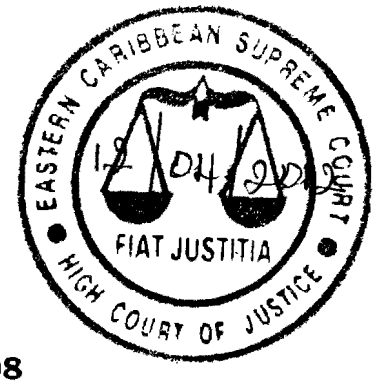
THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 320 OF 2011



IN THE MATTER OF MAGISTERIAL SUIT NO. 66 OF 2008
AND
IN THE EASTERN CARIBBEAN SUPREME COURT 2000 PART 56.

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO ISSUE A JUDICIAL REVIEW ORDER AGAINST HIS WORSHIP SENIOR MAGISTRATE DONALD BROWNE FOR A MANDATORY ORDER COMPELLING HIM TO STATE HIS REASONS IN WRITING FOR DISMISSING THE CLAIMANT'S CLAIM.

BETWEEN:

GERMISON GRIFFITH

Applicant

v

SENIOR MAGISTRATE
DONALD BROWNE

Respondent

Appearances:

Mr. Emery Robertson Sr. for the Applicant

Mr. Richard Williams and Mr. Sten Sargeant for the Respondent

---

2011: November 7
2012: April 12

JUDGMENT

(1) **THOM, J:** On July 28, 2011 the Applicant sought leave of the Court to make a claim for judicial review for an order of mandamus compelling the Senior Magistrate His Worship Mr. Donald Browne (Senior Magistrate) to give written reasons for his decision to dismiss the Applicant's claim against one Tetmore Joseph on the 5th day of February 2009.

BACKGROUND

(2) The Applicant on the 14th day of April 2008 instituted a civil suit in the Magistrate's Court in which he alleged that Tetmore Joseph a Police Constable assaulted him.

(3) The Senior Magistrate having heard submissions on a preliminary issue, dismissed the Applicant's suit on the 5th day of February 2009.

(4) On March 24, 2009 Learned Counsel for the Applicant wrote to the Senior Magistrate requesting a copy of the reasons for his decision. Paragraphs 3 and 4 of the letter state:

> *"3. The matter was argued before you in a reserved ruling which you delivered that the claimant did not meet the requirements of the Public Officers Protection Act you dismissed my client's case.*
>
> *4. I therefore request you to furnish me with a copy of the reasons as to how you have arrived at this decision as I consider that this matter ought to be submitted to the High Court for a judicial review."*

(5) The Applicant's Solicitor again wrote to the Senior Magistrate on 24th February 2010 requesting his reasons for the decision.

(6) The Senior Magistrate did not comply with the request to provide written reasons for the decision and on July 28, 2011 the Applicant sought leave to seek judicial review.

(7) The grounds set out in the application are as follows:

(1) An issue was raised before the Learned Senior Magistrate as to whether or not the defendant being a Public Officer was entitled to Notice under the Public Officer Protection Act No. 85 of 1990 and No. 64 of 1982 and whether the failure to do so invalidated the Claimant's claim.

(2) Since the said Judgment the said Senior Magistrate was written to by letters dated 24th March, 2009, 24th February, 2010 and to date there has been no response.

(3) The applicant is a person aggrieved and has been adversely affected by the said decision as his case has not been afforded a fair hearing as guaranteed by the St. Vincent Constitution Order S.R. & O No. 916 of 1979 Chapter 2 of the Laws of St. Vincent and the Grenadines 1990 Section 8 (8).

(4) The applicant honestly believes that if the Learned Senior Magistrate is not ordered by the Court to state his reasons in writing grave and irreparable injury would be done to him as his matter could be caught by the Limitation Act and justice denied to him in not affording a higher Court to pronounce on the validity of his claim.

(8) The Applicant sought the following reliefs:

(1) That the Court grants leave to issue a judicial review order.

(2) That the Learned Senior Magistrate do furnish his reasons in writing to the Claimant and/or his Solicitor within fourteen (14) days from the making of the said Order.

(3) That the High Court give further directions in this matter after receipt of the said reasons.

(4) That an Order be made for costs.

(9) The Application is supported by an affidavit of the Applicant. The Senior Magistrate did not file an affidavit in answer.

(10) In the written submissions of behalf of the Senior Magistrate it is submitted that the application should be dismissed on the following grounds:

(1) The application contains no arguable grounds for judicial review.

(2) There is no realistic prospect of success.

(3) There was delay in making the application.

(4) There was an alternative remedy.

(11) The grounds upon which judicial review may be sought were set out by Lord Diplock in Council of Civil Service Unions v Minister for the Civil Service (1984) 3 AER 935, to include:

(a) illegibility;

(b) irrationality;

(c) procedural impropriety.

Lord Diplock explained the terms in the following manner:

> *"By "illegality" as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not par excellence is a justifiable question to be decided in the event of dispute by those persons, the judges, by whom the judicial power of the State is exercisable.*
>
> *By "irrationality" I mean what by now can be succinctly referred to as Wednesbury unreasonableness (see Associated Provincial Picture House Ltd v Wednesbury Corp (1974) 2AER p.680). it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well-equipped to answer, or else there would be something badly wrong with our judicial system.*
>
> *I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.*

(12) It is settled law that the test to be applied by the Court on an application for leave to seek judicial review is the test as stated by the Privy Council in Satnarine Sharma v Browne-Antoine P.C. NO. 75 of 2006. The Court stated the test in the following terms.

> *"The ordinary rule now is that the Court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy; R v Legal Aid Board Exp. Hughes (1992) 5 Admin. LR 623, 628; Fordham Judicial Review Hand book 4th edition p.426 – But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the*

English Court of Appeal recently said with reference to the criminal standard of proof in R (N) v Mental Health Review Tribunal (Northern Region) (2005) EWCA Civ. 1605, 468 paragraph 62 in a passage applicable mutatis mutandis to arguability:

> *"...the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in an adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation must be proved to a higher degree of probability) but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."*

It is not enough that a case is potentially arguable. An applicant cannot plead potential arguability to justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory process of the Court may strengthen: Matalulu v Director of Public Prosecutions (2003) 4 LRC 712, 733.".

ARGUABLE GROUND WITH A REALISTIC PROSPECT OF SUCCESS

SUBMISSIONS

(13) Learned Counsel Mr. Richard Williams submitted that the Applicant does not have an arguable grounds for judicial review. The Applicant does not raise any question that the Senior Magistrate acted unlawfully, unreasonably or unfairly. In relation to ground (b) the Applicant does not refer to a section in the Limitation Act which is the basis for his claim. In relation to ground (c) there is no evidence of irreparable harm and it is not clear which Higher Court the Applicant is referring since the time for filing an appeal has long expired.

(14) Learned Counsel further submitted that there is no realistic prospect of success. The application is based on the failure of the Magistrate to give written reasons for his decision. Learned Counsel referred to the case of R v Southend Stipendary Magistrate Ex parte Rochford District Council (1995) Environmental Law report Vol 1. p.6, where the Court refused an order for judicial review of an order by a Magistrate where no reasons were given since there was no duty to give reasons. Learned Counsel also relied on the case of R v Dover Magistrate Couret Ex parte Webb (1998) COD 274, and Cedeno v Kenwin Logan (Trinidad and Tobago) 2000 UKPC P.48.

(15) Learned Counsel Mr. Emery Robertson Sr. submitted that the Senior Magistrate acted in breech of the law when he failed/refused to give written reasons for his decision. Section 28 of the Small Debts Act makes it mandatory for the Magistrate to give reasons for his decision.

FINDINGS

(16) Applying the test in Sharma the question is whether there is an arguable ground with a realistic prospect of success.

(17) The Magistrate (Civil Division) Appeals Act to which Learned Counsel for the Senior Magistrate referred provides in Sections 3 and 11 as follows:

> *"3. Unless the contrary is in any case expressly provided by any Act, any person who is dissatisfied with any decision of a Magistrate's Court acting in the exercise of its civil jurisdiction may appeal therefrom to the Court in the manner and subject to the conditions hereinafter mentioned.*
>
> *11. (1) Every part to a cause or matter in a Magistrate's Court in which the decision is subject to appeal shall be entitled, after such decision has been pronounced, on making application therefore to the Magistrate and on paying the proper fee in that behalf, to receive from the magistrate a copy of the*

proceedings as described in Section 15, including a copy of the memorandum of the reasons of the Magistrate for the decision.

(2) Any such application may be made by the party himself or by his legal practitioner.

(3) Such copy of the proceedings shall be furnished by the Magistrate as soon as practicable and at the latest within seven days after the making o

(18) Section 3 in effect gives a dissatisfied litigant a right to appeal the decision of the Magistrate. Decision is defined in Section 2 of the Act as follows:

> *'decision' means and include any nonsuit, dismissal, final order or other determination of any cause or matter.'*

(19) Section 11 in effect provides for a dissatisfied litigant to receive a copy of the proceedings including the reasons for the Magistrate's decision after paying the prescribed fees. When an application is made the Magistrate is required to provide the copy of the proceedings within seven days. This application could be made prior to an appeal. It is not a condition of making the application that the appeal process must have commenced or that the party must make a declaration that he intends to file an appeal. Where an appeal is filed and served and the appellant enters into a recognizance or pays the requisite sum of money in accordance with section 13, section 15 requires the Magistrate to provide the Registrar of the Court within three days, a copy of the proceedings and also a copy of the memorandum of reasons for the decision.

(20) The Small Debts Act contains inter alia the legislative provisions governing the determination of small claims in Tort.

(21) Section 28 of the Small Debts Act reads as follows:

> *"On the conclusion of the hearing, the Court shall, either at the same or any subsequent sitting of the Court, give its judgment in the cause; and shall, if so required by the plaintiff or defendant give the reasons for such judgment in writing to the plaintiff or defendant, as the case maybe."*

(22) The effect of Section 28 is that the Magistrate is reasons for his judgment in writing if requested to do so by any party to the proceedings.

(23) Under the Small Debts Act a party gets only the written reasons for the decision. Under the Magistrates' (Civil Division) Appeals Act the party gets the written reasons and also a copy of the proceedings. This assists a party to determine whether to appeal the decision and on what grounds.

(24) The cases R v Southend Stipendary Magistrate Court; R v Dover Magistrate Court; and Cedero v Kenwin Logan are not applicable since in St. Vincent and the Grenadines Section 28 of the Small Debts Act expressly provides for the Magistrate to give written reasons for his decision if requested to do so by a party to the proceedings.

(25) Having regard to the provisions of Section 28 of the Small Debts Act, I find that the Applicant has an arguable ground with a realistic prospect of success being that the Senior Magistrate acted unlawfully when he refused to give written reasons for his decision. However the matter does not end here. The Court must also consider whether the case is subject to a discretionary bar such as delay or an alternative remedy.

ALTERNATIVE REMEDY

SUBMISSIONS

(26) Learned Counsel Mr. Richard Williams submitted that the Applicant failed to comply with Part 56.3 of CPR 2000. The Applicant had an alternative remedy, he had a statutory right of appeal by virtue of Sections 3 and 5 of the Magistrate (Civil Decision) Appeals Act. The Act sets out eleven grounds of appeal and the applicant's application is based on four of the grounds being (b), (d), (e) and (j). learned Counsel relied on the cases of Preston v Inland Revenue Commissioner (1985) 2 AER 327, and Sharma v Browne-Antoine and submitted that where there is a statutory right of appeal, leave would only be granted to seek judicial review if there is a prima facie case made out that the decision-maker has either acted in an unlawful, unreasonable or unfair way.

(27) Learned Counsel Mr. Emery Robertson that there is no alternative remedy. There is no other remedy by which the Magistrate could be made to give the reasons for his decision other than by an order of Mandamus.

FINDINGS

(28) Part 56.3 (e) of CPR 2000 states as follows:

> *"56.3 The Applicant must state*
> *"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."*

(29) It cannot be disputed that this was not addressed in the application for leave. The fact that the applicant failed to address this issue in the application is not a fatal error. The Court has power under Section 26.9 of CPR 2000 to rectify matters where there has been a procedural error where no consequences have been specified for failure to comply. No consequences for failure to comply with Part 56.3 are specified. I will therefore rectify the matter and I so do.

(30) It is settled law that where there is an alternative remedy, unless judicial review is the more appropriate redress the alternative form of redress must be pursued. In Sharma's case one of the reasons given by the Privy Council for dismissing the appeal against the refusal to grant leave is that the complaints of Chief Justice Sharma could be resolved within the criminal process, either at trial or possibly by application for a stay of proceedings as an abuse of process. The Chief Justice had an appropriate alternative remedy.

(31) The question that arises in this case is whether there is an alternative form of redress in this case. It is submitted on behalf of the Senior Magistrate that there is a statutory right of appeal, while the Applicant submitted the only remedy is an order of mandamus.

(32) I agree with the submission of Learned Counsel for the Applicant. It is not disputed that the Magistrate has not given written reasons for his decision. The Applicant is not seeking judicial review of the Magistrate's decision to dismiss his suit. The Applicant is seeking to get the Magistrate to provide the written reasons. An appeal is not an alternative remedy in the present circumstances.

DELAY

SUBMISSIONS

(33) Learned Counsel Mr. Richard Williams submitted that the Application is being made approximately two and one half (2 ½) years after the matter was dismissed. This is detrimental to the good administration of justice. Learned Counsel relied on the decision of the Court of appeal in Roland Browne v Public Service Commission SLVHCVAP2010/023; and cases within the OECS jurisdiction where delays of fourteen (14) months and two (2) years were found to be inordinate and against the good administration of justice and leave for judicial review was refused.

(34) Learned Counsel Mr. Emery Robertson Sr. submitted that delay ought not to be a bar in this case since the Applicant waited on the Magistrate who did not stat that he was not going to give the written reasons. The Applicant was persistent, it is not a case where the Applicant did nothing - see IRC v National Employers (1981) 2 WLR p.728. Further under the Small Debts Act there is no time requirement for the Magistrate to give written reasons. The Magistrate can be called upon at any time to give written reasons for his decision. Good administration of justice requires that reasons be given for decisions.

FINDINGS

(35) Part 56.6 of CPR 2000 provides the circumstances in which the Court may refuse to grant leave to seek judicial review where there has been delay in making the application for leave. The Section reads:

> *"56.5 (1) In addition to any limit imposed by an 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 –*
>
> *(b) Be detrimental to good administration; or*
> *(c) Cause substantial hardship to or substantially prejudice to the right of any person.*

(36) It is not disputed that the Senior Magistrate dismissed the Applicant's suit on 5th February 2009. The Applicant wrote to the Senior Magistrate on 24th March, 2009 seeking written reasons for his decision. This was four weeks after the time for filing an appeal had expired. Almost one

year elapsed before the Applicant took any further action. On 24th February 2010 he again wrote to the Senior Magistrate. The Applicant took no further action until another year had expired before he and his Counsel held discussion with the senior Magistrate in early 2011 before he filed his application for leave on 28th July, 2011. The application for leave was filed approximately two (2) years and five (5) month after the decision was given.

(37) Part 56.5 requires the Court in considering whether to refuse leave to consider whether the granting of leave would be detrimental to good administration, or would cause substantial hardship, or substantial prejudice to the right of any person. Learned Counsel for the Senior Magistrate based his submission on the first limb – the delay being detrimental to good administration.

(38) The issue of delay being detrimental go good administration was considered by the Eastern Caribbean Court of Appeal in the Roland Browne case referred to by Learned Counsel for the Senior Magistrate. The Court applied the principles set out by Lord Diplock in O'Reilly v Mackman and referred to by Lord Bridge in R v Dairy Produce Tribunal for England and Wales Exp. Caswell (1990) 2A.C. 738:

> "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 that 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) recognizes that there is an interest in good administration independently of hardship, or prejudice to rights of third parties, and that the loss 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 decisions. Matters of particular importance, apart from the length of time itself, will be the extend of the effect of the relevant decision, and the impact which would be felt if it were to be re-opened."

(39) I bear in mind that there is no three month period within which the application for judicial review must be made as in the UK legislation. In Roland Browne the Court of Appeal held inter alia "...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."

(40) I find this application in the words of the Court of Appeal to be a "stale claim," and one which should be rejected. The applicant is seeking to have the Magistrate give written reasons for his decision which he made almost two and one half (2 ½) years prior to the filing of the application for leave. I agree that it is a fundamental principle that a party to proceedings must know the reasons for the Court's decision. Section 28 of the Small Debts Act makes it very clear that the Magistrate must give written reasons for his decision when requested to do so by a party to the

proceedings. However this is not a case where the applicant is not aware of the reason for the decision of the Magistrate. It is not disputed that a preliminary point was argued before the Senior Magistrate that the Applicant did not comply with the provisions of the Public Authority Act and the Senior Magistrate agreed with the submission that the Applicant did not do so and struck out the Claim. The Applicant was made aware at the time the decision was given that the claim was struck out because he did not comply with the provisions of the Public Authority Act. This is borne out in ground 1 of the Applicant's application which is outlined at paragraph 7 herein and in his latter of March 24, 2009 where he stated at paragraphs 2 and 3 as follows:

> *"2. Mr. Griffith was the Plaintiff in the above mentioned suit and a preliminary point was raised by the defendant who was represented by the Attorney General's Chambers on the issue of Notice before the presentation of these proceeding.*
>
> *3. The matter was argued before you and in a reserved ruling which you delivered that the Claimant did not meet the requirements of the Public Officers Protection Act you dismissed my client's case."*

Further the time for filing an appeal expired more than two (2) years before the application.

(41) In view of the circumstances of this case I find that the application for leave must be refused.

(42) It is ordered:

(1) That the application for leave to seek judicial review is hereby dismissed.

(2) There shall be no order as to costs.

.....

Gertel Thom

HIGH COURT JUDGE