

THE HIGH COURT

2007 No. 2370 P

BETWEEN

ANTONION CASIMIRO LOPES

PLAINTIFF

AND

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

DEFENDANT

Judgment delivered by Mr. Justice Hanna on the 11th day of June 2008

1. The plaintiff in these proceedings is a citizen of a Member State of the European Union, namely Portugal, hailing as he does originally from the Cape Verde Islands. He is or has been *inter alia*, a seafarer. He is also a lay litigant. This matter comes before me by way of a Motion brought by the respondent within the plaintiff's proceedings. The principal reliefs sought are as follows:

1. An order pursuant to Order 19 Rule 28 of the Rules of the Superior Courts dismissing, or alternatively, striking out the plaintiff's claim against the defendant on the grounds that it discloses no reasonable cause of action against the defendant and is shown by the Pleadings to be frivolous and/or vexatious.
2. Further, or in the alternative, an order pursuant to the inherent jurisdiction of the Court dismissing the plaintiff's claim against the defendant as being an abuse of process of this Court and/or as having no reasonable prospects of success and/or being bound to fail.
3. Further, or in the alternative, an order pursuant to Order 19 Rule 27 of the Rules of the Superior Courts dismissing, or alternatively striking out the plaintiff's claim as being scandalous.

2. The background facts and circumstances leading to the plaintiff's proceedings can be summarised as follows.

3. On the 11th December 1988, Mr. Lopes was unfortunately involved in a road traffic accident which was no fault of his own. He subsequently, through his then solicitor, a Mr. Walker, brought proceedings in the Circuit Court. These proceedings were heard in Naas Circuit Court before Judge Patrick Smith (as he then was) and an award was made to the plaintiff amounting to IR£10,000.00 for general damages and IR£2,000.00 in special damages. Those sums are roughly translated into today's money to €12,697.38 and €2,539.48 respectively.

4. Mr. Lopes was not well pleased with what happened to him because he maintained *inter alia* that his injuries were more significant and that he had suffered a significant loss of future earning power. This led to him instituting proceedings against his solicitor and one of his medical advisors, the Consultant Neurologist, Dr. Roderick Galvin.

5. On the 29th March 1995, Mr. Justice Morris (as he then was) dismissed Mr. Lopes' case against Dr. Galvin and on the 31st March 1995, Mr. Justice Morris similarly dismissed the plaintiff's claim against his solicitor, Mr. Walker. On the 25th November 1996, the Supreme Court dismissed Mr. Lopes' appeal against the dismissal of his action against Dr. Galvin; the Supreme Court on that occasion being constituted in the personage of O'Flaherty, Barrington and Murphy JJ. However, on the 28th July 1997, the Supreme Court, comprising of Murphy, Lynch and Barron JJ., allowed Mr. Lopes' appeal against the dismissal of his action against Mr. Walker and the matter was then remitted to the High Court for the determination of the damages. This, as I have indicated, was an action against his solicitor brought under the rubric of the tort of negligence.

6. On the 26th and 30th June and 1st July 1998, the action was heard by Mr. Justice Geoghegan and on the 2nd July 1998 he awarded the sum of €66,185.69 (that is the equivalent thereof), less the sum of €12,697.38 previously awarded to Mr. Lopes for general damages. That order was perfected on the 21st July 1998. Mr. Lopes appealed this decision, again at all times representing himself. This came before the Supreme Court, which was then made up of O'Flaherty, Lynch and Barrington JJ., and judgment was reserved. Unfortunately for all parties involved (including Mr. Lopes), certain difficulties arose which necessitated the resignation from the Bench of O'Flaherty J., as a consequence of which this case simply had to be heard again. Mr. Lopes does raise some queries about this but it seems to me that any query is wholly without foundation, since as one of the constituent members of the Court had to resign, the Court had to be reconstituted and the matter re-heard.

7. This re-hearing took place on the 21st June 1999 and judgment was delivered on the 19th July 1999, this Supreme Court consisting of Lynch J., Hamilton C.J. and Barron J. This resulted in a tripling of the damages to Mr. Lopes to the amount of €196,809.40 or its equivalent in punts, including €63,486.90, the equivalent to IR£50,000.00 for future special damages. The order was made in favour of Mr. Lopes, again taking into account the previous award made to him.

8. Here lies the fundamental cause of Mr. Lopes' grievance. In a nutshell, he alleges that insufficient provision was made for him in respect of future loss of earnings as a navigator/seaman and this he attributes to a variety of reasons to which I will shortly refer.

9. Some years later, on the 26th March 2007, he issued a Plenary Summons against the Minister for Justice, Equality and Law Reform. An appearance was entered on behalf of the defendant and on the 29th June 2007, the defendant brought a Motion to dismiss Mr. Lopes' claim. On the 26th June 2007, Mr. Lopes delivered his Statement of Claim.

10. I should observe at this point that it was indicated to me (and I would be most surprised if it were not to be the case) that, at the very least, the statute of limitations would loom extremely large in this case.

11. Mr. Lopes has brought a Plenary Summons and a Statement of Claim. The latter, with a few additions, is to all intents and purposes, the same as the former. It is a somewhat diffuse document but in basic summary, the plaintiff claims against The Minister for Justice, Equality and Law Reform under Article 12 of the Consolidated Treaty establishing the European Union. That article enjoins the Council to take appropriate action to combat discrimination, *inter alia*, based on racial or ethnic origin.

12. A brief summary of his claim is as follows.

13. Firstly, he alleges such discrimination on the part of a "state body", namely the High Court and Supreme Court Judges who have at various times dealt with his litigation. As a consequence, he alleges he has not been adequately compensated for future loss of earnings as a navigator/seaman. He further alleges that the decision of the 2nd July 1998 given by Geoghegan J., in effect, according

to his words, "overruled" the decision of the Supreme Court given on the 28th July 1997. He further alleges that the learned High Court Judge acted on the prompting by defence counsel that he was not an Irish citizen and that this spawned an unfair and discriminatory treatment he claims he has received at the hands of the Courts.

14. Further, he alleges that this refusal, as he would see it, properly to compensate him for future loss of earnings, is contrary to the EC Treaty. He further alleges racial discrimination as the root cause of his perceived woes. He points to some unidentified case where he claims a woman was compensated more generously than he. He says that he has been treated unfairly. He alleges racial discrimination and these allegations are carried forward in two affidavits sworn by him. He seeks compensation for the trauma which he alleges was suffered by him and his family as a consequence of his engagement to date with the Irish legal process. In a nutshell, Mr. Lopes' grievance is that he did not get enough compensation because of his racial origin and the colour of his skin.

15. In seeking the reliefs contained in the Notice of Motion, Mr. Andrew Walker BL urged that there was no basis in law for any prospect of success in Mr. Lopes' proceedings. They are no more, he says, than the embodiment of Mr. Lopes' grievance. The plaintiff cannot succeed in law. It was further argued that the plaintiff is abusing the process of this Court and, further, that his proceedings contain scandalous material comprising of *inter alia*, what Mr. Walker would describe as "unfounded and unsustainable allegations against Members of the High Court and the Supreme Court Bench".

16. As I have already noted, Mr. Lopes appeared on his own behalf. He claims to have studied law for a number of years. Strangely, although professing expertise in the law and trumpeting the force of his opinion, he refused to identify where he was conducting these studies which led to such vigorous certainty such as would be envied by many who have studied for far more years at internationally renowned centres of legal excellence, supplemented by decades of legal practice at the Bar or in the solicitors' profession, perhaps even graduating to the Bench. He argued that there was no defence to the proceedings. The fact that they were brought under the auspices of the Treaty and Irish law, he said, was irrelevant. The Motion was effectively a mechanism to silence him; it was brought in the hope that yet another biased Judge would spring to the aid of the defence (he suggested). I did invite him to suggest whether he thought I was biased and happily Mr. Lopes declined to do so.

The Material Law

17. Article 35 of the Constitution provides as follows:

"1. The Judges of the Supreme Court, the High Court and all other Courts established in pursuance of Article 34 hereof shall be appointed by the President.

2. All Judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law."

18. Article 13 of the EU Treaty provides as follows:

"Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."

19. The subject of judicial immunity from suit is well established and is enunciated clearly in the case of *Sirros -v- Moore & Others*, [1975] 1 Q.B. 118. Lord Denning, M.R., at page 132 of the decision states as follows:

"Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a judge for anything said or done by him in the exercise of a jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance or was actuated by envy, hatred and malice and all uncharitableness, he is not liable to action. The remedy of the party aggrieved is to appeal to a Court of Appeal or to apply for habeas corpus, or a writ of error or *certiorari*, or take some such step to reverse his ruling. Of course, if the judge has accepted bribes or been in the least degree corrupt, or has perverted the course of justice, he can be punished in the criminal courts. That apart, however, a judge is not liable to any action for damages. The reason is not because the judge has any privileges to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fear."

20. This was expressly adopted as part of the law in this jurisdiction by Morris P. in the case of *Desmond & Another -v- Cornelius Riordan* [2000] 1 I.R. 505. (see also *Macauley & Company Limited -v- Wyse-Power* [1943] 77 I.L.T.R 61)

21. Since judicial immunity from suit is thus set in stone, it follows that vicarious liability of the Government in general and a minister in particular does not arise (see *Deighan -v- Ireland* [1995] 2 I.R. 56).

22. It is also clear that the Court has an inherent jurisdiction to deal appropriately with proceedings that may be adjudged frivolous or vexatious in tandem with Order 19. Dealing with Order 19 under the former rules, Costello J. said in *Barry -v- Buckley* [1981] I.R. 306 at p.308:

"The principles on which the Court exercises this jurisdiction are well established. Basically its jurisdiction exists to ensure that an abuse of the process of this Court does not take place. So, if the proceedings are frivolous or vexatious they will be stayed. They will also be stayed if it is clear that the plaintiff's claim must fail; per Buckley L.J. in *Goodson -v- Grierson*, at p 765."

23. In the case of *D.K. -v- King* [1994] I.R. 166, Costello J. said at p. 170:

"The principles on which the court will exercise its inherent jurisdiction to strike out a plaintiff's action can be shortly stated. Basically, the jurisdiction exists to ensure that an abuse of the court's process does not take place. If it is established by satisfactory evidence that the proceedings are frivolous or vexatious or if it is clear that the plaintiff's claim must fail, then the court may stay the action. But it will only exercise this jurisdiction sparingly and in clear cases."

24. The plaintiff has brought these proceedings complaining of what has occurred. He has been dealt with by both the High Court and the Supreme Court. It must be observed that the plaintiff's success rate as a lay litigant is significantly greater than most others one has come across. He has in fact made major inroads into quantum. But the Court must have regard to the fact that it also has a

jurisdiction, notwithstanding the plaintiff's success to date, to deal with matters that are also considered to be of a scandalous nature. See *Riordan -v- Hamilton & Others* (Unreported, High Court, Smyth J. 26th June 2000).

25. As regards the case that he made, or argued, should I say, that this case is subject only to European Community Law, it is fair to say that in certain circumstances it might be envisaged that the Courts in this jurisdiction might be amenable to decisions of the European Court of Justice in procedural matters (See *Kobler -v- Republik Österreich* [2004] 1 Q.B. 848) but these are circumstances that are altogether different to what we are dealing with.

26.. In my view, having considered this matter carefully, it seems to me that the plaintiff's proceedings in this case are wholly unsustainable in law or in fact. They are the fruits of a grievance founded on what I regret to say is the fanciful and unsustainable notion that racial bias drove the Supreme Court to treble the damages awarded to him in the High Court. He has sought succour in a cherry-picked extract from the judgment of Barron J., without considering the judgment as a whole. Clearly, and beyond per adventure, it was the function of Geoghegan J. to hear and determine the plaintiff's trial according to the evidence before him. This matter is to be determined within the rubric of Irish law. Irish constitutional law is amply equipped to protect the applicant against any unfair discrimination, however motivated, but the reality of the matter is that there is not a shred of evidence whatsoever of any such racial discrimination against him and to that extent I am wholly satisfied that his allegations to this effect in his proceedings are scandalous and unsustainable. Nothing could be added to these Pleadings by way of amendment or by way of evidence to alter the situation. It seems to me that one is forced, sadly, to the conclusion that the sole qualification to be guilty of racial discrimination seems to be to take a view contrary to Mr. Lopes. Maybe I will now join the ranks of those who he wishes to label biased and racist but it seems to me that his case is wholly without any foundation and cannot under any circumstances be added to or succeed.

27. I should observe that in his concluding remarks to me, Mr. Lopes demonstrated a compulsion to fight on with the perceived grievance which he entertains against the Irish Judiciary. Not as far as this Court is concerned; I strike out his proceedings.