REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2013-01845

BETWEEN

SOCA FOR PEACE FOUNDATION

APPLICANT

AND

THE REGISTRAR OF THE SUPREME COURT OF JUDICATURE

RESPONDENT

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Farai Hove Masaisai instructed by Ms Thandiwe Hove Masaisai for the Applicant

Mr Kelvin Ramkissoon and Ms Josefina Baptiste-Mohammed instructed by Ms Stephenie Sobrian for the Respondent

Dated: 3 June 2013

RULING

1. By application and affidavit filed 29 April 2013, the applicant, Soca For Peace Foundation, sought permission to file judicial review proceedings against the Registrar of the Supreme Court of Judicature (the Registrar) seeking several reliefs relating to the provision of a transcript of court proceedings of the Court of Appeal. On **20 September 1996** the Court of Appeal had made a finding on an appeal against one Horace Lionel Hosein convicting him of offences under the Customs laws and the Firearms Act. There is an official written record of the extempore judgment given which is available to the applicant.

2. On 9 and 10 August 2010, Mr Anthony Hosein made a request to the Honourable Chief Justice for a copy of the transcript of proceedings (other than the record of the extempore judgment) in CA No. 60 of 1992, which were the proceedings referred to above. Anthony Hosein is the son of Horace Lionel Hosein who has since passed away. Anthony Hosein is also the Chair of the applicant.

3. By letter dated 16 August 2010, Rayana Dowden, Judicial Research Assistant, Office of the Chief Justice, responded. Her letter states that she was directed by the Honourable the Chief Justice to respond to his correspondences dated 9 and 10 August 2010. She further wrote:

> "I am to advise that the written judgment in the above referenced matter, (which is the only public document on the proceedings), as well as the transcript were reviewed. From this review, it was found that the written judgment has thoroughly addressed all the arguments before the court. Consequently, your request for the transcript of the proceedings is denied.
>
> Please note that this is His Lordship's final decision on the matter."

4. About a year later, Mr Hosein wrote to the Registrar requesting the same transcripts. He noted in that letter that his father was convicted and it was his legal opinion that there was a serious miscarriage of justice in this matter and he wished to obtain legal opinion and to explore avenues to reopen the matter or institute legal action against the State.

5. He sent another letter to the Registrar dated 12 September 2011. On 28 October 2011 he received a response from the then Registrar, Ms Evelyn Ann Peterson, that the letter was receiving her attention. Other letters passed, and on 18 May 2012, Mr Hosein received a letter from Ms Marissa Robertson, Acting Registrar, that his request "for transcripts in these proceedings have been denied".

6. On 26 September 2012, more than 3 months after receiving Ms Robertson's letter, Mr Hosein wrote to Ms Robertson requesting a reconsideration of the request and reasons if

the Office of the Registrar continued to deny his request. In the penultimate paragraph of this letter he wrote:

> "I wish to again reiterate that I have been advised by counsel that there are sufficient grounds to appeal this matter. The decision of the court of appeal in this case was a miscarriage of justice, since the indictment was illegal in law, in addition to the fundamental breaches by the court in arriving at its decision."

7. He further noted that his inability to gain access to the transcripts is hindering his ability and right to gain access to the higher court. There was nothing new set out in this letter as to why reconsideration should be given to the request since he had previously set out the reasons for wanting to get the transcript.

8. On 2 October 2012, Ms Robertson, now Registrar, wrote to Mr Hosein that his "correspondence in the matter at caption is receiving attention."

9. Mr Hosein wrote again to the Registrar on 16 January 2013 and the Registrar replied on 30 January 2013 as follows:

> "I refer you to the correspondence dated 16th August, 2010 of Ms. Rayana Dowden, Judicial Research Assistant, Office of the Chief Justice and to the correspondence dated 26th August, 2011 of Ms. Michelle Mayers, Judicial Research Assistant, Office of the Chief Justice when you were advised that "the written judgment in this matter, the only public document on the proceedings, has thoroughly addressed all the arguments of the Court and consequently, your request for the transcripts of proceedings is denied."
>
> You were also advised that this decision was the final decision of the Honourable the Chief Justice."

10. On 28 March 2013 Mr Hosein, as Chairman of the Soca for Peace Foundation, sent a pre-action protocol letter to the Registrar.

11. On 16 April 2013 Ms Stephenie Sobrian, attorney-at-law, Chief State Solicitor's Department, replied to the pre-action protocol letter. I note that the fact of this reply was not set out by the applicant in its application.

STANDING

12. The first issue for consideration is whether the applicant has standing to bring this claim. The application sets out that the applicant is bringing this claim as a public interest group under section 5(6) and/or section 7(1) of the **Judicial Review Act 2000** and/or under **Part 56.2 (b)** of the **Civil Proceedings Rules 1998 (as amended)** for and on behalf of Anthony Hosein who is "a poor and disadvantaged citizen".

13. No evidence has been given by the applicant as to the work of the applicant foundation or of any connection with it to Mr Hosein except that he is the Chairman of the Foundation. At best, in the pre-action letter of 28 March 2013, it is set out that Mr Hosein is the holder of a LLB degree from the London Metropolitan University and is a public officer in the Ministry of Legal Affairs. Further, the pre-action letter says that in his capacity as Chairman of the Foundation since 2010, he has undertaken and pursued "relentless human rights and humanitarian work to the benefit of the community and the wider citizenry". There is no other evidence of what the Foundation does.

14. In considering whether to grant leave to an applicant under the Judicial Review Act (JRA), the court can give leave on the issue of standing on 3 bases. The first is where the applicant's interest is adversely affected, which may be called personal standing. The second may be described as public interest standing. The third basis may be described as 'Good Samaritan' standing where the applicant is not seeking to protect his own interest but is seeking to protect the interest of another person or group who is unable to do so

themselves - see **Chandresh Sharma v Dr Lenny Saith and Another** CA No. 29 of 2006, delivered 9 June 2008, per Mendonca J.A. at paragraphs 11 to 16.

15. There is no evidence before this court that Anthony Hosein in his personal capacity is unable to file this application owing to the factors set out at section 5(6) of the JRA. An applicant who seeks to bring a claim as a "good samaritan" must set out adequate particulars to satisfy the requirements of section 5(6).

16. On the second basis that the application is justifiable in the public interest, the court may take account of any relevant factor, including those set out at section 7(7) of the JRA:

> 7(7) In determining whether an application is justifiable in the public interest the Court may take into account any relevant factor, including—
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> the need to exclude the mere busybody;
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> the importance of vindicating the rule of law;
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> the importance of the issue raised;
>
> the genuine interest of the applicant in the matter;
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> the expertise of the applicant and the applicant's ability to adequately present the case; and
>
> the nature of the decision against which relief is sought.

(See also **CPR, Part 56.2**)

17. In this application there is nothing to suggest that the applicant has any genuine interest in the matter, that the applicant has any expertise or that the applicant has the ability to adequately present the case. An issue to be considered therefore is whether there is any special case made out for vindicating the rule of law or establishing the importance of this issue from a public interest point of view.

18. It is not clear what is the rationale for the applicant seeking to be involved except that the chairman of the applicant Foundation is the son of the person concerned. There is also not raised any matter of public importance or the necessity for vindicating the rule of law. Without any evidence of the quality and sufficiency necessary to establish the credentials of the applicant, the applicant falls very close to the position of a busybody.

19. In the case of **R v Secretary of State for Foreign Affairs, ex parte World Development Movement** [1995] 1 All ER 611 at 617-618, Rose L.J. set out the kind of evidence which may establish the standing to bring a public interest claim. The applicant here has produced nothing on which the court can make an assessment. I hold therefore that the applicant has no standing to bring this claim. Mr Hosein in his personal capacity may have stood a better chance.

20. The issue of personal standing also does not arise since it would have been Mr Hosein's father who would have had a personal interest in obtaining the transcripts.

DELAY

21. Another issue is whether the applicant has been guilty of undue delay. An application for judicial review must be made promptly and ordinarily within 3 months of the decision being made: see section 11 of the JRA.

22. In this case there were 3 denials for the requested transcripts. The first was on 16 August 2010 by the Office of the Chief Justice. The second was on 18 May 2012 by the Registrar. A third denial was given on 30 January 2013 by the Registrar.

23. The appropriate decision to be challenged as concerned the Registrar, in my view, was the decision of 18 May 2012 denying the request. Notwithstanding the Registrar's letter of 2 October 2012 that the 26 September 2012 request was "receiving attention", nothing new had been advanced by Mr Hosein for the consideration of the Registrar. Therefore, the 30 January 2013 letter from the Registrar must be seen as only a reiteration of the previous decision of 18 May 2012.

24. I hold therefore that the decision to be challenged was made on 18 May 2012 and the applicant has not acted promptly in all the circumstances.

PROVISION OF DOCUMENTS

25. Sections 35(1) and (2) of the Court of Appeal Rules made under the **Supreme Court of Judicature Act** Chap 4:01 provide for the Registrar to provide to an appellant or respondent, or the attorney-at-law or other person representing them, copies of any documents or exhibits in his possession for the purpose of such appeals.

26. Section 2(1) of the Court of Appeal Rules provides that where a recording of the proceedings at the trial of a person convicted on indictment is taken by shorthand notes, the shorthand writer shall forward such notes to the Registrar. Section 2 (4) provides that a "party interested" in an appeal may obtain from the Registrar a copy of the transcript. Further, section 2(5) provides that a **"party interested"** means the prosecutor or the person convicted, or any other person named in, or immediately affected by, any order made by the Judge, or other person authorised to act on behalf of a party interested, as so defined.

27. What is clear is that neither Anthony Hosein nor the applicant Foundation falls within these categories of persons. There is no entitlement therefore to either Mr Hosein or the applicant to obtain a copy of any transcript. Thus, any granting of a request to Mr Hosein or the applicant would have been discretionary.

28. The question is whose discretion is it to exercise? The applicant's attorney submits that it is for the Registrar to decide relying on the statutory provisions set out above. There is nothing from which it can be concluded to say that that discretion should reside in the Registrar. It may well be the case and plausible grounds can be advanced that such a discretion should reside in the Honourable Chief Justice. So I am not persuaded that it was not within the remit of the Office of the Chief Justice to consider and refuse the application on 16 August 2010.

29. It is also significant and a matter of which the court can take judicial notice that the appropriate documents which an appeal court ordinarily reviews when considering an appeal from the Magistrates' Court is the record of proceedings before the Magistrate. Written or oral submissions may be made before the court hearing the appeal, but it is primarily the record which would be reviewed together with the submissions advanced. Nothing has been put forward by way of evidence to demonstrate that there was any "smoking gun" to be revealed in the appeal court transcripts.

30. Further, it would not have been unreasonable for the Registrar to consider any rationale set out previously by the Office of the Chief Justice. In the letter of 16 August 2010, it was noted that the written judgment had thoroughly addressed all the arguments before the court and was the only public document in the proceedings. In the circumstances where the Registrar on 30 January 2013 makes reference to the rationale set out in the 16 August 2010 letter, this cannot be seen as being unreasonable. The Registrar had considered the matter on 18 May 2012 and again on 30 January 2013 and refused the request.

31. Therefore, on the substantive issue challenging the Registrar's decision to refuse the transcript request, I hold that this decision was not irrational, unreasonable nor was it illegal. I also hold that no legitimate expectation could have arisen from the Registrar's letter dated 2 October 2012 since all that letter sets out is that Mr Hosein's correspondence was receiving attention. This cannot be equated with any suggestion that it would be **favourably considered**. Receiving attention means no more than it says. One expects that any written communication to an office holder would receive attention. The term connotes nothing more than an acknowledgment of the receipt of the communication and that it is being considered.

32. A further issue raised was whether the Registrar was obliged to give a hearing to Mr Hosein before making a decision on the request. Applications such as these would generally

be made by letter. A party would be entitled to set out all the circumstances and reasons for requiring a copy of the transcript. The appropriate authority would no doubt have to give consideration to the reasons for the request. It is not every decision that for which a requesting party would be entitled to a hearing before a request is considered. In my view, it would be burdensome and impractical and wholly unreasonable to impose a requirement for a further hearing on a matter such as this. An adequate hearing would be to consider whatever information is put forward in the requesting letter. I therefore reject any suggestion that a further hearing would be required in consideration of such a request unless the decision maker needed to clarify any matter raised in the request.

ALTERNATIVE REMEDY

33. I also find that there was an alternative remedy available in the event Mr Hosein wished to pursue further proceedings in relation to the conviction of his father. If, for example, he had sought to file a petition for special leave to appeal (assuming such a petition would be considered), it would have been open to him in that proceeding to seek an order that he be furnished with whatever documents were in the possession of the Court of Appeal.

34. I note that there is no appeal, and nothing has been advanced other than to say there was a miscarriage of justice to justify any appeal, 17 years now after Mr Hosein's father was

convicted. Mr Hosein's father himself, it appears, never himself pursued any appeal. It is to be noted that a perusal of the judgement of the Court of Appeal delivered on 20 September 1996 runs to 21 pages. The powers that the court would have in such circumstances would be adequate to grant the relief being sought. The request seems to be speculative at best to see if any grounds may turn up.

DISPOSITION

35. On the test set out in **Sharma v Brown-Antoine** [2006] UKPC 57 therefore, this application fails patently. That test is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy. I conclude that there is no realistic prospect of success and also that there are discretionary bars as set out above. This application for leave is therefore refused. For completeness I should note that I found it unnecessary to take account of the affidavit filed by the Registrar resisting the application, but I did consider the affidavit of Ms Sobrian which deposed to formal matters.

36. I have considered that **section 7(8)** of JRA provides that where an application is filed under section 5(6), the Court may not make an award of costs against an unsuccessful

applicant, except where the application is held to be frivolous or vexatious. I have considered in all the circumstances that an award of costs should not be made in this instance. Mr Hosein as Chair of the applicant has misguidedly in my view brought this claim. He was essentially seeking the review of a conviction made against his father. Although details have not been given of the human rights work the Foundation does, it may well be that an onerous costs order may stymie any good work the Foundation may be embarked on at present. I also do not wish to send any signal that may have the unwitting effect of discouraging genuine public interest litigation. In those premises I will make no order as to costs against the applicant.

Ronnie Boodoosingh

Judge