[2022] JMSC Civ 223

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2022CV00727

BETWEEN	**SONIA SMITH**	**1ST APPLICANT**
AND	**DONOVAN MCKENZIE**	**2ND APPLICANT**
AND	**JENNIFER WILLIAMS LIVINGSTONE**	**3RD APPLICANT**
AND	**THE KINGSTON AND SAINT ANDREW MUNICIPAL CORPORATION**	**1ST RESPONDENT**
AND	**THE NATURAL RESOURCES CONSERVATION AUTHORITY**	**2ND RESPONDENT**

IN CHAMBERS

Daniella Silvera-Gentles instructed by Livingstone, Alexander, Levy for the Applicant/Interested Party

Gavin Goffe- instructed by Myers, Fletcher and Gordon for the Respondent/Applicants

Rose Bennett Cooper and Sidia Smith instructed by Bennett, Cooper and Smith for the 1st and 2nd Respondents

Stewart Panton for the 3rd Respondent

Heard: September 23, 2022, October 5, 2022 and December 2, 2022

JUDICIAL REVIEW – leave to apply for judicial Review, Claim Form filed after 14 days of receipt of order, computation of time from receipt of order, Renewal of application for leave to apply for judicial review, Rule 56.2 (1) and (2), 56.4 (12), 56.5, and 56.11 (1) discussed; Meaning of directly affected, Interested party.

O. SMITH, J (AG.)

[1] This is a Notice of Application for Court Orders, (NOA) filed on behalf of VASS Properties and Logistics Limited on September 9, 2022 to be joined as an interested party and/or intervener in the claim. (VASS) They also seek orders that the orders made by Anderson, J on July 29, 2022 have lapsed.

[2] The Applicant, VASS, is a limited liability company with registered office at 8 First Street, Newport West, Kingston 13 in the parish of St. Andrew. The Respondents to this application are Sonia Smith, Donovan McKenzie and Jennifer Williams Livingstone, residents of Chancery Close or Chancery Hall Drive, in the parish of St. Andrew. They are the Applicants in the substantive matter. The 1st Respondent is the Kingston and St. Andrew Municipal Corporation, (KSAMC), the local planning authority and the 2nd Respondent is The Natural Resources Conservation Authority, (NRCA). They have also been served with the application but they made no submissions.

[3] The NOA seeks the following orders: (I have paraphrased them for expediency).

1. To have VASS joined as an interested party and/ or Intervener in the claim;

2. That the leave to apply for judicial review of KSAMC's permit has lapsed;

3. That the leave to apply for judicial review of NRCA's permit has lapsed;

4. That the order staying the NRCA's permit and the order that within 14 days of the order all construction work being done on the multi-family development has lapsed;

5. That the Fixed Date Claim Form filed on August 15, 2022 is a nullity and should be struck out;

6. Costs to be agreed or taxed.

BACKGROUND

[4] On March 3, 2022 the Respondents/Applicants, Sonia Smith, Donovan McKenzie and Jennifer Williams filed an Application for Leave to Apply for Judicial Review. They sought, in short, an order of certiorari to quash the building and planning permission granted to the Applicant herein by the 1st Respondent and an order of certiorari to quash the environmental permit granted to the Applicant herein by the 2nd Respondent to build a multi-family development at 34A and 34B Chancery Close, Kingston 19, in the parish of St. Andrew. (the buildings)

[5] On July 29, 2022, the Honourable Mr. Justice Kirk Anderson, who heard the Application, made the several orders. I will set them out in detail as they are necessary in understanding the current application:

1. The Applicants are granted Leave to apply for judicial review of the 1st Respondents decision to grant building and planning permits to VASS Properties and Logistics Limited (VASS) in respect of a multifamily development now being developed at 34A and 34B Chancery Close, in the parish of Saint Andrew, on the grounds as specified in their application for leave to apply for judicial review, which was filed on March 3, 2022.

2. The Applicants are granted leave to apply for judicial review of the environmental permit granted to Vass by the 2nd respondent on the ground of actual or apparent bias and as specified in grounds 5,6,7 and 8 of their application for leave to apply for judicial review, which was filed on March 3 2022.

3. The environmental planning and building permits granted to VASS are stayed with immediate effect within 14 days of today's date all construction work being done on the multifamily development at numbers 34A and 34B Chancery Close, Saint Andrew is to cease.

4. Conditional upon a claim for judicial review being filed in the requisite time period. A first hearing the Fixed Date Claim Form is scheduled to be held before a Judge in Chambers, on February 2, 2023 at 11:30 AM for one hour.

5. The costs of this said application shall be costs upon any future claim to be filed by the Applicants.

6. The Applicants shall file and serve this order and shall serve on VASS and also on the Respondents on the Town & Country Planning Authority and on the Minister of Local Government, care of the Ministry of Local Government.

[6] On August 15, 2022, the Respondents/Applicants filed the Fixed Date Claim Form (FDCF) along with the Affidavit in Support which had been ordered to be served with fourteen days of receipt of the order by Anderson, J on July 29, 2022. It this filing, I believe, that galvanized VASS into action and led to the them filing the NOA on September 8, 2022.

[7] On September 8, 2022 the Respondents/Applicants also filed a Notice of Intention to Renew and Amend Application for Leave to Apply for Judicial Review. They sought orders that:

"1. Permission is granted to the Applicants to apply for an order of certiorari to quash the 1st Respondent's building and planning permission granted to VASS Properties to erect a multi-family development at 34A and 34B Chancery Close, Kingston 19, in the Parish of Saint Andrew.

2. Permission is granted to the Applicants to apply for an order of certiorari to quash the 2nd Respondent's environmental permit granted to VASS Properties & Logistics Limited to erect a multi-family development at 34A and 34B Chancery Close, Kingston 19, in the parish of St. Andrew.

3. The grant of permission shall operate as a stay of the permits issued by the Respondents.

[8] However, when the current application came on for hearing before me, counsel representing the Respondents/Applicants indicated that he was abandoning the NOA in its entirety and instead made oral submissions on the computation of time. I have tried to reproduce them below I hope I have been able to do justice to them.

Affidavit of Stephon Henry on behalf of the Applicant

[9] An affidavit in support of the NOA, sworn to by Stephon Henry, Quality Assurance Manager and Director of VASS was also filed on September 8, 2022. He deponed that VASS was granted building, planning and environmental permits to construct a multi-family development at 34A and 34B Chancery Close in the parish of St. Andrew, (the Buildings). That on July 6, 2022, Justice Kirk Anderson ordered the applicants to serve VASS with the Application for Leave to Apply for Judicial Review. On July 29, 2022, Justice K. Anderson made the orders detailed in paragraph 5 supra.

[10] Being the developer of the land at 34A and 34B Chancery Close and to whom the permits were granted, he is a party directly affected by the orders, which was the

reason, he believes, VASS was ordered to be served. VASS has been severely affected by the orders which have halted construction. Consequently, VASS has been unable to service its loans, some of which have been recalled by the lender and it has not been able to secure new loans. This could result in VASS losing the property in question. Additionally, VASS has not been able to pay its suppliers who extended credit to the tune of over $25,000,000.00 with thirty-day repayment terms. Interest is accruing daily on the loan and over fifty workers have been displaced. The stay has had a serious psychological effects on the Directors of VASS "who have been adversely affected by the cessation of construction and the ensuing financial losses."

Submissions on behalf of VASS

[11] In support of its application to be made an interested party, VASS relied on Rule 56.2 of the CPR, specifically Rule 56.2 (1) and (2) to ground its argument that not only does VASS have sufficient interest in the subject matter but it has also been adversely affected by the orders made and as such they ought to be added as an interested party.

[12] VASS is the developer of the buildings to which the planning, building and environmental permissions were granted, which are the subject of the application for leave granted by Mr. Justice Anderson. Further, VASS is adversely affected by the grant of stay of the permissions and the order for the cessation of construction of the buildings. Counsel submitted that inherent in the order that VASS should be served with the Application for Leave was recognition of their status as a directly interested party, as per Rule 56.11 (1) and subsequently, the service Fixed Date Claim Form on them was a further recognition of VASS as a directly affected party. In support of this contention they relied on the judgement of Sykes J (as he then was) in ***R v Industrial Disputes Tribunal, ex parte J. Wray and Nephew Limited***, Claim No. 2009 HCV 04798, ***(R v IDT)***.

[13] As the recipient of the relevant permissions against which leave to apply for judicial review was granted, VASS is affected without the intervention of 'an intermediate agency'.

[14] In relation to their contention that the claim filed has lapsed, counsel looked at Rule 56.4 (12) and the authorities of ***Orrett Bruce Golding v Portia Simpson Miller*** SCCA No. 3 of 2008 (***Golding v Simpson) and The Minister of Finance and Public Service and Others v Viralee Latibeaudiere*** [2014] JMCA Civ 22 ***Minister of Finance v Latibeaudiere)***

[15] They also commended to the court t he case of the ***Royal Caribbean Cruises Ltd and Another v Access to Information Appeal Tribunal and Others*** [2016] JMCA App. (***Royal Caribbean Cruises (2)***) This case states that when computing time under rule 56.4 (12), within 14 days means that time begins to run from the date the actual order is given. As such Rule 3.2(2) and (3) of the CPR does not apply.

[16] Although the Respondents/Applicants abandoned their renewed Application for Judicial Review, VASS touched briefly on the application and argued that the Respondents/Applicant's application appeared to be grounded in the fact that Anderson, J did not grant leave for all the orders sought. This application they submitted was an admission that the previous leave granted by Anderson, J had lapsed. However, they also argued that this second application was not one the court could entertain. They placed reliance on Rule 56.5 of the CPR, in particular sub-section (3). The Rule is quoted in its entirety below. It outlines the circumstances under which an application for judicial review can be renewed. It provides that a renewed application for judicial review can only be made for matters concerning the liberty of the subject or a criminal cause.

[17] Counsel in response to Mr. Goffe's criticism of ***Andrew Wills*** indicated that although **Andrew Willis** was decided based on Rule 42.8 of the CPR, ***Golding v***

Simpson was not. It does not change the impact of the several Court of Appeal decisions on the issue, that time begins to run from the date the order was made.

Submissions on behalf of the Respondents/Applicants

[18] Counsel did not take issue with whether VASS was an interested party. In fact, he also conceded on the point of the computation of time and the effect it had on a Claim which was not served within the fourteen days. Counsel's main grouse was on the fine point of when time begins to run. He argued that time must be computed from the date of the filing of the Formal Order and as such the Fixed Date Claim Form filed on August 15, was within time.

[19] He was of the view that the case of ***Andrew Wills*** should be treated with caution as it concerned an application for permission to appeal. He preferred the authority of ***AG v John MacKay*** [2011] JMCA AC 26. Counsel relied on that case to say that there is no connection between the effective date of the order and when time begins to run for the next step.

[20] In arguing against ***Andrew Willis***, he also invited the court to look at the First Instance decision of ***Royal Caribbean Cruises Limited, Falmouth Jamaica Land Company Limited v Access to information Appeal Tribunal, Port Authority of Jamaica and Jamaica Environment Trust*** [2016] JMSC Civ. 61 (***Royal Caribbean Cruises (1)***) in which Bertram-Linton, J formed the view that Rule 3.2 of the CPR cannot aid in the calculation of time under Part 56. In so stating Counsel argued that it followed that Rule 42.8 of the CPR which deals with the time when a judgment or order takes effect could also not be relied. This was the basis for the decision in ***Andrew Willis***.

[21] He argued that there was a difference between when the order takes effect and when time begins to run, therefore it cannot be that time begins to run from the date of the order when the affected party is unaware. This, he said could lead to a party being completely shut out because of an error of the Court. In that regard, he submitted, that if you wanted to ascertain the intent of the framers then one had

to look at the source. He relied on ***Dennis Meadows, Betty Ann Blaine and Cyrus Rousseau v The Attorney General of Jamaica, The Jamaica Public Service Company Limited and The Office of Utilities Regulation*** [2012] JMSC Civ. 110.

[22] He further submitted that the decision in ***Golding v Simpson*** was based on the old rules. Therefore, it could not be relied on as an authority under Part 56 that the effective date of an order was when it was made. ***Andrew Willis***, he declared was the first case where the assertion was made,

[23] Finally, he submitted that there is a distinction between the cases that deal with the long vacation as they do not assist in the computation of time as it relates to judicial review.

ISSUES

[24] I have identified the following issues:

1. Whether the VASS properties can be deemed an interested party.
2. Whether the computation of time for service of the Claim Form runs from service of the formal order or from the date the orders were made
3. Whether the Respondents/applicants can renew the application for judicial review.

THE LAW

[25] Part 56 of the CPR deals with administrative law. Rules 56.2, 56.4 are relevant to these proceedings.

> *56.2 (1) An application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application.*
>
> *(2) This includes –*
>
> *(a) any person who has been adversely affected by the decision which is the subject of the application;*

(b) anybody or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);

Rule 56.4 (12)

"Leave is conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting leave.

Rule 56.5 (1)

"Where leave refused or granted on terms 56.5 (1) 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.

(2) A single judge may refer the application to a full court.

(3) No application not involving the liberty of the subject or a criminal cause or matter may be renewed after a hearing.

The Interpretation Act

Section 8 (1) In computing time for the purpose of any Act unless the contrary intention appears -

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;

(b) if the last day of the period is Sunday or a public holiday (which days are in this section referred to as excluded days) the period shall include the next following day, not being an excluded day;

(c) when any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day, not being an excluded day;

(d) when an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

Whether the VASS properties can be deemed an interested party.

[26] In ***R v IDT***, Sykes, J., as he then was, had to consider the meaning of 'sufficient interest' under Rule 56.2 of the CPR. He pointed out that "Part 56 distinguishes between persons "directly affected" and any person or body having a 'sufficient interest'." He observed, that a person who is directly affected must have sufficient interest, however, it did not mean that because a person, body or group had sufficient interest that they were directly affected.

[27] He relied on the definition of directly affected expressed by Lord Keith in ***R v Rent Officer and another Ex Pate Muldoon*** [1996] 1 WLR 1103, at page 1105, when he said;

> *"… directly affected by something connotes that he is affected without the intervention of any intermediate agency".*

[28] Justice Sykes indicated that the consequence of this was that persons who were directly affected "must be served" because, after the granting of leave, they have a right to participate in the proceedings. At paragraph 42 he said;

> *"By contrast persons not directly affected but with only sufficient interest are not conferred the same rights…they are restricted to making written submissions unless the court orders otherwise. No such restriction is placed on persons who are directly affected… . The rationale must be that persons directly affected have more at stake than a person with merely sufficient interest. The directly affected person is "affected without an intermediate agency."*

[29] He interpreted this to be the CPR giving a directly affected person the full right of audience. Sykes, J accepted that those words are not expressly stated in the CPR but reasoned that it must be the consequence of being in that class of persons. He drew support for this conclusion from Rule 56.11 (5) of the CPR which outlines the steps that an applicant must take to prove that the persons directly affected were served. See also ***Maurice Arnold Tomlinson v The Attorney General of Jamaica*** [2016] JMSC Civ. 119.

Analysis

[30] Rule 56.11 permits a judge to make an order that the claim form and affidavit must be served "on all persons directly" affected once leave is granted. VASS Properties was served with the relevant documents in this matter. I see that as an acknowledgment that they have a seat at the table in the fullest of terms as outlined by Sykes, J., in ***R v IDT***.

[31] In his affidavit, Mr. Stephon Henry indicated that VASS was directly affected by the orders as they are the company that is constructing the buildings in question. His affidavit, which is set out above, references how his company has been affected by the stays granted on July 29, 2022. I am therefore satisfied that the Applicant is a directly affected person and in all the circumstances has "full rights of audience" enabling it to make the application currently before the court.

Whether the computation of time for service of the Claim Form runs from service of the formal order or from the date the orders were made.

[32] There are several cases in this jurisdiction which address the issue of computation of time. These cases have examined the impact of; the **Interpretation Act**, Rule 3.2 of the CPR and Rule 42.8 on Rule 56.4 (12) of the CPR, if any. The starting point is the 2008 Court of Appeal decision of ***Golding v Simpson*****.** In that case, on December 13, 2007 Beckford, J., granted the respondent leave to apply for judicial review. Proceedings were stayed until January 10, 2008. Leave was granted in accordance with Part 56 of the Civil Procedure Rules, in particular, rule 56.4 (12) which is set out above. Service of the documents therefore; was to be effected within 14 days of December 13, 2007. That date being December 27, 2007. The Applicant did not file the relevant documents nor was the Respondent served. On January 10, 2008, the date set for hearing, the court was faced with a Notice of Application for Court Orders, to among other things extend the time for making the application granted on December 13, 2007.

[33] D. McIntosh, J., granted the extension and the appellants appealed his decision. At paragraph 11 of the judgment Panton, P said;

> *"By an amendment made on September 18, 2006, Rule 56.4(12) as mentioned earlier, provides that 'leave is conditional on the applicant making a claim for judicial review within 14 days of receipt of the order granting leave'. One does not require the use of a dictionary to appreciate that 'conditional' means 'not absolute', 'dependent'. In the instant circumstances, the leave that was granted was dependent on the applicant making her claim within fourteen days of the order. By ordinary calculation, the claim ought to have been made by the 27th December that is within fourteen days from the 13th December, 2007, the date of the order of Beckford, J, … The Interpretation Act provides that when an act is directed to be done within any time not exceeding six days, excluded days (that is, Sundays and public holidays) shall not be reckoned in the computation of time. That means that where, as here, the period is more than six days, excluded days are to be counted…"* ***Emphasis mine.***

[34] On page 20 of the judgment Smith J stated the consequence of failing to comply with the Rules:

> *"It seems to me that on the rule 56.4 (12) the consequence of failure to make a claim for judicial review within the prescribed time is that the leave will lapse it will become invalid."*

[35] Counsel for the Respondents/Applicants impugned the decision of ***Golding v Simpson*** as being based on the old rules. However, Panton, P was well aware that the case he cited, ***Re Board of Governors of Johnathan Grant High School, Ex Parte Castel Gordon*** (1997) 34 J.L.R. 592 was decided on rules that existed before the CPR. His point was, that Section 564 D (2) was somewhat similar to the present 56.4 (12). It states;"

> *"Unless the notice or summons is filed within fourteen days after leave has been granted the leave shall lapse."*

[36] The CPR says the very same thing. It is just stated more elegantly. In addition, as the Court had moved away from summons to Claim Form, the originating document is also different. Although not directly stated, Harris, JA in her judgement in ***Golding v Simpson***, confirmed when the time started to run, on page 39 she said;

> *"The order of December 13, 2007 mandated the respondent to have filed a Fixed Date Claim Form and Affidavit by December 27, 2007. This she failed to do. Her plight to pursue the remedy of judicial review ceased and determined as of December 27."*

Clearly, she had found that time started to run from the date of the order.

[37] The case of ***Andrew Willis*** is also instructive. This is the case that counsel for the Respondents/Applicants expressed should be treated with caution. I must say that I disagree with counsel on his approach to this case. The fact that the case was an application for permission to appeal does not detract from the issues which faced the Judge of Appeal in Chambers. The entire point of that case was that the first Instance judge, F. Williams, J (Ag), as he then was, upheld an objection by the respondent that since leave to apply for judicial review had been granted on condition that the claim formed be filed in 14 days and same had not been done, then the leave had expired. Consequently, the Claim Form was invalid and could not be renewed.

[38] On appeal it was argued that on the proper interpretation of Rule 56.4 (12) leave granted on condition that the Claim Form is served within 14 days of the order, did not contemplate an oral order, even if counsel was present when the order was made. It was argued that the computation of time should begin from the date of the filing of the formal order.

[39] The issues that faced the court were addressed by Phillips, JA as she weighed whether the application had a real chance of success. That case actually hits close to home. The Applicant in that case argued that "receipt" meant when the formal order was filed and not when the oral order was made by the judge.

[40] Phillips, JA resoundingly stated that;

> *"…once that leave is obtained, it must be acted on and if the claim is not filed within 14 days of obtaining the leave, it lapses. The leave is conditional on filing the claim within the time stated in the rules which is 14 days of receipt off the grant of leave. If the condition is not satisfied, when they leave is no longer valid. Any claim filed outside of that period is invalid."*

[41] In relation to the computation of time Phillips, JA relied on Rules 42.2 and 42.8 in interpreting Rule 56.4(12). She found, that based on 42.2 and 42.8, the order becomes effective once it is made. At paragraph 14 she said this, in reference to the order of the judge:

> *"It does not need to be served to be effective and binding. To obtain the order granting judicial review, however, the order for leave must be served with the application for leave and the affidavit in support on all those persons directly affected not less than 14 days before the date fixed before the day fixed for the first hearing."*

[42] She decided that by virtue of those rules the order was effective the moment it was made. The fact that an order was made orally did not make it any less binding.

[43] However, the Court of Appeal subsequently in ***The Minister of Finance v Latibeaudiere*** was at pains to point out that judicial review is a very specific and special area of the law. As such the general provisions of the CPR had no application in interpreting Part 56 unless specifically stated. This would directly affect that aspect of the reasoning in ***Andrew Willis*** but it was never stated. Morrison JA in fact relied on the reasoning of Panton, P in ***Golding v Simpson*** where at page 8, paragraph 10, he said:

> *"Part 11 of the Civil Procedure Rules provides 'general rules' in relation to application for Court Orders, whereas Part 56 deals specifically with Administrative Law. Where it is intended that these special rules are to be affected by other rules, it is so stated. For example, in Rule 56.13(1), it is provided that Parts 25 to 27 of the Rules apply…*
>
> *It cannot be that without there being a statement to that effect, the special rules are to be watered down by any and every other provision in the body of Rules. That would make a mockery of the entire Rules, and provide countless loopholes for dilatory litigants and their attorneys-at-law. The whole point of providing for the orderly conduct of litigation would be defeated."*

See also ***Reid and others v Christie and the Attorney General***

[44] In ***The Minister of Finance v Latibeaudiere*** Morrison, JA in emphasing that the general provisions of the CPR do not apply to Part 56 stated at paragraph 109;

> *"It seems to me, with respect, that by importing these general provisions of the CPR into Part 56, the learned judge failed to have sufficient regard to this special nature of judicial review proceedings and the fact that part 56, as consistently interpreted by the courts, was plainly intended by the framers of the rules to be, save where otherwise indicated, a self-contained code for the conduct of such proceedings."*

[45] Counsel commended the case of ***John MacKay***, to this Court as a better option than ***Andrew Willis.*** ***John MacKay*** also concerned an application for leave to appeal. However, it concerned the refusal of Anderson, J to set aside the default judgment granted by Rattray, J. The applicant had been granted permission to appeal but failed to file same in time in the Court of Appeal. The interpretation and impact of Rule 1.8 (1) and 1.8 (2) was therefore of importance in that case. That is, the application to the Court of Appeal must be made in writing within 14 days of the offending order regardless of whether or not the Court below had made its ruling.

[46] With respect to counsel, I do not find that this case provides any assistance to the court in determining the issue before it, particularly since that case placed reliance on rules in the CPR that Part 56 does not refer to.

[47] Finally, in **Royal Caribbean Cruises (2)** P. Williams, JA in coming to her conclusion, that in computing the 14 days within which the Claim Form and affidavit were to be filed after leave was granted to apply for judicial review, Part 3 of the CPR did not apply, at paragraph 61 said;

> *"To my mind, our resolution of this matter requires a closer consideration of rule 56.4 (12). This rule calls for an act to be done within 14 days. The day on which the period begins would be marked by the grant of leave to apply for judicial review. The end of the period is not defined by reference to an event, but the party granted leave is required to do something within a period of days. The leave granted is conditional upon something being done within a period of days. It follows from this, to my mind, that the computation of clear days as set out in Rule 3.2 has no application in these circumstances."*

[48] She instead took the route of rule 101 in statutory interpretation. That is, giving words their ordinary and natural meaning. To this end she continued at paragraphs 62 and 63:

> *"[62] It is a cardinal rule of construction that words must be given their ordinary and natural meaning. Relying on the Oxford dictionary, the word "within" is defined as "inside", "not further off than (a particular distance)" and "occurring inside (a period of time)", "not exceeding or transgressing", "not beyond or out of".*
>
> *[63] Applying this natural meaning to the rule would lead to the understanding of the rule being that leave is conditional on the applicant making a claim not exceeding or not beyond, or out of a period of 14 days. The calculation of time done in the cases which have considered this provision has been consistent with the method prescribed by the Interpretation Act; that is, by excluding the date from which the 14 day period is to be reckoned, but including the 14th day."*

Analysis

[49] The cases discussed above need no further analysis or assistance. In computing the 14 days within which the applicable documents must be filed once leave is granted, the day in which the act or thing is done is to be excluded. However, the act or thing must be done within the 14 days. The effect of 56.4 (12) cannot be escaped, if an applicant fails to make the claim for judicial review within fourteen days of receipt of the order granting leave to apply for judicial review, the leave expires. In the case at bar, leave was granted on July 29, 2022, by my calculation the fourteen days expired on August 12, 2022. The Claim Form and Affidavit were filed in this matter on August 15, 2022. The inescapable conclusion is that the leave has lapsed.

Whether the Respondents/Applicants can renew the application for judicial review.

[50] Rule 56.5 of the CPR allows an applicant to renew an application for leave where it had previously been refused or granted on terms. It sets out the conditions which must be met in order to qualify for renewal. The matter must be one involving the liberty of the subject, a criminal cause or matter. However, in these circumstances the application for renewal is to be made to the Full Court. If the application for renewal involves any other case then it must be heard by a judge in open court.

[51] The CPR is also rather specific in relation to an application granted on terms. It excludes those applications granted pursuant to rule 56.4 (12).

[52] This rule was reiterated in the Judgment of Smith, JA in the Court of Appeal decision of ***Golding v Simpson*****.** Having examined rule 56.5 he concluded on page 18 to 19 that:

> *"It is not disputed that the application does not involve the liberty of the subject or a criminal cause or matter. Accordingly, by virtue of rule 56.5 (3), the respondent's application may not be renewed. Recently this court (Smith, J.A., Harrison, J.A., and G. Smith., J.A (Ag)) in* ***Barrington Gray v the Resident Magistrate for the parish of Hanover****, Application No. 148/07 delivered on the 23rd of November, 2007 held that an application for leave which did not involve the liberty of this subject or a criminal matter and which was refused after hearing could not be renewed.*

[53] Smith, J.A., went on to point out that the rules also do not permit a renewal of an application if the applicant has failed to make the claim pursuant to rule 56.4 (12). On page 19 he continued:

> *"Further, rule 56.5 (1) does not permit the renewal of an application for leave where the applicant has failed to make a claim for judicial review pursuant to rule 56.4 (12)."*

[54] This dictum was approved by Phillips, J.A., in the case of ***Andrew Willis*****,** at paragraph 16 she said:

> "*I accept the dicta of the court in the* ***Bruce Golding*** *case (supra) with regard to the interpretation to be given to Rules 56.4 (12) and 56.5. The applicant cannot renew the application for leave to file a claim for judicial review. Leave was not granted on any terms. Leave was granted at the hearing before Sinclair- Haynes, J and this application for leave relates to matters concerning taxes … not to an application involving the liberty of this subject or a criminal cause or matter."*

Analysis

[55] There was a hearing before Anderson, J on July 29, 2022 as a result of which he issued a number of orders including an order that" leave is conditional on a claim for judicial review being filed within the requisite time period..." Clearly therefore, this matter is to be determined pursuant to Rule 56.4 (12). The orders sought in the September 8, 2022 NOA filed by the 1st Respondents are, in my view, no different. They also involve the building permits granted by the 1st Respondent to

VASS Properties and the granting of an environmental permit by the 2nd Respondent to VASS properties in relation the development at 34 A and 34B Chancery Close, Kingston 19. It does not involve the liberty of anyone, neither is it a criminal cause or matter. Consequently, the Respondents/Applicants cannot renew the application for leave to file a claim for judicial review nor does this court have the power to grant any of the amendments sought. I believe counsel was quite correct in abandoning that application.

Orders

[56] The Application is granted in terms paragraphs 1 – 6 of the Notice of Application for Court Orders filed on September 8, 2022.

[57] Applicant/Interested Party attorneys -at-law are to prepare. file and serve the orders herein.