[2015] JMSC Civ. 243

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CLAIM NO. 2013HCV05675**

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| **BETWEEN** | **CONSTABLE ERNESTO RICHARDS** | **APPLICANT** |
| **AND** | **CLIVE MCDONALD** | **1ST RESPONDENT** |
| **AND** | **ISLAND TRAFFIC AUTHORITY** | **2ND RESPONDENT** |
| **AND** | **INLAND REVENUE DEPARTMENT** | **3RD RESPONDENT** |

**Mr Paul Beswick instructed by Ballantyne Beswick & Company for the Applicant**

**Ms. Tamara Dickens instructed by the Director of State Proceedings for the Defendant**

**Judicial Review – Renewed Application for leave – Preliminary objection – Preliminary objection upheld - Rule 56 of the Civil Procedure (Amendment) Rules**

**Heard: November 12 and December 11, 2015**

**Lindo J.**

[1] On November 12, 2015, I heard submissions from Counsel in relation to the Respondents' preliminary objection that the court had no jurisdiction to entertain the renewed application for leave to apply for judicial review brought by the claimant. I adjourned the matter for consideration.

[2] This renewed of the application for leave to apply for judicial review is by Ernesto Richards who is again seeking leave to apply for judicial review in respect of the 1st respondent who "is responsible for assisting in policy formulation and implementation with the 2nd respondent. The 2nd respondent is the ...and is the agent of the state which is responsible for administering the Road Traffic Act. The 3rd respondent is ...and is the

agent of the state responsible for collecting the different forms of revenue due to the Government".

[3] There was also an application for time to be enlarged for the renewal of the application to be made.

[4] The application for leave is in relation to the following reliefs being sought:

> "(i) an order for certiorari...to quash the decision of the Chief Inspector to recommend that the applicant's car be de registered
>
> (ii) an order of certiorari...to quash the decision of the 3rd respondent to follow the recommendation of the 1st respondent to de register the applicant's car;
>
> (iii) an order of mandamus against the 3rd respondent directing it to forthwith restore the registration status of the applicant's motor vehicle as it stood prior to the recommendation of the 1st respondent
>
> (iv) an order of prohibition against the 1st, 2nd and 3rd respondents to restrain them and any other agents and/or employees of the Jamaican Government from de registering and/or tampering with the applicant's ability to register and renew the registration of the said motor vehicle in the future..."

[5] The initial application for leave was heard and refused by Anderson J, on June 24, 2014 on an *inter partes* hearing.

[6] At the hearing before me, Ms. Dickens, Counsel for the Respondents by way of a point taken *in limine,* objected to the hearing of the renewed application on the ground that the court had no jurisdiction to hear it. She therefore indicated that the application for enlargement of time was redundant.

[7] She expressed the view that the attempt to renew the application for leave to apply for judicial review is procedurally improper. Citing Rule 56.4(2) of the Civil Procedure Rule, (CPR), Counsel asked the court to note that there was an *inter partes* hearing in relation to the application for leave to apply for judicial review and this matter

is not a criminal cause or a criminal matter and does not concern the liberty of the subject.

[8] Counsel submitted that based on a purposive interpretation of the CPR, it is not open to the applicant to renew his application as his case does not fall within the categories outlined, where a renewal is permitted after a hearing is held. She therefore indicated that it is not appropriate to challenge the reasons for refusal in this forum and in this manner.

[9] Mr. Beswick directed the court's attention to the definition of "civil proceedings" in the Civil Procedure Rules which expressly embraces applications for judicial review, (Rule 2.2 ) and submitted that on a reading of the rule 56.4 the application by Ernesto Richards may be renewed, as although it is not a criminal matter it falls under "any other case". He indicated that the rule provides guidance on how to proceed as it states that the applicant may renew his application by lodging in the registry notice of his intention as has been done by the applicant.

[10] Counsel further submitted that the interpretative powers of the court are to be used "so that the court remains in control" and suggested that where there is a conflict between two portions of a legislative instrument, the interpretation to be applied is the one which favours the weaker party in the contest. This he says is favoured by the CPR Rule 1.1.

[11] He however indicated that there is no conflict between the sections of the rule as they are "contextual" and he further submitted that Rule 56 is a self contained rule. He stated that there is a Court of Appeal case which speaks to the fact that when interpreting the rule, one should not "to go to other sections." He however did not provide the court with any authority.

[12] He expressed the view that there is no obvious curtailment in Rule 56.5(1) and that the "sterile interpretation" favours the party who does not wish to have unassailable

facts put forward. He also noted that the only known method open to the applicant is to seek to quash the decisions by judicial review, hence the renewal application is made.

Law & Analysis

[13] Judicial review applications have distinctive features, hence permission is required before an application can be made, unlike in ordinary claims processes.

[14] Part 56 of the CPR deals specifically with administrative law and the procedure with respect to applications for administrative orders including applications for judicial review.

[15] The applicable provisions of that part of the CPR which relate to this matter are Rule 56.5(1) which states as follows:

> *"where the application for leave is refused by the judge or is granted on terms, (other than under rule 56.4(12)) the applicant may renew it by applying –*
>
> *a) In any matter involving the liberty of the subject or in any criminal cause or matter, to a full court; or*
>
> b) *In any other case to a single judge sitting in open court*,

and Rule 56.5(3) which reads: *"no application not involving the liberty of the subject or a criminal cause or matter may be renewed after a hearing."*

[16] The rules allow an applicant whose previous application for leave was refused, to renew the application by lodging in the Registry of the Supreme Court a notice of such intention within ten days of the judge's refusal. This in my view is a mandatory provision.

[17] Part 56 of the CPR has been consistently interpreted by the courts as plainly intended by the framers of the rules to be a self contained code for the conduct of proceedings of this nature. Rule 56.5 provides the mechanism for the renewal of an application for leave by an applicant who is dissatisfied by the refusal of leave.

[18] It is a cardinal rule of construction that words must be given their ordinary natural meaning. If leave is refused, rule 56.5 applies.

[19] It is my view that the words in part 56 are clear. Part 56.5(3) is very specific in stating the types of applications which may be renewed after there has been a hearing.

[20] The case of **Orrette Bruce Golding v Simpson Miller, SCCA** No 3/08 (unreported), delivered April 11, 2008, also provides guidance on the circumstances under which an applicant could renew his application for leave. The court at page 19 of the judgment, stated that *"the application does not involve the liberty of the subject or a criminal cause or matter. Recently this court in* ***Barrington Gray v The Resident Magistrate for Hanover****, Application No 148/07, delivered on the 23rd of November, 2007 held that an application for leave which was refused after a hearing could not be renewed..."*

[21] For emphasis, I note that Harris JA in **Golding** said *"Rule 56.5(3) does not allow the renewal of an application for judicial review save and except in matters affecting the liberty of the subject or in criminal causes..."*

[22] This matter before me does not fall within any of those circumstances. There is no dispute that there was an *inter partes* hearing before Anderson J. Although the application for leave was initially refused, it does not relate to a matter involving the liberty of the subject neither is it a criminal cause or matter.

[23] Counsel for the applicant has failed to give due consideration to all the provisions of the CPR which apply to the matter before the court, and in particular Rule 56.5(3), but instead sought to focus on the Rule 56.5(1) indicating that this matter falls under "any other cases." It is my view that "any other case" would relate to where the application for leave was granted on terms.

[24] I therefore do not find any merit in the submissions of Mr. Beswick. Accordingly, I find that by virtue of Rule 56.5(3) the application may not be renewed.

[25] The preliminary objection by Counsel for the Respondents is therefore upheld.

[26] The Respondents are entitled to costs which are to be taxed if not agreed.