IN THE EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV 2015/0288

ELROY PETER

Claimant

And

THE COMPTROLLER OF CUSTOMS

Defendant

Appearances:

Mrs Zena Dyer Munro and Mrs Gina Dyer Munro of Dyer & Dyer for the Applicant
Dr Eddy Ventose of the Attorney General's Chambers for the defendants

---

2017:

2018: April 18

RULING

[1] Stephenson J.: This is an application for leave to apply for Judicial Review which is being opposed by the defendant.

[2] Judicial review is a type of court proceeding brought pursuant to part 56.3 of Civil Procedure Rules 2000 ("CPR") in which the court is invited to review the lawfulness of a decision or action made by a public body or inferior court or tribunal[1]. Judicial reviews are in fact a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached. The court in matters such as these are not concerned with the conclusions of that process and whether those were

[1] See Judicial Review: Law and Procedure" the author, R. J. F. Gordon 1985 edition, page 3

'right', as long as the right procedures have been followed. In Judicial Review proceedings, the court will not substitute what it thinks is the 'correct' decision.

[3] In the case of Reid v Secretary of State for Scotland, Lord Clyde said

> *"Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational, or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency as, for example, through the absence of evidence, or of sufficient evidence to support it, or through account being taken of an irrelevant matter, or through failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision-maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear in a case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence."*[2]

[4] "Judicial Review includes the remedies (whether by way of writ or order of certiorari for quashing unlawful acts; mandamus, for requiring performance of a public duty, including a duty to make a decision of determination or to hear and determine any case; and prohibition, for prohibiting unlawful acts."[3] A person wishing to apply for Judicial Review must first obtain leave of the Court[4].

The facts

[5] On the 13th March 2015 the Comptroller of Customs ('the Respondent') seized from the sum of €259,300.00 ("the seized funds") from Elroy Christopher ("the Applicant") On the 16th November 2015

[2] Reid v Secretary of State for Scotland [1999] 2 AC 512
[3] CPR 2000 Part 56
[4] Ibid Part 56.3(1)

the Applicant filed for leave to apply for Judicial Review of the Respondent's decision to retain the seized funds pursuant to the Respondents notice of seizure dated the ///// of ,,,,.

[6] On the 16th day of November 2015 the Applicant commenced proceedings seeking the following orders:

a. an order of Mandamus requesting that the Respondent be ordered to return his monies taken from him in the sum of €259, 300.00 and US$10,960.00;
b. a declaration that the Respondent's refusal to return his property to him and the continued detention of his property is illegal, void, ultra vires and contrary to the Customs Act[5];
c. an order prohibiting the Respondent from continuing the detention/seizure and continued detention of the Applicant's money on the grounds that it is unlawful, illegal, void and ultra vires;
d. a declaration that the action of the Respondent is an abuse of process and unconstitutional;
e. damages;
f. costs;
g. such further orders, Writs or directions as may be necessary or appropriate to give effect to the relief claimed.

[7] The Applicant filed his application for leave with supporting affidavit. In his supporting affidavit he avers *inter alia* that:

1) The Respondent has refused to deal with his matter contending that they have three years within which to prosecute their matter;
2) The action of the Respondent amounts to an abuse of the process and is unconstitutional;
3) The Respondent has failed to act in accordance with the Customs Act (2010) and in the circumstances of the case has no authority to detain and /seize the monies taken from him.

[8] The sole issue for the Court to determine is whether this is a proper case in which the Court should exercise its discretion and grant leave to Mr Peter to file Judicial Review Proceedings.

[5] No 20 of 2010 of the Laws of the Commonwealth of Dominica

Applicant submissions

[9] The Applicant submitted that the sole issue for decision on the application for Judicial Review is whether or not the Applicant has an adequate form of redress and if that precludes this Court from granting leave.

[10] The facts are not in dispute in this matter. The Respondent has averred in his affidavit that leave should not be granted on the grounds that the Applicant had available to him an alternative remedy under the Customs Act[6] that is by making an application to the Court for an order disallowing the seizure.

[11] The Applicant on the other hand maintains that he does not have such an option and that based on the advice he has received from his Legal Counsel that Judicial Review is the most suitable remedy for him in all the circumstances of his case.

[12] Learned Counsel on behalf of the Applicant submitted that the existence of an alternative remedy does not preclude the Court's jurisdiction in Judicial Review Proceedings.

[13] Learned Counsel made reference to the case of Leech –v- Governor of Pankhurst Prison[7] and the following principle

> *"An alternative remedy for abuse or excess, whether effective or not may be a factor, and a very weighty factor, in the assessment of whether the discretion which the court undoubtedly has to grant or refuse judicial review should be exercised. But it cannot … bear on the question of existence of the jurisdiction …"*[8]

[14] Learned Counsel also relied on the decision in R(Cheltenham Builders Ltd) –v- South Gloucestershire District Council[9] and submitted that in that case the court examined whether Judicial Review was available in a situation where an Appeal Procedure was statutorily allowed. Counsel further relied on the dicta of Justice Sullivan who stated

> *"I accept the registration authorities have a discretion as to the procedure to be adopted (assuming that the limited requirements in the regulations have been complied with), but that discretion is not unfettered. It must be exercised in a manner which is fair to applicants and objectors. What fairness requires by way of procedure will depend upon*

[6] Act Number 10 of 2010 of the Laws of Dominica
[7] [1998] AC 533
[8] Ibid 580 C-D
[9] [2004] 4 PLR 95

the circumstances of the particular application. Coupled with the obligation to act fairly, the Registration Authority is also under and obligation not merely to ask the correct question under the Act, but to "take reasonable steps to acquaint [itself]with the relevant information" to enable it to correctly answer the question: See the Tameside case cited by Carwath J above"[10]

"In the present case, the defendant does not appear to have given any, or any serious, consideration as to what fairness required. The approach adopted by the Head of Legal and Democratic Services when introducing her report appears to have been that it was sufficient for the defendant to comply with the requirement laid down in the Act and the regulations. Where there is a comprehensive statutory code governing the determination of appeals (for example the Town and Country Planning Inquiries Procedure Rules), it may well be difficult to persuade the courts that fairness requires anything more than compliance with the statutory code. But as noted above, the Act and the regulations do not provide a comprehensive code. In particular, they are silent as to how the registration authority is to set about resolving disputes of fact between applicants and objectors which have emerged as a result of the process of the applicant responding to the objector's response to the information contained in the application."

"When parliament wishes to restrict the scope of a statutory appeal or application to the High Court, it does so in express terms: see, for example, section 11(1) of the Tribunals and Inquiries Act 1992 and section 289(1) of the Town and Country Planning Act 1990, which make provision for appeals on a "point of law" from decisions of certain tribunals and from the Secretary of State's decisions in enforcement notice appeals, respectively"[11]*.*

"For the reasons set out above, there can be no doubt that the registration of the site as a village green was unlawful. Is there any reason why the registration should not be quashed in the exercise of the court's discretion? Apart from stating, correctly, that the court has power under section 14 to order the amendment of the register, the defendants have put

[10] Ibid at Paragraph 36
[11] Ibid paragraph 49

forward no reason as to why a quashing order would be inappropriate. The claimant is not seeking to obtain any unfair procedural advantage or to evade any procedural obstacle by making an application for judicial review. The claim raises discrete points of law that can be answered by reference to the report and the other documents identified above, without the need for hearing oral evidence. In the circumstances, judicial review is at least as convenient as an application under section 14. Moreover, the defendants have not suggested that they have been prejudiced in any way by the fact that the claimant chose initially to proceed by way of judicial review.

The court's discretion must be exercised having regard to the overriding objective in CPR 1. Requiring a claimant who has commenced judicial review proceedings to recommence them under section 14, by way of a Part 8 claim, for no other reason than the existence of the right to make such a claim, would not be consistent with the objectives of saving expense or ensuring that his case was dealt with expeditiously. In short, it would be a pointless waste of money and time for no practical advantage.

For these reasons, I am satisfied that the court does have power to grant the claimant a quashing order in respect of, not merely the defendant's decision to register, but also the registration itself, in addition to its power to amend the register under section 14"[12]*.*

[15] Learned Counsel on behalf of the Applicant further submitted that this case made it clear that where points of law arise and where power is conferred on a particular authority it is not unfettered and must be exercised fairly.[13]

[16] Reference was also made to the case of R –v- Devon County Council, ex parte Baker[14] where it was held that the applicants were not precluded from applying for Judicial Review by the availability of the alternative remedy."

[17] It was submitted on behalf of the Applicant that the existence of an alternative remedy does not preclude the grant of leave to apply for Judicial Review. Counsel urged the court to analyse the situation at hand and further submitted that where a statutory redress is available this does not operate to oust the Court's jurisdiction in Judicial Review proceedings.

---

[12] Ibid Paragraphs 59, 60 & 61"

[13] See page 11 paragraph 2 of the Applicant's written submissions

[14] [1995] 1 ALL e r 73

[18] In applying the law to the facts of the case at bar, Learned Counsel submitted on behalf of the Applicant that the provisions of the Customs Act does not oust the Court's jurisdiction to grant Judicial Review and that the Respondent performs a statutory function and in those circumstances his decision making is amenable to Judicial Review. That in the case at bar the Applicant is seeking to review the manner of the exercise of the discretion granted to the Respondent and the Respondent's decision making power under the Act to seize his cash which was done in keeping with the legislation.

[19] The Applicant also submitted that the he filed a notice of claim as he was entitled to do and that the Respondent did not take any action on the said notice of claim until he made his application for Judicial Review. That this in and of itself shows that the Respondent's actions should be subject to the supervision of the Court. That there was some eight months of inaction on the part of the Respondent after the Applicant filed his notice of claim which shows abuse of process on the part of the Respondent and it also evidence of a questionable decision making process under the well known principles.

[20] Learned Counsel pointed out to the court that it was for the Respondent to initiate proceedings when he received the notice of claim as is stated in the Notice of Seizure and he did not do that for 8months and only after he was served with the application for Judicial Review and this course of action the Applicant contends is evidence that that Respondent acted ultra vires, in abuse of power conferred on him which requires invocation of the supervisory jurisdiction of the High Court.

Respondent's case

[21] The Respondents oppose the application for leave on the ground that there is an adequate alternative remedy available to the Applicant.

[22] Reference was made to Part 56.3 (e) which states

"Judicial review – application for leave

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 – …

(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; … "

[23] It was submitted that this section is a reflection of the common law principle that a claimant must have exhausted all available remedies before seeking Judicial Review.

[24] Learned Counsel Dr Eddy Ventose who had conduct of the case on behalf of the Respondents in support of his submission cited the statement of Lord Scarman in R –v- Inland Revenue Commissioners, Ex Parte Preston [15] when he said

> "… a remedy by way of judicial review is not to be made available where an alternative remedy exists. This is a proposition of great importance. Judicial review is a collateral challenge: it is not an appeal. Where Parliament has provided by statute appeal procedures, as in the taxing statutes, it will only be very rarely that the courts will allow the collateral process of judicial review to be used to attack an appealable decision."

Dr Ventose also relied on further on Lord Scarman's statement

> *"But cases for judicial review can arise even where appeal procedures are provided by Parliament. The present case illustrates the circumstances in which it would be appropriate to subject a decision of the commissioners to judicial review. I accept that the court cannot in the absence of special circumstances decide by way of judicial review to be unfair that which the commissioners by taking action against the taxpayer have determined to be fair. But circumstances can arise when it would be unjust, because it would be unfair to the taxpayer, even to initiate action under Part XVII of the Act of 1970. For instance, as my noble and learned friend points out, judicial review should in principle be available where the conduct of the commissioners in initiating such action would have been equivalent, had they not been a public authority, to a breach of contract or a breach of a representation giving rise to an estoppel. Such a decision could be an abuse of power: whether it was or not and whether in the circumstances the court would in its discretion intervene would, of course, be questions for the court to decide."*[16]

[25] Further reference was made to Lord Templeman's statement in his judgment when he said

> *"Judicial review is available where a decision-making authority exceeds its powers, commits an error of law, commits a breach of natural justice, reaches a decision which no*

[15] [1985] AC 835 at page 852
[16] Ibid at page 852

reasonable tribunal could have reached, or abuses its powers. Judicial review should not be granted where an alternative remedy is available … Judicial review process should not be allowed to supplant the normal statutory appeal procedure. The present circumstances are exceptional in that the appeal procedure provided by section 462 cannot begin to operate if the conduct of the commissioners in initiating proceedings under section 460 was unlawful."[17]

[26] In the Exparte Preston Case a tax payer was granted leave to file judicial review against the decision of the Commissioners of Income Tax and the judge of first instance held that the Commissioners actions were unlawful. The Commissioners appeal was allowed by the Appellate Court. The issue discussed by the Court was whether or not Judicial Review could be pursued where there is a statutory appeal procedure available.

[27] Learned Counsel Dr Ventose also drew the Court's attention to the decision of R-v- Secretary of State for the Home Department, ex parte Swati[18] In this case the Applicant was refused entry into the United Kingdom for a period of one week. The immigration officer at the port of entry refused the applicant entry and told the applicant *"I am not satisfied that you are genuinely seeking entry only for this limited period".*

[28] The applicant sought judicial review of the Immigration officer's decision on the ground that the statement made was not sufficient reason for the purposes of the relevant regulation and that the decision was irrational. The applicant did not pursue his statutory remedies of appeal to an adjudicator and the Immigration Appeal Tribunal under the Immigration Act since that required him first to leave the United Kingdom.

[29] One of the issues discussed and decided in the case was whether having regard to the alternative remedies provided by the Immigration Act; the court should grant leave to apply for judicial review. The court of first instance refused to grant leave and an appeal was launched.

[17] Ibid at page 862
[18] [1986] 1 WLR 477, [1986] 1 ALL E R 717

[30] The Court in his matter held that there was an alternative remedy in the Immigration Act and in the absence of exceptional circumstances this remedy should have been pursued. The court was of the view that this case did not have the exceptional circumstances present to allow leave to be granted in the face of the existence of an alternative remedy.

[31] Learned Counsel relied on the dicta of Sir John Donaldson MR who said

> *"However, the matter does not stop there, because it is well established that in giving or refusing leave to apply for judicial review, account must be taken of alternative remedies available to the applicant. This aspect was considered by this court very recently in Reg. v. Chief Constable of the Merseyside Police, Ex parte Calveley [1986] 2 W.L.R. 144 and it was held that the Jurisdiction would not be exercised where there was an alternative remedy by way of appeal, save in exceptional circumstances. By definition, exceptional circumstances defy definition, but where Parliament provides an appeal procedure, judicial review will have no place, unless the applicant can distinguish his case from the type of case for which the appeal procedure was provided.*
>
> *The applicant may have no basis for complaint at being refused leave to enter. He may have cause to complain that the immigration officer erred in her assessment of the evidence -- that her credulity threshold was too high. He may have cause to complain that she misunderstood and therefore misapplied the criteria for granting leave to enter. We simply have no idea which is the case. All these matters will be open on a statutory appeal, but only the latter could form the basis for judicial review, since as Lord Brightman pointed out in Chief Constable of the North Wales Police v. Evans [1982] 1 W.L.R. 1155, 1174G, judicial review is not so much concerned with the merits of the decision as with the way in which it was reached. In a word, the applicant's case is wholly indistinguishable from the general run of cases where someone arrives in the United Kingdom and is dissatisfied because he is denied leave to enter. Accordingly, in my judgment, he should not be allowed to pursue it by way of judicial review."*[19]

[32] Learned Counsel also quoted Parker LJ when he said

[19] Ibid at page 485 A-F

"Thus far I have considered the case without reference to the fact that there is an established appeal procedure. It is well established in a long line of cases, the last of which is Reg. v. Chief Constable of the Merseyside Police, Ex parte Calveley [1986] 2 W.L.R. 144 that in such circumstances relief by way of judicial review will only be granted in exceptional circumstances. Mr. Blom-Cooper submits that the question whether there are exceptional circumstances is irrelevant at the stage of application for leave. I disagree. An applicant for leave must show an arguable case that relief should be granted. Where, therefore, an appeal procedure exists, an applicant must, in my view, show not only an arguable case for relief, as must every applicant even if there is no appeal procedure, he must also show that there are special circumstances sufficient to render it arguable that there should be a departure from the normal rule. Unless he satisfies both limbs, he shows no arguable case for relief. It is impossible and would be legally wrong to define what are exceptional circumstances and what are not. Each case will depend on its own facts. It is of course clear that some circumstances are not even arguably sufficient, and that others equally plainly are. An example of the latter is to be found in Reg. v. Chief Immigration Officer, Gatwick Airport, Ex parte Kharrazi [1980] 1 W.L.R. 1396. An example of the former would be the mere fact that the appeal procedure is only available on leaving the country. In the present case the applicant shows, in my view, no special circumstances of any kind"[20].

[33] Learned Counsel acknowledged that there are times when the alternative remedy which is available is inadequate as has been held in Leech –v- Deputy Governor of Parkhurst Prison[21] and the House of Lords held that such a remedy was inadequate and allowed the application for Judicial review. In this case the court held that there were exceptional circumstances because of the inadequacy of the appellate machinery in that the appeals against disciplinary decisions was considered to be inadequate.

[34] Learned Counsel on behalf of the Respondents contended that contrary to the assertions by Counsel on behalf of the Applicant the decision in Leech does not stand for "*the existence of (sic) alternative remedy does not preclude the Court's jurisdiction in Judicial Review Proceedings".* Learned Counsel

[20] Ibid at page 489 G-H - 490
[21] [1988] AC 533

submitted that Counsel on behalf of the Applicant has taken the statement Lord Oliver of the House of Lords out of context in Leech when he said

> *"An alternative remedy for abuse or excess, whether effective or not, may be a factor, and very weighty factor in the assessment (sic) of whether the discretion which the court undoubtedly has to grant or refuse judicial review should be exercised. But it cannot, as I see it, bear on the question of the existence of the jurisdiction."*

[35] Learned Counsel Dr Ventose submitted that this statement can only be read "as suggesting nothing more than the existence of an alternative remedy without more does not go to the jurisdiction of the court to entertain the judicial review application. The alternative remedy principle is a discretionary bar to a judicial review application. In other words the court must have regard to whether that alternative remedy is effective in vindicating the rights of the applicant instead of the application for judicial review. Since judicial review should only be used in the last resort, the courts have stated repeatedly that, except in exceptional circumstances, a remedy by way of judicial review is not to be made available where an alternative remedy exists…."[22]

[36] Learned Counsel submitted that the court will invariably have jurisdiction to hear applications for judicial review however if there is a particular remedy available to the applicant that is sufficient to vindicate the applicant's rights the court will hold that that alternative remedy should be pursued instead.

[37] Learned Counsel Dr Ventose submitted that the case of Cheltenham Builders Ltd relied on by the Applicant was wrongly decided because, it does not take into consideration the established principle at Common Law that Judicial Review ought not to be made available where an adequate alternative remedy exists. Counsel further contended that this cases renders nugatory the part 56.3(3)(e) of CPR 2000 which requires that a statement be made whether an alternative form of redress exists and if so why Judicial Review is more appropriate or why the alternative remedy is not being pursued. Learned Counsel submitted that to apply Cheltenham in our courts would render this part of the CPR 2000 meaningless.

[38] To sum up the Respondent's objection to this application for leave, it has been submitted that the application should not be granted because the Applicant has an alternative remedy available to him as provided for by the Customs Act which is a bar to apply for Judicial Review. That whether there are

[22] See Paragraph 30 of respondents Written Submissions filed on the 10th March 2017

exceptional circumstances is to be considered on a case by case basis. It has been submitted that there are no exceptional circumstances in the matter that would allow the court to exercise its discretion and grant leave.

[39] The Respondent also submitted that the claim being made by the Applicant is essentially the same relief that is available if he were to utitlise the remedy available to him under sections 204 & 205 of the Customs act.[23]

The Test

[40] The test for leave to apply for judicial review is that stated by the Privy Council in Sharma[24]. The test is well known and stated by Lord Bingham and Lord Walker at para14 (4) of their joint judgment:

> "*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, ex parte Hughes (1992) 5 Admin LR 623 at 628, and Fordham, Judicial Review Handbook (4th Edn, 2004), 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 civil standard of proof in R (on the application of N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605, [2006] QB 468, at para [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 any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to 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*

[23] The Respondent in his submissions provided a tabulated form of the relief offered by section 205 of the Customs Act compared to the relief sought on his Application for Judicial Review.
[24] Op cit

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 processes of the court may strengthen'; Matalulu v Director of Public Prosecutions [2003] 4 LRC 712 at 733."

Court's considerations

[41] This Court has given very careful consideration to the applicants' case, the evidence in support, the respondent's evidence and submissions. This Court has also examined all the authorities cited by the parties and the court has also examined other cases not cited by the parties.

[42] The issue to be decided is whether having regard to the alternative remedy provided by the Customs Act where the Applicant can make an application for an order disallowing the seizure the Court should grant leave for judicial review.

[43] The granting of leave to apply is a matter of judicial discretion. If the Applicant were to be obtain leave, he has to satisfy the court that he has an arguable case for Judicial Review upon the grounds of illegality,[25] irrationality[26], or procedural impropriety.[27]

[44] It is not sufficient to merely express disagreement however strongly with the decision being challenged.

[45] In his notice of application for leave to apply for Judicial Review, the Applicant gave the following grounds on which he sought relief:

a. illegality that is a violation of the Customs Act;
b. that the Respondent's decision to seize and detain his property and his refusal to return same is oppressive arbitrary and procedurally improper;
c. that the Respondent's decision is illegal, void, ultra vires and contrary the Customs Act;
d. that the Respondent's actions is an abuse of process and unconstitutional.

[25] Associated Provincial Picture Houses Ltd. –v- Wednesbury Corporation [1948] 1 KB 223
[26] ibid
[27] Council of Civil Service Case

[46] The Respondent resists the application for leave on the ground that there is an alternative remedy available to the Applicant to challenge the Respondent's decision.

[47] It is established law by a long list of cases that where there is alternative statutory relief, the court will only grant leave to apply for Judicial Review in exceptional circumstances.

[48] Exceptional Circumstances is to be decided on a case by case basis.

[49] It is trite law that an applicant for leave to file Judicial Review must also show an arguable case that relief should be granted. It has been held that

> *"Where therefore, an appeal procedure exists, an applicant must, in my view, show not only an arguable case for relief, as must every applicant even if there is no appeal procedure, he must also show that there are special circumstances sufficient to render it arguable that there should be a departure from the normal rule". Unless he satisfies both limbs, he shows no arguable case for relief. It is impossible and would be legally wrong to define what exceptional circumstances are and what are not. Each case will depend on its own facts. It is of course clear that some circumstances are not even arguably sufficient and that others equally plainly are"*[28]

[50] In R-v-Chief Constable of Merseyside Police Exp. Calvely[29] Sir John Donaldson MR stated that "*… the Court will only "very rarely" make Judicial Review available where there is an alternative remedy by way of appeal".* In R –v- Secretary of State Ex p Swati[30] Sir John Donaldson also had this to say " *but where Parliament provides an appeal procedure, judicial review will have no place, unless the applicant can distinguish his case from the type of case for which the appeal procedure was provided*"..

[51] In R. (*On the application of Cowl) –v- Plymouth CC*[31] *Lord Woolf CJ said*

---

[28] *[1986] 1 WLR 477 at 490*)(Per Parker LJ)

[29] [1986] QB 424

[30] [1986] 1 WLR 44

[31] [2001] EWCA Civ 1935, [2002] 1 W.L.R. 803 at Para 14

"… The Courts should not permit, except for good reason, proceedings for judicial review to proceed if a significant part of the issues between the parties would be resolved outside the litigation process."

Disposition

[52] Learned Counsel Mrs Dyer Munro on behalf of the Applicant in her submissions in response to the submissions in opposition to the application to grant drew to the courts attention that the respondents failed in their submissions to make reference affidavit evidence filed in the matter. Learned Counsel submitted that this failure is indicative of the Respondents inability to appreciate the relevant legal principles. This is noted.

[53] Learned Counsel Mrs Dyer-Munro quoted Lord Jaucey in the case of Harley Development Inc –v- Commissioner of Inland Revenue[32] when he said

> "…, where a statute lays down a comprehensive system of appeals procedure against administrative decisions, it will only be in exceptional circumstances, typically an abuse of power, that the courts will entertain an application for judicial review of a decision which has not been appealed."

[54] Learned Counsel submitted that where there is abuse of power this amounts to exceptional circumstances warranting judicial review and based on the facts of this case there has been an abuse of power by the authorities and leave should be granted. It was submitted that in the case at bar, that there is affidavit evidence which establishes that the applicant acted on the options which were available to him as stated in the notice of seizure and that the Respondent has failed to take any further action to actualize the option exercised by the Applicant and that it is this failure on the part of the Respondent that amounts to abuse of power which is unjust. That in all the circumstances of this case it is necessary that the Court's supervisory jurisdiction should be invoked.

[55] Based on the averments made in his affidavit and on the submissions made by Counsel on behalf of the Respondent, I am satisfied that there is a bases upon which the applicant should be granted eave

[32] (1996) 1 WLR 736 C

to apply for Judicial Review. There is an alternative remedy available to the applicant and he has showed that he took necessary step to do so and that the Respondents have failed to act on the said notice in a timely matter which in the circumstances of this case does amount in my view to an abuse of power which constitutes special circumstances attendant to his case warranting the grant of leave.

[56] The court will therefore granted leave to apply for Judicial Review here in and make an order in this regard and give directions for the further conduct of this matter.

[57] It is hereby ordered that:

a. Leave is granted to the Applicant to apply for Judicial Review
b. The application making a claim for judicial review must be filed within fourteen (14) days of today.

[58] As a short post script to this ruling, due to the unavailability of full court facilities to ensure the timely delivery and proper editing and presentation of this ruling, this Court apologises for the delay in delivering this ruling and for any errors which may appear herein. Further the original file was unfortunately destroyed in the passage of Hurricane Maria which ravaged Dominica in September 2017 hence there is uncertainty as to the date that the decision was reserved.

M E Birnie Stephenson
High Court Judge

[SEAL] By the Court

Registrar