

**THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
FEDERATION OF SAINT CHRISTOPHER AND NEVIS  
SAINT CHRISTOPHER CIRCUIT  
(CIVIL)**

**CLAIM NO. SKBHCV2010/00339**

**In the Matter of an Application for an Order of Certiorari Part 56.3(1)**

**Between:**

**ALBERTO VIOLA**

*Applicant*

**And**

**JOSEPHINE MALLALIEU-WEBBE**

**(Magistrate District "A" Basseterre)**

**CHIEF OF POLICE**

**ATTORNEY GENERAL OF ST. KITTS-NEVIS** *Respondents*

**Appearances:**

Mr Glenford Hamilton *for the Applicant*

Mr Arudranauth Gossai *for the Respondents*

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**2011: July 29**

**2012: January 9**

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**DECISION**

[1] **THOMAS J:** This matter concerns an application for leave to apply for judicial review. The amended application was filed on 7<sup>th</sup> December 2010, but the application was opposed by the Respondents.

[2] At the end of the oral submissions on the applications the Court ordered that both sides should file submissions on the matter of abuse of process.

**Background**

[3] Certain property of the Applicant was ordered to be detained pursuant to the Proceeds of Crime Act, Cap 4.28, with the last order being made on 30<sup>th</sup> May 2011. At this time the learned Magistrate heard a further application in the same matter when an appeal had been lodged and an order made.

**Application without Notice**

[4] In the application the grounds are stated to be:

1. The Magistrate was without jurisdiction when she heard the application of the Chief of Police and made an order for further detention of the Applicant's property on May 30, 2011.

2. The Magistrate, who herself is a creature of the Magistrate's Code of Procedure Act violated the provisions of the statute, by reason that
  - a. The appeal which had been made by motion and within the time [prescribed] for the filing of such appeal has effect of suspending the execution of the order from until the final determination of such appeal;
  - b. Within 3 days of the filing the said appeal the Applicant herein entered into recognizance before a Magistrate with two sureties each in the sum of XCD5000 according to the direction of the Magistrate to appear before the Court of Appeal and try the appeal and abide by the judgment of that Court;
  - c. The learned Magistrate without lawful authority held the appeal which was filed and the recognizance given was improper and accordingly she was ignoring same, which she had no power to do;
  - d. The Chief of Police has continued to detain this property without the requisite legal authority.

#### **ISSUE:**

- [5] Whether in light of the previous applications for judicial review, which were refused, the bringing of this application for leave to seek judicial review of the Magistrate's actions of 30<sup>th</sup> May 2011, that is to say her hearing and ruling on an application made while an appeal in the matter was pending, constitutes an abuse of the Court's process.

#### **Submissions**

- [6] The following are the submissions on behalf of the Applicant:
1. It is beyond dispute that there is an abuse of process of the Court for a litigant to seek to re-litigate a matter or issue that had already been litigated. The abuse arises where issues that are required to be resolved and disposed of by the Court. Thus giving to *res judicata*.
  2. This is the first time that the Applicant has sought to challenge the order of 30<sup>th</sup> May 2011 and it is submitted that there are no issues of *res judicata* existing.
  3. The Magistrate had exceeded and abused her powers on 30<sup>th</sup> May 2011.
  4. When on 30<sup>th</sup> May, 2011 the magistrate sat and ruled as she did, there arose the first time, a cause of action in respect of her action as a decision maker. This was entirely a fresh action and is incapable of comparison with any other action of the Magistrate.
  5. The order of March, 2011 was suspended when the appeal against it was filed on 14<sup>th</sup> March 2011. When the Magistrate sought to hear an application pertaining to the appealed matter, without there being a final determination of that matter or appeal, she was acting without jurisdiction.

6. The Magistrate was acting outside of her statutory authority.
7. It is reasonable for the Applicant to raise an issue on the jurisdiction of the Magistrate to sit and rule as she did while the matter was pending on appeal.

[7] In the submissions filed on behalf of the Respondents the fact that a total of five applications were filed in the matter is highlighted. The submissions go on to state that:

- “19. The fifth Application seeks to affect the very same remedy sought in the preceding four Applications that is the return of money seized from the Applicant.
20. Also the Applicant stated in the fifth Application that an Appeal was not pursued as it was time consuming and very costly when infact an appeal was filed on the 14<sup>th</sup> March 2011”.

[8] Other submission on behalf of the Applicant are in these terms:

- “23. Part 56.3(3)(e) of CPR 2000 provided that an Application for leave must state whether an alternative form of redress is available.
24. The grounds of the fifth application are based entirely on the fact that the Magistrate sought to make an order of 30<sup>th</sup> May 2011 in the light of the Notice of Appeal filed by the Applicant.
25. In the same breath the Applicant stated in the fifth application that he has not appealed the decision and is seeking judicial review as the appeal process is too costly and time consuming.
27. All the grounds raised in the fifth application ought to and would be adequately addressed in the Court of Appeal.
28. The Applicant is to engage this Honourable Court and the Court of Appeal on the same issue and subject matter and this ought not to be allowed.
29. Further it is an elementary principle of judicial review that where an alternative remedy exists, the Court will refuse to grant relief by way of judicial review.

### **Analysis**

[9] It has been uttered<sup>1</sup> that abuse of process is a constituent of the inherent power of a Court to see that its process was not abused. And to when abuse of process arises the following is the learning in **Halsbury’s Laws of England**:

“The abuse of process arises where its process is used not in good faith and not for proper purposes, but as a means of vexation or oppression or for ulterior purposes or simply where the process is misused”.

[10] In view of the foregoing this matter can be disposed of within a very narrow compass. To begin with, the Applicant’s case rests on the perceived ultra virus action of the Learned Magistrate in acting on an application to further detain the Applicant’s property when an appeal is pending.

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<sup>1</sup>Metropolitan Bank v Pooley [1885] 11 R 10 App Cas 210; 220 221 Lord Blackburn

- [11] But what this position does not address is the fact that there were a total of five applications for judicial review with the common objective of the release from detention of money detained under the Process of Crime Act. This must be misuse of the Court's process.
- [12] In the grounds of the Application the fact of the appeal being made against the decision of the learned Magistrate which was filed within the prescribed time is highlighted. However in addressing the requirement of Part 56.3(3)(e) of CPR 2000 regarding alternative form of redress available the following is stated:
- "The only other form of redress is to appeal the jurisdictional point before the Court of Appeal but the time and expense required to bring the matter before the Court of Appeal renders that route less appropriate and this is one reason why the alternative has not been pursued".
- [13] It does not get better than this – admission followed denial on the same point and in the document. The Court agrees with learned counsel for the Respondents that this "clearly amounts to an abuse of the process of the Court".
- [14] In view of the foregoing, it is the determination of the Court that the Application constitutes an abuse of process. These are the five applications filed all with the common objective of seeking to have the Applicant's property released. Also the contradictory statements regarding alternative form of redress mandated by Part 56.3(3)(e) of CPR 2000.
- [15] Leave to seek for judicial review is refused as it constitutes an abuse of the process of the court.

#### **Costs**

- [16] The Applicant seeks the return of US\$56,057.70 or EC \$152,303.17 which would be value of the claim for the purposes of Part 65.5(2)(b) of CPR 2000.
- [17] An Application for leave to seek review is a procedural application and as such Part 65.11 of CPR 2000 applies and in particular Rule 65.11(7) restricts costs to one tenth of the amount of the prescribed costs appropriate to the claim.
- [18] The prescribed costs on EC\$152,303.17 is \$22,845.00 and one tenth amounts to EC\$2285.00.

#### **ORDER**

- [19] IT IS THE ORDER of this Court:
1. The Application for leave to seek judicial review is refused as it constitutes an abuse of process of the Court.
  2. The Applicant must pay costs in the amount of EC\$2285.00.

ERROL L THOMAS  
*High Court Judge (Ag)*