

EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2014/0295

BETWEEN:

[1] HAYDEN MORGAN

[2] GEMMA LOUIS

[3] MARTIN SEAMAN

[4] DELVIN CHALLENGER

[5] OLAN VIGILLE

Applicants

And

[1] CHIEF MAGISTRATE

[2] CHIEF OF POLICE

[3] MATTHEW CUFFY

[4] DIRECTOR OF PUBLIC PROSECUTIONS

Respondents

Appearances:

Mr. Lennox Lawrence, Mr. Geoffrey Letang and Mrs. Dawn Yearwood-Stewart for the first, second, fourth and fifth Applicants

Mrs. Zena Moore-Dyer for third Applicant

Mr. Levy Peter, Attorney General of the Commonwealth of Dominica and Ms. Tameka Hyacinth, Senior State Attorney for first, second and third Respondents

Ms. Sherma Dalrymple and Ms. Fernilia Felix for fourth named Respondent

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2014: August 19th, 26th

2014: August 27th (Re issued: Part 42.10 (1))
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DECISION

[1] **THOMAS , (Ag)**: This is an application seeking leave to institute judicial review proceedings in order to be granted the following:

- (I) An order of certiorari to quash the complaint brought by the third named Respondent and/or the fourth named Respondent and the decision of the second and third named Respondent to issue the complaint.
- (II) An order of prohibition prohibiting the first named Respondent whether by himself or by or through any Magistrate with the jurisdiction of District E or otherwise from hearing, adjudicating or otherwise exercising any magisterial function with respect to the claimants brought in the name of the third named Respondent whether by himself or through the direction or authorization by the second named Respondent or the fourth named Respondent.
- (III) An order pursuant to the **Civil Procedure Rules** Part 56.4 (8) directing the grant of leave to apply for judicial review operates as a stay of execution and or of the proceedings on that a stay be granted in respect of the complaint filed by the said third named Respondents on the 12th day of August 2014 and/or with respect to any proceedings pursuant to the said complaint and/or the Coroner's Court pending the final hearing and determination of the Application for Judicial Review herein or until further order
- (IV) A declaration that in the circumstances of this case the arrest of the Applicants and/or that their said arrest was illegal and/or an abuse and was oppressive.
- (V) An injunction and or prohibition order staying all the proceedings in the Magistrate Court with respect to the said complaint filed by the third named Respondent.
- (VI) Such further orders, directions or other relief as the Honourable Court deems just and as the justice of the case requires.

[2]

G

grounds upon which the relief is sought:

(a)

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he complaints are in law incurably bad and therefore no complaints could or should have been issued by the Magistrate's Court for the following reasons:

(I)

S

ection 6 of the **Coroners Act** contains a mandatory provision for the convening of a Coroner's Inquest and the determination of the cause of death

(II)

T

he holding and conclusion of a coroner's inquest and the determination of the cause of death a mandatory requirement and indispensable pre-condition to the filing of a complaint in murder without the jury certificate there is no determination to the cause of death or whether a crime has been committed.

(III)

T

he Applicants are entitled to substantive benefit and/or a legitimate execution of due process and/or the protection of the law. The due process provision is a constitutional and a fundamental right.

(IV)

T

he Respondent's have violated the Applicant's legal and constitutional right to due process and in the statutory protection provided by sections 6, 32-34 and 37 in particular.

(V)

A

ccordingly, there were no bases in law for the issuance of the complaints.

(b)

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i) Issues raised are amenable to judicial review as questions of law are raised substantially

(ii) The High Court has jurisdiction to review the decision of the Respondents and/or of any administrative authority

The issues identified are:

(I) W
whether the second, third and fourth named Respondents properly or improperly exercise their powers in issuing complaints prior to the convening and conclusion of the coroner's inquest.

(II) W
whether the criminal proceedings commenced herein are irregular and a nullity and/or constitute an abuse of process or oppressive conduct, as the said proceedings commenced by the second, third and fourth Respondents were done in violation of the provisions of the **Coroner's Act** and/or prior to the holding and convening of a coroner's inquest.

(III) T
The impugned decision and complaints issued by the first named Respondents are therefore unlawful, irregular and or a nullity.

Evidence

[3] T
The only source of evidence before the court is the affidavit of Hayden Morgan, the first named Applicant. Essentially at paragraph 7-15 the affiant deposes of the following:

(a) T
The arrest of Joshua Ettienne on 4th August 2014;

(b) O
On 5th August 2014 Ettienne was found and pronounced dead in the police cells at Portsmouth;

(c) T
The arrest and detention of the second and third named Applicants on 7th August 2014 and release on 11th August 2014,

(d) O
On 11th August 2014 the Applicants reported to Police Head Quarters upon the instructions of the third named Respondent and have been arrested as determined thereafter,

(e) O
n 8th August 2014 the affiant reported voluntarily to the Police Head Quarters and on 11th and 12th August 2014;

(f) O
n 12th August 2014 a complaint was filed against the affiant and on the 4 other Applicants charging that we did murder Ettienne.

[4] A
t paragraph 16 the affiant deposes that on the 8th August 2014 when the Coroner's Inquest had been convened and later adjourned the coroner could not properly be informed that anyone had been charged for the said murder. That on the 8th August 2014 when the coroner adjourned sine die but not as a result of being informed that some persons had been charged before a Magistrate for murder.

[5] I
n the remainder of the affidavit the affiant deals with the import and requirements of section 6 of the **Coroner's Act**.

Reasons for Decision

[6] T
he authority of the High Court to review decisions of inferior tribunals is not in doubt because of the common law and, perhaps more importantly, Part 56 of the **Civil Procedure Rules 2000**.

[7] A
t issue are the **Coroners Act**¹ and certain actions taken by a coroner and the filing of a complaint against the Applicants. The applicants being dissatisfied with the filing of the

¹ Chap. 4.30 (Revised Laws of Dominica)

complaint against them after the inquest had commenced. Accordingly, an application was filed seeking judicial review of the actions of the third named Respondent in respect of which certiorari is sought; and in relation to the first named Respondent an order of prohibition. Also sought is an order pursuant to CPR 56.4 (8) directing that the grant of leave to apply for judicial review to operate as a stay of execution and/or proceedings. Further, a declaration that in the circumstances that the arrest of the Applicants or their continued detention was/is unlawful and/or their arrest was illegal. Finally, an injunction and or prohibition order staying all proceedings in the Magistrate's Court with respect to the complaint filed by the third named Respondent.

[8] I
In essence the Applicants are contending that the action of the coroner and the filing of the complaint are contradictory since section 6 of the **Coroners Act** is mandatory and there has been no verdict by the coroner as is required by the **Coroners Act**, and as such judicial review should issue and the orders sought be granted.

[9] T
The Respondents are saying that while section 6 is mandatory, section 39 creates an exception whereby a complaint may be filed in the present circumstances.

[10] A
After a review of the submissions, the legislation and the authorities cited the court has determined that leave should be granted for the following reasons:

(1) T
This court is bound by the decision in **Sharma v Brown-Antoine**² in which it was held that only in exceptional circumstances that judicial review of a decision to prosecute and would in practice be granted extremely rarely.

² [2007] 1 WLR 780

(2) A

lthough the court agrees with the test laid down in **Caribbean Civil Court Practice** regarding an application for judicial review, the Privy Council in **Sharma** went further which again is binding on this court.

(3) T

he test laid down by the Privy Council is that in considering whether to grant leave for judicial review, the court had to be satisfied not only that the claim has a realistic prospect of success but also that the complaint could not adequately be resolved within the criminal process itself either at the trial or by way of an application to stay the criminal proceedings for abuse of process which should be interpreted widely.

(4) B

ut while the court is satisfied on the first limb of the test, that is to say the Applicants have a realistic prospect of success the second limb creates a difficulty having regard to section 39 of the Act as a whole and subsections (1) and (5) in particular, and the requirements for the coroner being informed before a jury has given their verdict that someone has been charged.

(5) T

his issue can be raised at a trial or on an application to stay for abuse of process; but in these circumstances this is neither immediate nor just.

(6) I

n the circumstances the court would apply another decision of the Privy Council in **Gangar v Her Worship Ejenny Espinet** ³ in which it was held that where an application for judicial review can determine an issue this is to be preferred to a full blown trial before a Magistrate when a judicial review application, based solely on interpretation of statutes, is available.

³ [2008] UKPC 48

(7) A
further reason for the grant is that there is nothing before the court to address the requirements of section 39 of the **Coroners Act** and in particular sub sections 39 (1) and (5) in the face of the clear mandatory terms of section 6 of the said Act.

(8) T
The first Applicant at paragraph 16 of his affidavit in support, without identifying the source of his information, deposes that on 8th August 2014 when the coroner's inquest had been convened and later adjourned the coroner could not properly be informed that anyone had been charged with murder.

(9) L
Learned counsel Ms. Hyacinth submitted that Parliament could not have intended a nonsense. This is correct but it is also correct to say that Parliament never acts in vain.

(10) C
Consequent on the grant of leave to seek judicial review the following order is given.

ORDER

IT IS HEREBY ORDERED as follows:

1. The Applicants must file a claim for judicial review within 14 days of the date of this order together with affidavits in support.
2. The Respondents must file an affidavit in reply within 10 days of the service of the claim and affidavits
3. First hearing shall take place in open court on 24th September 2014.
4. On the authority of Part 56.4 (8) of CPR 2000 the grant of leave shall operate as a stay of all proceedings

Errol L. Thomas

High Court Judge (Ag)