SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP 2010/023

BETWEEN:

ROLAND BROWNE
Applicant/Intended Appellant/Claimant

and

THE ATTORNEY GENERAL
(No longer a party)
First Defendant

THE PUBLIC SERVICE COMMISSION

Respondent/Second Defendant

Before:

The Hon. Mde. Ola-Mae Edwards	Justice of Appeal
The Hon. Mde. Janice George-Creque	Justice of Appeal
The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal

Appearances

Mr. Horace Fraser for the applicant/intended appellant/claimant
Mrs. Grace Ward-Glasgow for the respondent/2nd defendant

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2010: October 25;
December 15.

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Civil appeal – Judicial review – Undue delay, unreasonable delay, promptness, time limit in applying for leave to file claim for judicial review – Interpretation of Rule 56.5 Civil Procedure Rules 2000 – Substantial hardship – Detriment to good administration – Section 31(6) of the English Supreme Court Act 1981 and Order 53 Rule 4 of the Rules of the Supreme Court – Refusing relief sought on grounds of undue or unreasonable delay in making application for judicial review – Refusing relief sought on grounds of substantial hardship or detriment to good administration – Whether claim may be struck out on ground of unreasonable delay in applying for leave to file a claim for judicial review

The applicant, Mr. Roland Browne sought the leave of this Court to appeal against the decision of the learned trial judge dated 6th August 2010 which applied CPR 56.5 and struck out his claim for judicial review for reasons which included unreasonable delay in applying for leave to file the claim. The applicant had challenged, by way of judicial review, the decision to have him transferred from the Department of Probation and Parole where he held the post of Probation Officer III, to the Bordelais Correctional Facility where he would hold the post of Clinical Social Worker II. The applicant became aware of the decision to transfer him on 16th September 2008. On 10th December 2008, he attempted to appeal the decision to the Public Service Board of Appeal, however the Board ruled that it lacked jurisdiction to entertain such an appeal. On 21st August 2009, some 11 months after first becoming aware of the decision to transfer him, the appellant sought leave to apply for judicial review. The learned trial judge had, by order dated 4th January 2010, granted the applicant leave to file the claim. The respondent contested the claim on grounds that there was unreasonable delay in making the application for judicial review. Further, that substantial hardship, and detriment to good administration would be brought about if the claimant was allowed to pursue his claim for judicial review, since the applicant's transfer resulted in two vacant positions of Probation Officer III at the Parole Services being filled. Any interference with the decision to transfer him would be detrimental to good administration, and would cause hardship and prejudice the rights of the officers who have filled the two vacant positions.

Held: granting the applicant the leave requested to appeal the decision made by the learned trial judge in her ruling of 6th August 2010, treating the hearing of the application as the hearing of the appeal, allowing the appeal and setting aside the order of the judge striking out the claim, and remitting the matter to the court below for the judicial review claim to be case managed and determined on its merits:

1. That the presence of the words "or grant relief in any case" in CPR 56.5(1) indicates that CPR 56.5(1) applies to applications for leave to apply for judicial review and also to the substantive judicial review claim for relief. CPR 56.5 looks to certain effects of delay as grounds for refusing leave, or substantive relief, as the case may be. There is no rule in our CPR 2000 that is comparable to the English Order 53, Rule 4 (1) which stipulates that an application for leave to apply for judicial review shall in any event be made within three months from when grounds for the application first arose. Consequently, the absence of any rigid time limit for invoking the supervisory jurisdiction in Saint Lucia is salutary, subject of course to the Court's insistence on reasonable promptness in all the circumstances of each particular case, and rejection of stale claims.

   R v Dairy Produce Quota Tribunal for England and Wales Ex p. Caswell [1990] 2 A.C. 738 applied.

2. That at the hearing of the judicial review claim, apart from considering the merits of the claim (usually on the grounds of either illegality, irrationality, and or unfairness) the judge may revisit the issue of unreasonable delay where the claim has merit, in determining whether to grant the relief sought. There is no unqualified right to any of the remedies claimed. In exercising its discretion as to whether to grant any relief the court can take into account other factors including that there was unreasonable delay before making the application, whether the claimant acted promptly, or whether it would be detrimental to good administration or cause substantial hardship to the rights of any person, or

substantially prejudice the rights of any person. Despite the success of the judicial review claim, the relief may be refused where the judge applies CPR 56.5 and makes a positive finding under that rule.

3. At the first hearing, which is for case management under the CPR, the learned judge erroneously went behind her order granting leave and did not proceed as CPR 56.11 states. By striking out the claim, she was communicating that she was either wrong in granting leave to apply for judicial review, or that she had jurisdiction to review her earlier order granting leave, and effectively set it aside because of unreasonable delay by striking out the claim, which is not what CPR 56.5 envisaged. Striking out the claim for unreasonable delay in applying for judicial review is not the same thing as refusing the relief sought on a claim having merit on grounds of unreasonable delay or the reasons under CPR 56.5(2).

Leymon Strachan v The Gleaner Company Limited and Dudley Stokes (Privy Council Appeal No. 22 of 2004) applied.

JUDGMENT

[1] EDWARDS, J.A.: The applicant, Mr. Roland Browne is seeking the leave of this court to appeal against the decision of the learned judge made on 6th August 2010 which struck out the applicant's claim for judicial review for reasons which included unreasonable delay in applying for leave to file the claim. The same judge had previously granted leave on 4th January 2010 to the applicant to file the claim.

Background Facts

[2] The applicant had, by his without notice application filed on 21st August 2009, sought leave to make a claim for judicial review against the Attorney General and the Public Service Commission, in order to challenge his transfer from the Department of Probation to the Bordelais Correctional Facility which was effective from 1st September 2008. The learned judge states in her decision that at the time the application was filed, the Supreme Court Registry was not fully functional, and so when the application first came before her on 26th October 2009, she informed counsel that there had not been compliance with CPR 56.3(3) CPR 56.3 which governs applications for leave for judicial review states:

"56.3 (1) A person wishing to apply for judicial review must first obtain leave.
(2) An application for leave may be made without notice.

(3) The application must state –

(a) the name, address and description of the applicant and respondent;
(b) the relief, 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.

(4) The application must be verified by evidence on affidavit which must include a short statement of the facts relied on."

[3] The applicant apparently filed a supplemental affidavit in response to the judge's observation in order to cure this non-compliance. On 4th January 2010 the judge made the order granting leave in the following terms:

> "UPON READING the Application and the Affidavits filed August 21st, 2009 and November 20th, 2009 in Support of Application filed herein on the 21st day of August, 2009.
>
> IT IS HEREBY ORDERED
>
> 1. Leave be granted to Applicant to file a claim for judicial review against the decision of the Second Respondent to effect the transfer from the Department of Probation and Parole to the Bordelais Correctional Facility.
>
> 2. The Court further orders that the time for making application for judicial review is 14 days from the date of this order.
>
> 3. The Court further directs all proceedings connected to the said decision be stayed until after the hearing of the matter or until further order.
>
> 4. The Court further directs that the hearing of the said Fixed Date Claim Form is fixed for March 11…, 2010."

[4] CPR 56.4 prescribes how the hearing of an application for leave to apply for judicial review should proceed and the types of orders to be made. It states:

> "56.4 (1) An application for leave to make a claim for judicial review must be considered forthwith by a judge of the High Court.
> (2) The judge may give leave without hearing the applicant.
> (3) However, if –
> (a) it appears that a hearing is desirable in the interests of justice;
> (b) the application includes a claim for immediate interim relief; or
> (c) the judge is minded to refuse the application; the judge must direct that a hearing in open court be fixed.
> (4) The judge may direct that notice of the hearing be given to the respondent or the Attorney General of the relevant Member State or Territory.
> (5) Where the application relates to any judgment, order, conviction or other proceedings which are subject to appeal, the judge may adjourn consideration of the application to a date after the appeal has been determined.
> (6) The judge may allow the application to be amended.
> (7) The judge may grant leave on such conditions or terms as he or she considers just.
> (8) Where the application is for an order (or writ) of prohibition or certiorari the judge must direct whether or not the grant of leave operates as a stay of the proceedings.
> (9) The judge may grant such interim relief as appears just.
> (10) On granting leave the judge must direct when the first hearing or, in case of urgency, the full hearing of the claim for judicial review should take place.
> (11) Leave must be conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting leave."

[5] The applicant filed his fixed date claim and supporting affidavit; and the respondent/ second defendant filed two affidavits made by its secretary Ms. Valerie Orie. These documents as well as the order granting leave and the decision of the trial judge were not part of the record before us. It appears that the dysfunctional operations of the High Court Registry are taking a heavy toll on the ability of legal practitioners and the courts in Saint Lucia to function in compliance with the rules of practice and procedure. This dysfunction has now reached crisis proportions which is testing the patience and tolerance of the bench. The current sate of affairs does not augur well for the administration of justice.

[6] The decision of the judge which we subsequently obtained discloses that the second affidavit of Ms. Orie focused on the substantial hardship, and detriment to good administration that would be brought about if the claimant was allowed to pursue his claim for judicial review, since the applicant's transfer resulted in two vacant positions of Probation Officer III at the Parole Services being filled, and any interference with the decision to transfer shall be detrimental to good administration and will cause hardship and prejudice the rights of the officers who have filled the two vacant positions. Ms. Orie also said in her affidavit that the applicant who became aware of the transfer on 16th September 2008, had his attorneys-at-law write a letter to the Public Service Commission dated 1st October 2008. This letter threatened to initiate legal proceedings at the expiration of one month if the respondent failed to review its decision. Upon receiving a letter of response written by the respondent's attorneys-at-law dated 20th October 2008, the applicant subsequently appealed to the Public Service Board on 10th December 2008 which ruled that it lacked jurisdiction to entertain such an appeal.

[7] Ms. Orie deponed that she was advised by legal counsel that "notwithstanding the attempted appeal to the Board of Appeal there was unreasonable delay in making the application for judicial review as the initial process was wrong and useless and not a valid reason for failing to apply to have the decision of the Commission reviewed judicially. …the claimant was aware that he had recourse available to him by virtue of judicial review proceedings which he failed to avail himself of without delay."

[8] The judge heard submissions from both counsel concerning the joinder of the Attorney General to the judicial review proceedings and the previously stated positions outlined in the affidavits of Ms. Orie and the affidavit of Mr. Browne, at the first hearing of the fixed date claim on 11th March 2010. It is the contention of the applicant that the learned judge did not give the applicant the opportunity to respond to the second affidavit of Ms. Orie which was filed on 8th March 2010; and that the learned judge only directed that he file submissions to support his position that the Attorney General was properly joined as a party to the suit on or before 16th April 2010. Learned counsel Mr. Fraser has not challenged the assertions of learned counsel Mrs. Ward-Glasgow that he made no

application for time to be granted for him to file an affidavit in reply to the second affidavit of Ms. Orie and file submissions on the question of delay. Upon counsel for the applicant filing the submission as directed on 15th April 2010, the learned judge proceeded to determine the fixed date claim as she did.

The Ruling of the Judge

[9] The learned judge observed that "the Claimant recognized that he had the hurdle of delay to cross over in his application for leave for judicial review. Thereafter, having confirmed her view that the Attorney General ought not to be a party to the suit since the respondent was the decision maker; she identified the sole issue to be "Whether there has been "unreasonable delay" by the Claimant in filing his application for leave for judicial review".

[10] The judge identified CPR 56.5 as the relevant rule when considering an application for leave to file a claim for judicial review. This Rule states:

> "Delay
> 56.5 (1) In addition to any time limit imposed by any enactment, the judge may refuse leave or to grant relief in any case in which the judge considers that there has been unreasonable delay before making the application.
>
> (2) When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to –
>
> (a) be detrimental to good administration; or
> (b) cause substantial hardship to or substantially prejudice the rights of any person."

[11] The judge then considered several English authorities which establish that an application for judicial review should be made promptly and that a delay period of 3 months commencing on the date on which grounds for judicial review first arose constitutes undue delay which may cause a court in the exercise of its discretion to refuse to grant leave[1].

[1] The Civil Court Practice 2005 paragraph 54.5(2); R v Stratford-on-Avon DC ex parte Jackson [1985] 1 W.L.R. 1319 at p 1319 Per Ackner LJ.; Jones and Others v Solomon [1991] LRC (Const) p 646 at p 679 per Sharma JA; R v Senate of the University of Aston, ex p Roffrey [1969] 2 All ER 964 at 976 per Donaldson J

[12] Focusing on CPR 56.5(2), the judge applied the learning from Lord Bridge in R v Dairy Produce Quota Tribunal for England and Wales Ex p. Caswell[2], who relied on the judicial statement of Lord Diplock in O'Reilly v Mackman[3]. The learned judge concluded that despite "the difference in language in the Rules governing the grant of an application for leave to file judicial [review] proceedings, the authorities cited make it abundantly clear that the Claimant was duty bound to act with promptness in filing his application…." She continued: "On the important matters which I am required to consider, when delay is an issue, that is whether there is likely to be any detriment to good administration, or cause of substantial hardship or substantial… prejudice to the rights of any person. I am guided by Lord Diplock in this regard."

[13] Lord Bridge in R v Dairy Produce stated:

> "Lord Diplock pointed out in O'Reilly v Mackman: 'The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision.' I do not consider that it would be wise to attempt to formulate any precise definition or description of what constitutes detriment to good administration. This is because applications for judicial review may occur in many different situations, and the need for finality may be greater in one context than in another. But it is of importance to observe that section 31(6) recognises that there is an interest in good administration independently of hardship, or prejudice to rights of third parties, and that the harm suffered by the applicant by reason of the decision which has been impugned is a matter which can be taken into account by the court when deciding whether or not to exercise its discretion under section 31(6) to refuse the relief sought by the applicant. In asking the question whether the grant of such relief would be detrimental to good administration, the court is at that stage looking at the interest in good administration independently of matters such as these. In the present context, that interest lies essentially in a regular flow of consistent decisions, made and published with reasonable dispatch; in citizens knowing where they stand, and how they can order their affairs in the light of the relevant decision. Matters of particular importance, apart from the length of time itself, will be the extent of the effect of the relevant decision, and the impact which would be felt if it were to be re-opened."

[2] [1990] 2 A.C. 738 at p. 749
[3] [1983] 2 A.C. 237 at pp. 280-281

[14] While I have no quarrel with that statement of Lord Bridge, the legislative context in England within which that statement of the law operates must be carefully examined when interpreting CPR 56.5(2). The learned judge accepted this statement as instructive; and concluded as follows at paragraph 18 of her ruling: "Having now heard counsel *inter partes* on the matter of leave which I had previously granted, having regard to the facts, and in particular the Claimant's own undertaking to commence legal proceedings within one month of 1st October 2008, I find that there has been unreasonable delay by the claimant and which delay would be a detriment to good administration, could cause substantial hardship and substantially prejudice the rights of third parties. I must therefore reverse myself. The Claimant's claim form filed 11th January 2010 is struck out."

[15] The grounds of the application for leave to appeal and Mr. Fraser's submissions include that the test of "promptitude" and "the within three (3) months" time limit for seeking leave to make a claim for judicial review adopted by the learned judge in construing CPR 56.5(1) is wrong in law and clashed violently with the decisions of this Court in Doolittles v Doubloon International Limited et al[4] and Urban Dolor v The Board of Governors, Sir Arthur Lewis Community College[5].

[16] It appeared to the Court during the hearing of the application that apart from the 3 months test for promptitude, and the failure to provide the opportunity for the applicant to respond to the supplemental affidavit of Ms. Orie, another significant issue that arose on the grounds of the application for leave to appeal was whether the learned judge had erred in her interpretation of CPR 56.5 and revisiting her order granting leave at the first hearing of the fixed date claim. Further, did CPR 56.5 and the other rules under Part 56 of CPR 2000, or any other enactment, permit the judge to return to the issue of unreasonable delay on a claim for judicial review and strike out the claim?

[17] Learned counsel Mrs. Ward-Glasgow answered in the affirmative and pointed us to the judgment of Hariprashad-Charles,J. in Virgin Islands Environmental Council v The

[4] Civil Appeal No. 9 of 2005 (unreported) (St. Lucia) in which the Court rejected the Attorney General's argument that the 3 months time limit applies under the CPR 2000

[5] Civil Appeal No. 30 of 2009 (unreported) (St. Lucia) in which a period of over 7 months elapsed when the application for leave was granted

Attorney General and Quorum Island BVI Limited (Interested Party)[6]. At paragraphs 42 to 47 the learned judge discussed the submissions of Queen's Counsel Mr. Farara concerning the unreasonable delay of the claimant in bringing the claim for judicial review against the defendant when the 6 month limitation period under the Public Authorities Protection Act[7] had almost expired. Hariprashad-Charles J. said: "The fact that the application was made within the time specified, does not mean that it has been made 'promptly' according to Lord Ackner in Stratford-on-Avon District Council, ex parte Jackson[8]. Put differently, the time limit given by statute is promptitude; the reference to an application being made within six months appears secondary to that requirement. Permission may be refused on the basis of delay under CPR 56.5 even though it is made within the time limit fixed by statute or Rules of Court: see Lord Steyn in R (on the application of Burkett) v Hammersmith and Fulham London Borough Council... [46] Even though VIEC was granted leave to make the claim for judicial review, the court still retains a residual discretion under CPR 56.5(2) to refuse leave or refuse relief at the substantive hearing where there has been undue delay and the court considers granting leave or relief would cause substantial hardship or substantial prejudice. [47] In that light, I will consider the issue of whether or not there was undue delay for the purposes of CPR 56.5(2)." (My emphasis).

The Interpretation of CPR 56.5

[18] At first blush the court had doubts about the accuracy of the statement of the learned judge at paragraph 46 of her judgment in the BVI case. When that statement is carefully considered it appears to be too broad and it gives the impression that leave may be reversed by the trial judge when the English authorities say no such thing.

[19] Firstly, within the context of the decision in R v Dairy Produce the English legislative provisions regarding proceedings for judicial review are Section 31 of the English Supreme Court Act 1981 and Order 53 rule 4 of the Rules of the Supreme Court.

[6] BVIHCV 2007/0185
[7] Cap. 62 of the Revised Laws of the Virgin Islands

Sections 31(6) and (7) provide as follows:

> "(6) Where the High Court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant –
>
> (a) leave for the making of the application; or
>
> (b) any relief sought on the application, if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.
>
> (7) Subsection (6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made."

[20] Secondly, by Order 53, rule 4 of the Rules of the Supreme Court:

> "(1) An application for leave to apply for judicial review shall be made promptly, and in any event within three months from when grounds for the application first arose, unless the court considers that there is good reason for extending the period within which the application shall be made. (2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding. (3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made."

[21] It is immediately noticeable that we have no rule in our CPR which is comparable to the English Order 53, Rule 4. Consequently, the absence of any rigid time limit for invoking the supervisory jurisdiction in Saint Lucia is salutary, subject of course to the Court's insistence on reasonable promptness in all the circumstances of each particular case, and rejection of stale claims. However, the substance of our CPR 56.5 reflects the law in sections 31(6) and (7) of the English Supreme Court Act in my view. "Undue delay" is not defined in section 31(6) of the English Act, neither is "unreasonable delay" defined in CPR 56.5(1). Section 31(6), CPR 56.5(2)(a) and CPR 56.5(1) all manifestly apply to applications for leave to appeal.

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[8] [1985] 3 All E.R. 769

[22] It has been explained by Lord Bridge of Harwich in R v Diary at page 746 that:

> "…section 31(6) [of the English Supreme Court Act 1981] applies both to applications for leave to apply and to applications for substantive relief… [and] section 31(6) looks to certain effects of delay as grounds for refusing leave, or substantive relief, as the case may be". Lord Bridge therefore approved Lord Ackner's interpretation of section 31(6) in R v Stratford-on-Avon District Council who said as follows at page 1325 of his judgment ." " The court therefore still retains a discretion to refuse to grant leave for the making of the application or the relief sought on the substantive application on the grounds of undue delay if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration." Lord Bridge concluded: "I respectively agree. First, when section 31(6) and (7) refer to 'an application' for judicial review, "those words must be read as referring where appropriate, to an application for leave to apply for judicial review[page 747]Questions of hardship or prejudice, or detriment under section 31(6) are I imagine, unlikely to arise on an ex parte application, when the necessary material would in all probability not be available to the judge. Such questions could arise on a contested application for leave to apply…but even then,it may be thought better to grant leave where there is considered to be good reason…leaving questions arising under section 31(6) to be explored in depth on the hearing of the substantive application."

[23] I adopt the reasoning and conclusions of Lord Bridge which to my mind are also applicable to CPR 56.5. It can therefore be said in my view, that with the presence of the words "or grant relief in any case" in CPR 56.5(1) that CPR 56.5(1) applies to applications for leave to apply for judicial review and also to the substantive judicial review claim for relief. The Court's previously canvassed view at the hearing that the words "or grant relief in any case" would apply only to the interim relief contemplated in CPR 56.4 (8), and (9) cannot stand; in light of the existing similarity in the provisions in section 31(6) of the English Act and our CPR 56.5 and the existing case law on the interpretation of section 31(6). I note further that section 31(7) of the Supreme Court Act [UK] states that section 31(6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made, while CPR 56.5(1) recognizes that leave may also be refused because of a statutory limitation of time within which the application for judicial review may be made.

[24] It would seem therefore from the authorities mentioned that at the hearing of the judicial review claim, apart from considering the merits of the claim (usually on the grounds of either illegality, irrationality, and or unfairness) the judge may revisit the issue of unreasonable delay where the claim has merit in determining whether to grant the relief sought. Where the claim lacks merit there is no need to apply the considerations under CPR 56.5. Even if the court accepts that the defendant has acted unlawfully, there is no unqualified right to any of the remedies claimed. In exercising its discretion as to whether to grant any relief the court can take into account other factors including that there was unreasonable delay before making the application, whether the claimant acted promptly, or whether it would be detrimental to good administration or cause substantial hardship to the rights of any person, or substantially prejudice the rights of any person. To sum it up, despite the success of the judicial review claim, the relief may be refused where the judge applies CPR 56.5 and makes a positive finding under that rule.

[25] With that said, I return to the approach taken by the learned judge at the first hearing of the fixed date claim, which obviously did not comport with the rules prescribed by CPR 56.11 (1) governing the first hearing of a judicial review claim.[9] At the first hearing which is for case management under the rules, the judge erroneously went behind her order granting leave. By striking out the claim, she was communicating that she was either wrong in granting leave to apply for judicial review, or that she had jurisdiction to review her earlier

[9] 56.11 (1) At the first hearing the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and the provisions of Parts 25 to 27 of these Rules apply.

(2) In particular the judge may –
(a) allow any person or body appearing to have sufficient interest in the subject matter of the claim to be heard whether or not served with the claim form;
(b)direct whether any person or body having such interest –
(i) is to make submissions by way of written brief; or
(ii) may make oral submissions at the hearing;
(c) allow the claimant to –
(i) add or substitute a claim for relief other than an administrative order;
(ii) amend any claim for an administrative order; or
(iii) substitute another form of application for that originally made;
(d) direct that claims by one or more persons or bodies or against one or more persons in respect of the same office made on the same grounds be consolidated or heard together; and
(e) make orders for –
(i) witness statements or affidavits to be served;
(ii) cross-examination of witnesses; and
(iii) disclosure of documents.

order granting leave, and effectively set it aside because of unreasonable delay by striking out the claim. That is not what CPR 56. 5 envisaged in my view. Striking out the claim for unreasonable delay in applying for judicial review is not the same thing as refusing the relief sought on a claim having merit on grounds of unreasonable delay or the reasons under CPR 56.5(2). The judicial statement of Lord Millett in Leymon Strachan v The Gleaner Company Limited and Dudley Stokes [10] is eminently applicable: "Whenever a judge makes an order, he must be taken implicitly to have decided that he has jurisdiction to make it. If he is wrong, he makes an error whether of law or fact which can be corrected by the Court of Appeal. But he does not exceed his jurisdiction by making the error; nor does a judge of co-ordinate jurisdiction have power to correct it.

[26] In the premise, I would grant the applicant the leave requested to appeal the decision made by the learned judge in her Ruling of the 6th August, 2010. I would also treat the hearing of the application as the hearing of the appeal, allow the appeal, set aside the order of the judge striking out the claim, and remit the matter to the court below for the Judicial Review claim to be case managed and determined on its merits.

[27] I would also make no order as to costs.

Ola Mae Edwards
Justice of Appeal

I concur.

Janice George-Creque
Justice of Appeal

I concur.

Davidson Kevin Baptiste
Justice of Appeal

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[10] Privy Council Appeal No. 22 of 2004 at paragraph 32