Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE FULL COURT
SUIT NO. 1997/ M.53

BEFORE: THE HON. MR. JUSTICE WALKER
THE HON. MR. JUSTICE PANTON
THE HON. MRS.JUSTICE McCALLA

IN THE MATTER OF AN APPLICATION BY DESMOND HARVEY FOR AN ORDER OF CERTIORARI TO QUASH AN ORDER OF THE MINISTER OF NATIONAL SECURITY AND JUSTICE DISMISSING AN APPEAL UNDER THE FIREARMS ACT.

Patrick Foster, instructed by Clinton Hart and Co., for the applicant.

Miss Avlana Johnson, instructed by the Director of State Proceedings, for the Minister.

Heard: September 22 and 25, 1997.

PANTON, J.

The applicant, who resides in the parish of Saint James, is a businessman. Up to May 29, 1995, he was the holder of a Firearm User's Licence. On that date, the Superintendent of Police for Saint James, who is the appropriate authority for the purposes of the Firearms Act, revoked the licence. On June 16, 1995, the

applicant , in accordance with section 37 of the Firearms Act and Regulation 3 of the Firearms (Appeals to Minister) Regulations, 1967, through his attorneys-at-law, filed a "notice and grounds of appeal". This appeal was to the Minister of National Security and Justice.

The process of appeal took nearly two years. Miss Johnson, learned attorney-at-law for the respondent, was unable to say why this relatively simple process took so long to reach a conclusion.

The applicant's attorneys-at-law wrote no less than eight letters to the Permanent Secretary in the Ministry of National Security and Justice seeking information as to the date of the hearing of the appeal. To one of those letters, the Permanent Secretary replied thus on July 31, 1996:

> "Please be advised that the matter is still being processed and not yet ready for a hearing".

On March 7, 1997, the attorneys-at-law wrote to the Permanent Secretary inquiring whether the hearing might be fixed for March, 1997, and suggesting telephone contact so as to have agreement "on mutually convenient dates". The response to this letter was a letter dated March 27, 1997. In it, the Permanent Secretary advised the applicant's attorneys-at-law as follows:

> "I am directed to advise that your client's (Desmond Harvey) appeal against the decision of the appropriate authority to revoke his Firearm User's Licence has been dismissed by the Honourable Minister of National Security and Justice.

Please advise him accordingly."

The factual position, therefore, is that the Minister heard and decided the appeal without any input from the applicant, whether in person or in writing. Indeed, the applicant was not made aware of the complaints against him; and he never had the opportunity to attempt to answer them. He was not even advised of the date of the hearing.

Mr. Foster, for the applicant, submitted that in conducting the hearing in the absence of the applicant, the Minister acted in breach of the rules of natural justice. The applicant, he said, had been led to believe that the Minister intended to afford him a hearing in person. He based this submission on two letters in particular that passed between the applicant's attorneys-at-law and the Permanent Secretary. The first letter dated July 15, 1996, from the attorneys-at-law to the Permanent Secretary reads thus:

> "Reference is made to our letter dated May 6, 1996, to which we have not had a response. We confirm telephone conversation Harvey/Prince on the 11th instant when you informed our Miss Prince that the captioned matter is being processed and as soon as a date is set for hearing you will advise us."

To this the Permanent Secretary replied on July 31, 1996, in terms which have already been quoted; that is, to the effect that the matter was not yet ready for a hearing.

Miss Johnson submitted that notwithstanding those letters there was no evidence that the Minister intended to afford the applicant a

hearing in person.

We are of the view that the case **Danhai Williams v. The Attorney General and others (Supreme Court Civil Appeal No. 21/88; heard on November 5 and December 5, 1990)** provides guidance as to how the Minister is to proceed in a situation such as this. The facts of that case are similar to that which is before us in that the Minister dismissed Mr. Williams' appeal without advising him of the date of the hearing and without giving him an opportunity to be heard; notwithstanding that the appellant had sought permission to be present and to be represented at the hearing of the appeal.

At page 6 of his judgment, Carey, J.A., said:

> "Although the aggrieved party has no right to be present, it seems to me he should know the date on which the hearing of the appeal is to take place. It will enable him to decide whether he should retain counsel to apply to be present. He may wish to apply for further time to submit further representations.
>
> Further if the aggrieved person is to be able to appeal the decision, he should be in a position to know the basis of the revocation seeing that the reasons for revocation are categorised in specific and general terms. Is it being said that he is insane- or is "otherwise unfitted"? This phrase covers, I would suggest, a multiplicity of ill-assorted sins. I would hold that it would be wholly unreasonable to assert that an aggrieved person against whom serious allegations could be made as affecting his reputation or good name, is fairly treated if he

is expected to appeal a decision founded upon charges, the nature of which has never been vouchsafed to him."

Further, at page 9, he stated:

"The point seems to me unarguable that this failure by the Minister to consider this request could only mean that the appellant has been denied an opportunity of being heard. There can be no question that the Minister is bound to consider the request and either grant it or refuse it: he cannot ignore the request made."

Wright, J.A., at page 11, expressed himself thus:

"If the revocation of a licence so granted could be done whimsically, then a person who has done nothing to besmirch his character could find himself embarrassed by the arbitrary revocation of his licence and if a seal of silence were sanctioned, he would remain forever in the dark as to whether it was being alleged that he was of unsound mind, of intemperate habits or that he was guilty of any of the myriad reasons which may be accommodated under the umbrella 'otherwise unfitted' ".

At page 12, he said:

"It would be an exercise in futility to enable a person to appeal and then to deny him meaningful participation in the resultant proceedings. Merely to file grounds of appeal denying any breach of the qualifications for a licence, which is all he can do at this stage, is just a general denial that does not come near

meeting the specific reasons for the revocation."

Gordon, J.A.(Ag.)(as he then was), said at page 17:

> "Indeed the aggrieved party has no right of audience before the appropriate authority but he has such a right before the Minister on appeal from a decision of the appropriate authority. In exercise of this right the Minister may allow him to appear in person or by his attorney or he may hear him by considering the written submissions contained in the grounds of appeal or otherwise."

At page 18, he went on:

> "The right to appeal involves the right to the legitimate expectation that the rules of natural justice will apply. These rules subscribe to a right to fairness. How can one submit meaningful grounds of appeal if he is unaware of the basis for the revocation? In my view the appellant should have been informed of the basis of complaint."

In the instant case, the irresistible conclusion based on the correspondence passing between the applicant's attorneys-at-law and the Ministry of National Security and Justice is that the applicant was led to believe that he would have been afforded an opportunity to be legally represented at the hearing of his appeal to the Minister. The inescapable inference to be drawn from the several letters from the applicant's attorneys-at-law is that the applicant was requesting such an opportunity which, in the result, he was denied. Even if one were to accept Miss Johnson's submission that

the applicant's request was never expressly granted by the Minister, the fact of the matter is that neither was that request ever expressly refused. In such circumstances, the best that can be said is that the applicant's request was ignored by the Minister in which event such conduct would, in itself, amount to such a breach of the rules of natural justice as was recognised by the Court in the **Danhai Williams case (supra).**

It is quite obvious that even the Ministry has, since the decision, been having second thoughts as to the legitimacy of the Minister's action. That is what is gleaned from the report of a conversation between a member of staff of the Ministry and the attorneys-at-law for the applicant. A letter dated April 25, 1997, from the latter to the Ministry makes reference to a conversation in which Mr. Taylor of the Ministry indicated that there would be a "hearing of the appeal in the matter on Tuesday the 29th instant". The attorneys-at-law sought an explanation as to the legal basis upon which the hearing would take place. To this date, there has been no written reply to that letter.

In the circumstances, this application is granted. Certiorari is to go to quash the order of the Minister dismissing the applicant's appeal. This puts the case back before the Minister for the hearing of the appeal in accordance with the law.

WALKER, J.(Senior Puisne Judge) I agree.

McCALLA, J.(Mrs.) I agree.