

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2006/0452

ROMANETA FRANCIS

Applicant

And

PUBLIC UTILITIES AUTHORITY

Respondent

**Appearances:**

Ms. Rhodette Browne for the Applicant

Ms. Monique Francis-Gordon for the Respondent

.....  
2007: April 30th  
.....

**DECISION**

- [1] **Blenman, J;** Ms. Romaneta Francis (Ms. Francis) is the owner of a well known pharmacy – Shoppers Pharmacy that is located at High Street St John’s Antigua. She has filed a Notice of Application and seeks leave of the Court in order to be able to institute Judicial Review Proceedings against the Public Utilities Authority (APUA) which is responsible for the provision of electricity services in Antigua and Barbuda.
- [2] Ms. Francis says that there is a dispute between her and the APUA in relation to the ownership of the real property situate at the above address and as a consequence, since December 2004 APUA has unjustifiably denied her (pharmacy) the provision of the electricity service.
- [3] Ms. Francis indicates that she wishes, ultimately, to seek the following reliefs against APUA namely:
- (a) A declaration that she is entitled to the reconnection of her electricity services to the premises housing Shoppers Pharmacy Ltd located at High Street, St John’s Antigua and

(b) A mandamus against APUA requiring it to restore the electricity service to her premises.

- [4] In seeking the leave of the Court, Ms. Francis asserts that there is no alternative redress available to her. She deposed to an affidavit and stated that she has been a customer of APUA for over 13 years. She says that on 27<sup>th</sup> day of November, 2004 a fire occurred at her business place which destroyed the interior walls, contents and flooring of the building. However, by the 13<sup>th</sup> day of December 2004 her property was completely restored and opened for business. About December 2004 she applied to APUA for the electricity to be restored to her premises and her property was inspected by one Inspector Depeazer and the building was approved as being in fit and proper condition for the reconnection of electricity services. She has made several requests of APUA for the reconnection of her services, all to no avail.
- [5] Ms. Francis complains that about 25<sup>th</sup> February 2005, the then General Manager of APUA stated in a newspaper article that the reason why the electricity was not restored to her property was due to the dispute in relation to the ownership of the property. She complains that she has suffered severe hardship as a consequence of APUA's refusal to reconnect her electricity services and is forced to purchase several generators. She says that APUA is confusing "its role as a service provider with that of landlord."
- [6] APUA vigorously opposes Ms. Francis' application for leave to bring Judicial Review Proceedings. APUA disputes the allegations that APUA has failed to reconnect Ms. Francis' electricity due to the legal dispute between the parties. APUA contends that Mrs. Francis has not submitted the appropriate application for electricity, which along with APUA's inspection would form the basis of APUA's rendering of a decision. APUA argues that Ms. Francis has failed to establish or show that she has satisfied the procedural requirements set by APUA and that she is being unlawfully treated by APUA. APUA alleges that Ms. Francis claim is one that sounds in contract and in all of the circumstances the Court should refuse to exercise its discretion in favour of Ms. Francis.

[7] The sole issue for the Court to determine is whether this is a proper case in which the Court should exercise its discretion and grant leave to Ms. Francis to file Judicial Review Proceedings.

[8] In opposing Ms. Francis' application for leave, APUA General Manager Mr. Esworth Martin (Mr. Martin) deposed to an affidavit in which he stated as follows:

"There is a two tier process involved in the restoration of electricity supply to Ms. Francis' premises namely (a) she was first required to temporary restore the services to facilitate repairs being done to her property and the electrical circuiting for the premises itself would have had to be revised and must be grounded properly."

Mr. Martin next stated that the second phase of the procedure is:

"APUA would then send an inspector to ensure that the connections were safe. The customer then has to visit APUA's head office and fill out a re installation electricity service. Thereafter the APUA would send an inspector to inspect the new wiring so as to ensure that it was safe for reconnection."

[9] Mr. Martin refuted Ms. Francis' assertions that Mr. Depeazer approved the temporary service; in fact Mr. Martin said that Mr. Depeazer had rejected it entirely as unsafe. He stated that Ms. Francis has never complied with the second phase of the procedure since she has not submitted the requisite application form.

### **Respondent's Submissions**

[10] Learned Counsel Ms. Francis-Gordon strenuously opposed Ms. Francis' application for the grant of leave to issue Judicial Review Proceedings. Counsel explained to the Court the procedure involved in the re-connection of electricity after a fire has occurred. Ms. Francis-Gordon advocated that a formal application must be made and she adverted the Court's attention to the application form which specifically requires the applicant to indicate therein whether he or she is the owner/tenant of the premises. Counsel said that Ms. Francis has not submitted any application to the APUA, and this was confirmed by the General Manager who had perused the company's records.

[11] Further, Ms. Francis-Gordon submitted that APUA is the registered owner of the property in which Ms. Francis' pharmacy is housed therefore there could be no dispute as to its ownership, it is for this self same reason that Ms. Francis is unable to submit the application form to APUA in order to seek the reconnection of her services.

[12] Further, Ms. Francis-Gordon urged the Court not to grant leave to Ms. Francis in so far as Ms. Francis has failed to comply with Part 56 (3)(2)(e) of the Civil Procedure Rules 2000. In addition stated Ms. Francis-Gordon, in any event this is not a proper case for the Court to exercise its discretion in so far as:

- (1) Ms. Francis is guilty of delay since she has sought the leave of the Court nearly two (2) years after the alleged breaches occurred.
- (2) There is no illegality, irrationally or procedural impropriety on the part of the APUA.
- (3) Ms. Francis has not come to the Court with clean hands.

[13] In advancing her client's position, the Court brought to Ms. Francis-Gordon's attention the fact that she did not provide the Court with any authorities in support of her submissions. Therefore, at the conclusion of the oral submissions the Court granted both Counsel leave to file and exchange additional submissions and authorities. Counsel appearing on behalf of APUA did not avail herself of this opportunity.

#### **Claimant's Submissions**

[14] Learned Counsel Ms. Browne submitted that the Court should grant Ms. Francis leave to bring Judicial Review Proceedings against APUA. Ms Browne said that at the root of the entire matter is APUA's desire to have Ms. Francis vacate the property, which APUA says it owns and Ms. Francis disputes. Ms. Browne stated that as a consequence of the legal dispute it would be impossible for Ms. Francis to submit the form which requires the applicant to indicate whether the applicant is a tenant or owner. Ms. Browne says therein lies the gravamen of the dispute. Ms. Browne stated further that it was as a consequence of the dispute as to ownership of the property that has caused APUA to withhold its

permission and has resulted in APUA's refusal to connect the electricity supply to Ms. Francis's pharmacy.

[15] Next, Ms Browne said that APUA has omitted to act and in so doing it has taken into consideration irrelevant factors, hence, the reason for Ms. Francis seeking the leave of the Court in order to compel APUA to act; Ms. Browne further argued that APUA in refusing to provide/reconnect the electricity services to Ms. Francis pharmacy, is motivated by improper services.

[16] As stated earlier, the Court having heard oral arguments invited both Counsel to provide the Court with authorities for their propositions and to file further written submissions. The Court therefore reserved its decision pending these submissions. I must state that at the close of the oral arguments Learned Counsel Ms. Francis-Gordon informed the Court that she had just come into receipt of proposal for settlement from Dr. Cheltenham who was writing on behalf of Ms. Francis. Nothing apparently has come of this even though the parties had held out hope of an amicable resolution of the entire matter.

[17] Be that as it may, there was a strange turn of events which brings me now to deal with a document headed "Amended Affidavit in Reply" (Amended Affidavit)

#### **Amended Affidavit**

[18] After the decision of the Court was reserved and leave was granted to the parties to provide the Court with authorities in support of their oral arguments together with additional written submissions if necessary, Mr. Martin the General Manager of APUA filed a document headed "Amended Affidavit in Reply" several days after. No leave was sought nor obtained from the Court to file this affidavit. For what it is worth and of great significance is the fact that in the "Amended Affidavit" Mr. Martin deposed that Mrs. Francis is "a trespasser to the property from which she is operating a business without the payment of rent and is seeking the intervention of the Court to grant her rights that she would not otherwise have had." Further Mr. Martin stated in the "Amended Affidavit" as follows:

"Moreover the state of affairs has now changed as facing increased competition from our competitors in the cellular and interest diversion of our operations coupled with the proposed liberalization of the Telecommunication Industry within the next few months and the need for expansion of the property adjacent to that which the Claimant occupies which we both own and operate. It is extremely vital that we construct a multi storey building in the location from which the Defendant currently operates her pharmacy to give us a presence on the main street "High Street" in the heart of the central business district in St John's"

[19] Learned Counsel Ms. Browne in view of the "Amended Affidavit" applied to the Court for leave in order to file written submissions together with authorities as directed by the Court, a few days after the time permitted for doing so. The application was not placed before the Court for its attention; Counsel nevertheless proceeded to file further written submissions and provided the Court with authorities for her oral arguments. Let me state that it has never been the practice of the Court to shut out a litigant who is a few days late in complying with the Court's direction in providing written closing arguments and the Court will not commence that practice now.

[20] Ms. Browne in her written arguments further submitted that at this preliminary stage in Administrative Legal actions, the law does not require an Applicant to argue in significant depth the substantive issues involved in the proposed Judicial Review Claim. **Inland Revenue Commissioner v National Federation of Self Employed and Small Business Ltd [1984] AC 617 at 643, 644** the following submissions are intended to address the matters which the Court is concerned with at any hearing of an Application for Leave. The power of judicial review may be defined as the jurisdiction of the superior courts to review laws, decisions, acts and omissions of public authorities in order to ensure that they act within their given powers.

[21] Next, Ms. Browne referred the Court to Rule 56.3(1) of the Civil Procedure Rules, 2000 which indicates the procedure in order to apply for judicial review to first obtain leave. She stated that while Rule 56.3(3) does mandate certain matters which must be addressed in the Application, as a matter of procedure, no stated guidance is given by the Rules on the factors to be considered by the Court in exercising its discretion at this stage. Ms. Browne

stated that the Court has always looked towards judicial precedents for assistance in this regard. The permission stage in Judicial Review Proceedings serves to filter out challenges which are unarguable, doomed to fail or subject to some legal or discretionary bar. See: **R v Secretary of State for Trade and Industry exp Eastaway [2000] 1WLR 2222, 2227H** per Lord Bingham "*The requirement of permission to apply for judicial review is imposed primarily to protect public bodies against weak and vexatious claims.*"

- [22] Ms. Browne next stated that any body performing public law duties or powers is susceptible to judicial review. An example of such a body are those which derive their power from statute See: **R v British Broadcasting Corporation, ex parte Lavelle [1983] 1 WLR 23**. APUA is a Statutory Corporation created pursuant to the Public Utilities Act, Cap 359 of the Laws of Antigua and Barbuda and carries on the business of providing utility services to the entire State. In fact, APUA is the only electricity provider in Antigua and Barbuda. Ms. Browne therefore submitted that by being a Public Authority, APUA fits squarely within the type of bodies the Court is empowered to supervise, upon application, to ensure that it acts within its conferred powers.
- [23] Rule 56.2(1) of the CPR Rules, provides that an "*Application for Judicial Review may be made by any person, group or body which has sufficient interest in the subject matter of the Application*". Subrule 2(2) (a) goes on to provide that this includes: - "*any person who has been adversely affected by the decision which is the subject of the application.*" Under this head, an assessment is conducted into the extent of Ms. Francis' interests against the factual and legal circumstances of the claim. At the permission stage, the question of standing is merely a "threshold" question for the Court, designed to weed out frivolous and vexatious claims. See: **R v Monopolies and Mergers Commission ex parte Argyll Group plc [1986] 1 WLR 763**.
- [24] Ms. Browne said that the thrust of Ms. Francis' case is that from since December, 2004 she has been denied electricity to her business premises on High Street, Antigua. Her position is that she has been directly affected by APUA's failure to act, despite her many requests for reconnection of services. Further, it is Ms. Francis' contention that as a result

of APUA's inaction, she has suffered immense inconvenience and financial hardship. Ms. Francis therefore claims to be directly impacted by the inaction complained and argues that she satisfies this requirement of "sufficient interest."

### **Is there an arguable ground for Judicial Review?**

- [25] Ms. Browne pointed that the Court must be satisfied at the permission stage that there is an arguable ground for judicial review, on which there is a realistic prospect of success. See: **R v Secretary of State for the Home Department, ex p Cehblak [1991] 1 WLR 890 at 901C-D**. One of the well defined grounds for Judicial Review is that of an abuse of discretion. Discretion conferred upon a public authority must be exercised reasonably and in accordance with law.

### **Improper Purpose**

- [26] Ms. Browne next stated that an aspect of this ground is that a statutory power must not be exercised for a purpose for which it was not intended i.e. for an "improper purpose." From a perusal of the cases in this area, it is clear that the Courts have used this ground as a basic tool to strike down acts, omissions and decisions of public authorities which have strayed beyond the basic purpose. In general, an act by such a body which serves to promote private interest has been viewed with grave suspicion by the Courts. Such a case is **West India Electric Co. v Kingston Corporation [1914] AC 989, PC** where it was held that a company which could acquire land compulsorily for the erection of buildings in order to promote the efficient operation of its tramway could not acquire such lands in order to build houses for its European employees. To focus on the comfort and efficiency of the employees was to serve an improper purpose, different from building an efficient tramway.

### **Irrelevant or Immaterial Considerations**

- [27] Next, Ms. Browne said that in addition, the basic rule is that a public authority must factor into the exercise of his discretion only those considerations which are relevant and material for that purpose. See: **Padfield v Minister of Agriculture [1968] AC 897; Jhuggroo v Central Arbitration Control Board [1953] AC151**. Therefore, if a body strays from the confines of the power conferred upon it and takes into account immaterial

considerations, such a decision is reviewable and susceptible to being quashed by the Courts. Ms Browne further submitted that in the circumstances of this case it is evident that the APUA has either confused or merged its duty to the public to provide utility services with that of its role as disputed property owners of the subject premises. Counsel referred to the evidence of Ms. Francis in which she said that after her premises was gutted by fire made the requisite oral application for a reconnection. Certainly, despite the difference in evidence placed before the Court concerning the results of the inspection by the APUA's Inspector, Ms. Francis contends that despite numerous request of APUA they have since failed and or neglected to provide the requested service. APUA's response was rather to attempt to obtain vacant possession of the premises by issuing a notice to quit by letter dated the 31<sup>st</sup> day of March, 2005. The Court should also note that this matter has also been aired publicly, with Ms. Francis and her employees, on at least one occasion, protesting in the street against APUA's omission to provide the premises with electricity services and so the APUA has always known of Ms. Francis complaint and has since failed and/or neglected to address same. It is Ms. Francis' contention that APUA in these circumstances, has attempted to use its statutory powers to further a private purpose that is to obtain vacant possession of the premises, and further that they have taken into account immaterial considerations in relation to her application for electricity including, but not limited to, their current dispute in the Court over possession of the premises.

[28] Next, Ms. Browne submitted that upon a perusal of the issues raised in Ms. Francis' claim there is an arguable case for Judicial Review proceedings on the ground of an abuse of discretion, upon which there is a possibility of success. The circumstance of this case, Ms. Francis contends, is one most appropriate for the grant of leave in order to be able to pursue the intended Administrative Action.

### **Delay**

[29] Next, Ms Browne argued that while delay is a factor to be considered by the Court in considering this application, she submitted that while December, 2004 is the source of the APUA's omission to act, APUA's failure is a continuing one and ought to be viewed as

such. Ms. Francis has not been lying on her rights, but have at all material times requested action on the part of APUA.

### **Alternative Remedy**

[30] Finally, Ms Browne submitted that while there maybe a remedy under contract for breach against APUA, Judicial Review action is the most appropriate, in the circumstances, given the nature of the APUA and also the type of remedies sought, more specifically that of a mandamus.

[31] Finally, Ms. Browne submitted that Ms. Francis satisfies the factors to be considered in granting leave and asked that the Order as prayed be granted. Ms. Francis claims as a consumer who has either been unjustly denied electricity or discriminated against in having the service connected. Therefore, Counsel submitted that those circumstances amount to an arguable case for an abuse of discretion or failure to act because of an improper purpose.

### **Court's Analyses and Findings**

[32] I have perused the documents filed in this matter and the affidavits. I have also given careful consideration to the submissions made by both learned counsel. With respect, I am of the view that the arguments advanced by Learned Counsel Ms. Browne are persuasive and I accept them in preference to those advanced by Learned Counsel Ms. Francis-Gordon.

### **Law**

[33] It is well settled that judicial review proceedings is the procedure through which the Court exercises supervisory jurisdiction over tribunals, public bodies or inferior tribunal. In reviewing a particular decision the Court is concerned to evaluate fairness. The essential function of judicial review was stated by Lord Hailsham LC in **Chief Constable of North Wales Police v Evans [1982] 1 WLR 1155** as follows:

“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 the individual judges for that of the Authority constituted by law to decide the matter of question.”

The Court can determine, however, whether or not administrative decisions are unlawful and invalid. The Court has a duty to ensure that administrative decisions are taken properly; it cannot however determine whether decisions are right or wrong on their merits. The Court cannot require that a power be exercised in any particular way; it can only require that the discretion lying behind the decision to exercise a power be used lawfully. The Court is empowered to make declarations which indicate the rights of applicants. In the case at Bar, the Applicant has indicated her intention to seek certain declarations from the Court.

#### **Prima Facie Case**

[34] I have no doubt that at this stage of this application the Court is concerned with determining whether or not the applicant has established a prima facie case. The role of the Court is to determine whether Ms. Francis has an arguable case on its merits. The Court at this stage of the application for review has no power to try the case on the basis of the affidavits in order to determine which party has presented the true situation. However, the Court must be satisfied that Ms. Francis has established a prima facie case in support of her application for leave. There is no dispute in relation to Ms. Francis’ interest in the matter. I therefore need to make no comment thereon.

[35] Further, it is the law that at the leave stage the Court is required to be satisfied of the following namely:

- (a) That the applicant has a sufficient interest in the matter;
- (b) The decision maker was imposed by law to make decisions;
- (c) Alternatively, that the decision maker has failed to act in circumstances where it ought to have acted;
- (d) The applicant has established a prima facie case; and
- (e) The matter is one in which the Court ought properly to exercise its discretion to grant leave.

## Procedure

[36] Part 56.3(3) CPR 2000 provides the procedure that must be followed in order to obtain leave to issue judicial review proceedings:

The application must state:

- (a) the name, address and description of the applicant and respondent;
- (b) the reliefs, including in particular details of any interim relief sought;
- (c) the grounds on which such relief is sought;
- (d) the applicant's address for service;
- (e) whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued;
- (f) details of any consideration which the applicant knows the respondent has given to the matter in question in response to a complaint made by or on behalf of the applicant;
- (g) whether any time limit for making the application has been exceeded and, if so, why;
- (h) whether the applicant is personally or directly affected by the decision about which complaint is made;
- (i) if the applicant is not personally or directly affected what public or other interest the applicant has in the matter.
- (j) The name and address of the applicant's legal practitioner (if applicable); and
- (k) The applicant's address for service.

## Contractual Rights/Public Law Rights

[37] In the case at Bar, Ms. Francis-Gordon has strenuously resisted Ms. Francis' application for leave on the ground that the nature of Ms. Francis complaints sounds, if at all, in breach of contract. Learned Counsel Ms. Francis-Gordon urged the Court not to exercise its discretion to grant Ms. Francis leave on the ground that she has an alternative remedy

namely breach of contract, which Ms. Francis ought properly to have pursued. Ms. Browne though conceding that the matter sounded in contract also argued that Judicial Remedy was a correct procedure for Ms. Francis to pursue in so far as her (Ms. Francis') allegations are that APUA is acting in breach of well established public law principles including allegations improper purpose and that APUA has taken irrelevant or immaterial factors into consideration. As stated earlier, Ms. Francis also alleges that APUA by refusing to re connect herself has abused its discretion.

- [38] It has long been recognized that the traditional approach taken by the Court in determining whether or not a matter is amenable to judicial review namely whether it is a public law or a private law matter is no longer the approach adopted by the Court; The Court has long recognized that there are many functions that are particularly performed by statutory bodies which concern both public law and private law. The Courts have also recognized that the desired approach should be one which embraces the remedies that are sought rather than to slavishly create the dichotomy of public law and private law divide. All public authorities have a duty to act lawfully. In any event, it has never been doubted that a wholly statutory power seems ipso facto to be a public law power. There are however powers which are exercised by public bodies which powers are both statutory and contractual in nature. In the case at Bar, it seems to me that the allegations that are made by Ms. Francis against APUA are clearly in the realm of public law; her complaints are that APUA is taking into consideration irrelevant factors in refusing to entertain her application she also complains that by so doing APUA is acting unlawfully. I am therefore not of the view that the gravamen of Ms. Francis' complaints is premised on allegations of contractual breaches. In contradistinction, Ms. Francis is complaining that APUA is exercising its powers in an unlawful manner – ultra vires the statute from which it obtains its authority.

### **Ultra Vires**

- [39] Graham Aldous and John Alder in their treatise Applications for Judicial Review Law and Practice at pages 6 – 7 stated as follows:

“The notion of ultra vires extends beyond the notion of exceeding the wording of a statutory provision. Thus the exercise of a discretion may be

ultra vires because a body has no power to do something in a particular way. This may conveniently be referred to as ultra vires unreasonableness although in fact it covers a number of vitiating factors. The classic explanation of unreasonableness in this context is to be found in the speech of Lord Greene MR. in *Associated Provincial Picture Houses Ltd v Wednesday Corp*:

...a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey these rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington LJ in *Short v Poole Corp* gave the example of the redhaired teacher dismissed because she had red hair. This is unreasonable in one sense. In another, it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another."

This dictum has become so well known as to be referred to as the *Wednesbury Principle*. This second category of ultra vires includes:

- (1) Decisions taken in bad faith;
- (2) Decisions made without consideration of relevant matters (including the fettering of discretion by adopting rigid rules of policy, or by agreement, or improper delegation);
- (3) Decisions made taking into account irrelevant matters;
- (4) Decisions which no reasonable authority could come to; and
- (5) Decisions taken without regard to procedural requirements including the rules of natural justice."

[40] I am fortified in the view that the posture taken by APUA is that Ms. Francis has not applied for reconnection of her electricity services since she has failed to submit the requisite form. In any event, Ms. Francis would be unable to submit the requisite form in so far as she Ms. Francis is required to state whether she was the owner or tenant of the premises and she is neither tenant nor owner. It seems to me that, on the face of the matter that, this position is consistent with the one complained of by Ms. Francis as

occasioning the dispute; however, it is clear to me that this matter can only properly be resolved after a full trial of the matter, (alternatively as suggested by Ms. Francis-Gordon), by amicable resolution between the parties. Be that as it may, I have no doubt that the allegations that are made are ones that are amenable to judicial review. There is no doubt in my mind that the matter has public law elements and the functions of which Ms. Francis complains are “public” functions. I am also satisfied on the evidence presented and based on the submissions advanced that Ms. Francis has established a prima facie case.

### **No Decision**

[41] With respect, I do not accept Learned Counsel Ms. Francis Gordon's further argument that the Court has no power to grant leave in the instant matter in so far as there is no allegation before the Court that the APUA has taken any decision. I am of the opinion that the position urged on the Court by Learned Counsel Ms. Browne is the more acceptable one. The allegation is that the APUA has refused to entertain the application of Ms. Francis and she seeks to compel APUA to entertain her application; APUA's position is that there is no proper application before it in so far as it asserts that Ms. Francis has failed to submit an application form. In effect APUA is asserting that Ms. Francis is at fault since she has failed to comply with their APUA's established procedure. The issue of whether or not APUA is acting lawfully or whether Ms. Francis is at fault can only be determined after a full ventilation of all of the issues. It is no part of my function at this stage of the application to obtain leave, to seek to resolve these issues.

### **Delay**

[42] The Court has discretion as to whether it should grant leave to an applicant if the applicant is guilty of delay in seeking the Court's intervention. While, Ms. Francis Gordon is adamant that the Court should not exercise its discretion to grant leave to Ms. Francis since she is guilty of delay, Ms. Browne urged the Court to grant the leave to Ms. Francis to bring the judicial review proceedings in so far as she alleges that the APUA's breaches are continuing and that Ms. Francis has consistently and continuously requested APUA to reconnect her services. It seems to me that this is a matter that requires the Court to be careful in the exercise of its discretion. The relevant legal position is provided in Part 56.5

(1) CPR 2000 which states that “the judge may refuse leave in any case in which the judge considers that there has been unreasonable delay before making the application.” In addition part 56.5(2) indicates that “the Court when exercising its discretion to refuse to grant either leave to make an application where there was undue delay must consider if it would be likely to cause substantial hardship to or substantially prejudice the rights of any person or it would be detrimental to good administration.” I specifically note that part 56.5 of CPR 2000 unlike other statutory provisions does not state any specific time limit. Previously the position was that a delay of six (6) months was fatal. Our CPR 2000 does not so provide.

[43] However, in the exercise of my discretion I have considered (a) the allegations in the case at Bar, (b) the time lines, (c) whether there would be substantial prejudice to any of the parties and (d) whether it would be detrimental to good administration and I have given particular care to the fact that Ms. Francis took a very long time to move the Court. However, I am mindful of the fact that there is no specified time limit within which she ought to have sought the Court’s leave. I have also noted the fact that even during the inter parties hearing, Learned Counsel Ms. Francis Gordon intimated to the Court that she had then received a faxed letter from Dr. Cheltenham which proposed a settlement of the dispute. I do not think therefore that it is unreasonable to conclude that the parties even at that late stage still hoped for an amicable resolution of the matter. Taking into consideration all of the relevant factors, I am of the respectful opinion that the Court should not refuse to exercise its discretion in favour of the applicant on the sole ground of delay. Let me say straight away that each case must turn on its own facts; in the case at bar, it is my respectful view that, the justice of the matter requires the Court not to allow APUA to insist on the technical ground of delay in order to prevent Ms. Francis from pursuing her alleged rights.

[44] It is well settled that the Court is empowered with the authority to compel an authority to exercise its functions/powers properly. The court has never shirked from its responsibility to ensure that public bodies and functionaries act within the letter of the law; similarly where there are allegations that public bodies have refused and/or neglected to perform

their public functions the Court has also recognized its power to command that public functionary to perform the requisite function; originally this was achieved by the person aggrieved apply to the Court for prerogative writ of mandamus. Under the new dispensation the Court in Judicial Review can properly grant deserving applicants, in a properly made out case an orders of mandamus. See: **Part 56.4(3) CPR 2000** and indeed this is one of the reliefs that Ms Francis seeks the leave of the Court in order to be able to claim.

### **Conclusion**

[45] In conclusion, I am of the respectful opinion that this matter requires a full hearing on its merits in order for the Court to be able to determine whether or not APUA has acted unreasonably or illegally (by adopting rigid rules of policy) and took into consideration irrelevant matters in coming to the conclusion to which it has See: **Associated Provincial Picture Houses Ltd v Wednesbury Corp (1948)** I say this in full recognition that APUA's position is that it has not decided anything even though Ms. Francis-Gordon has argued that APUA's position is that Ms. Francis has failed to comply with APUA's procedure and has failed to submit a written application on the standard form for the reconnection of the electricity services.

### **Conclusion**

[46] For the reasons given, I exercise my discretion so as to grant leave to Ms. Romaneta Francis to file Judicial Review proceedings by way of Fixed Date Claim Form against the Public Utilities Authority. In an effort to expedite the matter I give the following directions:

- (1) Leave is granted to the applicant to file and serve a Fixed Date Claim Form and an Affidavit in Support seeking judicial review, within 14 days.
- (2) Leave is granted to the Respondents to file Affidavit in Answer within 14 days of the receipt of the Fixed Date Claim and Affidavit.
- (3) 7 days leave is granted to the Applicant to file Affidavit in Reply, if necessary.

- (4) The parties are to file and serve Statement of Facts Issue and Law on or before 21<sup>st</sup> June 2007.
- (5) The deponents must attend the Court hearing in order to cross-examine unless their attendance is dispensed with in writing.
- (6) Pre Trial Review is to be held in chambers at 9.00am on 6<sup>th</sup> July 2007.

[47] The Court gratefully acknowledges the assistance of both learned counsel.

Louise Esther Blenman  
**High Court Judge**

**PS.** The Court must note that when the matter was heard Learned Counsel Ms. Monique Francis-Cordon advised the Court that there was the real possibility of the matter being resolved amicably. To date, the Court has received no further communication and it is therefore necessary for the Court to render its decision.