COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2015/CLE/gen/00540

BETWEEN

JAIRAM MANGRA

Plaintiff

AND

MAGISTRATE JANET BULLARD

First Defendant

AND

THE ATTORNEY GENERAL

Second Defendant

Before: The Honourable Madam Justice Indra H. Charles

Appearances: Mr. Norwood Rolle for the Plaintiff
Mr. Petrocelli Edwards and Ms. Anastacia Hepburn of the Attorney General's Chambers for the Defendants

Hearing Date: 16 November 2016

Practice - Striking Out – Rules of the Supreme Court Order 18 Rule 19 - Civil action for damages against Magistrate and Attorney General - Judicial Immunity - Whether a civil action can be maintained against magistrate for alleged wrongs while she was performing a judicial function in court - Whether the magistrate is a proper party to this action - Improper or unnecessary Party – Order 15 Rule 6 - Magistrates Act, s 30, 31

Whether cause of action should continue against Attorney General - Crown Proceedings Act, s. 4 and 12

The Plaintiff is a practicing Attorney-at-Law. The First Defendant is a Magistrate appointed under the Magistrates Act, Ch. 54. The Second Defendant is joined pursuant to sections 4 and 12 of the Crown Proceedings Act, Ch. 68. The Plaintiff sued both Defendants for (i) loss of $10,500 resulting from frustration and termination of three contracts caused by the First

Defendant's refusal to allow the Plaintiff to represent his clients; (ii) damages for breach of his constitutional rights to liberty and freedom of movement; (iii) damages for unlawful arrest and detention and (iv) costs.

By Summons filed on 2 November 2015, the Defendants sought to strike out the Plaintiff's claim pursuant to Order 18, rule 19(1)(a), (b) and/or (d) of the RSC, section 4(5) of the Crown Proceedings Act, Ch. 68 and/or the inherent jurisdiction of the Court on the ground that the Plaintiff has no reasonable cause of action and alternatively that the action is frivolous and vexatious and/or otherwise an abuse of the process of the court as it constitutes a collateral attack on the Court. Further, pursuant to Order 15, rule 6(2) of the RSC, section 4(1)(a) of the Crown Proceedings Act, Ch. 68 and/or the inherent jurisdiction of the court that the First Defendant be removed as an improper or unnecessary party to the action.

The Plaintiff defended the application on the principal ground that an action could be maintained against a Magistrate for any act where that person has no jurisdiction or has exceeded her jurisdiction pursuant to section 31 of the Magistrates Act, Ch. 54.

Held: the action is struck out against the First Defendant but the action will continue against the Second Defendant.

1. It is well-established that the power of the court to strike out any pleading or the indorsement of any writ has often been referred to as the court's nuclear option. This option should only be employed when the justice of the case requires it. Order 18 rule 19(1) gives the court a discretion whether or not to strike out. The court is required to consider whether there are other alternatives which could be employed to deal with the case justly.

2. Persons exercising judicial functions in a court are exempt from all civil liability whatsoever for anything done or said by them in their judicial capacity, nor can any action be brought against the Crown in respect of acts of omissions of persons discharging responsibilities of a judicial nature or in connection with the execution of judicial process: **Halsbury's Laws of England, Vol. 30, [1351] – [1353]; Scott v Stansfield** (1868) L.R. III Exch. 220 at pp. 222-223.

3. The First Defendant was acting in a judicial capacity at all material times and cannot be sued in a civil court for the alleged acts. The Plaintiff has no cause of action against the First Defendant: see **Higgs and Another v Blackman and others** [2011/PUB/CON/00002]. Section 31 of the Magistrates Act, Ch. 54 is inapplicable and ought to be read conjunctively with section 30.

4. Relying on the principle of judicial immunity, the alleged acts of the First Defendant cannot amount to a breach of the Plaintiff's constitutional rights. See: **Maharaj v The Attorney General of Trinidad & Tobago** [1981] 1 W.L.R. 106 at pp.112-113. Further, the constitutional claim raised by the Plaintiff creates a collateral attack on the Magistrate Court's decision and constitutes an abuse of process as the matter could have been pursued as an ordinary appeal.

5. The case will proceed against the Second Defendant who is sued by virtue of sections 4 and 12 of the Crown Proceedings Act: see **Higgs and Another v Blackman and others** [supra]; **Geoffrey Farquharson v The Attorney General** SCCivApp & CAIS No. 77 of 2010.

Cases mentioned in judgment:
Chokolingo v Attorney-General of Trinidad and Tobago [1981] 1 WLR
Geoffrey Farquharson v The Attorney General SCCivApp & CAIS No. 77 of 2010
Gomez v Klonaris [2005] 5 BHS J No. 557
Harrikission v The Attorney General of Trinidad & Tobago [1980] AC 265
Higgs and Another v Blackman and Others 2011/PUB-CON/00002
Kendall v Wilkinson (1855) E1 & B1 680
Maharaj v Attorney-General of Trinidad and Tobago (No.2) [1979] A.C. 385
Scott v Stansfield (1868) L.R. III Exch. 220
Sirros v Moore and Others [1975] 1 Q.B. 118

JUDGMENT

Introduction

[1] **CHARLES J:** On 17 November 2016, I found that the First Defendant is not a proper party to the present action as at all material times she was acting in a judicial capacity. I also found that the action will continue against the Second Defendant. I gave reasons for my decision and promised to reduce them into writing. I do so now.

[2] On 2 November 2015, the Defendants filed a Summons seeking the following relief namely:

1. An Order pursuant to Order 18 rule 19(1)(a), (b) and/or (d) of the RSC, section 4(5) of the Crown Proceedings Act, Ch. 68 and/or the inherent jurisdiction of the court to strike out the Plaintiff's Amended Writ of Summons on the ground that the Plaintiff has no cause of action and alternatively the action is frivolous and vexatious and/or otherwise an abuse of the process of the court as it constitutes a collateral attack on the court and

2. An Order pursuant to Order 15, rule 6(2) of the RSC, section 4(1)(a) of the Crown Proceedings Act, Ch. 68 and/or the inherent jurisdiction of the court

that the First Defendant be removed as an improper or unnecessary party to the action.

Background

[3] By a Specially Indorsed Amended Writ of Summons filed on 4 August 2015, Mr. Jairam Mangra ("the Plaintiff"), a practicing Attorney-at-Law, sued Magistrate Janet Bullard ("the First Defendant") and the Attorney General ("the Second Defendant") (collectively "the Defendants") for the following:

1. Loss of $10,500 resulting from frustration and termination of three contracts caused by the First Defendant's refusal to allow the Plaintiff to represent his clients;

2. Damages for breaches of his constitutional rights to liberty and freedom of movement;

3. Damages as a result of his unlawful arrest and detention on 1 May 2014 in Georgetown, Exuma;

4. Special Damages; Interest and Costs.

[4] The Plaintiff alleged that while performing his duty as Counsel before the First Defendant, he was maligned and had his professional character and reputation impugned as Counsel by prosecutor ASP Sands during a trial. He further alleged that the First Defendant condoned it by saying to the Plaintiff "You have a reputation of being rude." An exchange took place between the Plaintiff and the First Defendant which eventually led to the Plaintiff being cited and held in contempt of court. The First Defendant ordered the police to remove the Plaintiff from the court and to detain him at the Exuma Police Station for one hour.

[5] Upon his subsequent release at 3.10 p.m. the Plaintiff returned to court but the First Defendant refused to permit him to perform his duties as Counsel. He

alleged that as a result of the unlawful act of the First Defendant, he suffered loss and damage.

Issues

[6] There are three key issues to be determined namely:

(i) Whether a civil action can be maintained against the First Defendant for alleged wrongs carried out by her while she was performing a judicial function in court;

(ii) Whether the First Defendant is a proper party to this action; and

(iii) Whether the action should be dismissed against the Second Defendant.

Court's power to strike out

[7] Order 18 rule 19 (1) of the Rules of the Supreme Court ("RSC") states:

> **"The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that –**
>
> **(a) it discloses no reasonable cause of action or defence, as the case may be; or**
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> **(b) it is scandalous, frivolous or vexatious; or**
>
> **(c) it may prejudice, embarrass or delay the fair trial of the action; or**
>
> **(d) it is otherwise an abuse of the process of the court."**

[8] Striking out has often been referred to as the court's nuclear option as it usually means that either the whole or part of that party's case is at an end. This option should be employed only when the justice of the case requires it. O.18, r.19(1) which gives the court a discretion whether or not to strike out and sets out four specific circumstances where the court has the power to strike out pleadings and indorsements.

[9] When deciding whether or not to strike out, the court takes into account all the relevant circumstances and makes a broad judgment after considering the available possibilities in order to deal with the case justly. Thus, the court has to be wary and act cautiously since it is a draconian step to strike out. Nonetheless, a plaintiff cannot be permitted to continue to pursue an action which has no real prospect of being successful. It is also part of the court's active case management role to ascertain the issues at an early stage.

Issues 1 and 2 - Whether an action is maintainable for alleged wrongs against a magistrate performing judicial function/ Is the Magistrate a proper party to these proceedings?

[10] For purposes of this discussion, issues 1 and 2 are considered together. It is common ground that the Plaintiff's action against the Defendants is for acts which were allegedly committed by the First Defendant in her capacity as a Stipendiary and Circuit Magistrate and not in her personal capacity.

[11] Learned Counsel for the Plaintiff Mr. Rolle submitted that the First Defendant may be sued pursuant to section 31 of the Magistrate Act, Ch. 54. Section 31 states:

> **"For any act done by a magistrate in a matter of which by law he has no jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made or warrant issued by such magistrate in any such matter, may maintain an action against such magistrate in the same case as he might have done before the passing of this Act, without making any allegation in his declaration or claim that the act complained of was done maliciously and without reasonable and probable cause."**

[12] There are two provisos to this section which do not apply to the situation at hand.

[13] That being said, in my opinion, section 31 ought to be read conjunctively with section 30. Section 30 provides:

> **"Every action hereafter to be brought against any magistrate for any act done by him in the execution of his duty as a magistrate with respect to any matter within his jurisdiction as such magistrate, shall be in the nature of an action on the case as for a tort, and in the declaration or claim, it shall**

be expressly alleged that such act was done maliciously and without reasonable and probable cause, and if at the trial of any such action, upon the general issue being pleaded, the plaintiff shall fail to prove such allegation, he shall be nonsuit, or a verdict shall be given for the defendant."

[14] Therefore, every action brought against a magistrate performing judicial functions must allege that the act was done maliciously. No such allegation is levied against the First Defendant.

[15] Learned Counsel for the Defendants, Mr. Edwards helpfully referred to Halsbury's Laws of England, Vol. 30. Under the rubric "Judicial Privilege", the learned authors stated as follows at [1351] – [1353]:

"1351. <u>Persons protected</u>. Persons exercising judicial functions in a court are exempt from all civil liability whatsoever for anything done or said by them in their judicial capacity, nor can any action be brought against the Crown in respect of acts or omissions of persons discharging responsibilities of a judicial nature or in connexion with the execution of judicial process. A further protection arises from the rule that the record of a court of record cannot, if subsisting and valid upon its face, be traversed in any action against the judge of that court.

1352. <u>Reasons for protection</u>. The object of judicial privilege is not to protect malicious or corrupt judges, but to protect the public from the danger to which the administration of justice would be exposed if the persons concerned therein were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. It is necessary that such persons should be permitted to administer the law not only independently and freely and without favour, but also without fear.

1353. <u>Requirements for protection</u>. To entitle any person to the protection of judicial privilege, the proceedings out of which the action arises must be the judicial proceedings of a tribunal which is, in the eyes of the law, a court. The protection applies to all courts of justice and to certain other courts having similar attributes. Thus, among courts of justice it has been applied not only to superior courts, but also to inferior courts of record and to inferior courts of justice not of record. The protection is also applied to analogous tribunals other than courts of justice,, if the case is one of an authorised inquiry before a tribunal acting judicially. It is not, however, sufficient that the tribunal should be acting judicially, it must also be a court or authorised tribunal."

[16] It is plain that a magistrate exercising judicial functions in a court of law is exempt from all civil liability whatsoever for anything done or said in his/her judicial

capacity nor can any action be brought against the Crown in respect of acts or omissions of persons discharging responsibilities of a judicial nature or in connection with the execution of judicial process. There is a wealth of judicial authority for this proposition. In **Gomez v Klonaris** [1992] BHS J. No. 48, Sawyer J.[as she then was] stated at [61]:

> **"I do not think it important to decide whether the Committee is or is not a "court" within the usual legal meaning of that term. Suffice it to say that the Committee would be at least a "domestic tribunal" which has a duty to act "judicially" and, as such, its members and persons appearing before it as witnesses advocates or complainants are absolutely immune from civil action for anything done or said in the course of proceedings before the Committee."**

[17] At [65], Sawyer J. quoted Kelly C.B. in **Scott v Stansfield** (1868) L.R. III Exch. 220 at pp. 222-223 where he said:

> **"The question raised upon this record is whether an action is maintainable against the judge of a county court, which is a court of record, for words spoken by him in his judicial character and in the exercise of his functions as judge in the court over which he presides, where such words would as against an ordinary individual constitute a cause of action, and where they are alleged to have been spoken maliciously and without probable cause, and to have been irrelevant to the matter before him.**
>
> **The question arises, perhaps, for the first time with reference to a county court judge, but a series of decisions uniformly to the same effect, extending from the time of Lord Coke to the present time, establish the general proposition that no action will lie against a judge for any acts done or words spoken by him in his judicial capacity in a court of justice. This doctrine has been applied not only to the superior courts, but the court of a coroner and to a court martial, which is not a court of record. It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law independently and freely, without favour and without fear. This provision of the law is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences. How could a judge so exercise his office if he were in daily and hourly fear of an action being brought against him, and of having the question submitted to a jury whether a matter on which he had commented judicially was or was not relevant to the case before him? Again, if a question arose as to the bona fides of the judge it would have, if the analogy of similar cases to be followed, to be submitted to the jury. Thus if we were to hold that an action is maintain able against a judge for words spoken by him in his judicial capacity, under such circumstances as those**

> **appearing on these pleadings, we should expose him to constant danger of having questions such as that of good faith or relevancy raised against him before a jury, and of having the mode in which he might administer justice in his court submitted to their determination. It is impossible to overestimate the inconvenience of such s[sic] [a] result. For these reasons I am most strongly of opinion that no such action as this can, under any circumstances, be maintainable."**[Emphasis added]

[18] In [67], Sawyer J continued:

> **"The immunity from suit was held to apply to magistrates when acting in their judicial, as opposed to their administrative, capacity – see eg., Kendall v. Wilkinson (1855) E1 & B1 680 at p.683, 119 E.R. 251 at p.254-256 per Lord Campbell, C.J. See also Halsbury's Laws of England 3rd Edition, Vol. 30 p.707."**

[19] In the English Court of Appeal case of **Sirros v. Moore and Others** [1975] 1 Q.B. 118 at p.119, Lord Denning M.R. and Ormrod L.J. stated:

> **"As a matter of principle every judge of the courts in this land, from the highest to the lowest, should, when he is acting judicially in the bona fide exercise of his office, be protected against personal actions for damages, even where he may be mistaken in fact or ignorant in law. There is no ground today for drawing a distinction between judges of different status or between judges and magistrates".**

[20] In **Higgs and Another v. Blackman and Others** [2011/PUB/CON/00002], Adderley, J accepted what Mr. Klein for the Respondents submitted at [31] – [33]. At [32] he stated:

> **"He [Mr. Klein] points out that this principle of <u>judicial immunity</u> also applies to declaratory relief as well as confirmed by the House of Lords where Lord Diplock in *O'Reilly v Mackman* [1983] 2 AC 237 when upholding the immunity of proceedings of the Board of Visitors as judicial proceedings (at 253, C) he said this:**
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> > **"…I see no difference between an action for damages and an action for a declaration. If a prisoner or litigant is not allowed to sue a justice of the peace for damages, neither should he be allowed to sue him for a declaration that he was biased. Have you ever heard of an action against a magistrate asking for a declaration that he was biased? Or was guilty of any other kind of conduct? I have not. I am sure that no such action lies."**

[21] In the present case, the Plaintiff claims, among other things, that his constitutional rights were breached by the alleged acts of the First Defendant. Mr. Edwards correctly postulated that, relying on the principle of judicial immunity, the alleged acts of the First Defendant cannot amount to a breach of the Plaintiff's constitutional rights. This principle was epitomized in **Maharaj v Attorney-General of Trinidad and Tobago (No. 2)** [1979] A.C. 385, Lord Diplock, delivering the judgment of the Board stated at p. 399:

> **"...no human right or fundamental freedom recognised by Chapter 1 of the Constitution is contravened by a judgment or order that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person's serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher court. Where there is no higher court to appeal to then none can say that there was error. The fundamental human right is not to a legal system that is infallible but to one that is fair."**

[22] Learned Counsel Mr. Edwards also correctly submitted that the action raises constitutional claims which creates a collateral attack on the Magistrates Court's decision and hence constitutes an abuse of process as the matter could have been pursued as an ordinary appeal. He referred to the Privy Council case of **Chokolingo v Attorney-General of Trinidad and Tobago** [1981]1 W.L.R. 106 where Lord Diplock stated at pp.111-112:

> **"Acceptance of the applicant's argument would have the consequence that in every criminal case, in which a person who had been convicted alleged that the judge had made any error of substantive law as to the necessary characteristics of the offence, there would be parallel remedies available to him: one by appeal to the Court of Appeal, the other by originating application under section 6 (1) of the Constitution to the High Court with further rights of appeal to the Court of Appeal and to the Judicial Committee. These parallel remedies would be also cumulative since the right to apply for redress under section 6 (1) is stated to be "without prejudice to any other action with respect to the same matter which is lawfully available." The convicted person having exercised unsuccessfully his right of appeal to a higher court, the Court of Appeal, he could nevertheless launch a collateral attack (it may be years later) upon a judgment that the Court of Appeal had upheld, by making an application for redress under section 6 (1) to a court of co-ordinate jurisdiction, the High Court. To give to Chapter I of the Constitution an interpretation that would lead to this result would, in their Lordships' view be quite irrational and**

subversive of the rule of law which it is a declared purpose of the Constitution to enshrine.

[23] Mr. Edwards submitted that if the Plaintiff's action were to succeed it would put the First Defendant, and all persons carrying out authorized judicial functions, in fear of being sued in their personal capacity for decisions made, or about to be made, that offended or may offend, respectively, a party involved, whilst carrying out judicial functions. Hence, the First Defendant and other Stipendiary and Circuit Magistrates may be reluctant to carry out their judicial duties in compliance with the oath of allegiance and the judicial oath. This would cause a serious dilemma for the administration of justice in The Bahamas and would erode and undermine the public's faith in the judicial system. I agree with Mr. Edwards that since at all material times the First Defendant was acting in a judicial capacity, she cannot be sued in a civil court for the alleged acts.

[24] It logically follows that the First Defendant is an improper and unnecessary party to these proceedings.

Cause of action against the Second Defendant

[25] The Second Defendant is sued by virtue of her role pursuant to the Crown Proceedings Act, Chapter 68.

[26] Learned Counsel Mr. Edwards argued that since no cause of action lies against the First Defendant, it necessarily follows that there is no cause of action against the Second Defendant. He relied on section 4(5) of the Crown Proceedings Act which provides as follows:

> **"No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process."**

[27] Mr. Edwards vehemently opposed the continuation of the action against the Second Defendant but, in the same breath, he submitted the following at [37] – [38] of his written submissions:

> **"<u>Pursuant to section 4(1)(a) of the said Crown Proceedings Act the Crown [Second Defendant] is the proper party as the First Defendant was at all material times a servant and agent of the Crown</u>**. [Emphasis added]
>
> **In the said case of Higgs and Another v Blackman and Others, at paragraph 31 it states:**
>
> > **"Mr. Klein also submits that to the extent that the application names Hon. Christopher Blackman and Hon. Stanley John as parties to the action and seeks judicial remedies in respect of them, the action is misconceived, as they are not proper respondents to the notice. He supported his contention with the well know[n] authority of Sirros v Moore [1975] 1 QB 118; and states that the proper party is the Attorney General (Maharaj v A.G. Trinidad and Tobago) (No. 2) [1979 A.C. 385, PC) (pg. 394 H-395 A; 397 D)."**

[28] In my opinion, Mr. Edwards has correctly stated the law. It is astonishing that he is now attempting to do a *volte face.*

[29] Learned Counsel Mr. Rolle helpfully provided the case of **Geoffrey Farquharson v The Attorney General** SCCivApp &CAIS No. 77 of 2010. **Geoffrey Farquharson** bolstered Mr. Edwards' position that the proper party to be sued is the Attorney General.

Conclusion

[30] It is not disputed that the First Defendant, in her capacity as Stipendiary and Circuit Magistrate, was exercising a judicial function in a court of law and not acting in her personal capacity when she allegedly committed the acts in question. Thus, she is exempt from all civil liability whatsoever for anything done or said in her judicial capacity. The law affords her such protection. If judicial officers are not afforded such protection, then they may be reluctant to carry out

their judicial duties in compliance with the oath of allegiance and the judicial oath. Unquestionably, this would cause a quandary for the administration of justice in The Bahamas and would erode and undermine the public's confidence in the judicial system. It seems clear to me that the First Defendant cannot be sued in this action and therefore, she is an improper and unnecessary party to these proceedings.

[31] Pursuant to section 4(1)(a) of the Crown Proceedings Act the Second Defendant is the proper party to be sued. The action shall continue against the Second Defendant. Costs will be costs in the cause.

Dated this 13th day of December, A.D. 2016

JUSTICE