ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

ANUHCV 2006/0038

BETWEEN:

LENNOX LINTON

Claimant

And

MAUREEN HYMAN "Chief Magistrate Ag., District "A", St John's
THE ATTORNEY GENERAL (Antigua and Barbuda)

Defendants

Appearances:

Mr. Dane Hamilton Snr for the Claimant
Ms. Bridget Nelson, Senior Crown Counsel and Mrs. Carla Brooks-Harris Crown Counsel1 for the Defendants

……..
2006: May 31st
June 19th
August 17th
…….

JUDGMENT

[1] Blenman J, These are Judicial Review Proceedings to quash the decision of the Acting Chief Magistrate and to prohibit the Acting Chief Magistrate from the further hearing of a matter. Application is also made to have the matter stayed on the basis that there is an abuse of process.

Background

[2] Mr. Lennox Linton (Mr. Linton) who is the Station Manager of the Observer Radio Station was charged on 3 complaints filed by the then Director of Public Prosecutions (ag.)(then DPP ag.) Mr. Gene Pestaina in relation to words he is alleged to have spoken about Mr. Pestaina and the Office of the DPP.

[3] The then DPP (ag.) summoned Mr. Linton before the Magistrates Court to answer three complaints including that on the 16th day of September 2005, Mr. Linton published a defamatory statement contrary to section 11 of the Libel and Slander Act Cap 248 Laws of Antigua and Barbuda (Libel and Slander Act).

[4] The genesis of the criminal summonses is said to be comments that Mr. Linton is alleged to have made on a radio programme "Wake up Call" in relation to Mr. Gene Pestaina in his capacity as DPP.

[5] For his part, Mr. Linton says he was merely reviewing the lead story "DPP v. Observer appearing in a daily newspaper the Antigua Sun. The sub headline was "Pestaina says RADIO MANAGER RUDE."

[6] Mr. Linton states that the then DPP (ag.) was reported to have had an interview with a newsperson and is alleged to have said that he (Mr. Linton) had verbally ridiculed his Office on air and had entertained calls from person who made a mockery of his Office.

[7] The then DPP (ag.) was further reported to have said "so to ask whether the DPP has gone to sleep is a malicious innuendo. It is dangerous and it is trying to put the DPP in a bad light in the public."

[8] Further the then DPP (ag.) was reported in the newspaper article to have said "most definitely, most definitely, there has got to be a stop to this nonsense."

[9] Mr. Linton advanced the view that he has not committed the offences for which he has been summoned since he merely stated that "Now if Mr. Pestaina considers this to be rude, if he considers this to be inciting public mischief, Mr. Pestaina is clearly entitled to his opinion, he is certainly not going to provoke me into commenting whether his piece in the Sun Newspaper suggests anything about his suitability for the post of DPP. He is not going to do that at all." It was after this that he was summoned by the then DPP (ag) to appear before the Acting Chief Magistrates on the three complaints.

[10] Mr. Linton alleges that on 28th September 2003 he appeared before the Acting chief Magistrate and his Counsel Mr. Dane Hamilton Snr made submissions on his behalf ,namely:" that the complaints disclosed no offence on the record, that the offences were duplicitous and that the offences should have been particularized.

[11] On 26th October 2005, Mr. Hugh Marshall, Attorney-at-Law who appeared on behalf of the then DPP (ag.) replied to the submissions made on behalf of Mr. Linton, and asserted that Mr. Linton's application was premature. The Acting Chief Magistrate, Mr. Linton further alleges, heard replies from Mr. Hamilton and reserved decision.

[12] On 8th December 2005, Mr. Linton complains that, the Acting Chief Magistrate ruled "Submissions denied matter to proceed to trial", and gave no reasons for her ruling. The date for the hearing of the complaints was set.

[13] Mr. Linton applied and was granted leave to file Judicial Review proceedings. He filed his claim together with an affidavit in support in which he chronicled the circumstances of the charges against him and the hearing in the magistrate's court.

[14] Mr. Linton seeks a number of reliefs the main ones include the following:

(a) An Order of the Court quashing the decision of the Acting Chief Magistrate;

(b) An Order prohibiting the Acting Chief Magistrate from further hearing of the matter;

(c) The staying the proceedings in the lower Court as an abuse of the Court's process occasioned by the alleged bias of the then DPP (ag.).

[15] Mr. Pestaina who now holds the office of Senior Crown Counsel in the DPP's Chambers deposed to an affidavit on behalf of the defendants and admitted that in his capacity as then DPP (ag) he caused three charges to be laid against Mr. Linton under the Libel and Slander Act.

[16] Mr. Pestaina stated that it was his considered view that the statements made by Mr. Linton were intended to generate in the general public a lack of confidence in the office of the Director of Public Prosecutions. Further the statements were intended/calculated to undermine the Office of DPP and they were intended to make the general public ridicule him. He was of the opinion that the statements violated section 11 of the Libel and Slander Act and filed complaints/summonses against Mr. Linton.

[17] Mr. Pestaina both in his affidavit and under cross examination by learned counsel Mr. Dane Hamilton denied that he was motivated by personal bias or ill will against Mr. Linton in instituting the criminal charges against Mr. Linton.

[18] Mr. Pestaina further opined that in his view the Acting Chief Magistrate considered the objections that were advanced on behalf of Mr. Linton and the reply put forward on his (Mr. Pestaina's) behalf and ruled in accordance with law.

[19] In his affidavit in response, by Mr. Pestaina further stated that based on the events that occurred he was of the honest view that they were designed by Mr. Linton to undermine the integrity of the Office of the Director of Public Prosecutions and ultimately the administration of justice in Antigua and Barbuda.

Issues

[20] The following issues arise to be resolved by the Court.

(a) Whether the Court should grant certiorari;

(b) Whether the Court should prohibit the Acting Chief Magistrate from further hearing of the matter;

(c) Whether the Court should stay the proceedings on the basis that it is an abuse of process

Certiorari

Mr. Linton's Submissions

[21] Learned Counsel Mr. Dane Hamilton, on behalf of Mr. Linton stated that he had submitted in the lower Court that the no offence was disclosed on the face of the complaints and that

the statements which Mr. Linton was alleged to have made were not defamatory on the face. In order to ground the offence thereby giving the Magistrate jurisdiction to hear the complaints the statements must be defamatory within the meaning of section 11 of the Libel and Slander Act.

[22] Mr. Hamilton said that the preliminary point that the charges were bad for duplicity and should be dismissed was also canvassed before the magistrate. The Acting Chief Magistrate heard extensive submissions from both sides and ruled "submissions denied trial to proceed". The magistrate provided no reasons for her decision. It was this failure, argued Learned Counsel Mr. Hamilton which necessitated the Court quashing the magistrate's decision. There is no disputing, he said that the magistrate was under a duty to provide reasons for her decisions.

[23] Mr. Hamilton stated that the High Court has inherent jurisdiction to review the proprietory of the decision making processes of Magistrates Court. The Court has the power to quash a decision which in its lack of merit becomes unreasonable. In support of this contention Mr. Hamilton relied on Chief Constable for North Wales Police v Evans [1982] 3 ALL ER 141.

[24] Mr. Hamilton further submitted that an applicant could challenge a Magistrate's Court decision for error of law/procedural improprietary, unreasonableness and unfairness. He cited R v. Hereford Magistrate Court exp Rowlands [1997] 2 WLR 854 in support of his argument that the Court should quash the decision of the Acting Chief Magistrate.

[25] Mr. Hamilton further stated that while the legal rule is that a professional judge as a rule provides reasons for his or her decision, it is not every decision taken by a Magistrate which would require reason. It all depends on the gravity of the matter and the legal arguments placed before the Magistrate. However, in the case at Bar procedural fairness required the Magistrate to give reasons See: R v Crown Court at Harrow exparte Dave (1994) 1 All ER 315 and Flannery v Halifax Estate Agencies Ltd (2000) 1 ALL ER 377

[26] In Flannery v Halifax Estate Agencies ibid at p 377 Henry LJ stated at paragraph d – e that

> "Today's professional judge owes a general duty to give reasons is clear (See: R v Crown Court at Knightsbridge, ex p International Sporting Club (London) Ltd [1981] 3 ALL ER 417, [1982] QB 304), although there are some exceptions. It does not always or even usually apply in the magistrates' court, nor in some areas where the court's decision is more often than not a summary exercise of discretion in particular orders for costs. For the general duty, See: for example R v Crown Court at Harrow, ex p Dave [1994] 1 ALL ER 315, [1994] 1 WLR 98, which was not cited to us but contains a useful review of earlier authority." (Emphasis mine)

[27] Mr. Hamilton also advocated that there was illegality in the matter since the Acting Chief Magistrate failed to understand and apply the law in that the issue of duplicity ought to have been dealt with prior to the hearing of the evidence.

[28] Further, Mr. Hamilton said that in the statement attributed to Mr. Linton in the three complaints/summonses namely that he (Linton) would not be provoked into making any comments as to the suitability of Gene Pestaina for the office of Director of Public Prosecutions did not disclose any offences. Counsel relied on Ambard v the Attorney General of Trinidad and Tobago [1936] 1 ALL ER 704 which stated that members of the public to critise in good faith in private or public the public administration. Reference was also made to Privy Council Decision No. 710 of 2002 George Worms v Commissioner of Police

[29] Mr. Hamilton next argued that the words alleged to have been used by Mr. Linton were not defamatory. In support of his position Mr. Hamilton relied on Charleston v Nevis Group Newspaper Ltd (1995) 2 AC 65 at 72 HL Jones v Skeleton (1963) 3 ALL ER 952. Hough v London Express Newspaper Limited [1940] 2 KB 507

Prohibition

[30] Mr. Hamilton stated that the charges against Mr. Linton are duplicitous. Mr. Hamilton urged the Court to prohibit the Magistrate from further hearing the matters in so far as no offence

has been disclosed on their face. Further, he argued that the Magistrate failed to understand the law that regulates her decision making process therefore the court should restrain the Acting Chief Magistrate further hearing of the matter.

Stay of Proceedings

[31] Finally, Mr. Hamilton argued that the Court should stay the proceedings on the basis that it is as an abuse of the process of the Court. In order to ground this aspect of his application Counsel sought to establish that there was a real prospect and/or likelihood that the Court's process is being abused. The Director of Public Prosecutions is required to be impartial and should have no bias or improper motives when instituting criminal proceedings against citizens. Mr. Hamilton stated that based on the words attributed to Mr. Pestaina when he labeled Mr. Linton rude, the clear inference is that Mr. Pestaina had "an axe to grind". It was against this background that "Mr. Pestaina set out to manners Mr. Linton to prosecute Mr. Linton."

[32] Further, the Director of Public Prosecutions has a duty to act fairly and impartially when initiating criminal proceedings. Based on the events that occurred the then DPP (ag) did not exercise his powers in a constitutional manner since he was not fair and impartial, "but was motivated by a personal desire to manners Mr. Linton." There is a real likelihood of bias and prejudice emanating from the institution of the criminal complaints.

Defendant's Submissions

Certiorari

[33] Learned Senior Crown Counsel Ms. Bridget Nelson opposed Mr. Linton's application for certiorari.

[34] Ms. Nelson argued that there is no duty on the Magistrate's Court to give reasons on rulings based on preliminary objections. What transpired in the lower Court was in the nature of a preliminary objections and it is sufficient for the Magistrate to rule on the objections without giving reasons. The situation would have been significantly different if the Magistrate's decision was a final one as distinct from a preliminary one. Ms. Nelson

relied on Regina v Worthing Justices, Ex parte Norwell and Another [1981] 1 WLR 413 In that case the applicants applied to the magistrates' court for the issue of summonses against two persons for perjury. After a hearing extending over two hours the justice declined to issue the summonses without giving any reasons for so doing. The applicants applied to the Queens bench Division for an order of mandamus requiring the justices to issue the summons. In refusing the application the Court held that although the justices could give reasons for their decision, it was neither usual nor obligatory for a magistrate's court to do so. Donaldson L.J said at page 414 "The applicants complain that he did not give reasons for his refusal, but there are a number of spheres of judicial activity where reasons are not given. It is not usual in magistrate's courts to give reasons for finding a case proved. It is not usual to give reasons for declining to issue summonses, although it is always open of course to any court to give reasons."

[35] Ms. Nelson next submitted that there is no duty on the Magistrate's Court to give reasons for the purpose of facilitating judicial review proceedings. Where the Magistrate is required to give reasons on a case stated or on an appeal grounds may emerge which give rise to any application for judicial review.

[36] Ms. Nelson further submitted that there is no general legal requirement applicable to all cases that a respondent must provide reasons following the grant of leave for judicial review. Reliance was placed on the case of R v Lancashire County Council, ex parte Huddleston [1986] 2 ALL ER 941 a case in which the issue arose for determination as to whether the respondent local authority had a duty to give reasons for the purpose of judicial review proceedings. Delivering the leading judgment of the Court of Appeal Sir John Donaldson MR. said at p. 946 f:

> "..the grant of leave to apply for judicial review does not constitute a licence to fish for new and hitherto unperceived grounds for complaint … the appropriate response by the respondent will depend on the facts of each case which are almost infinitely variable."

In the judgment of Parker LJ. with which Sir John Donaldson MR. was in agreement Parker LJ. Said at p. 947:

> "I would not wish it to be thought that once an applicant has obtained leave he is entitled to demand from the authority a detailed account of every step in the process of reaching the challenged decision in the hope that something will be revealed which will enable him to advance some argument which has not previously occurred to him."

[37] Reliance was placed on R v Home Secretary, Ex p. Doody [1931] 3 WLR 154 where the issue arose as to whether the Home Secretary was under an obligation to provide a prisoner serving a mandatory sentence with reasons for refusing to bring the matter up for review for the purpose of considering a release on licence, Mustill LJ said at p. 171:

> "It has frequently been stated that the right to make representations is of little value unless the maker has knowledge in advance of the consideration which, unless effectively challenged, will or may lead to an adverse decision. This proposition of commonsense will in many instances require an explicit disclosure of the substance of the matters on which the decision-maker intends to proceed. Whether such a duty exists, how far it goes and how it should be performed depend entirely on the circumstances of the individual case that I prefer not to reason from any general proposition on the subject."

[38] Moreover at p. 172 he made the following pronouncement on which Ms. Nelson also relied namely:

> "I accept without hesitation, that the law does not at present recognize a general duty to give reasons for an administrative decision."

In the case of Baldwin Francis v Patents Appeal Tribunal [1959] AC 663 the House of Lords reviewed the decision of the judge, the tribunal on an appeal. The appeal was against the decision of the superintending examiner on an application for a patent. Lord Justice Reid held at p. 685 that the judge was not bound to set out his reasons in full.

[39] Further reliance was placed on the passage from Administrative Law 7th edn. By Wade and Forsyth p.942 which reads:

> "..the courts of law are not subject to any rule requiring reasons…"

[40] Ms. Nelson also referred the Court to the cases cited in "Judicial Review Handbook" 3rd edn., by Michael Fordham at p. 880 paragraph C: R v The Southend Stipendiary Magistrate, ex p Rochford District Council [1995] Env LR 1, 6 (Judge J: "there is at present no general duty on the Magistrates' Court to give judgments or reasons for their decisions when delivering them; R v Wallace The Times 31st December 1996 (no general rule requiring reasons for all procedural rulings during a criminal trial; R v Harringay Magistrates" Court, ex p Cragg [1997] COD 160 (no general duty on magistrates to give reasons and no duty as to destruction order (even though no right of appeal to the Crown Court."

[41] Next Ms. Nelson referred the Court to the case of R v Crown Court at Harrow, ex parte Dave [1994] 1 ALL ER 315 in which hearing an appeal against the decision of the magistrates' court the Crown Court failed to give reasons for dismissing the appeal. In the Court of Queen's Bench Division the applicant sought an order of certiorari to quash the decision of the Crown Court. The Queen's Bench Division quashed the decision of the Crown Court and remitted the case for rehearing. One reason for the decision of the Queen's Bench Division was the failure of the Crown Court to give reasons for dismissing the applicant's appeal against conviction. Phill J. delivered the judgment of the court and drew a distinction between the Crown Court's obligation to give reasons and the absence of any such obligation on magistrates to give reasons when he said at p. 320 d:

> "Appeals to the Crown Court are normally from the decisions of magistrates who do not have to give reasons."

[42] Further, Ms. Nelson buttressed her arguments with the case of R v Civil Service Appeal Board, ex pa Cunningham [1991] 4 ALL ER 310 the respondent had refused to give reasons for its award of compensation for unfair dismissal to the applicant. The applicant had no right of appeal against the award. In considering whether he respondent Board had a duty to give reasons the Court of appeal held that the Board was required to give reasons for the way in which it had reached the award. The Court of Appeal stated categorically that there was no such obligation on the Magistrate's Court. The reasons for the distinction were given by Lord Donaldson MR. delivering the leading judgment of the court when he said at page 318 b:

> "I accept at once that some judicial decisions do not call for reasons, the commonest and most outstanding being those of magistrates…they are distinguishable from decisions by the board for two reasons. First, there is a right of appeal to the Crown Court, which hears the matter de novo and customarily does give reasons for its decision. Second there is a right to require the magistrate to state a case for the opinion of the High Court on any question of law. This right would enable an aggrieved party to know whether he had grounds for raising any issue which would found an application for judicial review, although his remedy would procedurally be different."

[43] Finally, Ms. Nelson stated that an aggrieved party in Antigua and Barbuda has the same right by virtue of the Magistrate's Code of Procedure Act Cap. 255. She submitted that in this jurisdiction as in England the Magistrate's Court has no obligation to give reasons for its decision at the time of delivering a ruling. Had the claimant exercised his right to require the Magistrate to state a case then the Magistrate would have had a duty to provide reasons. This would have given him the opportunity to determine whether there were additional grounds for his application for judicial review but having obtained leave for judicial review on other grounds there is no obligation following the grant of leave for the Magistrate to provide reasons.

[44] Ms. Bridget Nelson next submitted that the Court has no jurisdiction to inquire into the merits of the Acting Chief Magistrate's decision. This is a matter for the Court of Appeal. It is exclusively within the Magistrate's jurisdiction to determine whether or not the offence with which the defendant has been charged is known to law.

[45] Ms. Nelson adverted the Court's attention to a number of authorities to buttress her arguments that the summonses/complaints are good in law since there is no requirement to particularize the innuendo or special meaning where a defendant is charged with criminal libel. These cases include: Bookbinder v Tebbit [1989] 1WLR 640; Rubber Improvement Ltd v Daily Telegraph Ltd [1963] 2 ALL ER 151; Grubb v Bristol United Press Ltd [1962] 2 ALL ER 380 and Boyd v Mirror Newspapers Ltd [1980] 2 MS WLR 449

[46] There is no duplicity in the summonses/complaints stated Ms. Nelson. The allegations against Mr. Linton are made in separate summons. There is no disputing that they complaints/summonses are separate and distinct. Separate offences are created by section 11(1) (a) of the Libel and Slander Act. Had Mr. Linton been charged with maliciously or recklessly publishing the statement then and only then could the claim be made rightly that the information was duplicitous. Ms. Nelson placed reliance on the case of Surrey Justices, ex Parte Witherick [1932] 1KB 450 where the information for driving without due care and attention or without reasonable consideration contrary to the Road Traffic Act 1988, s.3 was held to be bad for duplicity because the section created two separate offences, one for driving without due care and the other of driving without reasonable consideration. They must be alleged in separate information, not as alternatives in a single information. She stated that in the instant case the allegations are made in separate summonses/charges. There is therefore no substance in the allegation that the charges/summonses are bad for duplicity."

Prohibition

[47] Ms. Nelson next submitted that every magistrate has a duty at law to ensure that the defendant has been charged with an offence known to the law and this is so whether or not the issue has been raised by the defendant. Where a particular act constitutes the offence it is enough to describe it in the words of the statute. In support of her argument Counsel relied on Stone's Justices' Manual Vol 1 2003 paragraph 1 – 420. The wording of the complaints and the summonses against Mr. Linton followed the statute which created the offences. Therefore, in the matter before the magistrate there was strict compliance with the wording of section 11 of the Libel and Slander Act, Ms. Nelson argued therefore, Mr. Linton application for Prohibition is baseless and should be refused.

Stay of Proceedings

[48] There is no abuse of the Court's process Ms. Nelson stated. Mr. Linton has failed to show that there has been an abuse of the Court's process, infact he has failed to lay the foundation that is essential to the grounding of such a complaint. In support of this

contention reliance was placed on Derby Crown Court, Ex parte Brooks (1985) 80 CR APP 164 where Sir Roger Ormrod, giving the judgment of the Court said at page 168:

> "In our judgment, bearing in mind Viscount Dilhorne's warning in DPP v Humphreys (1976) 63 Cr App. R. 95, 107; [1977] A.C. 1, that this power to stop a prosecution should only be used 'in most exceptional circumstances", and Lord Lane C.J's similar observation in Oxford City Justices ex parte Smith (1982) 75 Cr. App. R 200, 2004, which was specifically directed to magistrates' courts, that the power of justices to decline to hear a summons is 'very strictly confined', the effect of these cases can be summarized in this way. The power to stop a prosecution case arises only when it is an abuse of the process of the court. It may be an abuse of process if either (a) the prosecution have manipulated or misused the process of the court so as to deprive the defendant of a protection provided by the law or to take unfair advantage of a technicality, or (b) on the balance of probability, the defendant has been, or will be prejudiced in the preparation of the conduct of his defence by delay on the part of the prosecution which is unjustifiable." (emphasis mine)

[49] The case before the Court is not a case in which it is even arguable that the prosecution have manipulated or misused the process of the court so as to deprive the complainant of a protection provided by the law or to take unfair advantage of a technicality. Mr. Linton has failed to establish the ingredients of sharp practice on the part of the prosecution and prejudice to him argued Ms. Nelson

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[50] Ms. Nelson also placed reliance on the case of R v Willesden Justices, Ex Parte Clemmings (1988) 87 CA R280. The facts in brief are that the applicant had been charged with obtaining a cheque by deception. Following the failure of the prosecution on repeated occasions to comply with the order of the court to give disclosure the court dismissed the case for want of prosecution. Two weeks later the applicant was charged with the same offence. The magistrates' court refused an application by the applicant to dismiss the case on the ground of autrefois acquit and alternatively as an abuse of the process of the court. The applicant moved the Queen Bench Division for an order of prohibition to prevent the justices continuing with the committal proceedings. In refusing the application the Court held that the power to stop a prosecution would only arise if there had been abuse of the process of the court in that the prosecution had manipulated or

misused the process of the court to obtain an advantage or where on the balance of probabilities the defendant had been or would be prejudiced."

[51] Finally, Ms. Nelson stated that there is no supporting evidence to show that the then DPP (ag.) had any improper motive, bias or prejudice towards Mr. Linton.

Court's Findings and Analyses

[52] The supervisory jurisdiction of the Court over inferior tribunal has always been recognized. In public law the Court is clothed with the jurisdiction to review the proceedings of lower Courts. There are well recognized grounds upon which the Courts will review the decisions ought to be impugned.

[53] Lord Diplock in CCSU v Minister for the Civil Services [1985] AC 374 rationalized the grounds for judicial review into three categories: procedural improprietory, irrationality and illegality.

[54] In reviewing the function of judicial review Lord Hailsham LC in Chief Constable of North Wales Police v Evans [1982] 1 WLR 1155 stated that:

> "It is important to remember in every case that the purpose is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question."

[55] I adopt the principles stated above and apply them to the case at Bar. This however, does not negate the fact that it is the law that the court in the exercise of its supervisory role can examine a decision that was made by the Magistrate in order to determine whether or not the Magistrate had the jurisdiction to make that particular decision. Should the Court be of the view that he Magistrate has acted in excess of jurisdiction or ultra a vires the Court will not hesitate to quash the decision.

[56] No Court or tribunal has any jurisdiction to make an error of law on which its decisions of the case depends. If it makes such an error it goes outside its jurisdiction, this was stated

Lord Denning MR. in Pearlman v Governor of Harrow Scholar (1979) QB 56. I can do no more than accept this principle and apply it to the case at Bar.

[59] It is stated in Judicial Review: Law and Procedures ibid at page 103 paragraphs 10 – 01 that until very recently it was thought justices in criminal cases were subject to judicial review only where there was an excess of jurisdiction or an error of law on the face of the record. It is now clear from R v Greater Manchester Coroner, ex p Tal [1985] Q.B 67 that the ambit of review is wider encompassing, also, errors of law which do not appear on the face of the record but which are material to the decision.

[60] I am not of the opinion that the failure to produce a copy of the record is fatal to a claim for judicial review without more. As a general rule, the Courts has wide powers to review proceedings of tribunals are extensive. Certiorari lies to quash a decision that is made by public bodies including magistrates where the decision is ultra vires or where there is an error of law whether or not it appears on the face of the record.

[61] Indeed over the years, the plethora of case law has established that the Court will grant certiorari if there is either an error of law or excess of jurisdiction. The law has evolved and it is now clear that any error of law will render a decision susceptible to review if such error affects the decision See: Judicial Review: Law and Procedures RJF Gordon page 31 where it is stated that:

> "Increasingly, case law chipped away at the notional edifice of the "record" and the potential technical limitations that it could have involved."

[62] Further in R v Knightsbridge Crown Court ex p the Aspinall Cruzan Ltd [1982] The Times December 16, it was recognized that the Court may on Judicial Review, look at evidence which enabled it to deal with the issues before it despite the fact that such issues could not technically be regarded as forming part of the record.

[63] I have carefully reviewed the evidence in the case at Bar and the submissions presented by both Counsel. The following represent my findings and analyses.

[64] It is undisputed that submissions were made to the Acting Chief Magistrate after which she ruled that they were denied and the trial should proceed.

[64] As stated earlier, it is the law that where there is an error of law that materially affects the decision making process is regarded as an excess of jurisdiction. I have further reviewed the submissions made by both Counsel and with respect I am not of the view that there was a misapprehension of the law by the Acting Chief Magistrate. I am not of the view that the magistrate has a duty to provide reasons for ruling on the preliminary issue. At that preliminary stage of the matter ,that is where the substantive trial of the matter had not commenced, I am unconvinced that the Magistrate had a legal duty to provide reasons for her decisions. In coming to this conclusion I have applied the principles very helpfully enunciated in Regina v Worthing Limited Ex paprte Norwell and Another ibid I also apply the principles stated in R v The Southend Stipendiary Magistrate, ex p Rochford District Council ibid. Additionally, Lord Donaldson MR. enunciation at page 381 in R v Civil Services Appeal Board, exp Cunningham [1991] 4 ACL ER 310 is most instructive. I quote "*I accept at once that some judicial decisions do not call for reasons, the commonest and most outstanding being those of Magistrates*."

[65] Further, it is well recognized that, in practice it is difficult to obtain judicial review of a decision of the Magistrate who refuses to dismiss an information because of abuse of process unless the Court is satisfied either that the magistrate has not been properly directed in law or that the decision arrived at is perverse See: R v Ashton under Lynne JJ. ex p. Potts [1984] The Times, March 29.

[66] In the case at Bar, I am far from persuaded that the Acting Chief Magistrate had not been properly directed in law when she ruled on the preliminary objections raised.

[67] While it is no part of my function to determine the matter on its merits, I am of the respectful view and accept the submissions of Ms. Nelson that the relevant complaints/summonses were not duplicitous. In so stating however, I am very mindful of

the fact that Judicial Review proceedings are separate and distinct from appeal proceedings. Very instructive in this regard is the case of R v Entry Clearance Officer Bombay exp Anim [1983] 2 AC 818 in which Lord Fraser stated that:

> "Judicial review is concerned not with the manner in which the decision was made. Judicial review is entirely different from an ordinary appeal. It is made effective the Court quashing a decision without substituting its own decision, and is to be contrasted with appeal where the appellate tribunal substitutes its own decision on the merits for that of the hearing officer."

[68] Judicial review is not concerned with the correctness of a decision on the merits. In the Chief Constable of the North Wales Police v Evans [1982] 1 WLR 1155 it was emphasized that were the Court to ignore its function, on judicial review of confining its attention to the decision making process it would under the guise of preventing the abuse of power be guilty of usurping power.

[69] Further, I am not persuaded that the complaints/summonses before the Magistrate do not disclose any offences on their face. I therefore do not accept Mr. Hamilton's arguments that particulars or suggested innuendoes of the alleged complaints ought to have been set out therein.

[70] I am however of the considered opinion that the Acting Chief Magistrate was required to satisfy herself that the complaint or summons describes the specific offence with which the accused it charged. I accept Ms. Nelson's submissions that whether or not the office has been made out can only be properly determine at the close of the prosecution's case. Further, there is no requirement in a criminal matter to plead the particulars of the innuendoes, this is in contradistinction to a civil case where the rules of pleadings apply.

[71] It seems clear to me that the proper course was for Mr. Linton to have awaited the outcome of the trial and should he be of the view that the prosecution did not adduce sufficient evidence to prove the case against him (should the outcome of the matter be against him) he should challenge the decision of the Court by way of an appeal.

[72] In view of the foregoing and for the above reasons I decline to grant the application for the certiorari to quash the decision of the Acting Chief Magistrate's ruling to proceed with the trial.

Prohibition

[73] For the sake of completeness, I will now address the issue as to whether or not the Court should prohibit the Acting Chief Magistrate from the further hearing of the complaints.

[74] Prohibition is used to prohibit the future performance of an unlawful act by a public authority. Prohibition is also used to prevent a respondent from acting or continuing to act in such a way to abuse jurisdiction or offend against natural justice.

[75] In view of my findings and rulings above it is not necessary to address this limb of the relief in any detail since I have already ruled that the Acting Chief Magistrate acted lawfully and within her jurisdiction.

[76] I therefore refuse to grant the application for the Prohibition, as requested.

Stay of Proceedings

[77] The Court has always intervened to grant relief to parties on the basis that there is real likelihood of bias. Decisions have been quashed by the Court on the basis that there was a likelihood of bias.

[78] There is no doubt that there is a likelihood of bias if the adjudicator has, in the past, expressed clear views about live issues in the current application See: R v Recent Policy Authority, ex p Godden [1971] 2 QB 662.

[79] A judge is disqualified from determining any case in which he may or may be fairly suspected to be biased See: Wade and Forsyth Administrative Law Eight Edition page 445. A very important plank on which the principles of bias are built is that "No man shall be judge in his own cause."

[80] There may however be circumstances where it is necessary for the person who is alleged to be bias have to make the decision. This occurs in circumstances of necessity and is well recognized as an exception to the general principles against bias.

[81] The authors Graham Aldous and John Adler in their Treatise – APPLICATION FOR JUDICIAL REVIEW – LAW AND PRACTICE of the Crown Office Second Edition states at page 27 that:

> "A citizen is entitled to assume that the decision maker is reasonable free from irrelevant biases. Complete impartially is of course an impossible ideal, so the law has to compromise."

[82] There is no doubt that bias or potentially biased decisions are reviewable by the courts. As a general rule the Court will not hesitate to review decisions in which there are allegations of bias or if there is bias. This usually occurs in one of 3 ways namely:

(a) A disqualified person participates in the decision or
(b) Where the case is prejudged; or
(c) Where an interested party has private access to the adjudicator

[83] A disqualified person is someone who has a direct pecuniary interest in the subject matter or who is biased in favour of one side of the other See: Metropolitan Properties Co (F.G.C.) Ltd v Lennon [1969] 1 Q.B. 577

[84] However, the Courts have been slow to stop a prosecution of a case save in the most exceptional circumstances. I accept Ms. Nelson's submissions that the Court may stop a prosecution if there has been an abuse of process. An abuse of process usually occurs if the prosecution have manipulated or misused the process of the court so as to deprive the defendant of a protection provided by the law or to take unfair advantage of a technicality; or on the balance of probability, the defendant has been, or will be prejudiced in the preparation of the conduct of his defence or delay on the part of the prosecution which is unjustifiable See: Derby Crown Court, Ex Parte Brooke ibid.

[85] In the case at Bar, I am far from persuaded that there has been an abuse of the Court's process. It is clear to me that while the complaints were initiated by the then DPP (ag.),

Mr. Pestaina the matter is being heard by the Acting Chief Magistrate who is the arbiter. If the Magistrate Court were to determine that there is no merit in the complaints that would be the end of the matter.

[86] Further, I am not convinced that the then DPP (ag.) in instituting the complaints against Mr. Linton was motivated by bias. I am equally not satisfied that there is any real likelihood that the then Acting DPP was motivated by bias when he instituted the charges against Mr. Linton.

[87] I have further reviewed the evidence. I do not accept that in the circumstances that obtain there is any danger of bias. I find highly persuasive the Privy Council decision Rees et al v Crane [1994] 1 ALL ER 833 in which a decision by the Judicial and Legal Commission of Trinidad and Tobago to recommend to the President the removal of Mr. Justice Crane as a High Court Judge was also attached on the ground that the decision was vitiated by bias. Among the allegations were that there was personal animosity on the part of the Chief Justice which pre-disposed him against the respondent. Even though the Privy Council was of the view that there was "some force in these contentions" it declined to find bias in the absence of personal malice.

[88] I am therefore of the respectful view that there is no merit in the application for a stay of proceedings as an abuse of the Court's process.

Conclusion

[89] For the above reasons and in view of the foregoing, it is hereby ordered that the Mr. Lennox Linton's applications for Order of Certiorari and Prohibition are refused

[90] The Acting Chief Magistrate Court has jurisdiction to hear and determine the complaints and in the absence of any abuse of the Court's process, the application for a stay is also refused. The matter before the Magistrate's Court is to be proceed with.

[91] In accordance with part 65(6) Civil Procedure Rules 2000, I make no order as to costs.

[92] I acknowledge the assistance of all learned counsel.

Louise Esther Blenman
Resident High Court