

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2008-04646**

**BETWEEN**

**ABZAL MOHAMMED**

**CLAIMANT**

**AND**

**POLICE SERVICE COMMISSION**

**DEFENDANT**

**Before The Honourable Mr. Justice Stollmeyer**

**Appearance:**

**Mr. A. Ramlogan for the Intended Claimant**

**JUDGMENT**

This is an application for leave to issue a claim for the review of a decision of the Defendant that the Claimant has no right of appeal against a finding made against him on certain disciplinary charges.

That finding was conveyed to him by letter of 6<sup>th</sup> August 2008. That letter also informed him that he had no right of appeal.

The application for leave was filed on 26<sup>th</sup> November 2008. I raised the issue of delay and directed that the Defendant be present at the hearing of the application on 3<sup>rd</sup> December 2008. On that day, and after hearing Mr. Ramlogan and Mr.

Martineau who was present on behalf of the Defendant, I directed that written submissions be filed on behalf of the Claimant on the issue of delay, and said that if I needed assistance from the Defendant I would so inform its Attorneys. Mr. Ramlogan's submissions on behalf of the Claimant were filed on the 17<sup>th</sup> December 2008.

They are brief. In essence they are that if there was delay:

1. The delay was not undue;
2. It was caused by complying with the Practice Direction requiring compliance with the provisions of the Pre-Action Protocol;
3. (As I understand the submission) no prejudice will be caused to any person by extending the time for filing the application for leave.

It is clear that there was delay. In my view it was undue. The Claimant knew full well what his position was when he received the Defendant's letter of 6<sup>th</sup> August 2008. Complying with the Pre-Action Protocol cannot in this instance be a valid reason for the delay. Indeed, while the purpose of the Pre-Action Protocol is to put an intended Defendant on notice of the potential claim and inform him of the bases of the claim, failure to comply carries with it certain potential adverse consequences. Generally it is in costs, because a potential defendant has not been given the opportunity to put forward his side of the case, and no opportunity has been given for a resolution of the matter without recourse to the Courts. Just as important, if not moreso, is that the parties should attempt to resolve their differences without resorting to litigation. It must be appreciated, of course, that the penalty in costs will not arise in an instance where there is urgency to the matter thus not permitting compliance – or full compliance – with the requirements of the Pre-Action Protocol.

An application for leave to issue a claim in judicial review must be made without delay and although this does not dispense with the requirement to observe the Pre-Action Protocol, it does impose upon a claimant an element of additional urgency. In the present case, the application for leave was filed 5½ months after the Defendant's letter. The application for leave states expressly that there has been no delay despite the claim for *certiorari* which in general requires the application to be filed within three months of a decision, but where any application is made 5½ months after the decision it is incumbent upon the applicant to put forward the circumstances explaining the lapse of time. No attempt to do so is made in the supporting affidavit.

I do not consider the Claimant's explanation in his supplemental affidavit filed on 17<sup>th</sup> December 2008 (for which no leave was sought, but which I have considered) sufficient to justify the lapse of time. I am given no good or satisfactory reason either for the delay, or to support an application for extending the time to file the application.

The submissions do not assist me in determining any other issue that may arise on the application. It does not therefore appear appropriate that I consider the question of whether there is prejudice to any other party, or any other issue. Nor do I think it necessary to call upon the Intended Defendant for any assistance.

The application is dismissed.

20<sup>th</sup> February 2009

C.V.H. Stollmeyer  
Judge