

EASTERN CARIBBEAN SUPREME COURT  
IN THE COURT OF APPEAL

SAINT LUCIA

SLUHCVAP2013/0023

BETWEEN:

BRYAN JAMES

Appellant

and

THE ATTORNEY GENERAL

Respondent

Before:

The Hon. Mde. Louise Esther Blenman

Justice of Appeal

On written submissions:

Mr. Horace Fraser on behalf of the Appellant

Mr. Deale Lee, Senior Crown Counsel, on behalf of the Respondent

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2014: April 22.

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*Civil appeal – Proper party to institute proceedings against in claims involving public officials – Attorney General substituted as defendant in place of Comptroller of Customs – Article 28, Code of Civil Procedure, Cap. 243 – Whether notice of suit not having been served on Attorney General fatal to claim – Whether claim prescribed by virtue of article 2122(2) of Civil Code of Saint Lucia, Cap. 4:01*

The appellant filed a claim against the Comptroller of Customs on 11<sup>th</sup> June 2012 in which he alleged that on 14<sup>th</sup> October 2009, customs officers unlawfully entered his premises and seized and removed documents and a computer that belonged to him. On 25<sup>th</sup> October 2012 the appellant filed an amended claim, in which the Attorney General was substituted in place of the Comptroller of Customs as the defendant. The appellant claimed, inter alia, that the customs officers having unlawfully entered his property, acting outside the scope of the Customs (Control and Management) Act, had violated his rights to his property. He sought a number of reliefs, including damages. The appellant also filed an application to strike out the Attorney General's defence. The Attorney General filed an application to strike out the appellant's amended claim on the basis that the appellant had failed to

comply with article 28 of the Code of Civil Procedure since he did not serve the Attorney General with notice of the suit, and also on the basis that the claim was prescribed by virtue of article 2122(2) of the Civil Code of Saint Lucia. The learned master found in favour of the respondent and struck out the appellant's amended claim. The appellant appealed the learned master's decision.

**Held:** dismissing the appeal and awarding the Attorney General the costs which were ordered in the court below, and on appeal, two thirds of those costs, that:

1. The wording of article 28 of the Code of Civil Procedure<sup>1</sup> is clear. In order to bring a suit against a public officer for damages, a claimant must serve notice of the suit on the public officer personally, or at his domicile. It will not suffice to instead serve the notice on another public officer who is not a proper party to the action.

**Castillo v Corozal Town Board and Another** (1983) 37 WIR 86 applied; **Peter Clarke v The Attorney General et al** Saint Lucia High Court Claim No. SLUHCV1999/0475 (delivered 19<sup>th</sup> April 2004, unreported) cited with approval.

2. As a general rule, public officials are not suable in their official capacities in relation to acts or omissions that occur in the course of their duties. Pursuant to section 13(2) of the Crown Proceedings Act, the Attorney General is the proper party to all such suits. Proceedings against the Crown must be instituted against the Attorney General.
3. There is a clear distinction to be made between the situation where a claim is prescribed and one where the limitation period has expired. When a claim is prescribed, not only is the right to bring the claim extinguished, but the remedy is also extinguished. Based on the conjoint effect of articles 2122(2) and 2129 of the Civil Code of Saint Lucia<sup>2</sup>, the present claim became prescribed on 14<sup>th</sup> October 2012 and thus, it was not possible for the appellant to bring a claim after that date.

**Norman Walcott v Moses Serieux** Saint Lucia High Court Civil Appeal SLUHCVAP1975/0002 (delivered 20<sup>th</sup> October 1975, unreported) and **Michele Stephenson et al v Lambert James-Soomer** Saint Lucia High Court Claim Nos. SLUHCV2003/0138 and SLUHCV2003/0453 (delivered 19<sup>th</sup> April 2004, unreported) cited with approval.

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<sup>1</sup> Cap. 243, Revised Laws of Saint Lucia 1957.

<sup>2</sup> Cap. 4.01, Revised Laws of Saint Lucia 2008.

## JUDGMENT

- [1] **BLENMAN JA:** This is an appeal by Mr. Bryan James against the decision of the learned Master V. Georgis Taylor-Alexander dated 10<sup>th</sup> October 2013 in which she struck out his claim for damages against the Attorney General and ordered him to pay costs. The bases upon which the learned master struck out his claim are that:
- (a) he had failed to comply with article 28 of the **Code of Civil Procedure**;<sup>3</sup> and
  - (b) the claim, having been brought three years after the cause of action arose, is prescribed as being in violation of article 2122(2) of the **Civil Code of Saint Lucia**.<sup>4</sup>

[2] Mr. James, being dissatisfied with the decision of the learned master, obtained leave of this court to appeal against the decision. In pursuance of the leave that was granted, he has filed this appeal and seeks to impugn the decision of the learned master to strike out his amended claim and to order costs against him.

[3] I propose now to briefly examine the background with a view to providing the context to this appeal.

### Background

[4] Mr. James is an Associate of a company that imports used and reconditioned vehicles into Saint Lucia. Also, he is the owner of a private dwelling house situate at Balembouche, in the quarter of Choiseul, Saint Lucia. On 11<sup>th</sup> June 2012, he filed a claim against the "Comptroller of Customs and Excise Department" in which he alleged that on 14<sup>th</sup> October 2009, customs officers unlawfully entered his premises and seized and removed documents and a computer that belonged to him.

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<sup>3</sup> Cap. 243, Revised Laws of Saint Lucia 1957.

<sup>4</sup> Cap. 4.01, Revised Laws of Saint Lucia 2008.

- [5] On 25<sup>th</sup> October 2012, Mr. James filed an amended claim in which the Attorney General was substituted in place of the Comptroller of Customs and Excise Department (“the Comptroller of Customs”) as the defendant. The amended claim was supported by an amended statement of claim of even date. In the amended claim, Mr. James alleged that customs officers having unlawfully entered his property, acted outside the scope of the **Customs (Control and Management) Act**.<sup>5</sup> He claimed that by so doing the customs officers violated his rights to his property and he sought a number of reliefs including damages. He also alleged that the customs officers acted in bad faith. Also, he stated that on 2<sup>nd</sup> April 2012, he gave notice to the Comptroller of Customs, of his notice to file suit. He accepted that the goods were returned to him in March 2011.
- [6] In defence to the amended claim, the Attorney General admitted that customs officers entered Mr. James’s premises on 14<sup>th</sup> October 2009 but asserted that the entry was lawful. The Attorney General also asserted that the items that the customs officers seized were lawfully taken. Further, in the defence to the amended claim, the Attorney General asserted that Mr. James failed to comply with article 28 of the **Code of Civil Procedure** since he did not serve her with notice of the suit. The Attorney General also stated that the actions of which Mr. James complained occurred on 14<sup>th</sup> October 2009 and since the amended claim was filed and served on 25<sup>th</sup> October 2012 it was prescribed by virtue of article 2122(2) of the **Civil Code of Saint Lucia**.
- [7] The Attorney General’s defence led Mr. James to file an application to strike out the defence on the basis that it disclosed no reasonable basis for defending the amended claim. He also sought summary judgment.
- [8] The Attorney General also filed an application to strike out Mr. James’s amended claim on the basis that he had failed to comply with article 28 of the **Code of Civil**

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<sup>5</sup> Cap. 15.05, Revised Laws of Saint Lucia 2008.

**Procedure** and breached article 2122(2) of the **Civil Code of Saint Lucia**. The Attorney General filed an affidavit in support of the application in which she indicated that she had not been served with notice of the suit.

[9] The learned master having heard the two applications struck out Mr. James's amended claim on the bases indicated earlier. He has appealed against the Master's decision.

[10] I turn now to address the grounds of appeal.

### **Grounds of Appeal**

[11] Mr. James is aggrieved by the learned master's decision and challenges her conclusions on the grounds that: (a) the learned master erred in law by holding that he had failed to comply with article 28 of the **Code of Civil Procedure**, (b) the learned master misdirected herself in law and erred by ruling that his amended claim is prescribed in accordance with article 2124 of the **Civil Code of Saint Lucia**.

[12] It bears noting that in her written judgment the learned master ruled that Mr. James' amended claim was prescribed since it was brought in excess of three years after the cause of action arose and that this was in breach of article 2122(2) of the **Civil Code of Saint Lucia**.

### **Ground 1**

**The learned master misdirected herself and therefore erred in law by ruling that the appellant failed to comply with article 28 of the Code of Civil Procedure.**

[13] Learned counsel Mr. Horace Fraser submitted that Mr. James in his amended statement of claim had clearly indicated that on 2<sup>nd</sup> April 2012 he had served notice of the suit on the Comptroller of Customs. Mr. Fraser therefore argued that

the learned master clearly got it wrong since notice of the suit was served in compliance with article 28 of the **Code of Civil Procedure**. Mr. Fraser argued that the Comptroller of Customs is the public officer who had committed the tort and therefore service on him was proper.

[14] Learned Senior Crown Counsel Mr. Deale Lee referred the Court to article 28 of the **Code of Civil Procedure** which stipulates that:

“No public officer, or other person fulfilling a public duty or function, can be sued for damages by reason of or any act done by him in the exercise of his functions, nor can any judgment be rendered against him, unless notice of such suit has been given him at least one month before the issuing of the writ of summons.

“Such notice must be in writing, it must specify the grounds of the action, must be served upon him personally, or at his domicile, and must state the name and residence of the [claimant].”

Senior Crown Counsel Mr. Lee submitted the wording of the article 28 is very clear and that notice of the suit ought to have been served on the Attorney General and failure to do so was fatal. Mr. Lee submitted that the learned master was quite correct in so holding. Mr. Lee adverted the Court's attention to paragraphs 19 and 20 of the learned master's judgment which addressed the objection that was taken to Mr. James's failure to serve notice of the suit on the Attorney General. The master was careful to indicate at paragraph 20 that '[t]here has been no response to the application of [the Attorney General].' Mr. Lee submitted that in view of the uncontroverted evidence that was before the learned master that Mr. James had not served the Attorney General with notice of the suit, the master was correct in holding that Mr. James's non-compliance with article 28 of the **Code of Civil Procedure** was fatal.

[15] There is great force in Mr. Lee's submissions on this ground of appeal and I entirely agree with him. The wording of article 28 is pellucid. In order to bring a suit against a public officer for damages the claimant must serve notice of the suit

on the public officer personally or at his domicile. It will not suffice to serve the notice on another public officer.

[16] He said that article 28 of the **Code of Civil Procedure** is clear and mandatory in its terms. I fully agree with Mr. Lee. In support of the above proposition, he referred the Court to **Castillo v Corozal Town Board and Another**<sup>6</sup> and **Peter Clarke v The Attorney General et al.**<sup>7</sup> I have no doubt that failure to comply with the mandatory provisions that require notice is fatal. I have no hesitation in preferring his submissions on this issue in view of the fact that there was no evidence before the learned master that Mr. James had served the requisite notice on the Attorney General.

[17] It is clear from the judgment that contrary to what Mr. Fraser urged on this court, the learned master carefully addressed her mind to the evidence that was before her and the relevant legal principles. I have no doubt that the learned master correctly applied the relevant legal principles as enunciated in **Castillo**. In view of the above, I do not accept Mr. Fraser's criticism that the master's decision in relation to this issue was fatally flawed. To the contrary, she was correct to state that the provision of article 28 of the **Code of Civil Procedure** is inviolable.

[18] Accordingly, Mr. James does not succeed on the first ground of appeal.

[19] My conclusion in relation to the first ground is determinative of this appeal. However, out of deference to the helpful submissions of learned counsel and in so far as the learned master utilised the non-compliance of article 2122(2) of the **Civil Code of Saint Lucia** as additional basis to strike out the amended claim, I will now address Mr. James's the second ground of appeal.

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<sup>6</sup> (1983) 37 WIR 86.

<sup>7</sup> Saint Lucia High Court Claim No. SLUHCV1999/0475 (delivered 19<sup>th</sup> April 2004, unreported).

## Ground 2

Whether the learned master misdirected herself in law and therefore erred by ruling that the appellant's claim is prescribed in accordance with Article 2122(2) of the Civil Code of St. Lucia.

### General Observations

[20] It seems to me that Mr. James has made a typographical error in stating that the master had held that his amended claim is prescribed in accordance with article 2124 of the **Civil Code of Saint Lucia**. A close reading of the judgment at paragraphs 15 and 21 indicates that the master did no such thing. In contradistinction, the master was careful to point out at paragraph 15 that since Mr. James had pleaded that the customs officers had acted with bad faith in entering the premises and seizing his documents and property that whether or not article 2124 is applicable is a triable issue and 'should not be precipitately tried'. Also at paragraph 21 of the judgment the learned master stated quite clearly as follows:

"Based on my finding it is unnecessary to deal with the issue raised in relation to Article 2124. Nevertheless I am satisfied that that action too is hopeless being one for trespass; for unlawful detention of goods; and for breach of statutory duty it is covered by Article 2122(2) for which a three year limitation applies."

[21] In view of the above pronouncements it is clear that the decision of the learned master turned mainly on the ground that Mr. James's claim was prescribed and in violation of article 2122(2) of the **Civil Code of Saint Lucia**. I would therefore proceed on this basis and in any event both learned Counsel have addressed article 2122(2) of the **Civil Code of Saint Lucia** in their helpful submissions.

[22] Learned counsel Mr. Fraser acknowledged that article 2122(2) of the **Civil Code of Saint Lucia** requires a claim for delict or quasi-delict to be brought within 3 years after which the claim is prescribed. He referred to **Norman Walcott v**



**Moses Serieux**<sup>8</sup> in support of his proposition. He correctly argued that the prescription period does not start to run until there is a breach which gives rise to a cause of action. However, Mr. Fraser learned counsel submitted that in the case at bar the cause of action did not arise until March 2011 since this was the date on which the internal mechanism of the Customs Department had been exhausted and the articles that were seized from Mr. James were returned to him by customs officials. Mr. Fraser accepted that Mr. James's articles were seized on 14<sup>th</sup> October 2009 but was adamant that the cause of action did not arise until March 2011 when the customs officials returned the items to him since only then it was clear that they had no proper basis to enter his property and seize his articles.

[23] Further, Mr. Fraser argued that time could not begin to run until the internal mechanisms that are provided by the **Customs (Control and Management) Act** in relation to the seizure of the articles had been exhausted. He sought to rely on **The Attorney General of St. Lucia et al v Vance Chitolie**,<sup>9</sup> in support of his argument. In those circumstances, Mr. Fraser submitted that the master erred in concluding that Mr. James's cause of action arose on 14<sup>th</sup> October 2009 and is therefore prescribed. It was only when in March 2011 it became clear to Mr. James that the customs officials had no basis to seize his property that his cause of action arose. The claim was filed within one year after the cause of action arose.

[24] Mr. Fraser further submitted that it was quite proper for Mr. James to amend his claim on October 2012 by substituting the Attorney General for the Comptroller of Customs as the defendant. He asserted that changing the Comptroller of Customs as the defendant did not amount to a change that was made after the limitation period had expired and therefore was lawful. Mr. Fraser relied on Part 19 of the **Civil Procedure Rules 2000** ("CPR 2000") in support of this argument.

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<sup>8</sup> Saint Lucia High Court Civil Appeal SLUHCVAP1975/0002 (delivered 20<sup>th</sup> October 1975, unreported).

<sup>9</sup> Saint Lucia High Court Civil Appeal SLUHCVAP2003/0014 (delivered 10<sup>th</sup> January 2005, unreported).

He also referred the court to **Joel Gumbs v Adina Garnes et al**<sup>10</sup> to buttress his position.

[25] Learned Counsel Mr. Fraser argued that in those circumstances, the master erred in concluding that Mr. James' amended claim was prescribed and extinguished since it was brought in excess of three years since the cause of action arose.

[26] Learned Senior Crown Counsel Mr. Lee reminded the Court that it was common ground that the customs officers had entered Mr. James's property on 14<sup>th</sup> October 2009. Since Mr. James alleged that the entry and seizure on that date were unlawful, it is clear that the cause of action arose on that date based on the fact that his claims are founded on alleged torts or delicts. This was the basis on which the matter was litigated before the learned master. Mr. Lee argued that it was therefore inappropriate to allow Mr. James to now seek to argue that the cause of action arose in March 2011, the date on which the customs officers returned the goods to him. Mr. Lee further asserted that the case of **The Attorney General of St. Lucia et al v Vance Chitolie** is not authority for the proposition upon which Mr. James seeks to rely. There is great force in Mr. Lee's argument that **The Attorney General of St. Lucia et al v Vance Chitolie** cannot assist Mr. James. In that case the appellant had sought to challenge the assessment that the customs officers had made on goods that were imported into Saint Lucia; he did this by instituting a claim in the High Court even though the statutory framework made specific provision for challenges to the rate of duty that was assessed by the customs officials to be dealt with internally. In those circumstances, the Court of Appeal held that the Act clearly conferred an appellate jurisdiction on the High Court and not an original jurisdiction as it relates to the rate of duty charged and therefore the High Court had no jurisdiction to hear the matter. I therefore have no hesitation in agreeing with Mr. Lee that the **Attorney General v Vance Chitolie** has no relevance to the case at bar.

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<sup>10</sup> Saint Vincent and the Grenadines High Court Civil Appeal SVGHCVAP2001/0015 (delivered 28<sup>th</sup> January 2003, unreported).

[27] In any event, I fail to see how Mr. James could even attempt to now assert that the cause of action arose in March 2011 when the uncontroverted position is that the customs officers returned the articles to him in March 2011. It is clear that a claim for trespass or unlawful entry, if at all, arose on 14<sup>th</sup> October 2009.

[28] In relation to Mr. Fraser's argument that Part 19 of CPR 2000 enables Mr. James to substitute the Attorney General for the Comptroller of Customs, Mr. Lee asserted that Part 19 cannot assist Mr. James. Mr. Lee submitted that there is a clear distinction to be made between the situation where a claim is prescribed and one where the limitation period has expired. In the former situation, namely prescription, not only the right to bring the claim is extinguished but also the remedy. Mr. Lee also referred the court to **Walcott v Serieux**, and **Michele Stephenson et al v Lambert James-Soomer**.<sup>11</sup> I am in full agreement with Mr. Lee that not only the right to bring the claim is extinguished but also the remedy. I am fortified in the above view by article 2129 of the **Civil Code of Saint Lucia** which provides:

"In all the cases mentioned in articles 2111, 2121, 2122, 2123 and 2124, the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired ...."

[29] Based on the conjoint effect of article 2122(2) and article 2129 of the **Civil Code of Saint Lucia**, in my judgment, the learned master came to the correct conclusion despite it seems as though article 2129 of the **Civil Code of Saint Lucia** was not drawn to her attention. I draw support for my view based on the very helpful pronouncements in **Walcott v Serieux** and **Stephenson v James-Soomer** both of which are authority for the proposition that where a claim is prescribed the court has no jurisdiction to hear the matter.

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<sup>11</sup> Saint Lucia High Court Claim Nos. SLUHCV2003/0138 and SLUHCV2003/0453 (delivered 19<sup>th</sup> April 2004, unreported).

- [30] Learned Senior Crown Counsel Mr. Lee reinforced his arguments by asserting that Mr. James' claim against the Crown became prescribed on 14<sup>th</sup> October 2012, therefore it was impossible for Mr. James to seek to substitute the Attorney General for the Comptroller of Customs after that date. Section 13(2) of the **Crown Proceedings Act**<sup>12</sup> clearly states that proceedings against the Crown must be instituted against the Attorney General. Therefore, a civil action against the Comptroller of Customs is therefore a nullity since there was non-compliance with the **Crown Proceedings Act**.
- [31] The law is clear, as a general rule public officials are not suable in their official capacities in relation to acts or omissions that occurred in the course of their duties. By virtue of section 13(2) of the **Crown Proceedings Act**, the Attorney General is the proper party to all such suits. While the bringing of a claim against the Comptroller of Customs is of some significance, I do not find it necessary to reach a conclusion on whether the claim against the Comptroller of Customs was a nullity.
- [32] It is important to emphasise that in so far as the amended claim against the Attorney General was instituted on 25<sup>th</sup> October 2012 for the alleged torts or delicts, it violated articles 2122(2) and 2129 of the **Civil Code of Saint Lucia**. The learned master did not err in holding that the amended claim was prescribed.
- [33] In my judgment the learned master acted quite properly and struck out the amended claim in exercising the clear power provided by CPR 26.3(1)(b) which enables her to strike out the claim on the basis that the amended claim did not disclose any reasonable ground for bringing the claim.<sup>13</sup>

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<sup>12</sup> Cap. 2:05, Revised Laws of Saint Lucia 2008.

<sup>13</sup> See judgment of Byron CJ in *Baldwin Spencer v The Attorney-General of Antigua and Barbuda et al* (Antigua and Barbuda High Court Civil Appeal ANUHCVAP1997/020A (delivered 8<sup>th</sup> April 1998, unreported)). See also judgment of Rawlins J in *Julian Prevost v Rbayburn Blackmore et al* (The Commonwealth of Dominica High Court Claim No. DOMHCV2005/0177 (delivered 14<sup>th</sup> September 2005, unreported)).

[34] Costs usually follow the event. There is no basis to depart from this rule and the Attorney General, having prevailed at first instance and in this Court, is entitled to have costs. Accordingly, I hold that the Attorney General is entitled to have the costs that were ordered in the court below and in relation to this appeal. I will order that the Attorney General is to have two thirds on this appeal.

### **Conclusion**

[35] Accordingly, I would dismiss Mr. Bryan James's appeal. In relation to costs, the Attorney General is to receive the costs that were ordered in the court below and, on this appeal, two thirds of those costs.

[36] I gratefully acknowledge the assistance of learned counsel.

**Louise Esther Blenman**  
Justice of Appeal