BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

BVIHCV2007/0142

BETWEEN:

KENRICK BELL

Claimant

AND

COMMISSIONER OF POLICE
ATTORNEY GENERAL

Defendants

Appearances:

Mr. Herbert McKenzie of Farara Kerins for the Claimant
Mr. Baba Aziz of the Attorney General's Chambers for the Defendants

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2007: September 28th, October 31st

JUDGMENT

(Administrative Law – judicial review – police officer charged with criminal offence discharged on failure of prosecution to adduce evidence – police officer later charged with disciplinary offence - whether adjudicator based on the 'no evidence rule' erred when he found officer guilty of a disciplinary offence - whether Commissioner made the decision to dismiss officer from the Force - whether decision to discharge ultra vires the Commissioner - whether police officer can avail himself of the principles of autrefois acquit - Police Act – Police Regulations)

[1] JOSEPH-OLIVETTI, J.: This is a claim for judicial review by Mr. Kenrick Bell, a police officer who was discharged from service with the Royal Virgin Islands Police Force ("the Force"). In particular, Mr. Bell is seeking a declaration that the findings of a disciplinary tribunal convened under section 37 of the Police Act Cap 165 are unlawful or otherwise ultra vires and for orders of certiorari quashing the said findings, and the decisions of the Commissioner of Police and the Governor, which were based on those findings.

The Facts

[2] The facts are largely undisputed. Mr. Bell relied on his several affidavits and the Defendants on the affidavit of Mr. Philbert Alfred, the Deputy Commissioner of Police. Both deponents were cross-examined but this in the main related to one issue.

[3] Mr. Kenrick Bell is a citizen of Jamaica where he served as a Police Constable for 6 ½ years. He joined the Force as a Police Constable on 29th June, 2004. He was placed on a probationary period of 3 years as is mandated by section 12 of the Police Act ("the Act").

[4] On 1st August 2006 Mr. Bell was charged with the indictable offence of assault occasioning actual bodily harm contrary to section 184(a) of the Criminal Code 1997. The virtual complainant was his spouse, Mrs. Verna Bell. He was interdicted from duty on ¾ pay on the same day.[1] The preliminary inquiry into the charge commenced but Mrs. Bell after taking the stand refused to give any incriminating evidence against her husband. Accordingly, Mr. Bell was discharged following the failure of the prosecution to adduce evidence against him and the presiding magistrate entered a verdict of not guilty.

[5] Mr. Bell was not recalled to duty but instead in early January 2007 was evicted from the Police Barracks of the East End Police Station where he was living at the time and took up residence in his car. This was so as he had been ordered by the Magistrate to vacate the matrimonial home which order he complied with.

[6] On 15th January, not having heard from the Commissioner of Police ("the Commissioner") as to his status Mr. Bell sought legal advice. His legal advisors by letter of same date wrote to the Commissioner to ascertain his status.

[7] On 1st February Mr. Bell was summoned to Police Headquarters where he was orally informed by Inspector Potter that he would be charged with the offence of discreditable conduct. Shortly after he was handed the charge - a charge of discreditable conduct under Regulation 6(a) of the Police Regulations ("the Regulations").

[8] On 2nd February Mr. Bell's attorney received a letter from the Commissioner which advised that Mr. Bell was still a member of the Force and that disciplinary charges would be brought against him.

[9] Subsequently, the Commissioner appointed Chief Inspector Claudius Alexis Charles (Ag.) as adjudicator to hear the charge. Mr. Bell attended and was represented by Mr. McKenzie. At the conclusion of the hearing on 5th April the adjudicator found that the charge was proved but that the punishment he was authorized to impose under section 37(3) of the Act was inadequate and therefore remitted the matter to the Commissioner for the imposition of punishment in accordance with section 37(4) of the Act.

[1] See section 25 (2) of the Act

[10] On 12th April, Mr. Bell, on the invitation of the Deputy Commissioner of Police, attended at Police Headquarters where Deputy Commissioner Alfred orally informed him that the Commissioner would be recommending his discharge from the Force effective 19th April unless he successfully appealed against his conviction and that he had a right of appeal to the Governor. This was the main area of factual dispute and I accept the evidence of Deputy Commissioner Alfred that he not only told Mr. Bell that the Commissioner would be recommending his discharge but informed him of his right of appeal. Mr. Bell disputed that saying that Deputy Commissioner Alfred told him that the Commissioner 'might' recommend his dismissal. In any event nothing to my mind turns on the use of the word 'might' rather than 'would' in the circumstances and Mr. Bell was in no way prejudiced.

[11] Mr. Bell through his legal advisors then filed an appeal to the Commissioner against his conviction on 13th April. This was stated to be pursuant to sections 38 and 39 of the Act. Mr. Bell heard nothing about that appeal until 6th June when he was handed a letter dismissing him and informing him that his appeal had not been successful.

[12] On 7th June, Mr. Bell, again through his legal advisors, appealed to the Governor under s. 39(1) of the Act. The Governor by letter of 11th June advised him that the finding of the Tribunal and the Commissioner's decision were upheld and referred Mr. Bell's legal advisors to his earlier letter of 11th May by which he had rejected his appeal of 13th April. (Mr. Bell claimed never to have received this letter but nothing turns on this).

Issues

[13] The main issue arising is whether, the adjudicator, based on the 'no evidence rule' misdirected itself when he found Mr. Bell guilty of a disciplinary offence. A secondary issue is whether it was the Commissioner who made the decision to dismiss Mr. Bell from the Force and if so whether this decision was ultra vires the Commissioner. And a third issue is whether Mr. Bell can avail himself of the plea of autrefois acquit having regard to the fact that the criminal charge which was substantially the same as the disciplinary offence had been dismissed.

Claimant's Submissions

[14] Mr. Herbert McKenzie, Learned Counsel for Mr. Bell in essence submitted that there was no evidence before the adjudicator to support his finding that Mr. Bell was in breach of

Regulation 6 and thereby guilty of the offence charged. He emphasized that Mrs. Bell did not give evidence and that no one testified to seeing Mr. Bell assault Mrs. Bell.

[15] Mr. McKenzie founded his argument on the basis that the absence of evidence as a ground of judicial review has now been established and the "no evidence rule" applies equally to both statutory and domestic tribunals. Counsel relied on inter alia the cases of Westbourne Industrial Enterprises Ltd v Labour Relations Board[2], Lee v The Showmen's Guild[3], Allison v General Council of Medical Education[4], Re Rivas[5] and Wade on Administrative Law, 7th Edn.

[16] Counsel further submitted that Mr. Bell can rely on the plea of autrefois acquit based on the dismissal of the criminal charge as it was substantially the same charge as that heard by the adjudicator.

[17] On the third ground Counsel submitted that under the Act the power of the Commissioner is limited to recommendation only. He is not vested with the power to dismiss or discharge a member who has been found guilty of a disciplinary offence. Those powers are vested in the Governor by virtue of section 36 of the Act. Having regard to the tenor of the correspondence exchanged between the Commissioner, the Governor and Mr. Bell it was the Commissioner who in effect took the decision to discharge Mr. Bell and accordingly the Commissioner acted ultra vires his powers and the dismissal is void.

Defendants' Submissions

[18] Mr. Baba Aziz, Learned Counsel for the Defendants, submitted that Mr. Bell's challenge to the adjudicator's decision is an attack on the merits of the decision of the adjudicator and thus cannot be entertained by the Court as judicial review is not an appeal from a decision but a review of the manner in which a decision is made. See Chief Constable of North Wales exparte Evans.[6] The grounds upon which the decisions of inferior tribunals can be questioned were enumerated by Lord Reid in Anisminic Company Ltd v Foreign Compensation Commission[7] as (1) decision given in bad faith, (2) failure in the course of the enquiry to comply with the requirement of natural justice; (3) misconstruing the

[2] [1973] 6 WWR 451
[3] [1952] 2 QB 329
[4] [1984] 1 QB 750
[5] (1992) 54 WIR 112
[6] [1982] 3 All ER 141
[7] (1969) 2 AC 147

provisions giving it power to act so that it failed to deal with the question remitted to it and decided a question which was not remitted to it; (4) refusal to take into account something which it was required to take into account; and (5) basing its decision on some matter which under the provisions setting it up, it had no right to take into account.

[19] And, pursued Counsel, these categories were synthesized by Lord Diplock in Civil Service Union v Minister of Civil Service[8] into three main grounds namely illegality, irrationality and procedural impropriety. Mr. Bell has not shown that the adjudicator's decision fall within any of these categories. Counsel also relied on Associated Provincial Picture Houses Limited v Wednesbury Corporation.[9]

[20] Counsel also pointed out that these principles apply equally to the Commissioner's decision to recommend his discharge as well as the Governor's decision to accept the recommendation and that Mr. Bell had not shown that those decisions were capable of being challenged in the accepted manner. In any event, on the evidence before the Court the Commissioner only recommend his discharge and the Governor accepted the recommendation and acted on it. Therefore neither acted outside the scope of their powers under the Act. Counsel also drew the Court's attention to section 39 of the Act, which renders the Governor's decision final.

[21] Mr. Aziz further argued that assuming the court has power to examine the proceedings before the adjudicator there are cogent reasons, which made the double jeopardy issue inapplicable. He relied on Ridge v Baldwin,[10] R v Secretary of State for the Home Department, exparte Thornton[11] and the specific provision in Police Regulations para 6 (p) which permits disciplinary proceedings even though criminal proceedings have resulted in a conviction or acquittal.

Analysis

[22] Is the absence of evidence or sufficient evidence to support a finding a ground for judicial review? Lord Diplock in CCSU v. Minister of Civil Service[12] conveniently classified the three heads upon which administrative action is subject to control by judicial review. He labeled them as illegality, irrationality and procedural impropriety.

[8] (1985) AC 374
[9] (1948) 1 KB 223
[10] [1964] A.C. 41
[11] [1986] 2 All ER 641
[12] (1985) AC 374 p. 410 – 411 D – B

[23] Mr. Bell has founded his case on the 'no evidence rule'. Professor Wade in his book, Administrative Law[13] observes at page 312:- "just as the courts look jealously on decisions by other bodies on matters of law, so they look indulgently on their decisions of fact. But the limit of this indulgence is reached where findings are based on no satisfactory evidence. It is one thing to weigh conflicting evidence which might justify a conclusion either way. It is another thing altogether to make insupportable findings. This is an abuse of power and may cause grave injustice. At this point, therefore, the court is disposed to intervene. 'No evidence' does not mean only a total dearth of evidence. It extends to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding; or where, in other words, no tribunal could reasonably reach that conclusion on that evidence." (Emphasis added.)

[24] It is my view that the so-called 'no evidence rule' is a ground for judicial review as it strikes me as forming part of the irrationality category as defined by Lord Diplock. It must be irrational for an inferior tribunal to come to a conclusion which cannot objectively be supported by the evidence before it. I am supported in this conclusion by de Smith, Woolf & Jowell, Judicial Review of Administrative Action, 5th Edition, page 282 para. 5-087 – "A tribunal which has made a finding of primary fact wholly unsupported by evidence, or which has drawn an inference wholly unsupported by any of the primary facts found by it, will be held to have erred in point of law. Again, such a finding could be held to be "irrational" or "unreasonable" and, as we shall discuss later, the courts presume that, as a matter of law, Parliament did not intend any decision-maker so to act."

[25] In deference to Mr. Aziz it must be noted that the law has moved on since Anisminic which reflects the pre 1979 position. One also bears in mind that in Anisminic the Court was struggling with the concept of ultra vires as it related to the jurisdiction of inferior tribunals and were performing gymnastics worthy of olympians to ensure that the court's power of review of administrative actions was not unduly restricted hence the attempt at categorization. The fact that a claimant cannot bring herself within any of the Anisminic categories does not mean categorically that the courts have no power to review. Lord

[13] Wade & Forsyth, Administrative Law, 7th Edition

Diplock's classification in CCSU is what the courts are guided by now. See de Smith op. cit para 5-041 – 5-043.

[26] The Court remains mindful however that in considering a challenge on the 'no evidence rule' one must be careful not to usurp the functions of the inferior body as the court cannot substitute its own findings for that of the tribunal's. The question in cases such as these must always be whether the evidence adduced was reasonably capable of supporting the finding. Lee v The Showmen's Guild of Great Britain[14] is instructive. In Lee, the plaintiff did not pay a fine which the committee had imposed on him after a hearing into a dispute involving the plaintiff and another member of the Guild. According to the rules a member who failed to pay a fine ceased to be a member. The court of appeal held that the conduct of the plaintiff in the first place did not amount to a breach therefore the committee's decision to fine the plaintiff was wrong in law and therefore the plaintiff's expulsion was ultra vires and void. The court also considered the principles on which the courts will intervene in decisions of domestic tribunals.

[27] Denning LJ at page 345 observed:- "Nevertheless the courts will intervene if there is a real substantial miscarriage of justice…and they will hold that there is a miscarriage of justice <u>if the facts adduced before the Tribunal are not reasonably capable of supporting the charge made against him.</u>"

[28] And, at page 346, addressing the power of the courts to intervene in decisions of statutory tribunals, Denning L.J. said "I see no reason why the powers of the court to intervene should be any less in the case of domestic tribunals."

[29] Thus, it is clear that the court has power to intervene when the evidence before the tribunal is not reasonably capable of supporting the charge and the power extends to all tribunals, both statutory, as in this case and domestic as in Lee's.

[30] Now, what was the charge and the evidence adduced before the Tribunal? Mr. Bell as already noted was charged with the disciplinary offence of discreditable conduct contrary to Regulation 6 (a).

[31] The particulars of the charge read: 'that you Kenrick Bell engaged in conduct at Carrot Bay, in the Territory of the British Virgin Islands contrary to regulation 6 (a) of the Police Regulations, in that at about 10:15 a.m. on or about the 30th day of July, 2006,

[14] [1952] 2 QB 329

you acted in a disorderly manner reasonably likely to bring discredit on the reputation of the force by wrongfully assaulting Mrs. Verna Bell on the neck causing her neck to swell.'

[32] Regulation 6 provides:- "Disciplinary offences created by these Regulations are (a) discreditable conduct which is committed where a member of the Police Force acts in a disorderly manner or any manner prejudicial to discipline or reasonably likely to bring discredit on the reputation of the Force."

[33] Now to the evidence. Having regard to the particulars any finding of guilt must be supported by evidence that Mr. Bell assaulted Mrs. Bell in the manner alleged as that is the disorderly conduct complained of. The question this Court must ask itself is whether considering the evidence before the disciplinary tribunal as a whole, that evidence was reasonably capable of supporting the charge. And, for the charge to be established the evidence must be reasonably capable of proving an assault by Mr. Bell on Mrs. Bell. The required standard of proof is on a balance of probabilities as this was civil proceedings.

[34] Five witnesses, all police officers testified before the Tribunal. Mrs. Bell was not called. The gist of Constable Hill's evidence is that he and another officer in response to a domestic dispute report on 30th July 2006 went to the home of Mr. and Mrs. Bell at Carrot Bay at about 10:40 a.m. Mrs. Bell gave him some information and he took a statement from her. Immediately thereafter he filled out a police medical form and transported Mrs. Bell to the Peebles Hospital at Road Town where she was examined by Dr. Nur and discharged. He himself did not observe any injuries on Mrs. Bell. Dr. Nur completed the medical form.

[35] The other officers' involvement in the matter was either giving or taking instructions and subsequently arresting Mr. Bell. However, Officer Toulon's evidence is worthy of particular note. He testified to the effect that he informed Mr. Bell of the report made by his wife and cautioned him and that his reply was:- "you could put the handcuff on me" (See page 21 of the transcript.) The medical form was put in without objection. (See page 14 of the transcript.) This did not form part of the record before this court but it appears from the evidence before the Tribunal that this disclosed that there was "tenderness on the posterior neck area." See Mr. McKenzie in closing at page 33 of the transcript.

[36] In addition the Tribunal heard from Mr. Bell. Mr. Bell's evidence in substance was that he was at his residence on the morning of the 30th July and that he had a "heated argument" with his wife and that he left the home thereafter. He denied that he assaulted Mrs. Bell and in particular that he had injured her neck. He also testified that as he was about to leave, his wife threatened him that she would do something to him.

[37] Looking at the totality of the evidence before the Tribunal including the fact that Mr. Bell admitted being at the house that morning and having a heated argument with his wife, that the police went to his house that very morning and took Mrs. Bell for medical attention, the injuries disclosed by the medical report and Mr. Bell's response when taxed by a brother officer with his wife's report, I am of the view that the tribunal's finding of guilt can be supported by the evidence.

[38] Further, there can be no issue with the finding that if a police officer is found to have assaulted his wife that this is not disorderly conduct likely to bring the Force into discredit. Thus, on the evidence, a reasonable tribunal could have come to the decision that this tribunal did. True, Mrs. Bell did not give evidence before the Tribunal and there was no direct evidence of the alleged assault by Mr. Bell. But, there was evidence before the Tribunal on which it could reasonably infer that Mr. Bell assaulted his wife and so find him guilty of discreditable conduct. The Tribunal's decision is therefore unassailable.

[39] Now to the issue of autrefois acquit. The scope of the plea of autrefois was considered in depth by the House of Lords in Connelly v DPP.[15] The court held that a person may not be tried for a crime in respect of which he has previously been acquitted or convicted. Furthermore, he may not be tried for a crime in respect of which he could at a previous trial have been lawfully convicted. The defence of autrefois acquit applies where the previous conviction or acquittal was on indictment or summary, provided that it was before a court of competent jurisdiction after a hearing on the merits and the proceedings were not ultra vires. Additionally, the test of autrefois acquit is not whether the facts relied upon in the two trials are the same, it is whether the accused has been convicted or acquitted of an offence which is the same or practically the same offence as that with which he is charged.

[40] The plea of autrefois acquit or convict is only available in a court of law when one is charged with a criminal offence. It is one of the special pleas in bar known to criminal law.

[15] [1964] AC 1254

See Blackstone Criminal Practice 2004 Edn., para. D11.38. Mr. Bell appeared before a disciplinary tribunal constituted by the Regulations. This was not a court of law and he was not charged with a criminal offence. Therefore, he cannot avail himself of that plea as these were civil proceedings relating to his employment. Just as issue estoppel has no place in criminal law to my mind the plea of autrefois acquit or convict has no place in civil law.

[41] Furthermore, Regulation 6 (p) provides that it is a disciplinary offence if an officer has been found guilty by a court of law of a criminal offence. This seems to take care of this issue even if the plea were available as it contemplates disciplinary proceedings even in the face of a conviction (autrefois convict).

[42] It is also worth remarking, as Ridge v Baldwin was cited, that in that case there was a provision (Police Discipline Regulations 1952, para. 17) on all fours with Regulation 6 (p), which allowed Brighton police officers even though charged and convicted of a criminal offence to be subjected to disciplinary charges for the same offence. In that case the appellant was charged with conspiracy to obstruct the course of justice and was acquitted. Subsequently he was charged with a different offence arising out of the same circumstances as the first offence and on the prosecution offering no evidence the judge directed a plea of not guilty. He was later dismissed on the same evidence as gave rise to the charges but without a hearing. I observe that the position in England now is that if an officer has been acquitted or convicted of a criminal offence, disciplinary proceedings for the same or substantially the same offence may not be later taken against him. See section 11 Police Act 1976 UK. We have no such provision.

[43] In addition, a plea of autrefois even if applicable would not available to Mr. Bell at the disciplinary hearing as there was no adjudication upon the merits of the charge.[16]

Who took the decision to discharge Mr. Bell from the Force?

[44] The final question is whether the Commissioner acted ultra vires the Act. It is therefore pertinent to first consider the relevant sections of the Act. Section 11 deals with the power of appointment to the Force. This is vested in the Governor. However, the Governor has the power to delegate the power to make appointments of officers below the rank of

[16] See Bedford and Sharnbrook Justices exparte Ward [1974] Crim. LR 1974] and Grays Justices, ex parte Low [1990] QB 54

Gazetted Officers to the Commissioner. The power of dismissal is likewise expressly vested in the Governor. See section 16.

[45] Let us examine the relevant circumstances. After the inquiry the Tribunal referred the matter to the Commissioner for sentencing because the Tribunal was of the opinion that its sentencing powers were inadequate. This is permissible by Section 37(4) which in essence gave the adjudicator the power to remit the matter to the Commissioner for imposition of punishment where he considered that the punishment he was authorized to impose was inadequate and the nature of the offence merited a heavier punishment.

[46] And, section 37(5) gives the Commissioner the power where a case has been remitted to him under section 37 (4) to, inter alia, recommend discharge or dismissal. And, under section 39 the officer has a right of appeal from that decision to the Governor within 7 days of the decision being communicated to him. This appeal may be an appeal against the finding that resulted in the decision (to recommend) or against the decision or both. Upon appeal the Governor may confirm or set aside the finding or confirm, set aside or vary the decision and the decision of the Governor is final. This finality however does not mean that it is not subject to review in accordance with Lord Diplock's principles.

[47] Having regard to the appeal itself of 13th April and to the evidence of Deputy Commissioner Alfred it is clear that Mr. Bell appealed to the Commissioner against the decision of the Tribunal only and not the decision of the Commissioner. As he had no right of appeal to the Commissioner in these circumstances only to the Governor the Commissioner remitted the appeal to the Governor who had jurisdiction to deal with the appeal under Section 39 (1).

[48] Mr. Bell's 13th April appeal to the Commissioner stated:- 'this appeal is being made under the provisions of sections 38 and 39 of the Police Act Chapter 165 of the Revised edition of the 1991 Laws of the Virgin Islands.'

[49] There is no right of appeal under section 38. That section gives the Commissioner the authority to review disciplinary proceedings, other than those scheduled by himself, where the officer is found guilty.

[50] Regulation 9 clearly states that an officer who is dissatisfied with a decision on any of the disciplinary offences mentioned in Regulation 6 with which he is charged may appeal therefrom in the manner provided by section 39 of the Act. And as already noted section

39 (1) is the applicable section and provides for an appeal not to the Commissioner but to the Governor. An appeal under section 39(2) lies where the Tribunal has imposed a punishment. Such an appeal is made to the Commissioner of Police. This did not arise on the facts.

[51] The Commissioner's action in sending the appeal to the Governor together with the Commissioner's recommendation was not an abdication of the Commissioner's statutory duty. He could have delayed matters by returning the letter to Mr. Bell asking him to rectify his procedure. He chose not to allow the appeal to be bogged down with procedural errors but instead sent it to the proper person. The Commissioner ought to be commended not chastised for this.

[52] Another issue is whether the Commissioner and not the Governor took the decision to discharge Mr. Bell. I note Deputy Commissioner Alfred's evidence in his affidavit to the effect that he informed Mr. Bell of the Commissioner's decision to recommend his discharge from the Force. And, Exhibit PA2 (Commissioner's Memo) which reads:- 'Accordingly, I am recommending to the Governor your discharge from the RVIPF effective 19/04/07 unless you successfully appeal against your conviction. However, you may within 7 days of this notice of appeal in writing to the Governor against my decision to recommend your discharge from the Force.' (Emphasis mine.)

[53] An analysis of these passages discloses that at no time did the Commissioner take the decision to discharge Mr. Bell, it was only a recommendation which he was empowered to make by section 37 (5). Accordingly, the Commissioner did not discharge Mr. Bell and cannot be said to have acted outside his powers.

[54] Now to the Governor's powers of discharge. This is contained in sections 16 and 36. Under section 16 (a)[17] the Governor may upon the recommendation of the Commissioner discharge a member of the Force, including an inspector if a punishment was imposed on him under section 37. (Section 37 concerns punishments imposed in respect of disciplinary regulations by the adjudicating officer or by the Commissioner.) This section is

[17] Section 16 provides:-
An Inspector, subordinate police officer or a constable may, on the recommendation of the Commissioner, be discharged from the Force if the Inspector, subordinate police officer or constable – has had a punishment imposed on him under section 37;…

not applicable as neither the adjudicating officer nor the Commissioner imposed any punishment on Mr. Bell upon his conviction.

[55] Section 36 gives the Governor a discretion to dismiss or discharge or order a reduction in rank where the officer has been found guilty of a breach of a disciplinary regulation or has been found guilty of a criminal offence. This is the applicable section.

[56] The Governor's letter of 11th June states that he confirms the findings of the tribunal and the Commissioner's decision to discharge Mr. Bell from the Force. This is perhaps in hindsight unhappily worded as it should have referred to the Commissioner's decision to recommend his discharge but the true nature of events is easily discerned on examining all the correspondence between the Governor and the Commissioner. This makes it abundantly clear that the Commissioner recommended Mr. Bell's discharge and that the Governor accepted the recommendation and acted upon it. There cannot therefore be any cavil with the actions of the Governor or of the Commissioner.

Conclusion

[57] For the foregoing reasons Mr. Bell's application for judicial review is dismissed. The Defendants are to have their prescribed costs in accordance with CPR 65.5 (2) (b) (iii) and appendix B.

[58] Mr. Bell was dealt with rather harshly, to my mind. The Commissioner must have been aware that the Magistrate had ordered him not to return to the matrimonial home and that he was housed at the Police Barracks. It is a notorious fact that suitable accommodation is not easy to find in Tortola. Thus, his almost summary eviction from the barracks whilst still a member of the Force, albeit on interdiction, resulted in undue hardship to Mr. Bell. I note the given reason for the eviction but nonetheless feel that in the circumstances some measure of charity might have been extended to Mr. Bell. The true hallmark of greatness is to be able to refrain from causing someone unnecessary hardship when it is wholly within one's power to do so.

Rita Joseph-Olivetti
Resident High Court Judge
British Virgin Islands