[2022] JMCA Civ 17

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MRS JUSTICE DUNBAR-GREEN JA
THE HON MRS JUSTICE G FRASER JA (AG)

PARISH COURT CIVIL APPEAL NO 3/2018

BETWEEN	**ALEXANDER OKUONGHAE**	**APPELLANT**
AND	**BOARD OF DIRECTORS OF MICO UNIVERSITY COLLEGE**	**RESPONDENT**

Appellant in person

Garth McBean QC instructed by Pickersgill, Dowding & Bayley Williams Attorneys-at-law for the respondent

26 and 29 April 2022

F WILLIAMS JA

[1] I have read the draft judgment of my sister G Fraser JA (Ag) and agree.

DUNBAR-GREEN JA

[2] I too have read the draft judgment of my sister G Fraser JA (Ag) and agree.

G FRASER JA (AG)

[3] This is an appeal by Mr Alexander Okuonghae ('the appellant'). He has sought to challenge a Parish Court Judge's decision of 6 February 2018 in which she had nonsuited him in his claim filed in plaint no 4790/17. The matter has its genesis in attachment of debts orders (provisional and final) made against the appellant on 13 June 2017 and 6

July 2017 in the Supreme Court. Those orders were for a sum of $1,458,633.82 to be garnished from the appellant's salary and made payable to the attorneys-at-law for the University of Technology Jamaica ('UTECH').

[4] The respondent in the plaint before the Corporate Area Parish Court Civil Division (Plaint No 4790/17) and in this appeal is the Board of Directors of the Mico University College, which was at all material times the employer of the appellant. The respondent was the named garnishee in the Supreme Court claim no 2010HCV01454 (pursuant to which the attachment of debts orders were made) brought by the appellant against UTECH and was, therefore, responsible for ensuring that the debt owed by the appellant to UTECH was satisfied from the appellant's salary.

[5] I have observed that neither of the attachment of debts orders stipulated the manner in which the garnishment of the appellant's salary was to be carried out. No procedure was laid down as to whether incremental or periodical payments were to be made and in what amounts. It was, therefore, left to the sole discretion of the respondent garnishee as to how much and when deductions were to be made.

[6] The total debt was of a significant amount, that being almost $1,500,000.00 and would have required a significant period of time for its discharge having regard to the salary earned by the appellant, which by his account was $106,137.72 per month. The respondent, it would seem, in a bid to satisfy the debt payment, withheld the appellant's salary for the month ending June 2017. That deduction appeared to have been in the amount of the appellant's whole or substantially his whole salary. A further deduction of the appellant's salary was made in the month of July in similar amounts as in June. Those sums were, however, refunded to the appellant and an attempt to make a similar withdrawal in August was circumvented.

[7] After the first deduction was made a number of events unfolded, most significant of which are: (i) a payroll deduction authority (filed and labelled 'AO17' by the appellant) which was commissioned and signed by the appellant on 12 July 2017; and (ii) a

memorandum NO HR16134, generated by Ms Verona Dawkins, Director of the Human Resources Department of the respondent (filed and labelled 'AO1' by the appellant).

[8] The contents of the said payroll deduction authority were addressed to the respondent and dictated the following:

> "To: Mico University College
> 1A Marescaux Road
> Kingston 5
>
> This serves as my irrevocable instruction to you to deduct Fifteen Thousand dollars (J$15,000.00) from my net salary each month commencing during the month of July 2017, and make a cheque payable to **University of Technology, Jamaica** and forward the cheque to the following address:
>
> University of Technology, Jamaica
> c/o Myers Fletcher & Gordon Attorneys-at-Law
> 21 East Street
> Kingston
> …" (Emphasis as in original)

[9] The appellant, six days after the final attachment of debts order, authorised the respondent to deduct $15,000.00 from his salary for payment to UTECH. Nonetheless, on 17 July 2017, further to a letter from Myers, Fletcher and Gordon, the respondent was instructed to pay over the appellant's salary less the respondent's fees of $8,000.00 to UTECH. On 8 August 2017, the appellant was copied on the memorandum, which reads as follows:

> "**TO:** Ms Claudette Booth
>
> **FROM:** Verona Dawkins- Director, Human Resource Department
>
> **Ref.#:** HR16134
>
> **Copied:** Mr Alexander Okuonghae
>
> **DATE:** 2017 August 8

SUBJECT: Final Order – Alexander Okuonghae

> The Final Order from the Supreme Court indicates that Mr Okuonghae is required to pay to UTech $1 458 633.52 and therefore the following will apply:
>
> > 1. From Mr Okuonghae 2017 June salary - costs have been awarded to The Mico in the sum of $8 000.
> >
> > 2. The remainder of the 2017 June salary which is $99 338.58 is to be made payable to Myers, Fletcher & Gordon.
>
> We have since been advised that all salary owing to Mr Okuonghae thereafter is to be paid to him."

[10] The appellant was further advised by the respondent that the deductions from his July and August 2017 salary were not effected and would be recouped from his October 2017 salary. The sum of $15,000.00 was, however, deducted on 25 September in fulfilment of the garnishment of the appellant's salary. Accordingly, as at September 2017, deductions in the sum of $15,000.00, agreed and authorised by the appellant further to the Payroll Deduction Authority, officially commenced.

[11] Dissatisfied with the actions of the respondent and aggrieved by the memorandum, the appellant then filed the suit in the Parish Court (Plaint No 4790/17), in which he claimed the sum of $1,000,000.00 for damages. He stated that the suit was brought:

> "for the acts of wrongful conduct committed against Alexander Okuonghae by the Mico University College located on 1A Marescaux Road, Kingston 5. On or about the 25th day of September 2017, the University College proceeded to wrongly and/or wilfully and/or wantonly and/ maliciously and/or vindictively and/or oppressively and/or in bad faith caused Alexander Okuonghae to be denied of the rights to all salary owing to Alexander Okuonghae in the matter of Memorandum referenced as "Ref.#: HR16134" dated 2017 August 8 from Verona Dawkins to Claudette Booth, and copied to Alexander Okuonghae …"

[12] On the plaint coming before the Parish Court Judge for hearing on 6 February 2018, the appellant, who was self-represented, avers that he was not heard or granted the opportunity to give evidence, nevertheless, he was non-suited. In his notice of appeal, the appellant has outlined 17 grounds of appeal, some of which improperly seek a determination by this court of the appellant's claim before the Parish Court Judge. The orders sought by the appellant are, among other things, that the decision of the Parish Court Judge to nonsuit the appellant be set aside, that the amount claimed in plaint no 4790/17 be increased from $1,000,000.00 to $1,458,633.82 and that judgment be entered in his favour for that increased sum to be paid to him.

[13] Having heard the submissions of the appellant and Queen's Counsel, Mr Garth McBean, for the respondent, I have distilled that the crux of the complaint before this court is that the Parish Court Judge erred when she failed to afford the appellant the opportunity to present his evidence in support of his claim and to establish his cause of action, and that her decision to nonsuit him deprived him of his right to be heard. The appeal is confined to that issue.

[14] When this matter came before the Parish Court Judge, certain inquiries were made of the appellant, further to which he admitted to her that there had been a claim before the Supreme Court concerning the sum in dispute. The Parish Court Judge advised the appellant that the case had already been ventilated in the Supreme Court and so it could not be brought before the Parish Court. She also noted that the sum claimed by the appellant was the exact sum ordered to be paid by him to UTECH and that he had simply reduced it to $1,000,000.00 to bring his claim within the monetary jurisdiction of the Parish Court. I will take this opportunity to note that, in the light of the appellant's request before this court for the sum claimed in the Parish Court to be increased to $1,458,633.82, the Parish Court Judge's inference in that regard was correct. Consequently, the reasons given by the Parish Court Judge for nonsuiting the appellant were:

> "1) The Claim did not disclose a cause of action[.]

> 2) The sum claimed was already adjudicated in a Court of higher jurisdiction and a ruling made. The sum of $1,458,633.52 which the defendants in the case at bar paid to UTECH was paid pursuant to a Court Order."

[15] It is well settled that this court will only disturb the Parish Court Judge's decision, where it is shown that she misdirected herself on the applicable legal principles or misinterpreted or misapplied the facts, or that her decision was so aberrant that no judge regardful of his or her duty to act judicially would have made that decision (see **Hadmor Productions Ltd v Hamilton** [1982] 1 All ER 1042 and **The Attorney General of Jamaica v John Mackay** [2012] JMCA App 1).

[16] The Parish Court Judge is empowered by section 181 of the Judicature (Parish Courts) Act ('the Act') to nonsuit a plaintiff, it provides:

> "181. The [Parish Court Judge] shall have power to nonsuit the plaintiff in every case in which **satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the Court**." (Emphasis added)

[17] In the case of **Lorna Taylor v Eric Williams and others** [2014] JMCA Civ 53, on which the respondent relied, this court held at para. [18], in reference to section 181 of the Act, that it allows a Parish Court Judge (formerly a Resident Magistrate) to enter a nonsuit if he or she is not satisfied that the evidence is sufficient to support one side or the other. The crucial consideration, therefore, is the sufficiency of the evidence. The respondent has agreed that section 181 of the Act requires the Parish Court Judge to have heard evidence before she could exercise her power to nonsuit a plaintiff. Nevertheless, it was submitted that the documents before the Parish Court Judge, which were filed by the appellant and attached to his plaint and particulars of claim would have constituted evidence enabling her to make such a determination. This narrows the point of dispute even further to what would constitute evidence for the purposes of a trial on a plaint in civil proceedings before the Parish Court Judge.

[18] Since the Parish Court Judge is a creature of statute we must, therefore, look to the Act, which is the statute of her creation, to determine her powers. The pertinent provisions relative to the trial of claims can be found at sections 183 to 191 of the Act. Of particular relevance in this appeal are sections 183 and 184, which provide:

> "183. On the hearing of any action, or in any other proceeding, civil or criminal, before a Court, all persons adduced as witnesses may be examined upon oath, or, in those cases in which persons are allowed by law to make affirmation instead of taking an oath, on solemn affirmation.
>
> 184. On the day in that behalf named in the summons, the plaintiff shall appear, and thereupon the defendant shall be required to answer by stating shortly his defence to such plaint; and on answer being so made in Court, the Magistrate shall proceed in a summary way to try the cause, and shall give judgment without further pleading, or formal joinder of issue."

The above provisions make specific reference to evidence being adduced upon oath or affirmation. Additionally, it refers to the Parish Court Judge's power to determine the matter summarily upon certain enquiries being made. Together, they provide guidance on how trials in the Parish Court are to be conducted. The effect of a nonsuit is to dismiss a plaintiff's matter in circumstances where the evidence is so insufficient that the Parish Court Judge is unable to determine it in favour of either party.

[19] It appears that the Parish Court Judge, having informally canvassed the defence from the respondent's attorney and made queries of the appellant, was satisfied that he was attempting to re-litigate the matter which was already settled before the Supreme Court. On that basis, she nonsuited him without conducting a trial and eliciting evidence on oath or affirmation. Therein lies the challenges to her decision.

[20] On examining the particulars of claim filed in support of the appellant's suit, it is evident that the particulars of claim did not specify any named cause of action, whether arising in contract or in tort. I would even venture to say that the content of the particulars of claim was confusing and lacking in precision and care in its drafting. The appellant has

agreed that this is a reasonable criticism of his drafting skills or lack thereof. The question though is whether the action of the Parish Court Judge in nonsuiting the appellant was lawful, or did she err in law as the appellant complains.

[21] The question of whether a cause of action is disclosed depends on the facts of the particular case and not the format in which the action was brought. Determining the facts of a case is only possible after ascertaining evidence. Mr McBean has submitted that indeed there was documentary evidence filed by the appellant that the parish court judge had examined and which informed her decision. Even if it could be said that the documents filed by the appellant constituted "evidence" in the strict sense, was such evidence heard, received, and examined by the parish court judge? This is crucial in circumstances where the documents filed by the appellant, who was a litigant in person, were unclear with respect to the cause of action and the issues to be determined.

[22] I am of the view that it would have been prudent for the Parish Court Judge to embark on a hearing of the summons prior to making her determination. A trial would have had the effect of achieving substantial justice between the parties, especially since the Parish Court is not a 'court of pleading'.

[23] The Parish Court Judge did not follow the procedures laid out in the legislation in terms of a summary trial of a plaint before she was entitled to nonsuit the appellant. For all of the above reasons, I am of the view that the Parish Court Judge's decision to nonsuit the appellant is flawed since the exercise of such a power requires a particular course of action. I find that there is merit in this ground of appeal, in that the Parish Court Judge erred when she nonsuited the appellant without hearing evidence on oath or affirmation. A trial on the merits would have afforded the appellant the opportunity to explain himself as he rightly contends, and according to his submissions, and would have allowed for him to seek to establish that his claim was concerned with the memorandum "Ref.#: HR16134" and not an attempt to re-litigate.

[24] I wish to note, however, that since the appellant was non-suited, this was not a final determination of his suit, nor was he barred from the jurisdiction of the Parish Court. An alternative and more appropriate course would have been to re-file his plaint with the Parish Court to have it put before a different judge, as opposed to filing an appeal with this court. With that being said, it is my view that the appeal should be allowed in part in terms of the first order sought, namely "[t]hat the decision of the Corporate Area Parish Court, to nonsuit the Appellant, in matter of Plaint No. 4790/17, on the 6th day of February 2018, be set aside and/or reversed". I would, therefore, recommend that the matter be remitted to the Parish Court for the hearing of Plaint No 4790/17. In the normal course of things, costs would follow the event but in this case the appellant having been nonsuited should have re-filed the matter in the Parish Court. I would also recommend that costs be awarded to the respondent in the amount of $30,000.00 and that the matter be remitted to the Parish Court for the hearing of the plaint.

F WILLIAMS JA

ORDER

1. The appeal is allowed in part.

2. The decision of the Parish Court Judge made on 6 February 2018 to nonsuit the appellant in Plaint No 4790/17, is set aside.

3. The matter is remitted to the Parish Court for the hearing of Plaint No 4790/17.

4. Costs are awarded to the respondent in the amount of $30,000.00.