospital ("the Hospital's

Director") brought an application at the Tunapuna 3rd Magistrate's Court complaining that the claimant was a tuberculosis patient at the hospital who on divers dates refused to remain thereat for the duration of his treatment contrary to Section 7(1) of the Tuberculosis Control Act Chapter 28:51 ("the Act").

5. On May 3, 2018 the first defendant pursuant to section 7(2) of the Act issued a summons for the claimant's appearance in court on May 8, 2018. On May 8, 2018 the claimant was not conveyed to court and at around 4:10 p.m. he was arrested for not attending court and not taking his medicine. Consequently, he was transported to the Maximum Security Prison, Golden Grove, Arouca ("the prison").

6. At the prison, the claimant was received by the prison officers upon the authority of Order of Detention dated May 8, 2018 which was signed by the Justice of the Peace, St. George East Magisterial District, Tunapuna Magistrates' Court. The Order of Detention recited that the hearing of the complaint was adjourned to June 5, 2018 at 9:00 a.m. and that the claimant was detained pursuant to section 7(9) of the Act pending the hearing of the matters.

7. On May 22, 2018 the claimant's Attorney-at Law filed an application for the issue of a writ of *habeas corpus ad subjiciendum* to have the Commissioner of Police show cause why the claimant should not be immediately released from custody. The application was grounded on the argument that section 7 of the Act enjoined a Magistrate during the pendency of a hearing to make an order for detention in a hospital or such other safe and comfortable place and that a prison did not fall within that

scope. The aforementioned application was heard by this court on May 25, 2018.

8. After hearing the oral testimony and legal arguments, this court found that the prison infirmary was not on the evidence before the court, a hospital described under the provision of section 2(1) of the Act in respect of persons who did not fall into the category of those prisoners set out at section 8 of the Act. Consequently, this court ordered that the claimant be conveyed to the hospital, be admitted and detained there for treatment and remain there until discharged in the manner provided under the Act. There has been no appeal by the State of the aforementioned Order of this court. The claimant was released from the prison on May 25, 2018 and conveyed to the hospital.

9. On June 5, 2018 the complaints laid by the Hospital Director against the claimant came up for hearing before the first defendant at the Tunapuna 3rd Magistrate's Court. Based on the Hospital Director's statement relative to the medical condition of the claimant, the first defendant did not make any further orders of detention however, the hearing of the complaint was adjourned to November 20, 2018.

10. The Hospital Director discharged the claimant on June 6, 2018.

11. The claimant claims that he was unlawfully detained in prison custody by the first defendant and thereafter mechanically restrained at the hospital under police guard without being given the opportunity to be heard and upon complaints that were not criminal in nature and which carried no penal sanction. The claimant further claims that his detention under the

purported exercise of powers contained in section 7 of the Act was clearly outside the jurisdiction of the first defendant.

STRIKING OUT

Law and Analysis

12. ***Rules 26.2(1) (b) and 26.2(1) (c)*** of the CPR provides as follows;

"26.2 (1) The Court may strike out a statement of case or part of a statement of case if it appears to the Court –

…

(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 disclose no groundsfor bringing or defending a claim…"

13. In ***Beverley Ann Metivier v The Attorney General of Trinidad and Tobago and others,***[1] Kokaram J at paragraph 4.7 and 4.8 stated as follows;

"4.7 Of course, the power to strike out is one to be used sparingly and is not to be used to dispense with a trial where there are live issues to be tried. A. Zuckerman observed: "The most straightforward case for striking out is a claim that on its face fails to establish a recognisable cause of action… (Eg. A claim for damages for breach of contract which does not allege a breach). A statement of case may be hopeless not only where it is lacking a necessary factual ingredient but also where it advances an unsustainable point of law" 4.8 Porter LJ in Partco Group Limited v Wagg [2002] EWCA Civ 594 surmised that appropriate cases that can be struck out for failing

[1] H.C.387/2007

to disclose a reasonable ground for bring a claim include: "(a) where the statement of case raised an unwinnable case where continuing the proceedings is without any possible benefit to the Respondent and would waste resources on both sides Harris v Bolt Burden [2000] CPLR 9; (b) Where the statement of case does not raise a valid claim or defence as matter of law""

14. In ***Kelvin Field v Probhadai Bissessar***,[2] Justice Judith Jones (now Justice of Appeal) stated as follows;

"In the circumstances I intend to treat this as an application to have the claim form and statement of case struck out as (i) disclosing no grounds for bringing the claim; and (ii) being an abuse of the process of the court. In neither case will a court employ this procedure lightly but only after being satisfied that, in the case of no grounds being shown, the case as pleaded has no chance of success and, with respect to an abuse of the process, the Claimant is guilty of using the process for a purpose or in a way significantly different from its ordinary and proper use or in circumstances where the process of the court is misused and employed not in good faith and for proper purposes but as a means of vexation or oppression or for ulterior purposes: Halsbury's Laws of England, Fourth Edition Volume 37, page 322 paragraph 434."

15. Moreover, in ***Kadir Mohammed v the Attorney General of Trinidad and Tobago***,[3] Kokaram J concisely set out the following at paragraph 13;

"The application to strike out the claim is made on two limbs. First that there is no ground for bringing the claim and second that it is an abuse of

[2] CV2012-00772 at paragraph 2
[3] CV2013- 04647

process. In CPR rule 26.2 (c) if there is a ground for making the claim then the claim ought not to be struck out. Where therefore the factual allegations are accepted the Defendant must demonstrate that the Claimant cannot succeed either on those facts or as a matter of law. The Court is not assessing the merits or strengths of the Claimant's case as it would in a summary judgment application. The exercise is confined at looking at the Claimant's case as presented and asking the simple question is this doomed to fail without any further investigation of the facts."

16. The crux of the Defence filed on July 12, 2019 was that this court on the habeas corpus application did not quash the Order of Detention made by the first defendant nor did it rule that the first defendant's order of Detention was outwit her jurisdiction. As such, it was the defence of the defendants that the first defendant did not act outside of her jurisdiction in making the Order of Detention. That the claimant was at no time in prison custody but instead was detained pursuant to section 7(4) of the Act and as such the first defendant acted in a reasonable and proper manner and in accordance with the Act.

17. In the Court of Appeal case of ***Rion Woods v the Attorney General of Trinidad and Tobago***[4], Bereaux J.A. had the following to say at paragraph 3;

"[3] The appeal must be allowed for the following reasons:

(i) The effect of the order of Tiwary-Reddy J was that the three month detention at the Dormitory was found to be unlawful. The failure of the Commissioner of Prisons (to whom the order was directed and who was a party to the habeas corpus proceedings) to appeal the

[4] Civ. App. No. 6 of 2012

order meant that the order, coming as it did from the High Court, which is a court of competent jurisdiction, is binding on the parties and on all courts of concurrent jurisdiction. Gobin J therefore was bound by the finding of unlawfulness of the detention, even though she too rightly concluded that the magistrate had no jurisdiction to order the brothers' detention.

(ii) *(ii) The Commissioner of Prisons not having appealed the order of Tiwary-Reddy J in the habeas corpus application, any subsequent challenge to the illegality of the detention is a collateral attack on that decision and constitutes an abuse of process. But in any event the committal of the brothers to the Dormitory was plainly unlawful…"*

18. Further, at paragraph 14 His Lordship stated as follows;

"At the heart of the appeal is whether the magistrate had the power to order the brothers' detention pending the hearing of the variation of custody complaint or pending the hearing of the "beyond control" complaint. A court of competent jurisdiction has already found that she did not. I agree. Tiwary-Reddy J presiding on a habeas corpus application ordered the release of the brothers on 21st May 2008. The order of Tiwary-Reddy J of 21st May 2008 effectively quashed the warrant of commitment of 28th February 2008 and directed the brothers' release. Their release could only have been on a finding that their detention from 28th February was illegal. There was no appeal from that order."

19. This court is bound by the aforementioned authority which provides that the order of this court on May 25, 2018 in relation to the claimant's habeas corpus application did have the effect of quashing the claimant's Order of Detention dated May 8, 2018. Further, not having appealed the order of

this court in the habeas corpus application, the defendants cannot challenge the illegality of the detention as same would be a collateral attack on that decision and constitute an abuse of process. Counsel for the defendants has agreed that this court is bound by the statements clearly set out in ***Rion Woods*** . Consequently, it was the finding of the court that the Defence be struck it having disclosed no grounds for defending the claim.

Ricky Rahim

Judge