



[2013] JMSC Civ. 31

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2013 HCV 00626

BETWEEN	NERINE SMALL	APPLICANT
AND	THE DIRECTOR OF PUBLIC PROSECUTIONS	RESPONDENT

Mrs. Georgia Gibson-Henlin and Mr. Mark Jones instructed by Henlin, Gibson, Henlin for Applicant. (Nerine Small present)

Mrs. Tracey-Ann Johnson, Mrs. Andrea Norton-Swaby and Mr. Garcia Kelly for the Respondent

IN CHAMBERS – Inter partes

6th February 2013 CAV 7th March, 2013

Application for Court Orders to prevent Director of Public Prosecutions exercising Constitutional Powers

CORAM: D.O. MCINTOSH, J

[1] This is an application for Court Orders, filed on the 5th February, 2013 seeking:

1. An Order of Certiorari to quash the decision of the Respondent dated January 30, 2013 to enter a Conditional Nolle Prosequi in respect of pending criminal proceedings in Regina v Caribbean Airlines Limited Information No. 26007/2012 in the Corporate Area Resident Magistrate's Court.
2. An Order of Prohibition to prevent the Respondent from carrying out her decision dated January 30, 2013 to enter a Conditional *Nolle Prosequi* in respect of pending criminal proceedings in Regina v Caribbean Airlines

Limited Information No. 26007/2012 in the Corporate Area Resident Magistrate's Court.

3. Alternatively, an Order of Prohibition to prevent the Respondent from directing the Applicant to meet with Caribbean Airlines as a condition precedent to exercising her discretion to her continuing criminal proceedings in Regina v Caribbean Airlines Limited Information No. 26007/2012 in the Corporate Area Resident Magistrate's Court.
4. The grant of Leave to operate as a stay of proceedings in Regina v Caribbean Airlines Limited Information No. 26007/2012 in the Corporate Area Resident Magistrate's Court until the application for judicial review is heard and determined.
5. Costs to the Applicant.
6. Such further and/or other relief as this Honourable Court deems just.

[2] The application is based on what Applicant claims to be a decision by Respondent contained in letters dated 30th January, 2013 and 1st February, 2013.

[3] One assumes that these orders are sought pursuant to an Application to seek leave for Judicial Review.

[4] Needless to say, if the Orders sought in the Application are granted there would be no need to seek leave for Judicial Review.

[5] Section 56.2(2)(a) give any person who has been adversely affected by the decision which is the subject of the application to apply for Judicial Review. This Court is of the view that the Director of Public Prosecutions has not made a decision that adversely affects the Applicant. There is an intimation that the Director of Public Prosecutions may exercise her Constitutional rights under Section 94(3)(c) of the Constitution of Jamaica.

[6] This Application is for the specific purpose of preventing the Director of Public Prosecutions from exercising her Constitutional rights. The right the Director of Public Prosecutions exercises would be within her discretion.

[7] The Courts cannot and should not interfere with the exercise of her powers (under the Constitution). If however the exercise of her powers are considered improper and/or unlawful, that could be subject to Judicial Review.

[8] To date there is no application for leave to seek Judicial Review because there has been no exercise of the Constitutional Powers of the Director of Public Prosecutions affecting the Applicant.

[9] It seems to this court that the Director of Public Prosecutions has been gratuitous and gracious to have suggested that the Applicant that she exhaust all her remedies before seeking to embark on a criminal prosecution. The same would be required before Applicant pursues Judicial Review. However, as indicated, apart from the application for Court Orders no application has been made for Judicial Review or any other claim filed.

[10] A conditional *Nolle Prosequi* does not put an end to a prosecution. It merely puts it on hold.

[11] For these reasons the Applications in Application for Court Orders, filed 5th February, 2013 are refused.