

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN CIVIL DIVISION  
CLAIM NO. 2010 HCV 02529**

**IN CHAMBERS**

<b>BETWEEN</b>	<b>CHRISTOPHER MICHAEL COKE</b>	<b>APPLICANT</b>
<b>AND</b>	<b>THE MINISTER OF JUSTICE</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>AND</b>	<b>THE DIRECTOR OF PUBLIC PROSECUTIONS</b>	<b>2<sup>ND</sup> RESPONDENT</b>
<b>AND</b>	<b>THE ATTORNEY GENERAL</b>	<b>3<sup>RD</sup> RESPONDENT</b>

Paul Beswick instructed by Don O. Foote for the Applicant.

R.N.A. Henriques, Q.C., Allan Wood, Q.C., and Garcia Kelly instructed by the Director of State Proceedings for the 1<sup>st</sup> Respondent.

Miss Paula Llewellyn Q.C, Director of Public Prosecutions, Jeremy Taylor, Deputy Director of Public Prosecutions,(Ag.),Miss Claudette Thompson, Assistant Director of Public Prosecutions,(Ag.) and Vaughn Smith, Assistant Director of Public Prosecutions,(Ag.) for the 2<sup>nd</sup> Respondent.

***APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW-ORDER OF CERTIORARI AND PROHIBITION-STAY OF EXTRADITION PROCEEDINGS-WHETHER AUTHORITY TO PROCEED UNLAWFULLY ISSUED-ALLEGATIONS OF INTERFERENCE WITH MINISTER'S DISCRETION-WHETHER APPLICATION FOR JUDICIAL REVIEW IS PREMATURE.***

**HEARD: MAY 31, JUNE 2, 3, 4, & 9, 2010.**

**McCALLA, C.J.**

1. In this application, Christopher Coke, ("the applicant"), seeks leave of this court to apply for judicial review of the decision of the Minister of Justice, The Honourable Dorothy Lightbourne, C.D, Q.C., ("the 1<sup>st</sup> respondent") to issue an authority to proceed on a request by the Government of the United States of America for his extradition. The applicant seeks the following reliefs:

- i. "An order of certiorari to remove into this Honourable Court and quash the decision of the 1<sup>st</sup> Respondent issued or purported to be issued on 17<sup>th</sup> or 18<sup>th</sup> May, 2010, to issue authority to proceed pursuant to Section 8 of The Extradition Act;
- ii. An order of prohibition directed to the 1<sup>st</sup> Respondent to restrain her from carrying into effect the said decision;
- iii. An order of prohibition directed to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to restrain them from proceeding with the Extradition request from the United States of America, or providing assistance for the implementation of the said Extradition request;
- iv. A stay of any proceedings in the Resident Magistrates Court arising from the 1<sup>st</sup> Respondent's decision to proceed with Extradition proceedings pending determination of the action herein;
- v. Such further and other relief as to this Honourable Court may seem just."

2. The application initially named the Attorney General as 3<sup>rd</sup> Respondent, but by consent, an order was made on May 31, 2010 to have the Attorney General removed as a party to the proceedings.

3. The requirement for an applicant to obtain leave to apply for judicial review is stated in the case of **Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd. [1981] 2 All E.R. 93 at 105 (j)**. Lord Diplock stated as follows:

“The need for leave to start proceedings for remedies in public law is not new. It applied previously to applications for prerogative orders, though not to civil actions for injunctions or declarations. Its purpose is to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived.”

This requirement is also stated in the **White Book, 2007, Civil Procedure**, in relation to comparable rules in the English jurisdiction, **Volume 1, Section 54.4.2** states:

“Permission will be granted only where the court is satisfied that the papers disclose that there is an arguable case that a ground for seeking judicial review exists which merits full investigation at a full oral hearing with all parties and all the relevant evidence, ( *R. v Legal Aid Board Ex P. Hughes* (1992) 5 Admin. L. Rep. 623).

4. The learned authors of **De Smith's Judicial Review**, 6<sup>th</sup> Edition, have stated at paragraph 16-020 that:

"...in most situations there can be no constitutional or practical objection to the Administrative Court routinely refusing permission to proceed with a judicial review claim where there is a statutory appeal to a tribunal or a court. To hold otherwise would risk subverting Parliament's intention in creating such appeals."

5. Part 56 of the Civil Procedure Rule 2002 (CPR) deals with applications for judicial review and sets out the relevant requirements for an applicant wishing to apply for judicial review.

6. The applicant seeks leave to apply for judicial review of the decision of the 1<sup>st</sup> respondent to issue an authority to proceed on the request for his extradition and he is required to comply with the relevant provisions of this part of the CPR.

7. The request for the extradition of the applicant was made on August 25, 2009 for the purpose of preferring criminal charges against him in the United States of America.

8. The authority to proceed was issued by the 1<sup>st</sup> respondent on May 18, 2010 by virtue of section 8 of the Extradition Act of 1991, ("the act") and as a consequence, a warrant for the arrest of the applicant was issued by a Resident Magistrate for the Corporate Area Criminal Court in accordance with the provisions of that Act. The relevant sections are as follows:

**Section 8: Authority to Proceed:**

- (1) "Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Act except in pursuance of an order of the Minister (in this Act referred to as "authority to proceed") issued in pursuance

of a request made to the Minister by or on behalf of an approved State in which the person to be extradited is accused or was convicted.

- (2) There shall be furnished with any request made for the purposes of this section by or on behalf of any approved State-
- (a) in the case of a person accused of an offence, a warrant for his arrest issued in that State; or
  - (b) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in that State and a statement of the part, if any, of that sentence which has been served,

together with, in each case, the particulars of the person whose extradition is requested, and of the facts upon which and the law under which he is accused or was convicted, and evidence sufficient to justify the issue of a warrant for his arrest under section 9.

- (3) On receipt of such a request the Minister may issue an authority to proceed, unless it appears to him that an order for the extradition of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act."

**Section 9: Arrest for purposes of committal:**

- (1) "A warrant for the arrest of a person accused of an extradition offence, or alleged to be unlawfully at large after conviction of such an offence, may be issued-
- (a) on receipt of an authority to proceed, by a magistrate within the jurisdiction of whom such person is or is believed to be; or

(b) without such an authority, by a magistrate upon information that such person is in Jamaica or is believed to be on his way to Jamaica; so, however, that the warrant, if issued under this paragraph, shall be provisional only.

- (2) A warrant of arrest under this section may be issued upon such information as would, in the opinion of the magistrate, authorize the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence, within the jurisdiction of the magistrate.
- (3) A warrant of arrest issued under this section (whether or not it is a provisional order) may, without an endorsement to that effect, be executed in any part of Jamaica, whether such part is within or outside the jurisdiction of the magistrate by whom it is so issued, and may be so executed by any person to whom it is directed or by any constable.
- (4) Where a provisional warrant is issued, the magistrate by whom it is issued shall forthwith give notice of the issue to the Minister, and transmit to him the information and evidence, or a certified copy of the information and evidence, upon which it was issued; and the Minister may in any case, and shall, if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested thereunder, discharge him from custody.
- (5) ..."

9. There is no statutory provision for a challenge before an authority to proceed is issued. In accordance with the procedure laid down in the Extradition Act, on apprehension or surrender of the applicant, he would be taken before a Resident Magistrate's Court for a hearing. If a *prima facie* case for his extradition is made out, the Resident Magistrate is required to advise him of his right to apply for *habeas corpus* within 15 days, to enable the matter to be brought before the Supreme Court, for a hearing before the full court.

10. The request for the extradition of the applicant was received by the 1<sup>st</sup> respondent on August 25, 2009, but as noted at paragraph 8, the authority to proceed was not issued until May 18, 2010. It is common ground that the 1<sup>st</sup> respondent filed an application in the Supreme Court seeking certain declarations from the court. The assertions contained in the affidavit filed by the 1<sup>st</sup> respondent in support of her affidavit which sought declarations from the court and her subsequent signing of the authority to proceed, has given rise to the applicant's contention that this court ought to grant him permission to seek the reliefs referred to at paragraph 1.

11. There is no evidence that the warrant issued pursuant to the authority to proceed has been executed and consequently among the reliefs being claimed in these proceedings, is a stay of the authority to proceed.

12. In the affidavit dated May 19, 2010 filed by the applicant, he makes reference to the application filed by the 1<sup>st</sup> respondent in the Supreme Court, in which she sought declarations including:

"Declaration that where the Minister is of the opinion that the Requesting State has acted in breach of the Treaty pursuant to which extradition of a person is being sought or in breach of any agreement between the Requesting State and Jamaica pertaining to extradition, the Minister is authorized and/or

under a duty to deny the request to issue the authority to proceed.”

13. The applicant quoted extensively from the affidavit filed by the 1<sup>st</sup> respondent in support of her said application to seek declarations and the relevant sections are reproduced hereunder as follows:

“29. I am of the view that it cannot now be doubted that the ‘evidence’ on which the request for the extradition of the First Defendant is founded was not obtained by the US in accordance with the provisions of the Memoranda of Understanding and the Treaty between the GOJ and the US on Mutual Legal Assistance in Criminal Matters and the Mutual Assistance (Criminal Matters) Act. It is also my considered opinion that most of the ‘evidence’ being relied on by the US to support the said extradition request was obtained in breach of the Extradition Treaty and in contravention of the constitution of Jamaica and Interception of Communication Act. The process by which the evidence was obtained was also in violation of an Order made by the Supreme Court of Jamaica.

30. In those circumstances, I consider that it would be unlawful and/or inappropriate for me to issue an authority to proceed which would result in the arrest of the First Defendant. In the discussions so far, the US has consistently maintained a position that the request conforms with Jamaican law, the Treaty and the established procedures and understanding between the respective law enforcement agencies in Jamaica and the United States.



31. Having regard to the apprehended breaches of the Treaty by the US, contraventions of our Constitution and the Interception of Communications Act, and the violation of an order of a Judge of the Supreme Court, issues of national importance have arisen as to whether the process leading up to the request in this case involves the aforementioned factors which I can or should take into account in the exercise of my discretion, duty and jurisdiction under section 8 of the Extradition Act; and further whether these factors can be taken into account in my determination as to whether to issue an authority to proceed under the Extradition Act."

14. In the above circumstances the applicant contends that:

"The 1<sup>st</sup> respondent has therefore identified the breach of the Applicant's constitutional rights which would arise from her exercise of the authority granted to her in the current circumstances, but has nevertheless proceeded to exercise this authority so as to create the breach of the applicant's constitutional rights to which she warned."

15. The applicant further asserts in his affidavit that the 1<sup>st</sup> respondent:

"Unlawfully issued the authority to proceed on the direction and dictates of the Prime Minister in breach of the duties imposed on her under the Extradition Act" and that she "unlawfully and in breach of her duty took into account the Prime Minister's direction to issue the authority to proceed."

The application for declarations filed by the 1<sup>st</sup> respondent in which the applicant was named as one of the respondents has not been pursued for reasons outlined by her in the following paragraph.

16. On May 28, 2010, the 1<sup>st</sup> respondent filed an affidavit in which she denies the assertions of the applicant relating to the issuing of the Authority to Proceed. She has denied that she has acted without independent thought and has set out the circumstances in which she made the decision to sign the authority to proceed. In her affidavit, the 1<sup>st</sup> respondent also alluded to circumstances in which she sought the declarations previously referred to and asserted that no final decision rejecting the request for extradition of the applicant had been taken. The relevant paragraphs are set out below:

3. It is important to note that contrary to the Applicant's contention, I never refused the request for the extradition of the Applicant. Rather by reason of the matters which were referred to in my previous Affidavit, it was clear that there were several legal questions that arose which required clarification from the Court.
4. In addition further information was requested by me from the Charge d' Affaires of the Embassy of the United States of America by letters dated 30<sup>th</sup> October 2009 and 8<sup>th</sup> March 2010 that are referred to a paragraphs 22 and 26 of my previous Affidavit and which are exhibits DL3 and DL6 to my previous Affidavit. The replies are also exhibited to my previous Affidavit. To date no further information has been forthcoming.
5. In an effort to obtain directions from the Court as to points of law that were of concern to me, particularly with regards to the evidential material derived from intercepts obtained pursuant to the Interception of Communications Act, I took advice from senior

independent counsel and on his advice I instituted action on 14<sup>th</sup> April 2010 seeking declarations from the Supreme Court. The Defendants to that action included the Applicant who was not served, as his then attorney had refused to accept service and it was not possible to locate him to effect personal service. The other Defendants were the Leader of the Opposition and the President of the Private Sector Organisation of Jamaica, who made applications to be dismissed from the action. Those applications were heard on 5<sup>th</sup> May 2010 by the Hon Justice Roy Jones who gave a written decision on 11<sup>th</sup> May 2010 granting the applications releasing the two Defendants and leaving the Applicant as the sole Defendant. That action could not therefore proceed further nor was it proper in my view to proceed in the absence of any contesting party, and particularly in the absence of the Government of the United States of America who declined to appear and indicated by letter to Ministry of Foreign Affairs and Foreign Trade dated 4<sup>th</sup> May 2010 from the Charge d' Affaires of the Embassy of the United States of America a copy of which is exhibit "DL 8" that Article 17 of the Extradition Treaty made between the GOJ and the Government of the United States of America, requires the GOJ, being the requested State to represent the requesting State being the Government of the United States of America in any proceedings in the requested state arising out of a request for extradition. In the circumstances, to have proceeded with the action in the absence of the Government of the United States of America and in the absence of the Applicant to pursue points on the Applicant's behalf that he is entitled to raise in the extradition proceedings before the Jamaican Courts might have resulted in allegations that the GOJ had breached its obligations under the Extradition Treaty.























