

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

Cause No: 249 of 2012

BETWEEN:-

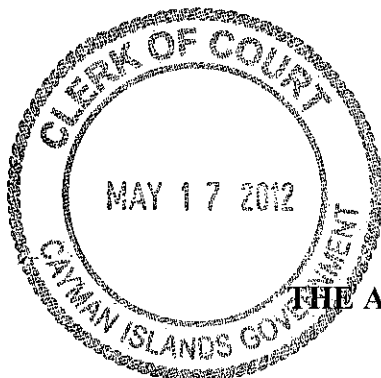
HERBERT MUSCHETTE

Plaintiff

-and-

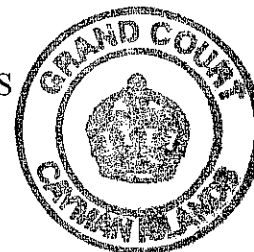
THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

Defendant



WRIT OF SUMMONS

TO: THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS
ATTORNEY GENERAL'S CHAMBERS
GOVERNMENT ADMINISTRATION BUILDING
GRAND CAYMAN
CAYMAN ISLANDS



THIS WRIT OF SUMMONS has been issued against you by the above-named plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return the Court Office, P.O. Box 495 Grand Cayman KY1-1106, Cayman Islands, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 16th day of May, 2012

NOTE – This Writ may not be served later than 4 calendar months [*or, if leave is required to effect service out of the jurisdiction, 6 months*] beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. From 2001 until the 30th July 2010 the Plaintiff was engaged as a police officer in the Royal Cayman Islands Police Service ('RCIPS'). With effect from the 2nd September 2003 he held the rank of constable on permanent and pensionable terms.

The Status of police Officers

2. Pursuant to section 8 of the *Police Law (2006 Revision)* ('the 2006 Law') the Plaintiff was an office holder.

The Disciplinary Rules applicable to Police officer

3. Section 48(1)(b) of the *Public Service Management Law 2005* provides that police officers (other than gazetted officers) of the RCIPS :

"shall be appointed, disciplined, dismissed, returned early or otherwise dealt with only by the Commissioner of Police and only in accordance with section 8(2) and any other relevant provisions of the Police Law (1995 revision) and regulations made there under.."

4. Section 16(2) of the 2006 Law provides that:

(2) A junior officer may at any time during the currency of his term of engagement-

(a) be discharged, when he has-

(i) in the opinion of the Commissioner, ceased to be efficient in the discharge of his duties; or

(b) be dismissed by order of the Commissioner or the Governor if in the opinion of the Commissioner or the Governor, as the case may be, the retention of his services would be contrary to the public interest.

5. Section 54(1) of the 2006 Law provides that any offence against discipline may be enquired into and dealt with by the Commissioner, and in the case of a junior officer, by any commanding officer.

6. Section 54(4) of the 2006 Law provides that no police officer shall be convicted of an offence against discipline unless the charge had been read and inquired into in his presence and he has been given sufficient opportunity to make his defence thereto.
7. Furthermore section 54(5) of the 2006 Law provides such an officer with the right of appeal to the Governor. In addition the *Police Regulations (1996) Revision* introduces procedural requirements for the protection of officers undergoing disciplinary proceedings.
8. The effect of the aforesaid provisions on the Plaintiff was that for so long as he was police officer:
 - a. In the event that he was suspected of any disciplinary charge he was entitled to have the charge read to him and to be given the opportunity of defending himself, and, if necessary, to appeal any decision or sanction.
 - b. The Plaintiff could only be dismissed by the Commissioner of the RCIPS if, and only if, the statutory disciplinary procedure had been followed.
 - c. A purported dismissal outwith the statutory procedure was void and is of no effect.

The Plaintiff's Dismissal

9. In March 2010 the Plaintiff, who by then had passed his sergeant exams, was appointed as the Officer in Charge of B shift in the Traffic Management Department.

10. On Friday April 30th the Plaintiff was telephoned by a Sergeant Wedderburn and asked to attend the Traffic Management Department for a meeting. The Plaintiff duly did so, whereupon he was told he was being transferred to the Central Police Station with effect from Sunday the 2nd May 2010. He asked why he was being transferred out of the Transport Department as he had just been certified as an accident reconstructionist. Sergeant Wedderburn said he did not know.
11. On Monday 3rd May 2010 the Plaintiff was told by Superintendent Seales that the reason for the transfer was to enable an investigation to be undertaken into an allegation of assault by the Plaintiff. He was advised to contact Detective Inspector Joseph. When the Plaintiff did so he was informed that the Professional Standards Unit (PSU) were investigating two very serious matters against him.
12. On the 7th May 2010 the Plaintiff was served with two PSU2s (the official notification of an allegation against him).
13. The first PSU2 concerned an alleged assault by the Plaintiff on a suspect, one Kwame Frank Kondwani, on the 28th March 2010 during which it was alleged he, the Plaintiff, had struck another constable, Constable Gilzeane.
14. The second PSU2 concerned a debt of \$800 that was alleged to be outstanding to a member of the public, one Mrs Ivy Lam, which it was alleged the Plaintiff had said he would repay but had failed to do so.
15. In an email dated the 11th May 2010 the Plaintiff was informed by Chief Inspector Powery that a further PSU2 (i.e. the third) would be served in relation to a separate incident and his mobile telephone number was requested so that he could

be notified when it was ready to be served. He was subsequently informed that there was yet another PSU2 (i.e. the fourth) shortly to be served on him.

16. On the 25th May 2010 the Plaintiff sent a lengthy email to Deputy Commissioner Ennis in which he complained about his treatment. In particular he complained that: Despite being told that two further PSU2s were to be served on him none had been; he was the victim of false complaints which other officers were encouraging members of the public to make; that his transfer from the Transport Department was unfair and prejudged his guilt. That his former wife, who was vindictive, was behind the complaint by Mrs Lam regarding the alleged debt and that she had been given a sum on divorce to settle any debts owed at that time - one of which was the Lam debt.

17. On the 28th May 2010 the Plaintiff made a formal complaint against officers Tahal and Gilzeane. He also made a leave request and said that he required leave so that he could consider his future with RCIPS. Before this was actioned by the RICPS Human Resources Department the Plaintiff was certified as being unfit for work.

18. On the 8th June 2010 the Plaintiff was telephoned whilst on sick leave and was asked by Sergeant Forth to attend Georgetown Police Station for a meeting with Deputy Commissioner Brougham at 2pm which he duly did.

19. At the meeting which took place in Deputy Commissioner's Brougham's office, Brougham said to him that he and Deputy Commissioner Ennis had come to a decision that the Plaintiff's time with the RCIPS had come to an end. That he, Brougham, had evidence to show that the Plaintiff was involved in drugs,

soliciting sex from female motorists, and passing information to the criminal underworld. The Plaintiff was then told he was being offered a deal that he could resign or face being dismissed and prosecuted and then imprisoned. If he resigned Brougham would not 'come after him' but if he refused he was to be arrested and taken to court where he would be found guilty and imprisoned.

20. The Plaintiff was given a choice – resign or be dismissed and potentially face criminal prosecution.
21. The Plaintiff protested. He said that he had never taken drugs or sold drugs and was told by Brougham that he, Brougham, had had police officers with 30 years' service sent to prison and the Plaintiff would just be another one. He then said 'if I were you I would resign'.
22. On the 11th June 2010 Sergeant Stone told the Plaintiff that she had been told by a police officer in Jamaica that the Plaintiff had been dismissed from the RCIPS.
23. On the 14th June 2010 the Plaintiff was informed by Detective Sergeant Lewis that he, Lewis, had been told by Inspector Yearwood that the Plaintiff was involved in drugs and asked that Lewis investigate.
24. On the 18th July 2010 the Plaintiff was approached at the Agape Worship Centre by Deputy Commissioner Ennis who told him that there was intelligence that showed that he was transporting drugs through the Georgetown airport.
25. On or about the 21st July 2010 the Plaintiff called the 911 centre and after he identified himself he was asked by the operator whether he was still in the RCIPS. The Plaintiff said that he was although he was on sick leave. The operator

replied by telling the Plaintiff that he had been advised otherwise and understood that the Plaintiff had been dismissed from the RCIPS.

26. On the 30th July the Plaintiff resigned in writing and his resignation was accepted by the RCIPS by letter dated 10th August 2010.

27. In the premises, by reason of the 'resign or be dismissed threats' together with RCIPs staff spreading the word that he had been dismissed the Plaintiff was unlawfully dismissed from his position as an office holder. For the avoidance of doubt the Claimant's resignation was not freely entered into it was the result of improper threats and pressure and was in fact a dismissal.

28. The purported dismissal of an office holder without, in any respect whatsoever, following the statutory procedure for their dismissal renders the purported dismissal void and of no effect and did so in the case of the Plaintiff.

29. In premises the Plaintiff is entitled to and claims:


- a. A declaration his purported dismissal was unlawful;
- b. A declaration that he remains engaged as a constable in the RCIPS;
- c. A declaration that he is entitled to payment of his salary from the 10th August 2010 to the date of judgment which amounts to CI\$89,139.68 as at the date of issue.
- d. An order for payment of the sum due to him.

30. An order of interest pursuant to Section 34 of the Judicature Law (2007) Revision on the aforesaid sum calculated at the rate of 2 3/8 % pre annum prescribed by the Judgment Debts (Rates of Interest) Rules 2010 from the date of issue herein until judgment or sooner payment.

AND THE PLAINTIFF CLAIMS:

- (i) The declarations as aforesaid;
- (ii) An order for the payment of \$89,139.68.
- (iii) Interest as aforesaid

Dated this 16th day of May 2012



PRIESTLEYS
Attorneys-at-Law for the Plaintiff

TO: The Clerk of the Court
AND TO: THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS
ATTORNEY GENERAL'S CHAMBERS
GOVERNMENT ADMINISTRATION BUILDING
GRAND CAYMAN
CAYMAN ISLANDS

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (14) days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not endorsed on the Writ, the defence need not be served until fourteen (14) days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for fourteen (14) days after his Acknowledgement, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of fourteen (14) days for acknowledging service, a Writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a FIRM and an Attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

Cause No:

BETWEEN:-

HERBERT MUSCHETTE

Plaintiff

-and-

THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

Defendant

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important

Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

Yes [] No []

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*)

Yes [] No []

Service of the Writ is acknowledged accordingly

(Signed) _____

Address for service:

Please see overleaf.....

Notes on address for service

Attorney: where the Defendant is represented by an Attorney, state the Attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign Attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Endorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

PRIESTLEYS
ATTORNEYS-AT-LAW
UNITS 11 & 12, GALLERIA PLAZA
638 West Bay Road
PO BOX 30310
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, KY1-1202

Endorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.