[2015]JMSC Civ. 76

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2014HCV04210

BETWEEN	**RANDEAN ROY RAYMOND**	**APPLICANT**
AND	**THE PRINCIPAL RUEL REID**	**FIRST RESPONDENT**
AND	**THE BOARD OF MANAGEMENT OF JAMAICA COLLEGE**	**SECOND RESPONDENT**

IN CHAMBERS

John Clarke instructed by Bignall Law for the applicant

Marlene Chisolm instructed by the Director of State Proceedings for both respondents

April 21 and 27, 2015

JUDICIAL REVIEW – APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO APPLY FOR JUDICIAL REVIEW – PART 56 OF THE CIVIL PROCEDURE RULES

SYKES J

[1] Mr Randean Raymond has applied for an extension of time within which to apply for judicial review. The application is dismissed and no costs are awarded to either party.

[2] It is one thing when litigants and counsel disobey the provisions of the Civil Procedure Rules ('CPR') but quite another when the court itself fails to comply with the rules. Rule 56.4 (1) states that an application for leave to apply for judicial review must be considered by a judge forthwith. According to Black's Law Dictionary 8th, forthwith means (a) immediately, without delay; (b) directly; promptly; or within a reasonable time under the circumstances. In the context of judicial review, the meaning of immediately, without delay is to be preferred. In this case, Mr Randean Raymond filed his application for leave to apply for judicial on September 3, 2014. The date he received was April 17, 2015. The failure of the court heed the preferred meaning of forthwith resulted in a further delay of seven months before his matter came before a judge. In light of this significant delay in getting this matter before a judge it needs to be explicitly stated that the court will not use this period of the seven-month delay against Mr Raymond. The court will assess the time using the date of September 3, 2014 as the outer limit. Mr Raymond should not be adversely affected by the internal inefficiencies of the court.

The facts

[3] These are the facts for the purposes of this application. Mr Raymond was a temporary teacher engaged by Jamaica College. He alleges that he entered an oral agreement with the school on March 15, 2012 to work as a temporary teacher. He went on to say that the formal written agreement was executed on

September 17, 2012. It appears that this latter date is the official date of his engagement.

[4] By letter dated March 27, 2013, Mr Raymond was informed that his services were no longer needed after March 31, 2013. The letter was signed by Mr Ruel Reid, the principal, on behalf of the chairman. Mr Raymond contended that this letter failed to comply with the article 54 of the Education Regulations of 1980. Specifically, he said that (a) the letter should have been signed by the chairman; (b) no reasons were given in the letter as is required and (c) there was a breach of natural justice in that he was not given an opportunity to deal with any allegations that were made against him. On this premise, the grounds which would have permitted Mr Raymond to launch an application for judicial review first arose on March 27, 2013. He did not do so.

[5] Mr Raymond said that the reason for the delay was that he was seeking to resolve the matter without resorting to litigation. He provided a chronology of steps that he took to resolve the matter. What were these steps?

[6] He said that on the same day that he received the letter he went to Mr Reid who told him that Mr Wong, the vice principal, who informed him (the principal) that there was no space for him at the school because he failed to comply with instructions given to him. These reasons were not stated in the letter. According to Mr Raymond these reasons, if they were the true ones, should have been stated in the letter.

[7] The same day, March 27, 2013, he went down to the Ministry of Education where he was told that he should go to the Jamaica Teaching Council ('JTC'). On arrival at the JTC, the person who dealt with these matters was said to be on leave. It appears that no one else was able to provide any useful information about what remedial action Mr Raymond could take.

[8] In April 2013, he went back to the Ministry of Education and deposited a written letter asking for the intervention of the Education Officer who had oversight responsibility for the school. He made another visit to the JTC where he was told that since twenty eight days had passed since the date of the termination letter, the JTC could not hear the matter because it was now time barred. This precipitated a visit to the Ministry of Labour.

[9] For good measure, he contacted the Jamaica Teachers' Association ('JTA') and was advised that person at JTA who dealt with such matters was away on a week-long seminar. It appears then, that the for the month of April 2013 Mr Raymond's efforts to resolve the matter were thwarted by persons being on leave, at seminars, as well as his matter becoming time barred.

[10] In May 2013, Mr Raymond finally spoke to the person at JTA who dealt with these matters. The person told Mr Raymond that the JTA would step in. The stepping in would begin with writing to the Ministry of Labour asking for its intervention but before that could be done, a letter from JTC was considered desirable. The letter, dated June 3, 2013, from JTC was procured. It stated that Mr Raymond's appeal was time barred. Based on this JTC letter, the JTA wrote to the Ministry of Labour by letter dated June 12, 2013. The letter stated that the JTA acted on behalf of Mr Raymond. The letter requested the intervention of the Ministry on the ground that Mr Raymond's termination was unlawful. To summarise, the month of June was taken up with getting the letter from JTC, taking that letter to the JTA which then wrote to the Ministry of Labour.

[11] It should be noted that Mr Raymond has now exhausted the outer limit of three months during which he ought to have applied for judicial review. The decision was made in March and he spent April, May and June speaking to various entities and persons. It means that by the end of the June he not only failed to act promptly as required by the rules but was now outside of the three-month window of opportunity to make his application.

[12] In July 2013, the JTA sent a letter (dated the 24th) to Mr Ruel Reid. From that letter it seems that a meeting between the JTA, Mr Raymond and officers of the school was held on the date the letter was written. The court says this because the letter opens with the words, '[t]hank you for facilitating the meeting today at 9:00 am to discuss' the matter of Mr Raymond's termination. The letter outlined what was described as the JTA's 'considered position.' Its considered position was that Mr Raymond's services were unlawfully terminated and the remedy should be full reinstatement and a withdrawal of the letter of termination.

[13] There is another letter from the JTA dated August 13, 2013 to the Ministry of Labour which beings with a reference to 'our initial meeting of July 11, 2013 in respect of the captioned matter.' The letter requested another meeting because no progress had been made. The Ministry of Labour wrote back to the JTA suggesting dates in September 2013 for the meeting. The JTA acknowledged receipt of the letter and advised that any of the proposed dates was acceptable.

[14] From these letters in July and August 2013, efforts were being made to resolve the impasse. Meetings were held in July (with the Ministry of Labour on July 11 and with Mr Reid on July 24) but the issue was not resolved in favour of Mr Raymond.

[15] From Mr Raymond's affidavit of April 10, 2015 which exhibited a chronology of events, we know that another meeting was held on September 3, 2013 at the Ministry of Labour. This meeting did not produced the desired result. By the middle of September, three meeting were held: two with the Ministry of Labour and one with Mr Reid.

[16] Another meeting was set for October 2013. This is known because there is a letter dated September 4, 2013 from the Ministry of Labour suggesting October 8, 2013 as another meeting date. This appears to be a second meeting with the Ministry of Labour.

[17] It seems that at least two meetings were held in October 2013 but no resolution emerged (see Raymond affidavit of April 10, 2015 with chronology exhibited). By the end of October 2013 at least five meetings were held. At one of these meetings held in October, the school made an offer which was rejected by Mr Raymond who then told the Ministry of Labour decided to take the matter to court (see letter from Ministry of Labour dated January 31, 2014). This means that from October 2013 Mr Raymond had indeed contemplated or even decided to take court action. This would be four months beyond the three-month outer limit for applying for judicial review. Even then, Mr Raymond did not approach the court.

[18] In November 2013, after several attempts, audience was had with chairman of the board. According to Mr Raymond, the chairman confessed that he did not know of Mr Raymond's termination until sometime after it had happened. From the court's calculation this knowledge came to the chairman's attention at least twelve weeks after the termination. The termination occurred in March 2013 and the chairman knew of it after the Caribbean Secondary Examination Council's examinations ended. These examination usually run from late April through to the end of June. Mr Raymond alleges that the chairman promised to assist but nothing happened. At the end of November 2013 at least six meetings had been held regarding Mr Raymond's termination: three with the Ministry of Labour, two with Mr Reid and one with the chairman.

[19] In December 2013 Mr Raymond spoke to an attorney (who was present at the November meeting with the chairman) who agreed to represent him formally. This formal representation produced letters to the Ministry of Labour in January 2014 and another letter to the Ministry in March 2014. In addition to counsel's January and March letters, the JTA also wrote to the Ministry in January 2014. The January letter from counsel was asking that the matter be referred to the Industrial Disputes Tribunal ('IDT'). The Ministry responded to counsel's January letter by saying that it was trying to decide whether the matter should be referred

to the IDT having regard to the fact that the Education Code had provided a body to deal with such issues.

[20] Counsel wrote again in March 2014 indicating that Mr Raymond cannot take advantage of the procedures under the Education Code because he was temporarily employed. The letter also said that the proper forum was the IDT. The Ministry of Labour wrote back on March 24, 2014 indicating that it was still advising itself since any decision had implications for future disputes of this nature. The March 24 letter stated that 'we must treat with the issue in a wholesome manner in order to ensure that the law and the spirit thereof, is not breached.' In polite terms, the Ministry was telling counsel, 'We are not anxious to refer this matter to the Tribunal. We don't think it fits the law as we understand it.' This was the Ministry of Labour's last missive to the attorney on the issue.

[21] The Ministry of Labour also wrote a response to the JTA's January 2014 letter. The Ministry's letter observed that Mr Raymond had 'during our last meeting on October 28, 2013 … orally informed the Ministry that he would not accept the offer made by the management of Jamaica College but would be proceeding to the Supreme Court with the matter.' This perhaps explains why the Ministry did not set any other meeting date after the October 2013 meeting since this intimation from Mr Raymond would have led the Ministry to believe that their intervention was no longer required.

[22] In April 2014, Mr Raymond and his legal adviser discussed the possibility of applying for judicial review. Mr Raymond is now one year past the time when grounds for applying for leave first arose. This is late indeed. In May 2014, the JTA was requested to provide the dates meetings were held at the Ministry of Labour. In June 2014, the information Mr Raymond sought was provided to him which he took to his attorney at law. In July 2014 there was a further meeting with counsel where drafts of the application were reviewed. These drafts were finalized and signed in August 2014 and filed on September 3, 2014. These are the events from March 27, 2013 to September 3, 2014.

The legal principles

[23] Rule 56.6 (1) of the CPR states that applications for judicial review must be made promptly and in any event within three months of the existence of facts which can ground an application. It is well known that time begins to run from the date grounds for the application arose. It is also well known that even an application within the three-month period may, depending on the circumstances, be held to be too late. The crucial point then is that judicial review proceedings are unique and special. They are subject to their own peculiarities. Speed of application is one of the hallmarks.

[24] Rule 56.6 (2) states that the court may extend time within which to make the application on good reason being shown. The principle existed before the CPR came into existence. Sharma JA in **Jones v Solomon** (1989) 41 WIR 299, 335 held:

> *Before seeking leave for judicial review if an applicant is out of time, there is delay. The first step he must take is to have that time extended to the date of the application. This must not be confused with the application for leave (my emphasis) which will only be dealt with when the time has been extended. An application for an extension of time in this jurisdiction is made on the hearing of the application for leave.*

Analysis

[25] In this case the facts, from Mr Raymond's perspective, giving rise to the right to apply for judicial review first arose on March 27, 2013. This was said to be the date of the unlawful decision. Mr Clarke submitted that the process of seeking redress accounted for the delay. He also submitted that one of the requirements for judicial review is that the applicant needs to show that other means of redress were exhausted or inapplicable to his case and therefore judicial review is

appropriate. Implicit in this submission is the idea that judicial review is the remedy of last resort and only taken up when others fail.

[26] Miss Marlene Chisolm put up stout resistance to this application. She submitted that Mr Raymond is not only late but incurably late. Indeed, even using the September 3, 2014, Mr Raymond was over one year late in his application. Worse yet, she submitted, was that the actual application for extension of time was not filed until April 2015. The omission from the September 3, 2014 application of this application and its late addition, she submitted, was not only the nail in the coffin but the tomb over the grave. Thus Mr Raymond's application was beyond resurrection not only because of its extreme lateness but the reasons advanced were not sufficient to cause the court to exercise its discretion in his favour. It will be recalled that this court has decided that it will treat the application as if it were filed on September 3, 2014. The court did so because had the matter been placed before a judge in accordance with the CPR this issue would have been addressed much earlier.

[27] In June 2013 a letter had been written to the Ministry of Labour. In July 2013 a letter had been written to the principal. Both letters were seeking to have the issue resolved. There were two meetings with the principal: one in September and the other in November. There was dialogue with the board via the chairman. This accounts for the period March 2013 to November 2013. However, it should be noticed that according to the Ministry's January 2014 letter to the JTA, Mr Raymond declined to accept the school's offer and had indicated that he was going to court. Why then expend time and effort trying to persuade the Ministry of Labour that the matter should be referred to the IDT having decided to go to court? This, to the court's mind, was not the best use of time in the context of judicial review which is extremely time sensitive.

[28] The Ministry's January 2014 letter to counsel was saying, 'We are not convinced that there should be a referral to the Tribunal. In any event, we have to

think about setting a precedent for the future.' This was the polite way of saying, 'Don't ask us to do this. We are unlikely to do it.' The Ministry's March 24 letter was to the same effect.

[29] For some reason neither counsel nor his client absorbed the patent fact that the Ministry of Labour was not embracing the idea of a referral the IDT. The Ministry's letter writers did not want to say, pointedly, 'It is not going to happen.' They were politely declining counsel's suggestions. This was so in January 2014 and it remained so in March 2014.

[30] In April of 2014, Mr Raymond said that his counsel suggested judicial review. The message was finally received. Now at this stage alacrity should have been the order of the day. This was not to be. The explanation is that Mr Raymond went to the JTA to get information about dates of meetings held at the Ministry of Labour. This took up the month of May 2014. In June 2014 he had just received some of the information the attorney requested. In July 2014 he and the lawyer met to go over drafts. He was advised to get further documentation. In August the draft was finalized and in September 2014 the application was filed.

[31] As far as this court is concerned this approach between April and September does not suggest that the applicant grasped the fact that judicial review is really an application to be pursued will all deliberate speed. On the facts of this case, the exact date of the meeting did not preclude an application. There can be no doubt that several meetings were held between March and November 2013. In addition, the rules allow for amendment of the application for leave itself. In other words, the need for precision should not prevent one from having an eye on the time limit. It is always better to get in the door when it is open than arrive late and knock seeking entrance.

[32] Mr Clarke submitted that the overriding objective should be applied when interpreting Part 56. The Court of Appeal of Jamaica has not endorsed this approach. If anything, the language of all three Justices of Appeal in **Golding v**

Simpson Miller SCCA No 3/08 (unreported) (delivered April 11, 2008) made it clear that Part 56 is self-contained and there cannot be any reference to any other part of the CPR unless Part 56 itself makes that reference. Thus there cannot be an appeal to the overriding objective in interpreting rule 56.6 (2) on the issue of extension of time.

[33] Mr Clarke also submitted that no hardship would be caused to the respondents if time was extended. An identical argument was made in **Jones'** case. Edoo JA frowned upon it when he said at page 318:

> *I reject the submission of the attorney for the respondent that proof by the appellants, of substantial hardship or substantial prejudice is a condition precedent to the refusal of relief. This is an untenable proposition, since it would throw the burden upon the commission of proving that the grant of relief would cause substantial hardship or substantial prejudice to the commission, irrespective of the length of time which has elapsed since its decision.*

[34] This is an effective answer to the submission of Mr Clarke.

[35] Mr Clarke finally submitted that egregious wrongs were done to Mr Raymond and he should not be punished for seeking alternate remedies. Mr Raymond is not being punished for anything. What has happened is that judicial review is a special area where speed is of the essence. Once it became clear, and that was clear from as early as October 2013, that the negotiations were going nowhere the Mr Raymond should have acted. His effort with the chairman in November 2013 did not advance his position. Surely by November 2013 the end of the road of negotiations had been reached. The jurisdiction of the IDT was not clear cut. Further delay was not helpful.

[36] It may be said that the attempt to have the matter referred to the IDT should be regarded as an attempt at alternate resolution. Even on this premise, having written two letters and no affirmative decision by the Ministry one way or the other the need to act became even more crucial. Mr Raymond and his counsel took a very leisurely approach to preparing and getting the matter before the court.

[37] It is my view that Mr Raymond has not justified the delay in applying for judicial review. His reasons were acceptable in light of what he said he did during the period March 2013 and November 2013. Certainly by the end of November, in light of his own statement to the Ministry of Labour that he intended to go the Supreme Court; his rejection of what the school management offered; the inactivity, as he put it, of the chairman who did not follow through on promises made to him, he ought to have proceeded as he intimated. He prolonged the delay be searching for a doubtful solution which the Ministry of Labour was not enthusiastic about. This he knew from January 2014. He waited a further two months. The Ministry's lack of fervency regarding the proposed referral was communicated to the JTA in January 2014. On a generous interpretation, Mr Raymond should have acted by the end of January. His slow steps between April and September did not assist his case.

Disposition

[38] The application for extension of time is refused. No order as to costs. Leave to appeal granted.