In The Supreme Court of Bermuda

CIVIL JURISDICTION
2022: No. 129

BETWEEN:

KAMAL HANIF NAEEM ASIM WORRELL

Plaintiff

-v-

THE DIRECTOR OF PUBLIC PROSECUTIONS

1st Defendant

-and-

THE COMMISSIONER OF POLICE

2nd Defendant

-and-

CARRINGTON MAHONEY

3rd Defendant

-and-

LARISSA BURGESS

4th Defendant

-and-

MICHAEL REDFERN

5th Defendant

-and-

JASON SMITH

6th Defendant

-and-

CINDY CLARKE

7th Defendant

Before: The Hon. Chief Justice Hargun

Representation: Shakira J. Dill-Francois, Deputy Solicitor General, for the 1st and 2nd Defendants

Paul A. Harshaw of Canterbury Law Limited for the 3rd to 7th Defendants

Date of Hearing: 24 October 2022

Date of Judgment: 8 November 2022

JUDGMENT

Strike out application based upon expiry of limitation period for false imprisonment, conspiracy to injure and malicious prosecution; vicarious liability of the Commissioner of Police for the actions of police officers; vicarious liability of the Director of The prosecutions for the actions of Crown Counsel

IIARGUN CJ

Introduction

1. In these proceedings Kamal Hanif Naeem Asim Worrell ("**Mr Worrell**") seeks special damages in the amount of approximately $2,100,000 against the Defendants alleging that he has good causes of actions against them for false imprisonment, conspiracy to injure and malicious prosecution. In addition, Mr Worrell seeks aggravated and exemplary damages against the same Defendants.

2. In the Statement of Claim, Mr Worrell states that at all material times he was a barrister and attorney practising in Bermuda. In around August 2014 Mr Worrell was engaged by a Mr Devon Hewey ("**Mr Hewey**") to represent him at trial on a charge of attempted murder. The circumstances giving rise to the charge were that two unidentified people were seen on a motorcycle from which gunshots were fired in the direction of a Mr Lavon Thomas ("**Mr**

Thomas"). Mr Thomas evaded the shots and ran from the scene. The assailants rode away and escaped police.

3. Mr Worrell asserts that shortly after the incident, on the same day, Mr Thomas provided the police with a witness statement including the description of the two people on the motorcycle. Neither description accorded with that of Mr Hewey. The instructions given to Mr Worrell by Mr Hewey included the assertion that Mr Thomas will be familiar with his general appearance having previously seen him about the St. Monica's Road area of Pembroke Parish, where Mr Hewey had resided.

4. The Statement of Claim further asserts that, as instructed, Mr Worrell met with Mr Thomas in the presence of Mr Thomas's friend, who is Mr Hewey's cousin, in order to confirm whether Mr Thomas agreed with Mr Hewey's assertions and would be prepared to give evidence to that effect.

5. At this meeting, according to Mr Worrell, Mr Thomas confirmed that Mr Hewey's assertions were correct and that he was familiar with his general appearance and build. Mr Thomas further confirmed that neither person on the motorcycle matched Mr Hewey's description. Mr Worrell states that at no time did he demand, request, or suggest that Mr Thomas should lie under oath or give any false testimony whatsoever. Mr Worrell covertly recorded the meeting on his mobile telephone and retained it.

6. At the trial Mr Worrell put to Mr Thomas in cross examination that the substance of what Mr Thomas had told him regarding Mr Hewey. Mr Thomas accepted Mr Worrell suggestions as accurate and after consideration of all the evidence Mr Hewey was unanimously acquitted by the jury.

7. On 4 December to 14 Mr Worrell was arrested by police officers on suspicion of conspiracy to defeat justice based on a report made by Mr Thomas alleging that Mr Worrell had suborned

him to commit perjury. The arresting officers included Michael Redfern and Jason Smith, the 5th and 6th Defendants. Mr Worrell was detained at the Hamilton Police Station from 4 December 2014 until 8 December 2014.

8. On 8 December 2014 the Director of Public Prosecutions ("**the DPP**") caused Mr Worrell to be charged in the Hamilton Magistrates' Court with: (1) conspiring to defeat justice; (2) fabricating evidence; and (3) perjury.

9. After receipt of disclosure from the DPP Mr Worrell elected to have a magistrate enquire into the sufficiency of evidence against him by way of a preliminary enquiry. The enquiry was scheduled to be heard in April 2015. In April 2015 Ms. Larissa Burgess, Crown Counsel, under the direction of the DPP, applied for and was granted a voluntary bill of indictment, thereby dispensing with the preliminary hearing.

10. Mr Worrell complains that as a result of the voluntary bill of indictment he was required to appear at the Supreme Court arraignment session or about 1 May 2015 and his trial commenced before the Honourable Justice Simmons and the jury. On or about 3 December 2015 Mr Worrell was acquitted by the jury on direction of the judge who ruled that there was no evidence to support any of the charges against Mr Worrell and that, therefore, Mr Worrell had no case to answer.

11. Mr Worrell complains that thereafter, Mr Carrington Mahoney, Crown Counsel, and Ms. Burgess, the 3rd and 4th Defendants, appealed to the Court of Appeal against Mr Worrell's acquittal. On 17 June 2016 the appeal was dismissed by the President of the Court, Baker JA, sitting with Bernard JA and Kawaley JA (Acting). The proceedings were thereby finally determined in Mr Worrell's favour.

The Applications

12. The DPP and the Commissioner of Police, the 1st and 2nd Defendants, apply to this Court to strike out the Specially Endorsed Writ of Summons pursuant to RSC Order 18 rule 19 (1) on the grounds that the Mr Worrell's claim either discloses no reasonable cause of action; and/or is otherwise an abuse of the process of the court.

13. The 3rd to the 7th Defendants seek an order that Mr Worrell be required to provide further and better particulars of the Statement of Claim and inspection of certain documents specified in the Notices dated the 10 and 24 June 2022. The 3rd to 7th Defendants reserved their position to apply to strike out these proceedings after they have received the particulars sought.

The application to strike out these proceedings

14. Ms. Dill-Francois, on behalf of the 1st and 2nd Defendants, contends that in relation to the causes of action based upon false imprisonment and conspiracy to injure, the Court should strike out these causes of action on the basis that they are statute barred. In this regard section 6 of the Limitation Act 1984, provides that the limitation period for actions founded in tort (false imprisonment and conspiracy to injure) is 6 years. Ms. Dill- Francois contends that if it can be demonstrated to the Court that these causes of actions are clearly barred by the Limitation Act 1984 then the Court should strike out these causes of action.

15. The Court accepts that if it is clear that there is no escape from a potential defence based upon limitation of action then, the Court can and should strike out the proceedings on the basis that continuation of those proceedings serves no useful purpose. Thus, Kawaley J (as he then was) so held in *Global Construction Limited v Hamiltonian Hotel & Island Club Ltd* [2005] Bda LR 81:

"16. However, MS. Basden relies on a narrower application of these broad principles, which is perhaps less well recognized in this jurisdiction, formulated in the 1999 White Book at paragraph 18/19/11 as follows:

'However, if the defendant does plead a defence under the Limitation Act ... in a very clear case, he can seek to strike out the claim upon the ground that it is frivolous and vexatious and an abuse of the process of the Court (see per Donaldson L.J. in Ronex Properties Ltd. v John Laing Construction Ltd [1983] Q.B. 398). Thus where the statement of claim discloses that the cause of action arose outside the current period of limitation and it is clear that the defendant intends to rely on the Limitation Act and there is nothing before the Court to suggest that the plaintiff could escape from that defence, the claim will be struck out as being frivolous, vexatious and an abuse of the process of the Court ...'

17. In fact, this Court has applied precisely this test in striking-out an obviously time-barred claim in an unreported decision of then Acting Puisne Judge Geoffrey Bell: Phillips v Phillips, Civil Jurisdiction 1995: No. 341, Judgment dated December 11, 1998. Adopting this principle and applying it to the Defendant's application in this case, the Statement of Claim does disclose that the cause of action accrued outside of the applicable limitation period and it is clear that the Defendant intends to rely on a limitation defence. The relevant claim can accordingly only be struck out if is 'very clear ... that there is nothing before the Court to suggest that the plaintiff could escape from that defence,' and both parties have placed affidavit evidence before the Court for the purposes of this application."

False imprisonment

16. In relation to the cause of action based upon false imprisonment Ms. Dill-Francois points to Mr Worrell's assertion in the Statement of Claim that he was arrested in December 2014. Accordingly, it is contended by the 1st and 2nd Defendants, that any claim for false imprisonment would therefore be outside the limitation period which would have ended in

December 2020. The present proceedings were not commenced by Mr Worrell until 6 May 2022.

17. Ms. Dill-Francois submits that the fact that the proceedings against Mr Worrell continued until the Court of Appeal rendered its judgment on 17 June 2016 is irrelevant to the consideration of the issue of accrual of the cause of action based upon false imprisonment. The Court accepts this analysis based upon the decision of Sir John Wood in *Baker v Commissioner of Police for the Metropolis* [1996] Lexis Citation 1045. In that case the plaintiffs alleged malicious prosecution against the defendant, the Chief Officer of Police for London. The defendant filed a summons to strike out the action on the ground that it was time-barred pursuant to section 2 of the Limitation Act 1980, which provides that an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued. The importance of this decision lies in the distinction drawn by the court between an action of trespass to the person (such as false imprisonment) and an action on the case (such as malicious prosecution). Sir John Wood held that the cause of action based upon false imprisonment accrues immediately upon the person being wrongfully imprisoned whilst the cause of action for malicious prosecution cannot accrue until a court has acquitted the person being prosecuted. In that regard Sir John Wood relied upon a number of decisions including *Morgan v Hughes* (1788) 2 TLR 225, at page 3 of the judgment. In *Morgan v Hughes* Buller J held:

> *"The distinction between the actions of trespass and case has long been settled in the manner mentioned by my brother, Ashurst. The gravamen of the present case is that the offender personally took and arrested the plaintiff illegality and imprisoned him.* ***This is false imprisonment and is an immediate injury to the person of the plaintiff. It is stated on the record that the warrant was illegally granted and it never was doubted that in such a case trespass was the proper remedy.*** *But even if an action on the case can be maintained here, this declaration cannot be supported. The grounds of a malicious prosecution are, first, that it was done maliciously; secondly, without probable cause. The want or probable cause is the gist of the action but is not stated here, for it should have been shown on the face of the record that the prosecution was at an end."* (emphasis added)

18. The Court accepts that in relation to the cause of action based upon false imprisonment, the cause of action accrued when Mr Worrell was arrested and detained by the Police in December 2014 and in the circumstances, it is clear that the limitation period for the cause of action expired in December 2020. Accordingly, the Court concludes that the cause of action based upon false imprisonment is statute barred and should be struck out. The Court notes that in his reply submissions Mr Worrell accepted this as correct legal position.

Conspiracy to injure

19. Ms. Dill-Francois contends that the cause of action in relation to conspiracy to injure falls in the same category as false imprisonment for the purposes of considering whether it is statute barred. She contends that conspiracy to injure is trespass to the person, not the case, and as such, accrues from the date of the alleged conspiracy (the agreement).

20. It appears to the Court that the position in relation to civil conspiracy is not as straightforward as in relation to false imprisonment. In relation to civil conspiracy the constituent elements are not merely an agreement (as is the case in relation to criminal conspiracy) but also the overt acts necessary to implement the agreement. Cockerill J described the elements of conspiracy to injure in *FM Capital v Marino* [2018] EWHC 1768 (Comm) at [94] thus:

> *"94. The elements of the cause of action are as follows:*
>
> *i) A combination, arrangement or understanding between two or more people. It is not necessary for the conspirators all to join the conspiracy at the same time, but the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of: Kuwait Oil Tanker at [111].*

ii) An intention to injure another individual or separate legal entity, albeit with no need for that to be the sole or predominant intention: Kuwait Oil Tanker at [108]. Moreover:

a) The necessary intent can be inferred, and often will need to be inferred, from the primary facts – see Kuwait Oil Tanker at [120-121], citing Bourgoin SA v Minister of Agriculture [1986] 1 QB: "[i]f an act is done deliberately and with knowledge of the consequences, I do not think that the actor can say that he did not 'intend' the consequences or that the act was not 'aimed' at the person who, it is known, will suffer them".

b) Where conspirators intentionally injure the claimant and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests: Lonrho Plc v Fayed [1992] 1 AC 448, 465-466; see also OBG v Allan [2008] 1 AC 1 at [164-165].

c) Foresight that his unlawful conduct may or will probably damage the claimant cannot be equated with intention: OBG at [166].

iii) In some cases, there may be no specific intent but intention to injure results from the inevitability of loss: see Lord Nicholls at [167] in OBG v Allan, referring to cases where:

"The defendant's gain and the claimant's loss are, to the defendant's knowledge, inseparably linked. The defendant cannot obtain the one without bringing about the other. If the defendant goes ahead in such a case in order to obtain the gain he seeks, his state of mind will satisfy the mental ingredient of the unlawful interference tort."

iv) ***Concerted action (in the sense of active participation) consequent upon the combination or understanding: McGrath at [7.57].***

v) ***Use of unlawful means as part of the concerted action***. *There is no requirement that the unlawful means themselves are independently actionable: Revenue and Customs Commissioners v Total Network [2008] 1 AC 1174 at [104].*

vi) *Loss being caused to the target of the conspiracy."*

21. In *Kuwait Oil Tanker Company SAK v Al Bader* [2000] Lexis Citation 2962, Nourse LJ highlighted this distinction in the following passage at page 34:

> *"It is important to note that the tort of conspiracy to injure by unlawful means is different in significant respects both from the crime of conspiracy and from the law of contract. A criminal conspiracy is in essence an agreement to commit a crime and, as such, is complete when the agreement is made, whether or not it is carried out. For this reason care must be taken in considering decisions in criminal cases where (as here) the question is whether the tort of conspiracy was committed. Lord Diplock put it in this way in Lonrho v Shell (at page 188):*
>
> > *"Regarded as a civil tort, however, conspiracy is a highly anomalous cause of action. The gist of the cause of action is damage to the plaintiff;* ***so long as it remains unexecuted the agreement, which alone constitutes the crime of conspiracy, causes no damage; it is only acts done in execution of the agreement that are capable of doing that. So the tort, unlike the crime, consists not of agreement but of concerted action taken pursuant to agreement****."*
>
> *In that passage Lord Diplock appears to have been referring to both types of conspiracy.* ***The essence of the unlawful means conspiracy is injury to the claimant as a result of an unlawful act or acts where two or more people have combined to cause the injury. It is not necessary that every overt act is done by every conspirator, but the act must be done pursuant to the conspiracy or combination****."* (emphasis added).

22. Mr Worrell argues that the tort of conspiracy to injure involves overt acts in pursuance of the alleged agreement to injure. He says that in this case, the attempt to procure a second trial by

the Defendants, by way of appeal to the Court of Appeal in October 2016, was the last such overt act. Accordingly, Mr Worrell contends, that the limitation period will only expire at the end of October 2022. He says that it is therefore arguable that the cause of action accrued once the appeal was either argued on 31 October 2016 or dismissed by the Court of Appeal on 14 November 2016. On this basis, he says, it is arguable that the limitation period has not expired when the Writ of Summons was issued in this case on 6 May 2022.

23. The Court reminds itself that it is only in very clear cases that it is appropriate to strike out an action on the ground that it is statute barred. Thus, in the recent case of *Geoffrey Willcocks v Joseph E Wakefield* [2022] SC (Bda) 76 Civ (11 October 2022), this Court so held:

> *"40. The Court of Appeal's decision in Ronex Properties Ltd v John Laing Construction Ltd [1983] 1 QB 398, makes it clear that it is only "in a very clear case" a court will strike out a claim on the ground that the defendant has a defence under the Limitation Act. At 405A Donaldson LJ stated the position as follows:*
>
> > *"Where it is thought to be clear that there is a defence under the Limitation Acts, the defendant can either plead that defence and seek the trial of a preliminary issue or, in a very clear case, he can seek to strike out the claim upon the ground that it is frivolous, vexatious and abuse of the process of the court and sport's application with evidence."*

24. The Court is not satisfied that this is such a *very clear case* where the Court can conclude that the claim based upon conspiracy to injure is statute barred. It appears to the Court that it is at least arguable that the cause of action based upon conspiracy to injure does not accrue until the last overt act relied upon by the plaintiff has taken place. On that basis it is arguable that the cause of action relating to conspiracy to injure did not accrue until the hearing of the DPP's appeal before the Court of Appeal in October 2016. On this basis the commencement of these proceedings on 6 May 2022 would not be barred under the Limitation Act 1984. In the

circumstances, the Court concludes that it would not be appropriate to strike out the cause of action relating to conspiracy to injure on the ground that it was statute barred when these proceedings were commenced.

Malicious prosecution

25. The elements of malicious prosecution are set out in the speech of Lord Viscount Simonds in *Glinski v McIver* [1962] AC 726 at 742:

> *"Of the four essentials to a successful action for malicious prosecution the first two, namely, that the appellant was prosecuted by the respondent and was acquitted, are not in debate. It is upon the third and fourth essentials that controversy has arisen.* ***The third is that the prosecution was without reasonable and probable cause, and the fourth that it was malicious****. I need not remind your Lordships that it is for the plaintiff in such an action to prove these facts."*

26. Ms. Dill-Francois argues that in this case, as in *Glinski v McIver*, it is not disputed that the first two aspects of the test are satisfied, as Mr Worrell was prosecuted and subsequently acquitted. However, she argues, that Mr Worrell cannot satisfy the remainder of the elements, namely that the prosecution was without reasonable cause and that it was malicious.

27. In support of these contentions Ms. Dill-Francois relies upon the fact that, at the conclusion of the appeal of the Plaintiff's criminal trial, the Court of Appeal noted, in its postscript, that Mr Worrell had come perilously close to having breached the well-known principle that discussions between witnesses should not take place, and that statements and proofs of one

witness should not be disclosed to any other witness. The Court of Appeal noted that based on the facts of the case, Mr Worrell was "*sailing very close to the wind*".

28. Additionally, Ms. Dill-Francois points out that in the cost application brought by the Mr Worrell with respect to the 2016 appeal, the Court of Appeal dismissed the application noting that there were issues of law from the Supreme Court trial that the Crown was entitled to, if not obliged to, raise before the Court of Appeal. The Court further noted that whilst the Crown's appeal did not succeed, there was nothing to suggest that they acted improperly in bringing such appeal.

29. Finally, Ms. Dill-Francois relies on the fact that the Court of Appeal noted that whilst Mr Worrell was entitled to give a "*no comment*" interview, the consequence was such that his full defence only became apparent when he gave evidence in the Supreme Court trial. This was relevant because it was only after Simmons J had heard Mr Worrell's evidence, that she felt obliged to stop the case. Simmons J had refused to accept Mr Worrell submission that based upon the prosecution case there was no case to answer.

30. The Court accepts that these are powerful arguments against the contention that the prosecution of Mr Worrell was commenced and continued without reasonable and probable cause. However, the issue at this stage is not the assessment of potential arguments available to the parties in relation to a particular issue but whether the issue is arguable. On the latter question the Court concludes that it would be unsatisfactory to strike out a claim based upon the assessment of factual evidence which has not been tested at trial or in respect of which there has been no discovery. In the circumstances the Court is unable to conclude that having regard to these contentions advanced by Ms. Dill-Francois the Court can safely conclude that this issue is not arguable. Accordingly, the Court declines to strike out this cause of action based upon the contention that it is unarguable.

31. During the course of the argument there was much debate as to whether the police officers (the 5th and 6th Defendants) and the Crown Counsel (the 3rd and 4th Defendants) could properly be considered as "*prosecutors*" for the purposes of this claim for malicious prosecution. Having reflected on the matter, it appears to the Court that this issue is highly fact sensitive (see paragraphs 16-19 to 16-24 of *Clerk & Lindsell on Torts*, Twenty-Second Edition) and is not a suitable issue to be determined at a strike out application.

Vicarious liability of the Commissioner of Police

32. In paragraph 3 of the Statement of Claim, it is said that the Commissioner of Police and the police officers referred to in the Statement of Claim were at all material times officers of the Bermuda Police Service acting together and under the direction and control in the performance of their functions as police officers. It is further said that in the premises, insofar as the Commissioner of Police is not liable as a primary tortfeasor, he/she is vicariously liable for the tortious actions and/or omissions of Michael Redfern and Jason Smith (the 5th and 6th Defendants).

33. Ms. Dill-Francois challenges the contention that the Commissioner of Police is vicariously liable for the actions and/or omissions of other police officers within the Bermuda Police Service, and relies upon the decision of Kessaram AJ in *Akinstall v The Commissioner of Police*, Civil Jurisdiction 2003 No. 58, where the learned judge considered the issue whether the Commissioner of Police could be vicariously liable, as a matter of law, for the actions and/or omissions of the police officers within the Bermuda Police Service. Kessaram AJ held that as a matter of Bermuda law the Commissioner of Police could not be vicariously liable for the conduct of other police officers within the Service and his reasoning for that conclusion is set out in the following passages in his judgment:

"I was referred by Crown Counsel Melvin Douglas acting for the Police Commissioner to the case of Enever v The King (1906) 3 CLR 969 for an understanding of the position in law of police officers vis-a-vis their appointing authority. That case makes it clear (specifically in relation to the position in Tasmania) that a police officer occupies a public office. I do not believe the position is any different in Bermuda. The appointment of police officers (except the Commissioner and Deputy Commissioner) is made by the Governor on the recommendation of the Public Service Commission...

It seems to follow that the Police Commissioner is not being sued as the Crown for the acts or omissions of his officers. In the circumstances, section 3 of the Crown Proceedings Act 1966 does not apply. But even if (allowing a great degree of latitude to the Plaintiff in the way the case is presented) was to be treated as the Crown, it is clear on the authority of Enever that no liability would attach on the basis of the principle of respondeat superior notwithstanding s. 3 of the Crown Proceedings Act. One reason put forward for the rule of law (that the appointing authority of the police officer is not responsible for the acts or omissions of the police officers) is that a police officer is performing a public duty. It is the nature of the duties performed by the police officers and not the relationship between the police officer and the body appointing him that is important. As was stated by Griffith, CJ in Enever:

> *"Now, the power of a constable, qua peace officer, whether conferred by common law or statute law, are exercised by him by virtue of his office, and cannot be exercised on the responsibility of any person but himself. If he arrests on suspicion of felony, the suspicion must be a suspicion, and must be reasonable to him. If he arrests in a case in which the arrest may be made on view, the view must be his view, not that of someone else. Moreover, his powers being conferred by law, they are definite and limited, and there can be no suggestion of holding him out as a person possessed of greaterauthority than the law confers upon him. I dispose to think that this is a sounder basis for the rule of the immunity of those who appoint constables for their acts than that suggested by Wills J. A constable, therefore, when acting as a peace officer, is not exercising a delegated authority, but an original authority, and the general law of agency has no application."*

I have been given no reason to treat the position of police officers in Bermuda as being different to that in Australia. In my view the position is the same. In any event, as provided for in the Bermuda Constitution Order 1968, the Police Commissioner does not appoint police officers. They are appointed by the Governor upon the recommendation of the Public Service Commission. Thus, if the doctrine of respondeat superior were to have any application in the context of this case, it would be against the Governor that any proceedings would be directed. As noted earlier, however, such a claim would be bound to fail having regard to the nature of the duties performed by police officers."

34. The Court accepts that the correct legal position in relation to vicarious liability is as set out by Kessaram AJ in *Akinstall*. It follows therefore, that any cause of action pursued against the Commissioner of Police based upon the doctrine of vicarious liability is unsustainable and that part of the pleaded case shall be struck out. To the extent that Mr Worrell contends that the Commissioner of Police is being sued in his personal capacity, the Court gives Mr Worrell leave to amend the Statement of Claim and to make that position clear and set out the material facts relied upon in support of such an averment. If Mr Worrell elects to amend the Statement of Claim, he must do so within 14 days after the delivery of this judgment.

Vicarious liability of the DPP

35. In oral argument Ms. Dill-Francois contended that the DPP is in the same position, as far as vicarious liability is concerned, as the Commissioner of Police and the analysis and holding in the *Akinstall* case applies equally to the DPP.

36. The position of Crown Counsel may be similar to that of the police officers in the *Atkinstall* case if the liability is sought to be attributed to the DPP purely on the basis of employment of

Crown Counsel. However, it appears to the Court that it is certainly arguable that Crown Counsel are acting as agents for the DPP. In this regard it is to be noted that under section 71A of the Bermuda Constitution Order 1968, it is the DPP who has the power to institute and undertaking of proceedings in respect of any offence against any law in force in Bermuda. This power of DPP may be exercised by him in person or by officers subordinate to him acting under and in accordance with his general or special instructions. Accordingly, it is arguable that the 3rd and 4th Defendants, when acting as Crown Counsel in this matter, were acting as agents of the DPP. In the circumstances, it is arguable that the DPP, as the principal, may be liable for the actions of the 3rd and 4th Defendants (see paragraph 16-29 of *Clerk & Lindsell on Torts*, Twenty-Second Edition).

37. The Court notes that the Statement of Claim in fact pleads a direct claim against the DPP. Thus, as noted earlier, in paragraph 25 of the Statement of Claim it is asserted that on 8 December 2014 that the DPP caused Mr Worrell to be charged in the Hamilton Magistrates' Court with (1) conspiring to defeat justice; (2) fabricating evidence; (3) perjury.

38. In the circumstances the Court declines to strike out the claim against the DPP based upon the contention that the DPP cannot be liable for the actions and/or omissions of Crown Counsel, provided that it is understood that the attribution of responsibility against the DPP is likely to be based on agency principles as opposed to liability arising from the employment as Crown Counsel.

The 3rd to 7th Defendants' Request for Further and Better Particulars of the Statement of Claim

39. As an initial matter, the Court grants leave to amend the summons issued by the 2nd to 7th Defendants dated 24 June 2022 as set out in the summons dated 11 July 2022.

Paragraph 35.2 of the Statement of Claim

40. In paragraph 35.2 of the Statement of Claim Mr Worrell alleges that the Defendants conspired together and with "*others not party to this action*" in order to procure the malicious and wrongful prosecution of him in order to do him harm and damage his career as a barrister. The Defendants requested Mr Worrell to identify "*others not party to this action*", including, full names, addresses and contact details for each such person. In his response Mr Worrell states that the identities of those "*others not party to this action*" are not known to him.

41. The Court accepts Mr Harshaw's submission that in the circumstances it is impossible for the Defendants to respond to this allegation. In any event this assertion does not add anything to the pleaded case. Accordingly, the Court orders that the reference to "*others not party to this action*" be struck out from paragraph 35.2 of the Statement of Claim.

Paragraph 35.5 of the Statement of Claim

42. In paragraph 35.5 of the Statement of Claim Mr Worrell alleges that in 2014 a Mr Simpson engaged Mr Worrell to take over the conduct of his appeal in a separate matter and Mr Worrell made repeated requests to the 6th and 7th Defendants for access to certain police exhibits, including human tissue, for the purpose of forensic analysis. The Defendants requested Mr Worrell to state how many requests were made for access to these exhibits in respect of each such request stating whether it was oral or in writing, and if in writing the date of the writing and the address to which the request was sent to whom the request was delivered. In his response Mr Worrell stated that at least three request was made in writing via email by him to the 6th and 7th Defendants to access the relevant exhibits.

43. The Court accepts Mr Harshaw submission that the response from Mr Worrell does not properly respond to the request made. To say that "*at least three requests were made in writing by email*" does not properly answer the question which is being asked. Accordingly, the Court orders that Mr Worrell should provide a complete answer to the request made.

44. Mr Harshaw accepted that the request made in respect of paragraph 35.6 had been adequately answered and he further advised that he did not wish to pursue the request made in respect of paragraph 35.7 of the Statement of Claim.

Paragraph 35.11 of the Statement of Claim

45. In paragraph 35.11 Mr Worrell alleges that when he was finally allowed to access the exhibits, the 6th Defendant remain present throughout and actively attempted to dissuade him from carrying out the proper and thorough inspection of the exhibits, by among other things, intimidating and threatening him. The Defendants requested further and better particulars of the acts the 6th Defendant which are alleged to have been intimidating and threatening to Mr Worrell. Mr Worrell has set out a narrative of what transpired at the meeting. The Court considers that the narrative sets out Mr Worrell's case in respect of this allegation and no useful purpose would be served by ordering that he provides further particulars.

46. Mr Harshaw advised that he was no longer pursuing particulars in respect of paragraph 35.12 of the Statement of Claim.

Paragraph 35.20 of the Statement of Claim

47. In paragraph 35.20 Mr Worrell alleges that the 7th Defendant aided, abetted, counselled and/or procured the entry of Mr Thomas into Bermuda's Justice Protection Programme. The Defendants requested Mr Worrell to state what act or acts it is alleged that the 7th Defendant has undertaken to procure the entry of Mr Thomas into the Bermuda Justice Protection Programme or his continued participation in the program and when it is alleged actions. In response Mr Worrell states that as a member of the Justice Protection Administrative Centre, the 7th Defendant approved and/or directed, or failed to object to, or deny, Mr Thomas's entry into the Justice Protection Programme.

48. The Court considers that Mr Worrell's response adequately sets out the basis of his allegation made in paragraph 35.20 of the Statement of Claim. It provides sufficient basis for the 7th Defendant to understand the allegation made against him. Accordingly, no further order is made in relation to this particular request.

49. Mr Harshaw accepted that he no longer pursued the request in respect of paragraph 35.40 of the Statement of Claim.

Paragraph 35.43 of the Statement of Claim

50. In paragraph 35.43 of the Statement of Claim the 1st, 3rd, 4th, and 7th. Defendants together and individually encouraged, instigated and/or assisted the then Attorney General to bring section 17(5) of the Court of Appeal act 1964 (allowing appeals against a no case to answer ruling) into force on 6 November 2015. The Defendants sought detailed particulars of the actions taken by the Defendants in relation to this specific allegation. In response Mr Worrell states that "*The answer to this question is not within the plaintiff's knowledge.*"

51. The Court accepts Mr Harshaw submission that this is an unsatisfactory response. It makes it impossible for the Defendants to understand what is alleged against them and to answer that case. Furthermore, it is difficult to see on what basis Mr Worrell could make this allegation if "*the answer to this question is not within the plaintiff's knowledge*". Accordingly, paragraph 35.43 of the Statement of Claim struck out.

Conclusion

52. Mr Worrell's claim based upon false imprisonment is struck out on the basis that it was statute barred when these proceedings were commenced on 6 May 2022. The Court declines to strike out the claim is based upon conspiracy to injure and malicious prosecution.

53. The Court orders that the further and better particulars of the Statement of Claim as sought by the 3rd to 7th Defendants and as set out in paragraphs 39 to 51 above.

54. The Court will hear the parties in relation to the issue of costs, if necessary.

Dated this 8th day of November 2022.

THE SUPREME COURT OF BERMUDA

NARINDER K. HARGUN
CHIEF JUSTICE