



IN THE SUPREME COURT OF NAURU  
AT YAREN DISTRICT  
CIVIL JURISDICTION

CIVIL SUIT NO. 2/2019

BETWEEN

SLADE BENJAMIN OF DENIG DISTRICT

Plaintiff

AND

NAURU POLICE FORCE, YAREN DISTRICT

First Defendant

AND

DIRECTOR OF PUBLIC PROSECUTIONS,  
YAREN DISTRICT

Second Defendant

AND

SECRETARY FOR JUSTICE, YAREN DISTRICT

Third Defendant

Before: Khan, ACJ  
Date of Hearing: 24 November 2020  
Date of Ruling: 12 January 2021

Case to be referred to as: Benjamin v Nauru Police Force and Secretary for Justice

**CATCHWORDS:** Where claim filed without leave of the Cabinet – Where under section 3(2) of Republic Proceedings Act 1972 plaintiff was barred from filing the claim without Cabinet's leave – Where O.50, r.2 provides for Certificate of the Secretary to the Cabinet to be presented to the Registry prior to the issue of the proceedings. Claim dismissed.

**APPEARANCES:**

Counsel for the Plaintiff: Mr V Clodumar  
Counsels for the First and Second Defendants: Miss B Narayan and J Togran

## RULING

### INTRODUCTION

1. The plaintiff has filed a claim for malicious prosecution, in that, he claims to be wrongly charged for the offences of rape and causing harm.
2. In the statement of claim the plaintiff alleges that on 28 September 2016 he was arrested and detained at the Nauru Police Station and produced before the District Court on 29 September 2016 – some 36 hours after his arrest. As a result of the charges, he was remanded in custody for a period of 14 days. He later took part in a record of interview on 7 December 2016 in which he identified another person who ran away from the scene of the incident.
3. The plaintiff's criminal case for rape and causing harm was set down for trial on 11-13 December 2017 and on 8 September 2017 the prosecutor in carriage of the trial advised the Registrar that the charges against the plaintiff will be withdrawn. On 11 September 2017 the Director of Public Prosecutions filed a nolle prosequi in respect of both charges and he was discharged.
4. The plaintiff claims the following damages against the defendants:
  - a) Exemplary damages for false imprisonment in the sum of \$10,000;
  - b) General damages for stress and suffering in the sum of \$10,000;
  - c) Specific damages for wages in the sum of \$377 for the period that he was remanded in custody;
  - d) General damages for defamation in the sum of \$10,000.
5. The defendants deny the claim and states that the plaintiff was only charged for the offences after sufficient evidence was obtained against him and also pleaded that the claim is bad in law and should be struck out.

### SUMMONS TO STRIKE OUT

6. On 26 August 2020 the defendants filed a summons under O.15, r.19 of the Civil Procedure Rules 1972 (CPR 1972) to strike out the claim as this action was filed on behalf of the plaintiff without obtaining Cabinet's leave as required under section 3(2) of the Republic Proceedings Act 1972 (RPA 1972).
7. In the plaintiff's response to this strike out application filed on 5 October 2020 it is stated that section 3(2) of RPA 1972 does not apply as he is only seeking declaratory orders against the defendants and is not seeking an order to "enforce a claim" under section 3(2) of RPA 1972.

## AMENDED SUMMONS TO STRIKE OUT

8. On 12 October 2020 the defendants filed an amended summons seeking orders for dismissal of the plaintiff's claim/suit under O.28, r.2 and 4 of CPR 1972 as Cabinet's leave was not obtained prior to the institution of this action.

## ISSUES

9. The issue in this case is very similar, if not identical, to the case of *Mobit v Nauru Police Force and Secretary for Justice*<sup>1</sup> (*Mobit*) and I do not intend to repeat what I have discussed in that case.
10. The issue is whether the plaintiff is seeking declaratory orders that the defendant in filing criminal charges had maliciously prosecuted him or whether this proceeding seeks to 'enforce a claim' as provided for under section 3(2) of RPA 1972, which was discussed in the case of *Mobit*.
11. Miss Togran very strongly submitted that the plaintiff is seeking orders for damages and his claim comes within the ambit of section 3(2) of RPA 1972 which was discussed in the case of *Estate of Putaki Haulangi v Secretary for Justice and Others*<sup>2</sup> where it was stated at [31] as follows:

[31] The second plaintiff has a cause of action against the first defendant as she is basing her claim on vicarious liability and the issue is whether the Cabinet's consent was obtained as required by s.3 of the Republic Proceedings (Amendment) Act 2010. It is conceded by Mr Clodumar that Cabinet's leave was not obtained and for that reason alone I hold that the action against the first defendant is incompetent and is struck out.

12. Mr Clodumar's response is that the plaintiff is not seeking 'to enforce a claim' but is seeking declaratory orders that the defendants had maliciously prosecuted the plaintiff. He relies on *Eidaguawe Clodumar and Ors v Secretary for Justice*<sup>3</sup> which was also discussed in *Mobit*'s case.

## CONSIDERATION

13. In paragraph 5 of the statement of claim the plaintiff states that he was maliciously prosecuted and as a result he suffered damages and was defamed. In paragraph 9 of his claim, he seeks exemplary damages in the sum of \$10,000, general damages of \$10,000, special damages of \$377 for loss of income and general damages of \$10,000 for defamation.

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<sup>1</sup> Civil Suit No. 21 of 2019 (Judgement delivered on 12 January 2021)

<sup>2</sup> [2020] NRSC 3 Civil Action No. 28 of 2018 (28 January 2020) Khan, J

<sup>3</sup> [2013] NRSC 16 (dated 13 November 2013), Eames, CJ

## WHAT IS MALICIOUS PROSECUTION

14. In *Renata Benake v Leon Adeang*<sup>4</sup> it is stated at [20] as follows:

### Malicious Prosecution

[20] The defendant's claim is for malicious prosecution and there are two lines of authorities in cases on malicious prosecution which are:

a) The elements of tort of malicious prosecution are defined in Clerk & Lindsell, *The Law of Tort*, 20<sup>th</sup> ed (2012) at para 16-09 as follows:

“In an action for malicious prosecution the claimant must first show that he was prosecuted by the defendant, that is to say that the law was set in motion against him by the defendant on a criminal charge; and secondly, that the prosecution was determined in his favour; and thirdly, that it was without reasonable and probable cause; fourthly, it was malicious.”

15. The plaintiff's case falls within the definition of malicious prosecution. He was prosecuted by the defendants by way of a criminal charge, the case was resolved in his favour when the Director of Public Prosecutions entered a nolle prosequi, he has to satisfy the court that the case was filed without reasonable and probable cause and lastly that it was malicious.

16. When the plaintiff's statement of claim is analysed it is clear that he is seeking 'to enforce a claim' for malicious prosecution against the defendants for which the consent of the Cabinet was required under section 3(2) of RPA 1972.

17. O.50, r.2 of CPR 1972 also states that the proceedings against the Republic cannot be taken without leave of the Cabinet by virtue of section 3 of RPA 1972 and further, the proceedings shall not be issued unless prior to its issue a certificate under the hand of the Secretary of the Cabinet has been presented at the registry.

## CONCLUSION

18. In the circumstances the plaintiff's claim is dismissed. I make no orders as to cost as this is the first time that the interpretation of section 3(2) of RPA 1972 has been advanced before this court in this manner.

DATED this 12 day of January 2021

Mohammed Shafiullah Khan  
Acting Chief Justice

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<sup>4</sup> [2016] NRSC 5; Civil Action No. 42 of 2014 (20 May 2016) Khan, J