

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2012/0005

ANDREW SMITH

Claimant

and

1. ANNE MARIE SMITH

2. THE ATTORNEY GENERAL

Defendants

Appearances:

Edith Petra Nelson for the Applicant

Dwight Lay for the Respondent

2012 : September 24;

2014 : November 26

DECISION ON APPLICATION FOR LEAVE TO FILE A CLAIM FOR JUDICIAL REVIEW

- [1] **BELLE J.:** This is an application by Andrew Smith for leave to apply for Judicial Review which was heard in open court. Andrew Smith will be granted leave to file a claim for Judicial Review for the following reasons below.
- [2] The reasons given by the applicant for filing the application on 10th January 2012 are contained in his affidavit filed on the same date.
- [3] In the affidavit he states that after obtaining a judgement against Mr Stanley Felix on 16th December, 2010 he proceeded to enforce his judgment by way of judgment summons following Mr. Felix's non-compliance with the judgment.

[4] He says that when the judgement summons came on for hearing on 7th March, 2011 Mr Felix gave reasons to the Magistrate as to why he was unable to pay the money owed to the applicant. Magistrate Smith then said that she would have a new trial and the matter was adjourned. She did not set aside her judgment.

[5] On the adjourned date Mr. Felix did not appear. A Police officer was sent by the Magistrate to find Mr Felix but he could not be found to be brought to court. It is at this hearing of 11th April that the learned Magistrate said that she was setting aside the judgment, a new trial would take place and then purported to commence the new trial.

Was the Learned Magistrate Functus Officio?

[6] The question for the court is whether in the circumstances of the case the Respondent Anne Marie Smith had any authority to order a new trial without giving reasons. Counsel for the Applicant argued that the Learned Magistrate was functus after entering judgment against Mr. Felix.

[7] Magistrate Anne Marie Smith to date has not given reasons for ordering a new trial. There is evidence that the learned Magistrate made this decision after she heard Mr Felix's explanation for not paying the money due on the judgement summons at the hearing of 7th March, 2011. However the evidence at this time does not indicate whether the Learned Magistrate had before her an application to set aside the judgment against Mr. Felix neither is there any evidence that she gave notice of any procedure challenging the judgment for which the Applicant could have prepared himself. Additionally there is no evidence before the court that Mr. Smith was permitted to cross-examine Mr Felix when he made the statement which appeared to convince the Learned Magistrate that a new trial should be held.

[8] In the decision **Attorney General of Grenada v Peter Charles, Supervisor of Elections and Brenda Hood** (HCVP2006/034) Gordon J.A at paragraph 3 made the following statement.

" Learned counsel is absolutely correct in the point that he makes, that is , once an order is settled and issued by the court , the judge or panel of judges become functus officio. Any other opinion would result in litigation never being final or certain-an untenable position"

[9] I therefore agree that after judgement was entered against Mr Stanley Felix the Learned Magistrate would have been functus officio.

The Issue of Delay

- [10] The respondent raises the issue of undue delay. The issue of undue delay is one which will be considered at trial. But taking into account the mysterious nature of the proceedings in which the Applicant was involved it is not surprising that he took a considerable amount of time to discover what exactly was going on. I do not think there was undue delay in the circumstances. Indeed it was reasonable in the circumstances for the Applicant to wait to be provided with reasons.
- [11] Neither Magistrate Smith nor anyone else has provided any different version of the facts to date. If the facts as stated by the Applicant are true there is no basis in law for the manner in which the decision to order a new trial was made. This would be manifestly unjust unless by way of explanation it is shown to be otherwise.

Article 28 of the Code of Civil Procedure

- [12] Counsel for the Crown argues that Article 28 of the Code of Civil Procedure protects the Respondents. This argument has been completely rebuffed by the decision of the court of Appeal in **Fire Service Association et al v Public Service Commission et al**, Civil Appeal No 13 of 2010 in which Baptiste JA held that Article 28 of the Code of Civil Procedure does not apply to Judicial Review proceedings. In any event the point cannot be taken before a Claim is filed since an application for leave to file a claim is not itself a claim, and the notice required under Article 28 is notice of intention to file a writ of Summons (claim).

Attorney General not a necessary respondent

- [13] I agree with the Respondents that the AG is not a necessary respondent since the Claim for a prerogative order should be against the Learned Magistrate alone.

Alternative form of redress

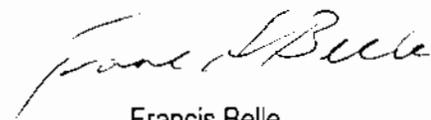
- [14] Counsel for the Respondents raised the issue that the Applicant should have filed an appeal as a more appropriate form of redress. Part 56 .3 (3) (e) of the CPR 2000 states that the Application for Judicial Review must state whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued.
- [15] I interpret this rule to mean that that where the action for Judicial Review is more appropriate it should be used. In my view the Applicant was faced with a situation where the Learned Magistrate was proceeding with a new trial without having given him any explanation. The judgement against Mr Felix had been set aside but there is no evidence of an application to set aside the judgment against Mr. Felix coming on for hearing. Mr Smith had not been advised that he was participating in any proceeding in which his judgment was being set aside.

Section 11 of the District Court Act Cap 2.02 of the Laws of Saint Lucia

- [16] In any event an attempt to appeal would have met with other obstacles.
- [17] Section 11 of the District Court Act Cap 2.02 of the Revised Laws of Saint Lucia provides for the appeal of a judgement, decision or order of the District Court in the exercise of its criminal or civil jurisdiction except for any order – (a) for the adjournment of any cause or matter.
- [18] In this case on 7th March, 2011 the Learned Magistrate said that there would have to be a new trial of the matter then she adjourned the case. What exactly was the proceeding being adjourned? The only logical presumption would be that the Learned Magistrate was adjourning consideration of the issue whether to have a new trial. Consequently the Applicant was correct not to attempt any appeal at that stage.

Conclusion

- [19] On the date that the Learned Magistrate purported to start the new trial, again there was nothing to be appealed since on the record the learned Magistrate had not said on what basis she was going to proceed to a new trial. All the Learned Magistrate did was to issue an order that the applicant's judgment against Mr. Stanley Felix was set aside. She then proceeded without more with a new trial. No reasons were given for starting a new trial on that date. Nevertheless Mr Smith was being prevented from enforcing his judgment and a new trial was proceeding. It was necessary to stop this procedure from going any further.
- [20] In the circumstances Judicial Review was therefore the more appropriate form of redress in this case and the court will grant the leave prayed for in the circumstances.
- [21] Leave is therefore granted to the Applicant to File a Claim for Judicial Review for the following orders:
1. An order of certiorari quashing the decision of the former Magistrate Anne-Marie Smith made on 11th April 2011 to set aside judgement entered in favour of the Applicant dated the 16th of December, 2010 in the matter of SLUMCV2010/0147 as being ultra vires, null and void and of no effect in law.
 2. A Declaration that the Judgment dated 16th December, 2010 be reinstated.
 3. Damages
 4. Costs
 5. Such further or other relief as to the Court shall appear just and appropriate.


Francis Belle
High Court Judge