IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018HCV01597

BETWEEN	**DON FOOTE**	**APPLICANT**
AND	**ICOLYN REID**	**FIRST RESPONDENT**
AND	**ATTORNEY GENERAL OF JAMAICA**	**SECOND RESPONDENT**

IN CHAMBERS

Mr Douglas Leys KC for the Applicant.

Ms Faith Hall instructed by the Director of State Proceedings for the Respondent

Application for leave for leave to apply for Judicial Review of decision of a Parish Judge – Whether the Attorney General is a proper party - Jurisdiction to issue bench warrant - Whether matter in relation to which leave is sought is moot – Whether there is an alternative remedy.

Heard: May 15, 2023 and June 6, 2023

PETTIGREW-COLLINS,

BACKGROUND

[1] On the 20th April 2018, the applicant filed an Ex parte Application for Leave to Apply for Judicial Review. The application was filed by the applicant in person. Since the

matter was revived after being in abeyance for some time, he is now represented by counsel.

[2] The applicant brought this application to enable him to seek an order of certiorari to quash/set aside the order made on April 3, 2018 by the first respondent for the applicant to sign in "Open Court a Form No. 4 NOTICE OF RECOGNIZANCE dated April 3, 2018 binding over the Applicant in the sum of $50,000.00 to appear before the 1st Defendant on April 23, 2018 at 10:00am in the Westmoreland Parish Court, Savanna-La-Mar in the parish of Westmoreland."

[3] The grounds on which the application was made are:

a) Breach of Applicant's constitutional Rights of Freedom from Arrest without due process of law (Liberty and Precedent Facts).

b) Error of Law arising from irrational conclusion of fact

c) Lack of jurisdiction

[4] The applicant also filed an Affidavit of Urgency which was sworn to on April 20, 2018, in support his ex parte application. In that affidavit, the applicant set out the basis of his application. He stated that he is an attorney-at-law by profession. He said that on Monday March 5, 2018, he was brought before the first respondent's court on a warrant which was wrongfully issued and executed on him upon the instructions of the first respondent. He said that the warrant was wrongfully issued against him because he was not in breach of any court order binding him over or extending his bail to attend the first respondent's court for any offence.

[5] He stated that having been brought on the warrant before the court, the following occurred:

i) The first respondent directed the Clerk of the Court to put him in the dock and plead him.

ii) He went into the dock and the Clerk of the Court started to plead him, asking him whether he was guilty or not guilty, but did not indicate guilty or not guilty for what and could not complete the process of pleading him, but instead indicated to the judge that he (the Clerk of Court) had “no papers.”

iii) He told the court that he had received a message from his secretary stating that he should attend court on March 1, 2018, whereupon he instructed his secretary to inform the court that he could not be present on March 1, 2018, because he would be attending the swearing in ceremony of the Honourable Mr Justice Sykes in the permanent position of Chief Justice of Jamaica at Kings House.

iv) The judge then rose asking for a short adjournment, went into her chambers and returned after six minutes and asked him the following question:

> "Mr. Foote, why were you not in my court on Thursday the 1st March, 2018?"

whereupon he repeated that he had attended the swearing in ceremony.

v) The first respondent confirmed to him that on Thursday March 1, 2018 his secretary had attended at court and advised her in open Court that he was indeed attending the swearing in ceremony and that that explanation did not satisfy the respondent and that is why she issued a bench warrant for his arrest.

vi) That he tried to explain but the first respondent would “have none of it” and insisted that he had no right to be absent from her court and that he should stop speaking loudly ‘over her voice’.

vii) That the first respondent went on to say that he should be alert to the fact that he was now speaking to her not as an attorney at law, but as an accused and that the police had complained to her about his behaviour saying “that if it were they she would have acted differently to them.”

viii) The first respondent then told the police to take him down stairs to the courts office and give him bail in his own surety in the sum of $100,000.00 for him to return to court on March 20, 2018 and that no special privileges should be granted to him.

ix) He requested that the matter be put for mention on April 13, 2018, on which date he would appear with his attorney, who was outside of the jurisdiction.

x) The first respondent rejected his suggestion and insisted that the matter would be set for March 20, 2018.

[6] The applicant also said that he could not have attended court in Savanna-La-Mar at 10:00 a.m. on March 20, 2018. He also said in relation to what transpired in court that the first respondent stated that she was going to charge him $100,000.00 if he did not attend her court on the 20th of March 2018.

[7] The applicant deponed that on March 20, 2018 he took steps to have the matter stood down until 3:00pm because he was engaged in a court of higher jurisdiction. However, when he arrived at the Westmoreland Parish Court at 3:00pm, he was advised by court staff that court had adjourned at 2:50pm for the day and that a warrant was issued by the first respondent and the bond escheated against him.

[8] The applicant also deponed that he enquired of the Clerk of the Court whether the Clerk had brought the contents of the applicant's letter to the attention of the Judge, whereupon the Clerk advised him that he was "not working" with the applicant.

[9] It was his affidavit evidence that on April 3, 2018, the first respondent had her court sergeant execute another warrant against him, despite his objections, ordering that he execute new bail bonds in his own surety in the sum of $50,000.00 for contempt and for him to return to court on April 23, 2018.

[10] It was also the applicant's affidavit evidence that the first respondent is charged with ill-will against him and is therefore not able to objectively carry out her judicial duties in matters concerning him and his clients. He claimed that the first

respondent's acts were done maliciously and without reasonable and probable cause, and/or were calculated to punish and embarrass him, and/or amount to an abuse of the process of the court.

[11] He further alleged that the basis on which the first bench warrant for his arrest was issued and executed on him at court on Monday March 5, 2018, and the second bench warrant issued and the bond escheated "*was improper and/or cannot be justified in law and/or political and/or personal and/or spiteful and/or malicious and brings the judiciary in disrepute.*"

THE LAW

[12] In the case of ***Sharma v Brown-Antoine and Others (2006) 69 WIR 379***, the Judicial Committee of the Privy Council propounded the test to be satisfied in order for an applicant to be granted leave to apply for judicial review. Lords Bingham and Walker explained as follows at page 387 J of the 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… 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:*
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> *…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.*
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> *It is not enough that a case is 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 The Director of Public Prosecutions [2003] 4 LRC 712 at 733.

[13] The applicant must also be able to establish at least one of the recognized grounds of judicial review in order to succeed in an application for leave. The traditional grounds were explained in ***Council of Civil Service Unions (CCSU) v Minister of State for the Civil Service [1985] AC 374***, HL by Lord Diplock as illegality, irrationality and procedural impropriety. A claim that one acts without jurisdiction is an accusation of illegality. Those concepts have been explained as follows:

> ***i. "By "illegality" as a ground for judicial review, I mean that the decision–maker must understand correctly the law that regulates his decision–making power and must give effect to it. Whether he has or not is par excellence a justifiable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.***
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> ***ii. "By irrationality" I mean what can by now be succinctly referred to as — Wednesbury unreasonableness (Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it. …***
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> ***iii. I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."***

[14] An applicant must also meet the requirements set out in Rule 56 of the **Civil Procedure Rules**. He must possess sufficient interest in the subject matter of the application (56.2). The application must be made promptly (56.6). There is no suggestion that the applicant in this instance has not met those requirements or has not followed the procedure set out in Rule 56.3, thus there is no need for a discussion of those requirements.

ANALYSIS

THE ATTORNEY GENERAL AS A PARTY TO THE APPLICATION

[15] In the respondent's skeletal submissions filed January 8, 2019, it was submitted that the Attorney General is not a proper party to this application, as civil proceedings which may be instituted against the Attorney General do not include proceedings for judicial review.

[16] The Respondents made these submissions based on the provisions of sections 13(2) and section 2(2) of the **Crown Proceedings Act**.

[17] The respondents also relied on the case of **Brady & Chen Limited v Devon House Development Limited,** where Smith JA made it clear that:

> *…by virtue of section 2(2), the phrase "civil proceedings" does not include proceedings which in England would be taken on the Crown side of the Queen's Bench Division. And of course, proceedings for the prerogative orders (which have been replaced by proceedings for judicial review), were brought on the Crown side.*

[18] Reliance was also placed on **Conroy Housen v the Commissioner of Police and the Attorney General** [2010] JMCA Civ 33 at para 22 in which **Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd and Another** at p. 281 (1989) 39 WIR 270 was cited.

[19] At the hearing of the application, the applicant's attorney-at-law intimated that he accepted the position that judicial review is not civil proceedings within the meaning of the Crown Proceedings Act, but that the Attorney General was joined simply for the reason that if an order for costs were to be made in circumstances where the Learned Senior Parish Judge (as she was then) was the only party, then she would be required to bear the costs. He ultimately indicated that he would not resist the application for the Attorney General to be removed as a party.

[20] As Miss Hall rightly indicated, judicial review is concerned with the action of a decision maker and the Attorney General made no decision in this matter. The

applicant's attorney at law correctly conceded that judicial review is not civil proceedings within the meaning of the Crown Proceedings Act. The provisions of section 13(2) of that act which directs that civil proceedings against the Crown should be instituted against the Attorney General is therefore of no applicability in this instance. The Attorney General is removed as a party to this application.

WHETHER THE APPLICANT HAS MADE OUT AN ARGUABLE CASE THAT THE FIRST RESPONDENT ACTED WITHOUT JURISDICTION

[21] The meaning and import of the terminology jurisdiction was expounded in the case of **Anisminic Ltd v The Foreign Compensation Commission and Another** [1969] 1 All ER 208. Anisminic was a British company which owned a mining property in Egypt worth more than £4,000,000. In 1956, after the Israeli-Egyptian hostilities, the property, together with other properties owned by British nationals, was nationalised by the Egyptian government. An order in Council was made under the Foreign Compensation Act 1950 for the distribution of compensation paid by the Egyptian government to the British government in relation to British properties that had been nationalised. Anisminic's claim was denied by the tribunal (the defendant) on the basis that the legislation required that successors in title of Anisminic's properties be of British nationality.

[22] Anisminic sought judicial review of the decision on the basis that there had been an error of law in interpreting the meaning of "successors in title". The Court of Appeal held that any question of judicial review was barred, in accordance with the ouster clause at s.4(4) of the 1950 Act, which states 'the determination by the commission of any application made to them under this Act shall not be called into question in any court of law. Anisminic appealed to the House of Lords.

[23] It was held by a 3 - 2 majority of the House of Lords that section 4(4) of the Foreign Compensation Act did not preclude a court from reviewing the tribunal's decision. It was said that a court is always able to inquire whether there has actually been a

"decision", meaning a legally valid decision. If there is no legally valid decision (that is, the purported decision is legally a nullity) there is no "decision" to which an ouster clause can apply. Their Lordships found the purported decision to be invalid (a nullity), because the tribunal had misconstrued the term "successor in title". Since the tribunal's determination that Anisminic did not qualify for compensation was null and void, Anisminic was entitled to a share of the compensation paid by the Egyptian government.

[24] At pages 213 to 214, Lord Reid said:

> *It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the inquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly. I understand that some confusion has been caused by my having said in* ***Reg. v. Governor of Brixton Prison, Ex parte Armah*** *[1968] AC 192, 234 that if a tribunal has jurisdiction to go right it has jurisdiction to go wrong. So it has, if one uses "jurisdiction" in the narrow original sense. If it is entitled to enter on the inquiry and does not do any of those things which I have mentioned in the course of the proceedings, then its decision is equally valid whether it is right or wrong subject only to the power of the court in certain circumstances to correct an error of law. I think that, if these views are correct, the only case cited which was plainly wrongly decided is* ***Davies v. Price*** *[1958] 1 W.L.R. 434. But in a number of other cases some of the grounds of judgment are questionable.*

[25] At page 229 at Lord Morris of Borth-y-Gest said:

> *It is sometimes the case that the jurisdiction of a tribunal is made dependent on or subject to some condition. Parliament may enact that, if a certain state of affairs exists, then there will be jurisdiction. If, in such case, it appears that the state of affairs did not exist, then it follows that there would be no jurisdiction. Sometimes, however, a tribunal might undertake the task of considering whether the state of affairs existed. If it made an error in that task such error would be in regard to a matter preliminary to the existence of jurisdiction. It would not be an error within the limited jurisdiction intended to be conferred. An illustration of this appeared in 1853 in Bunbury v Fuller. A section of an Act of Parliament imposed a restraint on the jurisdiction of tithe commissioners in the case of lands in respect of which the tithes had already been perpetually commuted or statutorily extinguished. The tithe commissioners had, therefore, no jurisdiction over such lands. Coleridge J, said ((1853), 9 Exch at p 140.):*
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> > *Now it is a general rule, that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends; and however its decision may be final on all particulars, making up together that subject-matter which, if true, is within its jurisdiction, and, however necessary in many cases it may be for it to make a preliminary inquiry, whether some collateral matter be or be not within the limits, yet upon this preliminary question, its decision must always be open to inquiry in the superior Court."*

[26] In **Halsbury's Laws of England, Judicial Review** Volume 61A 2018, the concept of jurisdiction was explained as follows:

> *The courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. Such a body will not act lawfully if it acts ultra vires or outside the limits of its jurisdiction. The term 'jurisdiction' has been used by the courts in different senses. A body will lack jurisdiction in the narrow sense if it has no power to adjudicate upon the dispute, or to make the kind of decision or order, in question; it will lack jurisdiction in the wide sense if, having power to adjudicate upon the dispute, it abuses its power, acts in a manner which is procedurally irregular, or, in a Wednesburysense, unreasonable, or commits any other error of law. In certain exceptional cases, the distinction between errors of law which go to jurisdiction in the narrow sense and other errors of law remains important.*
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> *A body which acts without jurisdiction in the narrow or wide sense may also be described as acting outside its powers or ultra vires. If a body arrives at a decision which is within its jurisdiction in the narrow sense, and does not commit any of the errors which go to jurisdiction in the wide sense, the court will not quash its decision on an application for judicial review even if it considers the decision to be wrong.*

[27] Ms Hall has argued that the Senior Parish Judge's decision can only be impeached if she did not have the jurisdiction to decide as she did. She urged that it was within the Learned Senior Parish Judge's jurisdiction to issue a warrant. She continued that the applicant's argument is that the basis for issuing the bench warrants in question was not present.

[28] Mr Leys KC urged that the Learned Senior Parish Judge acted without jurisdiction. He contended that even if she had jurisdiction generally to issue warrants, she had no jurisdiction in that instance. He adverted to the fact that a warrant can only be properly issued in disobedience of a court order and there is no evidence of any disobedience of any order of the court. He pointed to the evidence of the Clerk of the Court being in a state of confusion when he was directed to plead the applicant. He submitted that this is not a case of the Learned Senior Parish Judge having jurisdiction to issue a warrant in the circumstances she did but one where she acted on a wrong set of facts. He urged that since she had no jurisdiction in the circumstances to issue a warrant, her conduct is subject to the supervisory jurisdiction of the High Court and that no issue of an appeal from her decision can arise.

[29] What is called into question in this instance, is not the Learned Senior Parish Judge's jurisdiction to issue warrants generally, but rather, whether circumstances arose which empowered her to issue a warrant and cause same to be executed on the applicant. That conduct calls into question the Learned Senior Parish judge's jurisdiction in the wider sense of the word.

Circumstances in which a parish judge may issue a warrant outside of contempt of court.

[30] Sections 3, 9 and 12 of the Justice of the Peace Jurisdiction Act and section 16 of the Bail Act enable a Parish Judge to issue warrants in prescribed circumstances.

[31] **Section 3 of the Justice of the Peace Jurisdiction Act** provides that a warrant may be issued in two instances:

1. If a person served with a summons fails to appear before the Justice(s) at the time and place specified in said summons, and it appears to the Justice(s), by oath or affirmation, that the summons was served within a reasonable time, then a warrant may be issued.

2. The Justice(s) before whom a complaint or information was laid may, by way of oath or affirmation being made substantiating the matter of such information to his satisfaction, may issue a warrant to apprehend the person against whom the information has been laid, instead of a summons.

[32] **Section 9** of the **Justice of the Peace Jurisdiction Act** provides that a Justice may issue a warrant in the first instance to apprehend the defendant, where an information for any offence or act punishable upon summary conviction is made or laid. The information should be substantiated by the oath or affirmation of the informant, or by some witness or witnesses on his behalf, before any such warrant shall be issued.

[33] **Section 12** of the **Justice of the Peace Jurisdiction Act** provides that if the defendant upon whom a summons has been served fails to appear before the court when called, then in the defendant's absence, the Justice(s) may issue a warrant and adjourn the hearing of the matter until the defendant has been apprehended. When the defendant is apprehended under such warrant, he shall be brought before the same Justice(s) of the same parish and by the Justice's warrant, be committed to prison or if the Justice thinks fit, verbally to the custody of a constable, another person who apprehended the defendant or such other safe custody as the Justice deems fit, and order the defendant to be brought up at a certain time and place before the Justice of which the complainant shall be notified.

[34] Section 16(1) and 16(2) of the **Bail Act, 2000** provide that:

> *"(1) Where a person who has been released on bail in criminal proceedings and is under a duty to surrender to custody fails to surrender to custody at the time appointed for him to do so, the Court may issue a warrant for his arrest.*
>
> *(2) Where a person who has been released on bail in criminal proceedings absents himself from the Court without the leave of the Court, at any time after he has surrendered to the custody of the Court and before the Court is ready to begin or to resume the hearing of the proceedings, the Court may issue a warrant for his arrest…"*

[35] Seetahal in **Commonwealth Caribbean Criminal Practice and Procedure**[1], stated that a bench warrant may be issued by a court when a properly notified defendant fails to show up for his trial or where the defendant may have been served by summons to attend court on a particular date. Alternatively, the defendant may have been present in court when the matter was adjourned to a fixed date. In either case, the court is empowered to issue a warrant for the defendant's arrest once a police officer swears in court to the contents of the complaint or information which initiated the charge.

[36] According to **Blackstone's Criminal Practice**[2], a bench warrant can be issued where the court decides to adjourn the trial rather than proceeding in the absence of the accused, provided the offence which the warrant relates to is punishable with imprisonment, or the court, having convicted the accused, is proposing to impose a disqualification.

[37] None of the circumstances set out in the preceding paragraphs occurred in this case, thus the only basis for the issue of the warrant must have been the judge's perception that the applicant was in contempt of court.

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[1] Dana Seetahal, *Commonwealth Caribbean Criminal Practice and Procedure* (4th edn, Routledge 2014) 38
[2] David Ormerod CBE, KC (Hon) and David Perry KC, ***Blackstone's Criminal Practice*** (33rd edn, Oxford 2023)1700

Contempt of court

[38] It is not specifically spelled out in any statute, but it is assumed that a bench warrant may be issued if an attorney is found to be in contempt of court by being deliberately absent with a view to frustrating the court proceedings. It is arguable whether it could be said that the applicant was in breach of a court order and thus in contempt of court on the first occasion on which the warrant was issued, in circumstances where according to his evidence, he was advised by his secretary that the judge said that he should attend court. In other words, it is questionable whether a message through the secretary qualifies as an order of the court. Secondly, assuming that the message qualifies as an order of the court, it has not been demonstrated that the reason for his absence on that occasion was to frustrate the proceedings of the court. There is no evidence from the respondent indicating the basis on which the warrants were issued. The basis for the issuing of the second warrant is evident from the applicant's account.

[39] In the case of **Balogh v Crown Court at St Albans** [1974] 3 Aller 283, Lord Justice Lawton in his judgment enumerated the type of conduct on the part of individuals which may trigger the use of the summary contempt power of the court. He listed these as follows:

> *" …witnesses and jurors duly summoned who refuse to attend court; witnesses duly sworn who refuse to answer proper questions; persons in court who interrupt the proceedings by insulting the judge, shouting or otherwise making a disturbance; persons in court who assault or attempt to assault or threaten the judge or any officers of the court whose presence is necessary ; persons in or out of court who threaten those about to give evidence or who have given evidence ; persons in or out of court who threaten or bribe or attempt to bribe jurors or interfere with their coming to court; persons out of court who publish comments about a trial going on by revealing a defendant's criminal record when the rules of evidence exclude it."*

[40] Contrary to Mr Ley's submission, it is arguable that the Learned Senior Parish Judge acted on a wrong set of facts. But it is not purely a question of fact. It is a question of fact as well as one of law whether the state of affairs, both factually and legally enabling the issuing of a warrant by the Learned Senior Parish Judge

obtained. The argument may be made that the Learned Senior Parish Judge acted outside of her jurisdiction based on the circumstances allegedly leading to the issuing of the warrant, since it is arguable that a bench warrant could not properly have been issued to secure the presence of the applicant, an attorney at law, in order to treat with a matter that could not have been dealt with under the summary contempt jurisdiction of the court. Further, a warrant could not be issued in order to secure the presence of an attorney at law to facilitate the exercise of the court's disciplinary powers to punish him, he being an officer of the court. See **Weston v Courts Administrator of the Central Criminal Court** [1978] 2 All ER 875. The circumstances therefore raise an arguable case as to whether the Learned Senior Parish Judge acted within her jurisdiction.

IRRATIONALITY AS A BASIS FOR GRANTING LEAVE

[41] No argument was put forward by any of the parties as to whether it could be argued that the Learned Senior Parish Judge's decision was irrational although this was one of the grounds relied on by the applicant. The court having decided that the applicant has made out an arguable case on the ground of lack of jurisdiction, renders it unnecessary to address this ground in detail. However, for the same reason that the Judge's decision is arguably outside of her jurisdiction, it may be argued that it was irrational.

WHETHER THE APPLICANT HAS AN ALTERNATIVE REMEDY

[42] Miss Hall has argued that the applicant referred to a breach of his constitutional rights and has in fact brought a claim seeking redress for such breaches and thus it is evident that he has an alternative remedy.

[43] Mr Leys KC contended that the applicant ought to be allowed to pursue judicial review alongside a claim for redress for breach of his constitutional rights.

[44] This court is of the view that an applicant may seek judicial review of a decision which he also alleges breached his constitutional rights and thus the fact that the applicant has filed a claim alleging that his constitutional rights have been breached does not bar him from at the same time seeking judicial review in respect of the same conduct. It is questionable whether constitutional relief should be considered an alternative remedy to judicial review in a scenario where both are now treated as administrative orders and reliefs sought under those heads may be heard together. Even if constitutional relief is in fact an alternative remedy, for the reason suggested by Mr Leys KC at paragraph 46 below, it may be prudent for the applicant to pursue both remedies.

WHETHER THE ISSUE THAT THE APPLICANT IS ASKING THE COURT TO PRONOUNCE UPON IS MOOT

[45] Miss Hall contended that the applicant is asking the court to pronounce upon an issue that is moot. She insisted that the remedy of certiorari cannot be available in a situation where the warrant that the applicant is seeking to quash has already been executed and thus spent.

[46] Mr Leys KC argued that the fact that the warrants have been executed is irrelevant. It was his submission that the warrants are now part of the record of the Parish Court and a grant of certiorari will go to quash the record as it exists, if a court of judicial review determines that the warrants were null and void. Counsel also adverted to the existence of disciplinary proceedings before the General Legal Council, brought against the applicant in relation to the very occurrences giving rise to this application and urged that the quashing or otherwise of the warrant has significant implications for those proceedings. Counsel also adverted to the evidence that the bonds were escheated. The implication from the escheating of the bonds is that the applicant was required to pay the amount of the bond.

[47] Essentially for the reasons outlined by Mr Leys, I am not of the view that the court would be asked to decide a moot point if leave were to be granted.

[48] Based on the foregoing, the applicant has made out an arguable ground for judicial review with a realistic prospect of success and he is not subject to a discretionary bar such as the existence of an alternative remedy.

[49] The following orders are made:

1. The Attorney General is removed as a party to this application.

2. Leave to apply for judicial review of the decision of the first respondent is granted to the applicant.

3. Leave is conditional on the Applicant making a claim for Judicial Review within (14) days of this Order granting leave.

4. The first hearing of the Fixed Date Claim Form for Judicial Review is scheduled for July 10, 2023 at 12 noon for 30 minutes.

5. The costs of this application will be costs in the claim for judicial review.

Andrea Pettigrew-Collins
Pusine Judge