

EASTERN CARIBBEAN SUPREME COURT
COLONY OF MONTSERRAT

IN THE HIGH COURT OF JUSTICE
(CIVIL)



Claim Number: MNIHCV2016/0006

Between

Sean Ross McLaughlin

Claimant

And

(1) Montserrat Development Corporation
(2) Department for International Development
(3) Martin Dawson

Defendants

Before:

Ms. Agnes Actie

Master

Appearances:

Mr. Sylvester Carrot of counsel for the claimant
Ms. Sheree Jemmotte Rodney of counsel for the first defendant
Ms. Marcelle Watts for the second and third defendants

2016: July 21
August 9

1. **ACTIE M:** Before the court are three applications respectively filed by the defendants to strike out the claim form and statement of claim filed by the claimant. The applications are refused for the reasons given below.

Background Facts

2. The claimant in a claim form filed on 11th February 2016 claims against the defendants for the following "breach of contract, breach of the provisions of the Labour Code 2012 in respect of wrongful termination of his employment and breach of the European Convention on Human Rights".

3. The statement of claim states that the claimant was employed by Montserrat Development Corporation (MDC) under a contract of employment for 3 years. The Department of International Development (DFID) is a Government Department of the United Kingdom which provided funding for the MDC. The claimant alleges that he became aware of misappropriation of funds and reported the matter to DFID. The claimant alleges that he suffered victimization from Board members of MDC and DFID as a result of his whistle blowing and his contract of employment was eventually terminated. He contends that the defendants breached Article 10 of the **European Convention on Human Rights** as they failed to provide him with protection as a whistle blower.
4. The claimant avers that the termination of his contract was unlawful as (1) the same was not in accordance with the **Labour Code 2012** in that reasons were not given for the termination and (2) the termination was in breach of Article 10 of **The European Convention on Human Rights** which places a positive obligation on the first, second and third defendants to protect his rights as a whistle blower. He avers that Article 10 takes precedence over the provisions of the **Labour Code 2012**.
5. The claimant further avers that the first and second defendants are public authorities for the purposes of the **European Convention on Human Rights** and that the protection afforded to the claimant under Article 10 extends to acts carried out whilst residing in Montserrat. He contends that no effort was made by the first or second defendant to redeploy or assist him in finding alternative employment or alternatively protecting his identity as a whistle blower causing him to suffer loss, damage, personal injury, distress and inconvenience.
6. All three defendants respectively filed a defence to the claim together with an application to strike out the claim form and statement of claim.
7. The claimant filed a reply to the defendants' defences together with submissions in reply to the applications to strike out the claim.

FIRST DEFENDANT'S APPLICATION TO STRIKE OUT

8. On 18th April 2016, the first defendant filed a defence and on the even date filed a notice of application to strike out the claimant's claim pursuant to CPR 26.3 (1) (c). Counsel for the first

defendant contends that the claim is unsustainable; an abuse of process and further or in the alternative fails to disclose any reasonable grounds for bringing the claim. Counsel contends that the **European Convention on Human Rights** is not enforceable in Montserrat. Counsel further contends that the claimant should petition the European Court of Human Rights as the Convention was made between High Contracting States and does not have any applicability in Montserrat. Counsel contends that the claimant's claim is misconceived with no real prospect of success and should be struck out

9. Counsel further contended that the claimant alleged that the first defendant infringed the provisions of the **Labour Code** by failing to give reasons for the termination of his employment but failed to stipulate the relevant provisions of the Code. Counsel states that she is unaware of any provision of the **Labour Code** that requires reasons to be given in circumstances where a contract was terminated upon giving the required notice stipulated in the contract of employment.

SECOND AND THIRD DEFENDANTS APPLICATIONS TO STRIKE OUT

10. On 22nd April 2016, the second and third defendants' respectively filed a defence and on 25th April 2016 filed a notice of application to strike out the claimant's claim form and statement of claim. They both allege that the claim form and statement of claim fail to disclose any reasonable ground for bringing the claim and an abuse of process. Counsel aver that the claimant failed to indicate the purported cause of action against the second and third named defendants as there never existed a contractual relationship between themselves. Counsel for the second and third defendants like counsel for the first defendant avers that the protection under Article 10 of the **European Convention on Human Rights** is to be provided by States and not individuals who were not contracting parties to the treaty. Counsel contends that the pleadings fail to disclose how the second and third defendants violated the claimant's freedom of expression. Counsel also maintains that the proper forum for such actions is the **European Court of Justice**.
11. Counsel further contends that the second defendant is protected under the **Public Authorities Act** and as such the claim is statute barred having been instituted in excess of the six months period required by the Act.

