THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0051

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE CHILDREN CARE AND ADOPTION ACT 2010 OF THE LAWS OF SAINT VINCENT AND THE GRENADINES

AND

IN THE MATTER OF A MATTER OF LEAVE TO JUDICIALLY REVIEW OF THE DECISION BY THE ADOPTION COMMITTEE TO APPROVE A LOCAL ADOPTION IN THE FAVOUR OF THE APPLICANT A US CITIZEN CONTRARY TO THE REQUIREMENTS OF PART XIV OF THE SAID ADOPTION ACT

AND

IN THE MATTER OF A MATTER OF A LOCAL ADOPTION ORDER GRANTED TO MICHELLE JAMES A CITIZEN OF THE UNITED STATES OF AMERICA

BETWEEN:

MICHELLE JAMES

APPLICANT/INTENDED CLAIMANT

AND

THE PRESIDENT OF FAMILY COURT

FIRST RESPONDENT/INTENDED DEFENDANT

THE DIRECTOR OF FAMILY SERVICES AS

THE CHAIRPERSON OF THE ADOPTION COMMITTEE

SECOND RESPONDENT/INTENDED DEFENDANT

THE ATTORNEY GENERAL

THIRD RESPONDENT/INTENDED DEFENDANT

Appearances:

Ms. Vynnette Frederick and Mrs. Zhinga Horne-Edwards for the applicant/intended claimant.
Mrs. Cerepha Harper-Joseph for the respondents/intended defendants.

2019: May 15
May 22

DECISION

BACKGROUND

[1] Henry, J.: Mrs. Michelle James lives in the United States of America and is a United States citizen. In 2016, she learnt that a young woman would shortly be delivered of a baby which she intended to abandon at the hospital. Mrs. James got in touch with the mother and made arrangements to care for the child immediately after birth and took steps to adopt her. The child 'B.C.'[1] was born on August 17th 2016.

[2] Mrs. James retained the law firm of Browne and Browne to make the necessary application for an Adoption Order. She deposed that she initially met with Mr. Johnathan Lewis a practising barrister. However, she later switched to Mr. Theodore Browne a senior lawyer in the firm. Mrs. James claimed that she never met with Mr. Browne (or any other lawyer), but completed the transaction through his wife Mrs. Laura Browne. She explained that Mrs. Browne was in the front office and was her point of contact.

[3] Mrs. James recalled that the adoption order was made on October 6, 2017. Thereafter, she visited Saint Vincent and the Grenadines with the intention of taking B.C. to the United States to live with her. She attempted to get a visa for B.C. from the United States Embassy in Barbados and discovered then that the Adoption Order and Adoption Certificate that she presented would not permit B.C. to emigrate to the United States as her adopted child.

[1] The child's initials are being used to protect her identity, and because it is nit germane to a consideration of the issues.

[4] She learnt subsequently that due to errors which transpired during the adoption process, her lawyer applied for and she received a local adoption order instead of an inter-country adoption order. Mrs. James contended that the Adoption Committee ('the Committee') and the Family Court failed to consider all relevant matters 'which should have informed their understanding of the procedural requirements for the adoption of a Vincentian child by a US citizen to be valid'. She sought leave to apply for judicial review of the Committee's and the Family Court's decision in connection with her application for B.C.'s adoption.

[5] The Secretary to the Committee, Ms. Camille Johnson filed an affidavit in response. In it, she averred that the Committee approved Mrs. James as a suitable candidate to adopt a child and declared her home to be a suitable one in which to place a child. She stated that a person who disagrees with the Committee's decision may within 2 weeks apply to the Minister to review the decision. She averred that provision is made in the law for a person to appeal an adoption decision of the Family Court.

[6] The Committee and the Family Court contend that Mrs. James' application for judicial review of their decisions should be dismissed. They argued that Ms. James applied to the Committee and the Family Court in respect of a local adoption order and their respective determination was in accordance with the applicable provisions for local adoptions and not inter-country adoptions. They submitted that Ms. James' legal practitioners made errors in the application which resulted in the outcome. I have decided that there is no legal or other basis to grant Mrs. James leave to apply for judicial review of either order.

ISSUES

[7] The issues are whether:

1. Ms. Michelle James should be granted leave to apply for judicial review of the decision of the Adoption Committee to approve a local adoption in favour of the applicant in respect of the minor child 'B.C.'; and

2. Ms. Michelle James should be granted leave to apply for judicial review of the decision of the Family Court to grant a local adoption order in favour of the applicant in respect of the minor child 'B.C.'.

LAW AND ANALYSIS

Issue 1 – Should Michelle James be granted leave to apply for judicial review of the decision of the Adoption Committee to approve a local adoption in favour of the applicant in respect of the minor **child 'B.C.'**?

[8] The Court is authorized to grant leave to an applicant to apply for judicial review of a tribunal's decision. Leave will be granted where the applicant establishes a good arguable ground with a realistic prospect of success; and if there is no discretionary bar and no alternative recourse available to her. The applicable legal principles are set out in the Civil Procedure Rules 2000 ('CPR')[2] and the case of Satnarine Sharma v Browne-Antoine[3].

[9] It is now accepted that leave to institute an application for judicial review is a requirement instituted to eliminate hopeless, frivolous or vexatious claims. This requirement seeks to ensure that only claims which are fit for further consideration will proceed beyond this stage.[4] Judicial review proceedings lie against illegal, irrational or procedurally unfair decisions made by public authorities. Such proceedings are not by way of an appeal from the decision, but involve a review of the manner in which the determination was arrived.[5] The parties have acknowledged the foregoing to be the guiding principles to be applied by the court. In this regard, Ms. James highlighted the decision in The Application of Sharma[6]. She argued that the Committee's decision was arrived at by reason of procedurally improper, illegal and unreasonable considerations.

Good arguable case – Committee's decision

[10] Ms. James submitted that she relied on the expertise of legal counsel in preparing her application and on the expertise of the Committee and the President of the Family Court in considering her application. She acknowledged that new legislation including Regulations were introduced on 7th

[2] Rules 56.4 – 56.5 of the CPR.

[3] [2006] UKPC 75.

[4] R v. Inland Revenue Commissioners ex. P. National Federation of Self-Employed and Small Businesses Ltd. [1982] AC 617.

[5] Peerless General Finance Investment C. Ltd. v Res.rv. Bank of India Air 1992 SC 1033; Chief Constable of North Wales Police v Evans [1982] 3 All ER 141 at 154 per Lord Brightman.

[6] HCA No. s-109 of 2005 TT.

October 2010 and 18th October 2016 respectively when the Children (Care and Adoption) Act[7] ('the Act') and Regulations ('the Regulations') were passed, proclaimed and published.

[11] The Committee is constituted by section 85 of the Act to carry out the policy directions issued to it by the Minister and to assist the Director in giving effect to the provisions relating to the provisions of the Act. Its functions are listed in section 91 and include:

1. determining the manner in which a child is selected for adoption;
2. establishing guidelines for the conduct of negotiations between it and a parent who wishes to have a child placed for adoption;
3. receiving applications made pursuant to section 94 of the Act;
4. assessing the suitability of a person to adopt a child;
5. making arrangements for and in relation to a child's placement;
6. taking appropriate measures to secure confidentiality of the child's natural parents' and adoptive parents' records; and
7. carrying out such functions as may be necessary to give effect to Part X to XIII of the Act as determined by the Minister.

[12] The Act makes provision for the Committee to place a child for adoption in Saint Vincent and the Grenadines[8]; receive and consider an application by a prospective adoptive parent who wishes to have a child placed in his home (in Saint Vincent and the Grenadines) for adoption; conduct a home assessment study in respect of such applicant prospective parent; decide whether such applicant prospective parent is suitable and capable of having a child placed in her home for the purpose of adoption; and grant or refuse approval for such applicant prospective parent who is a single person to have a child placed in her home in Saint Vincent and the Grenadines, for the purposes of adoption.[9]

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[7] No. 15 of 2010.

[8] Section 92(1) of the Act.

[9] Section 95 of the Act.

[13] Section 125 of the Act provides that a non-resident applicant or a person who is not a citizen of Saint Vincent and the Grenadines must apply to the Committee if she wishes to adopt a child who is resident in Saint Vincent and the Grenadines. Such application must be accompanied by a recommendation from the competent body responsible for adoption in the applicant's country of origin. The Committee may grant or deny approval for such an applicant to apply to the Family Court for an Adoption order.

[14] The Act stipulates that an application to the Committee under sections 94 or 125 must be made in the respective prescribed form. None of the parties produced either a copy or the original of the application form by which Ms. James applied to the Committee; or the impugned decision of the Committee. In her affidavit[10] Ms. James admitted that she 'now realize that the adoption which was supposed to be granted was an inter-country adoption which requires additional steps if the child is being adopted by a US Citizen.' She has thereby conceded that her application did not contain all of the relevant information which would place it into the category of an application for approval of an inter-country adoption.

[15] She averred further 'I returned to St. Vincent and was unable to see any lawyers connected to Browne and Browne's chambers as I made calls to Mrs. Browne which she never returned. I never interacted with any lawyer in Browne and Browne's only Mrs. Laura Browne. I returned to the US without B... and sought the assistance of Vincentian Lawyers who practice in New York'.

[16] Ms. James has not explained why she has not exhibited a copy of her application to the Committee or the decision of the Committee in respect of which she seeks leave to apply for judicial review. It appears from her affidavits and submissions that she applied to the Committee pursuant to section 95 and not pursuant to section 125 of the Act. I also infer and find that the Committee made its decision pursuant to section 95 of the Act. I accept that her application to the Committee was for approval for a local adoption and not an inter-country one.

[17] Ms. James' application for leave to apply for judicial review reveals that she expected the Adoption Committee to interpret her application as one made under section 125 of the Act and grant

[10] Filed on 18th March 2019.

approval pursuant to section 125 of the Act and not under section 94 of the Act. She also expected the Committee to direct her lawyer how to make an application for approval of an inter-country adoption. I pause here to stress that the function of the Committee is not to advise legal practitioners. Ms. James submitted that her counsel, the Committee and the President of the Family Court should have known that the applicant is a US Citizen and would be required to apply to the Committee for an inter-country adoption and not a local adoption.

[18] She reasoned that the Committee's decision to approve or recommend a local adoption instead of an inter-country adoption is amenable to judicial review because it was based on errors of law and procedural impropriety which arose from its failure to observe procedural rules expressly laid down in section 125 of the Act. She cited in support the decision of the court in (In the Application of Republic Bank Limited[11] and Council of Civil Service Unions v Minister of the Civil Service[12]. Both of those decisions rehearse the grounds on which judicial review may be sought. Ms. James contended that where her counsel failed to provide the information required by statute, the Committee was authorized to advise him of that failure and permit him to correct the omissions in the application which went contrary to the law.

[19] With the greatest respect, I must disagree that the Committee has a duty to advise counsel who files an application of the steps to be taken to achieve the desired outcome. It has always been the case that legal practitioners must advise themselves of the applicable law and procedures which govern the proceedings in which they appear before a tribunal or court. To expect the Committee to step into the arena and advise an applicant would be tantamount to the Committee directing the application process over which it would then be obligated to adjudicate. That approach runs contrary to the principles of natural justice and administrative law and is to be shunned.

[20] Ms. James accepted that the Committee approved her application under section 94 of the Act, for B.C. to be placed in her home and for her (a single person) to apply to adopt her. Ms. James has not accused the Committee of any deviation from the legal or procedural stipulations contained in sections 92, 94 or 95 of the Act under which her application was made. She has not highlighted

[11] HCA No. 6921 of 1987 (TT) Deyalsingh.

[12] (1984) 3 ALL ER 935.

any unreasonableness in connection with the referenced provisions. Instead, she points to section 125 which by her own admission was not invoked by her application.

[21] In the circumstances, she has failed to demonstrate that the facts of this case or her assertions disclose that she has a good arguable ground with a realistic prospect of success, on which to seek judicial review of the Committee's decision. I find that she has not.

Discretionary Bar and Alternative Remedy

[22] The Committee argued that an applicant seeking judicial review of a decision must first exhaust all other adequate alternative remedies and engage the judicial review process as a last resort. They relied on the cases of R (Bancourt) v Secretary of State for the Foreign Commonwealth Office[13]; and R v. Ministry of Agriculture, Fisheries and Food, ex p. Live Sheep Traders Ltd. [14] In the latter, Popplewell J. stated:

> 'It is a cardinal principle that, save in the most exceptional circumstances, the jurisdiction to grant judicial review will not be exercised where other remedies are available and have not been used.'

[23] The Committee also cited Benjamin Exeter v. Godfred Pompey (Permanent Secretary – Ministry of National Security; Chairperson - Firearms Licensing Board) Michael Charles (Commissioner of Police) Attorney General of the Government of Saint Vincent and the Grenadines[15] and Hutchinson Construction Limited v The Comptroller of Inland Revenue[16] which contain similar statements.

[24] They Committee submitted that an applicant who is displeased with the Committee's decision may apply to the Minister to review such decision within 2 weeks of receipt, on the grounds that the assessment was incorrect. They contended that Ms. James made no such application.

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[13] [2001] QB 1076.

[14] [1995] COD 297.

[15] SVGHCV2016/0014 (unreported).

[16] SVGHCV2017/0056 (unreported).

[25] Ms. James submitted that she was not aggrieved by the Committee's decision and did not know that the order was wrong until 4 months after it was granted. She argued that the legislative process for appealing would not have applied and would not have been open to her because the two week deadline for appealing would have elapsed by then. She submitted further that the appellate process would not assist her because it would not permit the superior court to 'send the matter back to the ... Committee, but simply back to the lower court.'

[26] I agree with the Committee that Ms. James had a right of review pursuant to section 96 of the Act. She has made it clear that the Committee's decision is not objectionable. It is instructive that she has admitted that this application for leave to apply for judicial review is an attempt by her to undo the *faux pas* committed by her legal practitioner.

[27] The judicial review process is not to be utilized for such purposes. Importantly, the Committee's decision was not unfavourable to Ms. James. She therefore had no interest in having it reviewed for illegality, irrationality or procedural irregularity but rather to correct her lawyer's error in approach to the Committee. I am satisfied that she failed to utilize the alternative recourse prescribed by law. She has failed to make a good arguable case which has a reasonable prospect of success by way of judicial review.

Delay

[28] The Committee submitted that pursuant to CPR 56.5, the Court will refuse to grant leave to apply for judicial review where there has been an inordinate delay in applying. It submitted further that Ms. James' claim is 'stale', having being made over a year after the Committee's determination. They relied on the decisions in Roland Browne v The Public Service Commission[17]; Germison Griffith v Senior Magistrate Donald Browne[18] and Lestroy Leon Charles v The Financial Secretary[19].

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[17] SLUHCVAP2010/0023.

[18] SVGHCV2011/0320.

[19] SLUHCVAP2010/0023.

[29] Ms. James countered that she received the relevant legal advice in November or December 2018 and took action as soon as practicable thereafter. She maintained that any delay between February 2018 and October 2018 were entirely out of her control. She explained that this was attributable to lack of direction from the lawyers she consulted during that period regarding the appropriate steps to obtain relief. She indicated that Mrs. Laura Browne promised to assist her but failed to do so. She contended that her delay has not been inordinate and is not detrimental to good administration, to the Court or the Committee. She argued that the decisions in **O'Reilly v** Mackman[20] and Roland Browne v The Public Service Commission articulate the rationale behind the insistence on timeous applications. In this regard, Lord Diplock opined 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 if decision making powers any longer than is absolutely necessary in fairness to the person affected by the decision.'[21]

[30] Ms. James argued that the granting of leave to judicially review the Committee's decision will bring clarity to the Committee and the President of the Family Court, assist in strengthening their good administration; tell her where she stands and address the question of the correctness of the procedure followed in coming to the recommendation/decision arrived at by the Committee and the Court.

[31] She argued that it is in the best interest of all parties concerned that the procedure be thoroughly understood by the Committee and the President of the Family Court and is critical for the guidance of future adopters from the United States of America. She submitted that a decision to refuse leave on the basis of delay would cause substantial hardship and prejudice her and the minor child B.C. Ms. James reasoned that judicial review is the only vehicle whereby the Committee's actions can be revisited or assessed or queried. She argued that neither the Court nor the Committee stands to be harmed by a determination in her favour.

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[20] [1983] 2 A.C. 237.

[21] At pp. 280-281.

[32] CPR Part 56.5 (1) and (2) provide:

> '(1) In addition to any time limit imposed by any enactment, the judge may refuse leave or to grant relief in any case 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.'

It sets no time period for making an application for leave to seek judicial review. It makes it clear however that such applications must be made promptly. The decisions cited by learned counsel reiterate this criterion.

[33] Ms. James' main reason for the delay in applying for judicial review is that her US based lawyers did not or could not advise her on what steps to take to seek redress. She did not state what if any action she took to consult or get an opinion from a lawyer practising in Saint Vincent and the Grenadines. I find that her delay is inordinate. In any event, I reiterate that she has not established that she has a good arguable case for judicial review with a realistic prospect of success in relation to the Committee's decision. I have considered the issue of delay for the sake of completeness, mindful that Ms. James has not surmounted the hurdle of laying out a good arguable case. Her application for leave to apply for judicial review of the Committee's decision is therefore dismissed.

Issue 2 **–** Should Michelle James be granted leave to apply for judicial review of the decision of the Family Court **to grant a local adoption in favour of the applicant in respect of the minor child 'B.C.'**?

Procedural impropriety, Illegality and Irrationality

[34] Having received approval from the Committee to apply for a local adoption order, Ms. James proceeded to file an application for a local adoption order. She exhibited the Family Court's decision which reflected that the adoption order was being granted pursuant to section 120 of the Act and Regulation 18. Section 120 of the Act empowers the Family Court to make a local adoption order in respect of an application filed pursuant to section 113 of the Act in keeping with procedures outlined in sections 115 and 116.

[35] None of those provisions invoke section 125 of the Act, which deals with inter-country adoptions. Those provisions do not obligate the Family Court to have regard to section 125 of the Act or to direct an applicant to review her application to conform with section 125 of the Act. Ms. James submitted that the Committee should have taken into account the requirements to be satisfied for an inter-country adoption to be made; that she was adopting in a Non-Hague territory and the consequential additional steps which she would need to satisfy for the child to be adopted and found eligible to migrate to the United States of America.

[36] Ms. James argued that where she had failed to provide the information mandated by statute, the Committee was authorized to advise her lawyer of the failure and permit him to correct the omissions which ran contrary to the legislation. She contended that the Committee erred in this regard and approved her as a suitable candidate for the adoption under section 125(4) of the Act; that the President of the Family Court should have recognized the errors and exercised her discretion to adjourn the application to permit her lawyer to provide further proof and comply with the legislative requirements under Part XIV of the Act[22], which he had failed to address at the Committee stage.

[37] Ms. James did not exhibit any decision by which the Committee granted her approval to apply for an inter-country adoption. The affidavit accounts do not reveal that such a decision was made by the Committee. There is no documentary basis or other sufficient on basis on which such a finding can properly be made. I therefore conclude that no such decision was made by the Committee, which was then acted on by Ms. James.

[38] In the premises, the President of the Family Court was not considering an application for an inter-country adoption. Accordingly, she had no obligation to consider factors which were relevant to an inter-country adoption. For those reasons, her failure to take such matters into consideration could not be subject to challenge on the ground of irrationality, illegality or procedural impropriety. It follows that Ms. James has not established a good arguable case with a realistic prospect of success, to underpin this application for leave to seek judicial review of the Family Court's decision.

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[22] Part XIV of the Act deals with inter-country adoptions.

[39] Ms. James contended that unlike a High Court judge, the President of the Family Court does not have the jurisdiction to vary, revisit or set aside its order after the order has been perfected. She submitted that for this reason judicial review of the impugned decision is appropriate in the circumstances of this case. She argued that she is not questioning the correctness of the order, but rather the manner in which the Family Court President arrived at the decision to grant the adoption order. She submitted that the decision in Albert St. Bernard v Her Worship Karen Noel et al[23] is authority for the proposition that the decision of a Magistrate is subject to judicial review. This is not in dispute.

[40] She submitted that she cannot pursue any relief except judicial review because certiorari is the only relief which is available to her to quash the impugned adoption order and return the matter to the Committee so that the proper procedure could be followed at that level and subsequently. She insisted that the application procedure must be done again so that the proper order can be granted which would satisfy the US Customs and Immigration Services (USCIS). She argued that in the case of In the Application of Aldric Taylor[24], Permanand J. stated that the High Court's controlling jurisdiction exercised by means of certiorari was the mechanism by which the High Court supervises inferior courts, commanding magistrates and other persons 'to do what their duty requires'. While I accept that this statement captures a correct principle of law, it does not aid Ms. James in establishing that the circumstances of the case at bar presents a good arguable case with realistic prospects of success. I hold that she has not.

Delay

[41] The Family Court argued that Ms. James' delay in applying for leave to seek judicial review is excessive. It submitted that the delay should result in her application being denied. Ms. James advanced the same reasons for the delay and similar arguments made in respect of the Committee's attack on her late application.

[42] Similar considerations apply as outlined in paragraphs 32 and 33 above. I find therefore that Ms. James' delay in seeking leave to judicially review the decision of the Family Court is unreasonable

[23] GDAHCV2011/0052.

[24] HCA No. 5461 of 1984 (TT).

and unjustified. For the reasons articulated previously, I am satisfied that she has failed to establish a good arguable case with reasonable prospects of success. Her application for leave to apply for judicial review of the Family Court's decision is denied.

[43] Ms. James proceeded to argue a number of grounds on which judicial review should succeed. The court is not concerned with those matters at this stage of the process. Those arguments are therefore not entertained.

Costs

[44] Costs usually follow the cause. However, it is unusual to award costs in favour of the Crown in judicial review proceedings. There are no peculiar circumstances which emanate from this matter which justify a departure from practice and convention. I therefore make no order as to costs.

Order

[45] It was ordered:

1. Michelle James' application for leave to apply for judicial review of the decision of the Adoption Committee to approve a local adoption in favour of the applicant in respect of the minor child 'B.C.' is dismissed.

2. Ms. Michelle James' application for leave to apply for judicial review of the decision of the Family Court to grant a local adoption in favour of the applicant in respect of the minor child 'B.C.' is dismissed.

3. No order as to costs.

[46] I am grateful to learned counsel for their written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar