

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No BBCV2017/003
BB Civil Appeal No 14 of 2013

BETWEEN

COMMISSIONER OF POLICE
DARWIN DOTTIN

APPLICANT

AND

GOVERNOR GENERAL OF BARBADOS
POLICE SERVICE COMMISSION

FIRST RESPONDENT
SECOND RESPONDENT

Before The Rt Honourable
And The Honourables

Sir Dennis Byron, President
Mr Justice Wit
Mr Justice Hayton

Appearances

Mr Elliot D Mottley, QC, Mr Leslie F Haynes, QC and Ms Andrea Simon for the Applicant

Ms Donna K Brathwaite, QC for the First Respondent

Mr. Hal McL. Gollop, Q.C., Mr Patterson K H Cheltenham, QC, Mr Alrick Scott and Ms Natasha D S Green for the Second Respondent

JUDGMENT

of

The Right Honourable Sir Dennis Byron, and
The Honourable Justices Wit and Hayton

Delivered by

The Honourable Mr Justice Hayton
on the 18th day of July 2017

- [1] On July 14th 2017 we heard the application filed on May 11th 2017 of the former Commissioner of Police of Barbados, Mr Darwin Dottin (“the Commissioner”), for special leave to appeal against the decision of the Court of Appeal of Barbados which had dismissed his appeal against the interlocutory decision of

Margaret Reifer J. At the hearing, we dismissed the application for special leave, saying that we would give our reasons later. These are those reasons. They highlight the need for claimant's counsel when appealing an interlocutory matter to give serious consideration to proceeding with the substantive action unless stayed by a judge's order. This can significantly avoid much delay in hearing the action.

- [2] On June 17th 2013 the Commissioner was sent on "administrative leave" by the First Respondent, the Governor General of Barbados, after the Second Respondent, the Police Service Commission, had recommended his retirement in the public interest pursuant to s 11(1)(a) of the Pensions Act, Cap 25.
- [3] The Commissioner promptly filed for judicial review of the actions of the First and Second Respondents and then sought the following interim injunctions or orders pending determination of the substantive case: an injunction restraining steps from being taken to retire him pursuant to the said s 11(1)(a); an injunction to restrain steps from being taken to fill the office of Commissioner of Police by a permanent appointment; an order that all proceedings relating to his removal from office be stayed; and an order that the status quo be maintained so that he could return to work as Commissioner of Police.
- [4] After three adjournments, the application for interim relief was heard on 10th and 11th July 2013 and Reifer J's judgment and order were handed down on 18th September 2013.
- [5] Reifer J substantially granted the interim relief sought but only against the Second Respondent since the First Respondent exercised his functions only in accordance with recommendations made by the Second Respondent, pursuant to section 96(1) of the Constitution. She ordered:

"(1) All action in this matter to date is stayed and the Second Defendant is restrained from making any further recommendation to the First Defendant to effect the compulsory retirement of the Claimant from the Office of Commissioner of Police under the provisions of section 11(1)(a) of the Pensions Act Cap 25 until the trial of these proceedings or further order. (2) All other claims for relief are dismissed until further order."

- [6] At this interim stage when the balance of convenience comes into play, the judge refused to make an order enabling the Commissioner to return to work, finding that the norm is not for a reinstatement order, although not impossible, but for damages to be an adequate remedy and she found no exceptional circumstances to deviate from this norm. She stated that “the only way to hold the balance of justice equally between all parties would be to proceed swiftly to an expedited hearing of the matter.”
- [7] Since the facts were clear and only points of law were in dispute, except for the possible exercise of a discretion to reinstate rather than order damages and a need, if appropriate, to determine those damages, one would have thought that a defence, leading to a reply, would have been served and the substantive judicial review hearing held swiftly. Unless a judge otherwise orders in the exercise of discretion, a substantive case is not stayed to await the outcome of any appeal concerning some interlocutory application made in the course of dealing with the case. If the substantive case had proceeded, the Court would have been able to determine whether, as claimed, there was no concept of “administrative leave” and that the Commissioner could not have been compulsorily retired in the public interest under the Pensions Act, and to obtain resolution of the claim for reinstatement or the award of an appropriate measure of damages. We note here in passing that it was conceded on behalf of the Commissioner that even assuming there is no concept of “administrative leave” in Barbados, this would not necessarily lead to the Commissioner’s reinstatement and that under (section 5(2) of) the Administrative Justice Act the award of damages was a possible alternative form of relief.
- [8] Be that as it may, not satisfied with the substantial interim relief granted but wanting reinstatement in office of the Commissioner, on 9th October 2013 the Commissioner’s counsel filed a Notice of Appeal in the interlocutory application. It took nearly two and a half years before the matter came on for hearing in the Court of Appeal on the 22nd February and the 21st March 2016 with a further year before judgment was delivered on 31st March 2017. During that period, despite the fact that no order was made by either the High Court nor

the Court of Appeal to stay the proceedings, the substantive action was not proceeded with.

- [9] Such a loss of time before the substantive hearing is inconsistent with the overriding objective of the Civil Procedure rules enabling courts to deal with cases justly and in a timely manner through its powers of case management. Counsel, however indicated that it was they who took time to conduct settlement negotiations between the parties, and when those broke down they decided to await the outcome of the appeal hearing. We were not told how much time was taken for these negotiations. However, although there is, in principle, nothing wrong with interrupting proceedings for a limited time in order to attempt a settlement, we should point out that the overriding objective requires counsel to assist the court in its management of the process, because the adage justice delayed is justice denied can affect the rights of the litigants adversely.
- [10] As it happened, in the year that elapsed between the hearing in the Court of Appeal and the delivery of its decision, the Commissioner retired, following upon pre-retirement leave commencing 3rd November 2016. Thus, by the time judgment was delivered in March 2017 there was no scope for any of the interim relief that was sought in 2013. A fortiori it is pointless to seek special leave from this Court because the retirement of the Commissioner has made it futile to grant the interim relief that was sought.
- [11] The Commissioner's two claims that there is no such concept as the "administrative leave" he was forced to undertake and that he could not have been compulsorily retired under the Pensions Act are the very claims awaiting determination in the substantive case filed in June 2013. He cannot avoid due process under the Barbados judicial system and come directly to this Court, by-passing the views of the High Court and Court of Appeal, and having this Court usurp the role of those courts. Since neither Reifer J nor the Court of Appeal had made any order staying the substantive proceedings, the Commissioner's counsel should have progressed the substantive hearing, leaving the interim relief proceeding to wend its way through the system.

- [12] This is sufficient to justify dismissing the application for special leave, though since *Y'axché Conservation Trust v Sabido*¹ was cited to us, a few words on it are justified. That case accepts that special leave will not normally be granted in the case of an appeal which has become academic as a result of events occurring after a case was filed, but, exceptionally, it may be granted if there is a significant discrete point of public law likely to arise in future cases – and the two public law claims in this case can be so regarded. However, this Court in its discretion will normally refuse to decide such a significant point without having had the assistance of the views of the local High Court and Court of Appeal below. On this ground, too, the application is dismissed.
- [13] Re costs: we asked counsel to agree on costs. They refrained from doing so and asked us to quantify the costs. Counsel for the Commissioner contended that because this is a public law claim against the State no orders for costs should be made against him. This argument can have no force because the retirement of the Commissioner prior to the filing of this application made it unnecessary.
- [14] This is an application for special leave to appeal against an interlocutory order. The matter was not complex, so it is not a case for an order that would indemnify the Respondents for the costs they expended. In the circumstances, we make an order for BB\$6,667 costs in favour of the Second Respondent, but no order as to costs for the First Respondent.

/s/ CMD Byron

The Rt. Hon. Sir Dennis Byron, President

/s/ J. Wit

The Hon Mr Justice J Wit

/s/ D. Hayton

The Hon Mr Justice D Hayton

¹ [2014] CCJ 14 (AJ), (2014) 85 WIR 264