EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

ANGUILLA

AXAHCVAP2018/0007

BETWEEN:

TROPICAL DISTRIBUTORS COMPANY LIMITED

Appellant

and

PERMANENT SECRETARY IN THE MINISTRY OF FINANCE

Respondent

Before:

The Hon. Dame Janice Pereira, DBE	Chief Justice
The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mr. Paul Webster	Justice of Appeal [Ag.]

Appearances:

Mrs. Tana'ania Small-Davis and Ms. Navine Fleming for Appellant
Mr. Ivor Greene, Senior Crown Counsel for the Respondent

2019: January 18;
April 15.

Interlocutory appeal — Application for leave to apply for judicial review — Discretionary bar — Unreasonable Delay — Whether learned judge erred in refusing leave to bring a judicial review claim on the basis of unreasonable day

The appellant, Tropical Distributors Company Limited ("Tropical"), is a company engaged in the distribution business in Anguilla. It has grown over the years to represent major international wines and spirits brands. Tropical heard a rumour that International Wines & Spirits Limited ("IWAS"), a distribution company operating in St. Maarten, intended to enter the Anguillan market. Having so heard, two of Tropical's directors enquired from the Chief Minister/Minister of Finance the process for granting business licences and raised issues affecting the company operating in that sector generally and, specifically, the prospects of facing a major competitor who was essentially seeking to consolidate the St. Maarten/Martin and Anguilla market. Tropical says that it was assured that no business licence was granted to IWAS by the respondent, the Permanent Secretary in the Ministry of Finance (the "Permanent Secretary"). The enquiry was followed by a meeting with the President of the Anguilla Chamber of Commerce and the Minister of Finance, where it was discussed that

the Chamber of Commerce and affected stakeholders should be given the opportunity to weigh in on all business licence applications that are submitted to the Permanent Secretary. Tropical says that, the Minister and the Permanent Secretary again assured the parties that IWAS had not been granted a business licence nor were they aware of any such application.

Tropical received communications from two of their major brands that they would be moving their brands to IWAS who was the distributor in St. Maarten, as it made sense to consolidate since they were now operating in Anguilla. One of Tropical's representatives once more contacted the Permanent Secretary informing him of what he was told by his brand managers namely, that IWAS had been granted a business licence. Tropical says that the Permanent Secretary then confirmed that a business licence had been granted, but neither he nor the Minister of Finance had any knowledge of it. As a result, members of the Chamber of Commerce and some of Tropical's directors met with the Minister of Finance and the Principal Assistant Secretary who told them that the matter would be investigated and the licence would be revoked or suspended in the meantime. The business licence was apparently initially granted by the Principal Assistant Secretary.

Subsequently, Tropical was informed by the Minister of Finance that the business licence was reinstated by the Permanent Secretary on the advice of the Attorney General. Tropical then sought leave to institute judicial review proceedings of the Permanent Secretary's decision granting the licence to IWAS on several grounds.

The learned judge, having heard the application for leave to bring judicial review proceedings, found that only one ground argued before him presented a realistic prospect of success. That is, that the grant of a business licence to IWAS by the Principal Assistant Secretary is null and void and of no legal effect as the Trades, Businesses, Occupations, and Professions Licensing Act specifically provides for the Permanent Secretary to grant business licences. The learned judge, nonetheless, refused Tropical's application for leave to file judicial review proceedings because there had been an unreasonable delay of six months in seeking leave and thus applied the discretionary bar in refusing leave.

Tropical, being dissatisfied with the learned judge's decision, appealed. The critical issue arising for this Court's determination is whether the learned judge erred in the exercise of his discretion in relation to unreasonable delay such as to bar Tropical from pursuing a judicial review claim.

Held: dismissing the appeal and making no order as to costs, that:

1. On an application for leave to bring a judicial review claim, the judge is obliged to consider the issue of delay in determining whether to grant leave even where the claim has merit. A finding of unreasonable delay in pursuing an application for leave to institute judicial review proceedings may prevent an applicant from pursuing an arguable ground for judicial review even though the ground may have a realistic prospect of success.

Rule 56.5 of the Civil Procedure Rules 2000 applied; Sharma v Brown-Antoine [2007] 1 WLR 780 applied.

2. The Civil Procedure Rules 2000 does not provide any time limit for the filing of an application for leave to file a judicial review claim. However, there is a duty to act promptly. In determining whether there has been unreasonable delay in pursuing judicial review proceedings, the court must consider the issue of promptness and it will be an identifiable question of law, namely, when did the grounds for the judicial review claim first arise.

   Fishermen and Friends of the Sea v Environmental Management Authority and others [2018] UKPC 24 applied; In the Matter of An Application by Robert and Sonia Burkett [2000] EWCA Civ 321 applied.

3. In determining whether there has been unreasonable delay, the learned judge should also consider whether the granting of leave would be likely to be detrimental to good administration or cause substantial hardship to or substantially prejudice the rights of any person. The learned judge correctly concluded that there had been an unreasonable delay in filing the application for leave to bring a judicial review claim as the consequences of revoking IWAS' business licence six months into the operation of its business would cause substantial hardship to the business. Further, seeking to unravel the Permanent Secretary's decision at that late stage would no doubt be detrimental to the good administration. There would also be substantial hardship and substantial prejudice to IWAS. In view of the totality of the circumstances, the learned judge correctly exercised his discretion in relying on the delay as a discretionary bar to prevent Tropical from obtaining leave to bring a judicial review claim. Accordingly, there is no discernible error of law in the learned judge's reasoning and his conclusion cannot be impugned.

   Rule 56.5 of the Civil Procedure Rules 2000 applied; Roland Browne v The Attorney General and the Public Service Commission SLUHCVAP2010/0023 (delivered 15th December 2010, unreported) followed; R v Dairy Produce Quota Tribunal for England and Wales Ex p. Caswell [1990] 2 AC 738 applied.

REASONS FOR DECISION

[1] BLENMAN JA: On 18th January 2019, we dismissed Tropical Distributors Company Limited's ("Tropical") appeal against the decision of Belle J refusing Tropical's application for leave to file a judicial review claim against the decision of the respondent, the Permanent Secretary in the Ministry of Finance (the "Permanent Secretary"), granting a business licence to International Wines & Spirits Limited ("IWAS"). At the hearing of the appeal, we gave an oral decision dismissing the

application and indicated that we would provide our reasons at a subsequent date. We do so now.

[2] We will now briefly set out the background to the appeal in order to provide the necessary context.

Background

[3] Tropical, a company operating in Anguilla, has been engaged in the distribution business there since 1983. It has grown over the years to represent major international wine and spirit brands. In May 2016, Tropical heard a rumour that IWAS, a distribution company operating in St. Maarten, intended to enter the Anguillan market. Having so heard, two of Tropical's directors enquired from the Chief Minister/Minister of Finance the process for granting business licences and raised issues affecting the company operating in that sector generally and, specifically, the prospects of facing a major competitor who was essentially seeking to consolidate the St. Maarten/Martin and Anguilla market. Tropical says that it was assured that no licence was granted to IWAS. The enquiry was followed by a meeting with the President of the Anguilla Chamber of Commerce and the Minister of Finance where discussions were held that the Chamber of Commerce and affected stakeholders should be given the opportunity to weigh in on all business licence applications that are submitted to the Permanent Secretary in the Ministry of Finance. Tropical says that, the Minister and the Permanent Secretary again assured the parties that IWAS had not been granted any licence nor were they aware of any such application.

[4] Tropical received communication in early September 2016 from two of their major brands that they would be moving their brands to IWAS who was the distributor in St. Maarten, as it made sense to consolidate since they were now operating in Anguilla. One of Tropical's representatives once more contacted the Permanent Secretary informing him of what he was told by his brand managers namely, that IWAS had been granted a licence. Tropical says that the Permanent Secretary then confirmed

that the licence had been granted, but neither he nor the Minister of Finance had any knowledge of it. On 9th September 2016, members of the Chamber of Commerce and some of Tropical's directors met with the Minister of Finance and Mr. Wycliffe Fahie, the Principal Assistant Secretary in the Ministry of Finance, who told them that the matter would be investigated and the licence would be revoked or suspended in the meantime.

[5] The licence was apparently initially granted by the Principal Assistant Secretary. In October 2016, Tropical was informed by the Minister of Finance that the licence which had been suspended was reinstated by the Permanent Secretary on the advice of the Attorney General. Tropical states that it was made to believe that the matter of the issuance of the licence without hearing from the interested parties and stakeholders in the business sector would be investigated, the licence would be suspended in the interim and that there would be consultation among stakeholders on any proper consideration of the application made by IWAS. It states that it has been adversely affected by the grant of the licence, which was done improperly and in breach of the statutory duty to act fairly. Tropical believes that there is "unfair competition" and alleges that since 23rd September 2016, it has lost 19 of its brands and the distribution rights for all of them have been reassigned to IWAS.

[6] Aggrieved by the decision to grant the business licence to IWAS, Tropical sought leave to institute judicial review proceedings of the Permanent Secretary's decision. The grounds for judicial review are: breach of the principle of natural justice, specifically the procedural unfairness in the failure to consult with the stakeholders in the business sector for which the licence was granted to IWAS; failure to properly consider the application for licence made by a non-belonger company; and denial of the applicant's legitimate expectation that it would be given an opportunity to be heard before any licence was granted.

Judgment of the lower court

[7] The learned judge, having heard the application for leave to file judicial review proceedings, found that only one ground argued before him presented a realistic prospect of success, subject to a discretionary bar. The learned judge noted at paragraph 3 that:

> "The ground which appears arguable is that stated in support of the application for a declaration that the grant of a business licence on 20 July 2016 by the Principal Assistant Secretary in the Ministry of Finance, Economic Development, Commerce & Tourism to International Wines & Spirits Ltd. is null and void and of no legal effect. This is arguable because the [Trades, Businesses, Occupations, and Professions Licensing Act] specifically provides for the Permanent Secretary to grant the Business Licence."

[8] In view of the above, the learned judge refused Tropical's application for leave to file judicial review proceedings on the ground that there had been an unreasonable delay of six months in seeking leave and thus applied the discretionary bar in refusing leave.

[9] At paragraph 31 of the judgment, the learned judge concluded that:

> "I agree that this was undue delay since it would be known that the removal of a business licence six months into the operation of a business would cause extreme hardship to the business affected. Consequently, this application must be refused since it would be both detrimental to good administration and cause substantial hardship to and prejudice the rights of IWAS who had been refused an opportunity to appear in the proceedings as an interested party."

The Appeal

[10] As earlier indicated, Tropical is aggrieved by the decision of the learned judge and has filed some seven grounds of appeal which contain sub-grounds. The main issues which arise from the grounds of appeal can be crystallised as follows:

(a) Whether the learned judge erred in the exercise of his discretion in relation to unreasonable delay such as to bar Tropical from pursuing a judicial review claim;

(b) Whether the learned judge erred in concluding that Tropical had been given consultation and that there was therefore no breach of the principles of natural justice or procedural fairness; and

(c) Whether the learned judge erred in concluding that there was no arguable case for legitimate expectation that Tropical would be permitted an opportunity for consultation.

[11] As the oral arguments developed in this Court, it became clear that the main thrust of Tropical's complaint was that the learned judge erred in refusing to exercise his discretion to grant leave to bring judicial review proceedings on the basis of unreasonable delay. This was also the determinative issue posed before the learned judge and operated so as to bar Tropical from pursuing a judicial review claim.

Appellant's Submissions

[12] Learned counsel, Mrs. Small-Davis, argues that Tropical has satisfied the threshold test outlined in Sharma v Brown-Antoine[1] and the learned judge ought to have granted it leave to file a judicial review claim. Mrs. Small-Davis first submitted that the learned judge failed to consider and apply the proper legal principles of consultation as set forth in the dicta of Lord Woolf in R v North and East Devon ex parte Coughlan[2] that:

> "It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken."

Mrs. Small-Davis stated that meetings were held between Tropical's representatives and the Ministry of Finance's representatives, being the Minister, the Permanent Secretary and the Principal Assistant Secretary.

[1] [2007] 1 WLR 780.
[2] [2001] QB 213.

[13] Next, Mrs. Small-Davis stated that the learned judge erred in concluding that there was no arguable case for a legitimate expectation that Tropical would be permitted an opportunity for consultation. She stated that the learned judge failed to consider that in the meetings held with various representatives, there was a clear and unambiguous representation, upon which Tropical relied, that they would be permitted an opportunity to be heard on a proper consideration of IWAS' application. In essence, Mrs. Small-Davis contended that Tropical had a legitimate expectation that a process of consultation would be followed, based on the several representations made by the Minister and Permanent Secretary.

[14] In support of her contention, Mrs. Small-Davis referred the Court to Attorney General of Hong Kong v Ng Yuen Shiu[3] in relation to the point that where a public authority had promised to follow a certain procedure before reaching a certain decision, good administration required that it should act fairly and implement its promise, as long as that did not interfere with its statutory duty. Mrs. Small-Davis argued that the promise to interview each application and consider each case on its merits required each applicant to be given an opportunity to state his case.

[15] Mrs. Small-Davis stated that the learned judge erred in the exercise of his discretion in refusing to grant leave because of what he considered to be unreasonable delay such as to bar Tropical from pursuing a judicial review claim. She said that refusing leave, on the basis of delay, is a discretionary measure and the court may extend time if there is a good reason to do so. She referred to Denzil Edgecome v The Premier and the Honourable Attorney General[4] and Roland Browne v The Attorney General and the Public Service Commission[5] in support of her submission. Mrs. Small-Davis further said that the learned judge erred in principle in his approach as the time between Tropical becoming aware of the grant of the business licence and the filing of the application for leave to make a judicial review claim was within a reasonable time as prescribed by Part 56 of the Civil Procedure

[3] [1983] 2 AC 299.
[4] MNIHCV2013/0022 (delivered 9th January 2015, unreported).
[5] SLUHCVAP2010/0023 (delivered 15th December 2010, unreported).

Rules 2000 ("CPR"). Mrs. Small-Davis argued that the learned judge had no regard to the impact of the grant of the business licence on Tropical and the judge placed consideration entirely upon the perceived adverse impact on IWAS in having its business licence subject to challenge six months into the operation of its business. She submitted that barring Tropical from pursuing judicial review on this basis was an irrational exercise of the judge's discretion such as to entitle this Court to reverse it.

Respondent's Submissions

[16] Learned Senior Crown Counsel, Mr. Greene, stated that the learned judge properly refused Tropical's application for leave to file a judicial review claim. First, he stated that section 3 of the Trades, Businesses, Occupations, and Professions Licensing Act[6] ("the Act") does not provide for consultations with entities which engage in business of a similar nature as an applicant for a business licence. Mr. Greene further stated that notwithstanding that the Act does not provide for consultations, Tropical had been given consultations between May and September 2016 after the issue of the IWAS licence was raised with the Minister by Tropical. He stated that these consultations related to whether there would be consultations before business licences are issued to foreign companies in the future. Mr. Greene submitted that, in view of the affidavit evidence, prior to the decision to revoke the suspension and grant the business licence to IWAS, Tropical had been heard and had communicated its views to the Government of Anguilla (the "Government"), but the Government nonetheless confirmed the licence on 19th October 2016 by revoking the suspension. This, he said, the Government was entitled to do.

[17] Mr. Greene argued that there was no evidence from Tropical demonstrating that IWAS was a non-belonger that did not have a work permit. He pointed out that the requirement for a work permit in the circumstances does not apply to companies. Mr. Greene submitted that the issue of IWAS being issued a work permit is therefore irrelevant.

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[6] Cap. T40, Revised Statues of Anguilla.

[18] Mr. Greene stated that since the Act does not provide for consultations with potential competitors, Tropical could not have had any expectation of being consulted before the issuing of the business licence to IWAS. Therefore, he said that the learned judge correctly observed that there was no evidence of a breach of natural justice or that the established procedure for the granting of business licences to foreign companies was unfair. He referred to paragraph 9 of the affidavit of Mr. Wycliffe Fahie on this point which states that:

> "I know of no general policy that speaks to not granting licences to foreign companies. Furthermore I have always been guided on granting of licences to foreign companies by Section 1 and Section 6 of the Trades Businesses Occupations and Professions Licensing Act and the note on page three of the business license application form."

[19] Mr. Greene further maintained that the right of competitors not to be heard on the issue of the grant of licences to foreign companies is unarguable as it is ultra vires the statutory scheme. He says that the Act provides a duty to grant the licence subject only to the narrow matters set out in the Act. Therefore, he stated that there is no discretion, authority or power under the Act to refuse a business licence other than one of the statutorily prescribed grounds being met. Mr. Greene makes the point that to refuse a licence on the basis of the applicant's views on competition would have been ultra vires the terms of the Act.

[20] On the legitimate expectation point, Mr. Greene said that the learned judge correctly found that there was no clear confirmation of a promise made by either the Minister of Finance or the Permanent Secretary. He referred to paragraph 10 of the affidavit of Mr. Wycliffe Fahie which states that:

> "I recall a meeting at the Ministry with the Chamber of Commerce, Mr. Willis Hodge the Honourable Chief Minister, Mr. Victor Banks and others. I recall the said Chief Minister discussing in general terms the possibility of forming a committee to review applications for business licences in the future. However, the said licence had already been granted at this time."

[21] In further support of his argument, Mr. Greene said that the affidavit of Mr. Willis Hodge dated 24th March 2017 does not say that, at the meetings on 7th May 2016 and 4th July 2016, the Minister of Finance provided them with an assurance that they had

a right to be heard in respect of IWAS' application. Further, it was not said in these meetings that Tropical would be consulted in respect of any application to distribute wine and spirits. Mr. Greene pointed out that the affidavits provide no evidence on what led Mr. Hodge to believe that he was given a right to be consulted. Therefore, he said that Tropical could not have had a reasonable expectation that they would have to be consulted on the issue of the business licence to IWAS.

[22] On the important issue of unreasonable delay, Mr. Greene also submitted that the learned judge correctly concluded that there was unreasonable delay in making the application for leave to file a judicial review claim. He further submitted that the learned judge's finding that "there was undue delay since it would be known that the removal of a business licence six months into the operations of a business would cause substantial hardship to the business affected" is consistent with the learning in Judicial Review in the Commonwealth Caribbean[7] that, "[t]he Courts may decline leave for judicial review where there is prejudice to third parties. Even where an order for leave has been obtained, the remedies may have an adverse impact on third parties". Mr. Greene referred to In the Application of Fisherman and Friends of the Sea[8] and In the Application of Gulf Insurance Ltd[9] in support of his submission.

[23] In support of his arguments, he said that business licences have to be renewed annually and that IWAS' business licence has been renewed for 2019 and IWAS is currently operating. He submits that judicial review of this matter now, given the length of time the licence has been issued to IWAS, would be even more detrimental to good administration and cause even more substantial hardship to and cause even more prejudice to the rights of IWAS which has been refused an opportunity to appear in the proceedings as an interested party.

[7] R. Ramlogan, Judicial Review in the Commonwealth Caribbean (Routledge 2013), p. 210.
[8] Civil Appeal No. 106 of 2002, (Court of Appeal of Trinidad and Tobago).
[9] Civil Appeal No. 32 of 2000, (Court of Appeal of Trinidad and Tobago).

[24] In relation to Tropical's contention that the judge failed to take into account the date on which Tropical became aware of the grant of the business licence in accessing delay as a bar to relief, Mr. Greene states that the judge properly took into account the hardship on both Tropical and IWAS. He referred to Roland Browne v The Attorney General and the Public Service Commission in support of his submission.

[25] On the hardship point, Mr. Greene said that IWAS' business licence was granted in July 2016, while the application for leave to apply for judicial review was filed on 23rd March 2017, almost 8 months after the grant of the licence. The crux of his submissions is that IWAS would have made substantial investments, hired employees and engaged in commercial relationships with third parties since the issue of the licence. Further, he stated that Tropical could have conducted a search at the Board of Inland Revenue and Companies Registry to find out whether IWAS was issued a business licence which would have enabled Tropical to commence proceedings soon after the licence was granted. He therefore maintained that judicial review of the Permanent Secretary's decision at this point in time would be detrimental to good administration and would cause substantial hardship.

[26] Additionally, Mr. Greene indicated that in view of the Permanent Secretary's decision to remove the suspension of IWAS' business licence based on his review of the circumstances surrounding its issuance, it would have made no material difference whether the licence was issued by the Permanent Secretary or the Principal Assistant Secretary.

[27] Finally, Mr. Greene submitted that in the circumstances the learned judge took into account all the relevant factors in considering the application for leave to file a judicial review claim and therefore the judgment should not be disturbed.

Discussion
Delay

[28] As the critical issue arising on this appeal is whether the learned judge erred in the exercise of his discretion as to what he considered to be unreasonable delay such as to bar Tropical from pursuing a judicial review claim, it is unnecessary for the disposition of this appeal to discuss the remaining issues, in any detail, but we will do so out of deference to counsel's submissions and for the sake of completeness.

[29] The threshold requirement which the applicant for leave to institute judicial review proceedings should meet is well established by the Privy Council in Sharma v Brown-Antoine. It is noteworthy that a finding of unreasonable delay in pursuing an application for leave to institute judicial review proceedings may, however, prevent an applicant from pursuing an arguable ground for judicial review even though it may have a realistic prospect of success.

[30] A useful starting point is to examine the relevant rule. Rule 56.5 of the CPR provides:

> "1. In addition to any time limit imposed by any 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 –
>
> (a) be detrimental to good administration; or
>
> (b) cause substantial hardship to or substantially prejudice the rights of any person."

[31] The effect of the rule is that in determining whether there has been unreasonable delay, the judge should consider whether the granting of leave would be likely to be detrimental to good administration or cause substantial hardship to or substantially prejudice the rights of any person.

[32] The approach of this Court in determining whether there was unreasonable delay prior to the making of the application for leave was helpfully summarised by Edwards

JA at paragraph 24 of Roland Browne v The Attorney General and the Public Service Commission that:

> "It would seem therefore from the authorities mentioned that at the hearing of the judicial review claim, apart from considering the merits of the claim (usually on the grounds of either illegality, irrationality, and or unfairness) the judge may revisit the issue of unreasonable delay where the claim has merit in determining whether to grant the relief sought. Where the claim lacks merit there is no need to apply the considerations under CPR 56.5. Even if the court accepts that the defendant has acted unlawfully, there is no unqualified right to any of the remedies claimed. In exercising its discretion as to whether to grant any relief the court can take into account other factors including that there was unreasonable delay before making the application, whether the claimant acted promptly, or whether it would be detrimental to good administration or cause substantial hardship to the rights of any person, or substantially prejudice the rights of any person. To sum it up, despite the success of the judicial review claim, the relief may be refused where the judge applies CPR 56.5 and makes a positive finding under that rule."

[33] The above pronouncements remain good law and are applicable to the appeal at bar.

[34] In expounding on the good administration limb of the rule, Lord Bridge in R v Dairy Produce Quota Tribunal for England and Wales Ex p. Caswell,[10] stated:

> "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 than 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) recognises that there is an interest in good administration independently of hardship, or prejudice to rights of third parties, and that the harm 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

[10] [1990] 2 AC 738.

> 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 decision. Matters of particular importance, apart from the length of time itself, will be the extent of the effect of the relevant decision, and the impact which would be felt if it were to be re-opened."

[35] The Board in Fishermen and Friends of the Sea v Environmental Management Authority and others[11] considered the issue of unreasonable delay. At paragraph 22, it is stated that:

> "Rule 56.5 of the Civil Procedure Rules ("Delay") lays down a similar set of tests, but with a somewhat different emphasis...It is important to emphasize that there is a duty to act "promptly" regardless of the three-month limit. It seems also that the purpose of that specific limit is to provide a degree of certainty to those affected, and accordingly that strong reasons are needed to justify extending it where other interests, public or private, are involved. It is also clear that the discretion under section 11(1) is that of the trial judge, with which an appellate court will only interfere if it finds some flaw in his reasoning (see Fishermen and Friends of the Sea v Environmental Management Authority [2005] UKPC 32)."

[36] The above pronouncements are helpfully adopted and applied to the case at bar. In assessing what period amounts to unreasonable delay, it is important to note that there is no rigid time frame provided by CPR. The court in In the Matter of An Application by Robert and Sonia Burkett[12] highlighted that what is at issue is promptness and it will be an identifiable question of law, namely, when did the grounds for the judicial review claim first arise? This application is also adopted in the appeal at bar and was utilized by the learned judge.

[37] Applying the principles referred to above to the case at bar, the learned judge having correctly identified the relevant date as being the date the licence was granted to IWAS formed the view that a delay of months amounted to unreasonable delay sufficient to debar the application for leave. It is noteworthy that the licence was reinstanted by the Permanent Secretary in October 2016 and the application for leave

[11] [2018] UKPC 24.
[12] [2000] EWCA Civ 321.

to institute judicial review proceedings was filed in March 2017. In the circumstances, the learned judge exercised a discretion in concluding that a period of six months in pursuing the application for leave constituted unreasonable delay such as to bar Tropical from pursuing judicial review proceedings. The judge's decision is one which this Court has no basis for interfering with as there is no discernible flaw in the judge's reasoning. It must be remembered that the business licence was granted to IWAS six months before the application for leave to file a judicial review claim was made in the High Court. There are additional factual matters that were impacted by the unreasonable delay which were properly identified by the judge.

[38] There is no useful purpose in repeating the relevant circumstances which have been outlined earlier in this judgment. Suffice it to say that, in view of the totality of the circumstances, the learned judge found that there was unreasonable delay for the reasons given at paragraph 31 of the judgment. It is clear that there is great force in Mr. Greene's submissions on this point as the consequences of seeking to revoke IWAS' business licence six months into the operation of its business would cause extreme hardship to the business affected. Seeking to unravel the Permanent Secretary's decision at that late stage would no doubt have been detrimental to the good administration of the issuing of business licences. There would also be substantial hardship and substantial prejudice to IWAS' substantial investments, employees and commercial relationships with third parties since the issue of the licence if the Permanent Secretary's decision is reversed so long after the issuance of the licence. Indeed, as Mr. Greene submitted, Tropical could have taken other steps to find out whether IWAS was issued a business licence, such as conducting a search at the Board of Inland Revenue and Companies Registry, which would have enabled it to commence proceedings soon after the licence was granted. In the circumstances, the learned judge correctly exercised his discretion and case management powers in relying on the delay as a discretionary bar to prevent Tropical from pursuing a judicial review claim. There is no discernible error of law in the learned judge's reasoning and his conclusion cannot be impugned. Our conclusion on the issue of delay is determinative of the entire appeal.

[39] However, out of deference to the submissions that were made by learned counsel on legitimate expectation and the need for consultation, we propose to briefly state that we are in entire agreement with the submissions that were made by Senior Crown Counsel Mr. Greene. In our view, the learned judge, based on the evidence that before him, correctly concluded that there was no basis to assert that Tropical had a legitimate expectation to be consulted. We also agree with Mr. Greene that there is no basis for reading into statute the need to consult.

[40] In the circumstances, the appeal is dismissed and the learned judge's decision is affirmed.

Conclusion

[41] For the above reasons, Tropical's appeal against the decision of Belle J refusing leave to file a judicial review claim against the decision of the Permanent Secretary in granting a licence to IWAS was dismissed with no order as to costs.

[42] We gratefully acknowledge the helpful assistance of learned counsel.

I concur.
Dame Janice M. Pereira, DBE
Chief Justice

I concur.
Paul Webster
Justice of Appeal [Ag.]

By the Court

Chief Registrar