IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Sub Registry, San Fernando

HCA NO. CIV. 2017-02985

EX PARTE

1. LYNETTE HUGHES, Representative of the Estate of CINDY CHLOE WALDROPT Deceased
   (Petitioner/1st Claimant)
2. LYNETTE HUGHES Guardian as Litem and Next Friend for KAILON WALDROPT
   (Petitioner/2nd Claimant)
3. LYNETTE HUGHES Mother and Grandmother for and on her own behalf
   (Petitioner/3rd Claimant)

AND

1. THE COURT OFFICE OF THE DOCKET MANAGEMENT SYSTEM 1st Respondent
2. THE HON. MR. JUSTICE FRANK SEEPERSAD 2nd Respondent
3. THE HON. MR. JUSTICE KEVIN RAMCHARAN 3rd Respondent

IN THE MATTER OF
CRIMINAL AND CIVIL H.C.A. NO. Civ. 2014-02749

SOUTH WEST REGIONAL HEALTH AUTHORITY 1ST Defendant

DR. PERSAD 2ND Defendant

DR. LEWATTEE 3RD Defendant

DR. R. MOHAMMED 4TH Defendant

And

INSURERS OF SWRHA AND/OR DEFENDANTS 1 TO 4 Co-Defendants

Decision on application for Review by Oral Hearing of the Honourable Mr. Justice Rampersad's Order Dated 15th August 2017 Refusing Leave to File Judicial Review – Petition of Mandamus

Background

1. This cause of action CV2017-02985, was filed, on the 14th of August 2017 by Lynette Hughes in a number of capacities. Firstly, as Representative of the Estate of Cindy Chloe Waldropt, secondly as Guardian ad Litem and Next Friend for Kailon Waldropt and as mother and grandmother and on her own behalf. The Respondents to the cause of action are firstly, The Court Office of the Docket Management System, the Hon. Mr. Justice Frank Seepersad and the Hon. Mr. Justice Kevin Ramcharan.

2. The orders requested in the Claim were various and arouse out of perceived decisions and indecisions from a previously filed and ongoing Claim before the court, namely CV2014-02749. The Applicant requested an ex parte hearing of the application to file Petition or Writ of Mandamus to be deemed fit to be heard in the Court Vacation.

3. By order dated 15th of August 2017, leave was refused by Rampersad J, to file a writ of mandamus as requested on the basis that the actions of judicial officers are immune from judicial review.

4. By application filed on the 28th of August 2017, the applicant seeks an Ex Parte Originating Motion for Urgent Consideration of a Request for an Oral Hearing to reconsider the Refusal of Leave to File a Writ of Mandamus.

Issues and analysis

5. This action raises four primary issues and the answers to these will serve to resolve this application. The issues are the review of a decision made by a judge of the high court, the nature of a writ of mandamus, judges' immunity from suit and whether an action can be sustained against THE COURT OFFICE OF THE DOCKET MANAGEMENT SYSTEM (the 1st Respondent).

6. The first question to answer is whether this application to re-consider the refusal of leave to file a writ of mandamus is sustainable. The Civil Proceedings Rules 1998 as amended (CPR), Part 56 details the process to apply for leave to apply for judicial review. For convenience the CPR, Rules 56.3 and 56.4 and it is copied below

Judicial review—application for leave

56.3 (1) No application for judicial review may be made unless the court gives leave.

(2) An application for leave may be made without notice.

(3) The application must state—

(a) the name, address and description of the applicant and respondent;

(b) the relief including in particular details of any interim relief sought;

(c) the grounds on which such relief is sought;

(d) the applicant's address for service;

(e) whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued;

(f) details of any consideration which the applicant knows the respondent has given to the matter in question in response to a complaint made by or on behalf of the applicant;

(g) whether any time limit for making the application has been exceeded and, if so, why; and

(h) whether the applicant is personally or directly aggrieved by the decision about which complaint is made; or

(i) where the applicant is not personally or directly aggrieved, what public or other interest the applicant has in the matter; and

(j) the name and address of the applicant's attorneys (if applicable).

(4) The application must be verified by evidence on affidavit which must include a short statement of all the facts relied on.

(5) The applicant must file his application for leave and affidavit not later than the day before the application is to be heard unless the court otherwise orders.

Judicial review—hearing of application for leave

56.4 (1) An application for leave to make a claim for judicial review must be considered by a judge of the High Court.

(2) The judge may give leave without hearing the applicant.

(3) However, if—

(a) the judge is minded to refuse the application;

(b) the application includes a claim for immediate interim relief; or

(c) it appears that a hearing is desirable in the interests of justice,

he must direct that a hearing in open court be fixed.

(4) The judge may direct that notice of the hearing be given to the respondent or the Attorney General.

(5) Where the application relates to any judgment, order, conviction or other proceedings which are subject to appeal, the judge may adjourn consideration of the application to a date after the appeal has been determined.

(6) The judge may allow the application to be amended.

(7) The judge may grant leave on such conditions or terms as he considers just.

> (8) Where the application is for an order of prohibition or certiorari the judge must direct whether or not the grant of leave operates as a stay of the proceedings.
> (9) The judge may grant such interim relief as appears just.
> (10) On granting leave the judge must either direct when the case management conference shall take place or, in cases of urgency, or where he considers a case management conference is not necessary, fix the date of hearing of the application for a judicial review and give any appropriate consequential directions.
> (11) Leave must be conditional on the applicant making a claim for judicial review within 14 days.

7. Leave was sought and determined by the order made by the judge on the 15th day of August 2017. The applicant was clearly aggrieved by the decision made by the judge. The recourse for such grievance is an appeal of the judge's decision in the ordinary course and by the usual procedure. The CPR, Rules 56 (3) and (4) do not provide any special provision for appealing refusal of leave to apply for judicial review. The law on civil appeals from the High Court to the Court of Appeal is detailed in the Supreme Court of Judicature Act Chapter 4:01, Section 38 and is copied below

> 38. (1) Subject as otherwise provided in this Act or in any other written law, the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the High Court, in all civil proceedings and for the purposes of and incidental to the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the power, authority and jurisdiction of the High Court.
> (2) No appeal shall lie, except by leave of the Judge making the order or of the Court of Appeal from—
>> (a) an order made with the consent of the parties;
>> (b) an order as to costs;
>> (c) a final order of a Judge of the High Court made in a summary proceeding.

8. Like all such cases where the applicant is aggrieved by the refusal of the court to grant leave to apply for judicial review, the recourse is an appeal to the Court of Appeal as in the cases of Singh, Vijay v The Ombudsman[1] and Warde-John, Yonnet v Minister of National Security; Chief Immigration Officer[2].

1 C.A.CIV.S. 89/2017 Date of Delivery: 2017.05.22
2 C.A.CIV.P.382/2016 2017.02.13

9. Based on the above, the court will now briefly consider the other questions raised in the application. If this court had jurisdiction to consider the application for leave to file an application for judicial review, the second question for this court to answer is when can an Application for a Writ of Mandamus be made and sustained. In answering that question the court considered the current state of the law regarding Writs of Mandamus and in particular De Smith's Judicial Review[3] where it was stated

> Today the main role of the order of mandamus, now obtainable only in CPR PT 54 judicial review proceeding (and called a mandatory order), is to compel inferior tribunals to exercise jurisdictions that they have wrongfully declined, and to enforce the exercise of statutory duties and discretion in accordance with the law…The primary function of the writ was to compel inferior tribunals to exercise jurisdiction and discretion according to law (15-035 - 037)

10. The court also considered Judicial Review Principles and Procedure[4], where it was stated

> where on a claim for judicial review, a court holds that an enactment, decision, act or failure to act is unlawful, there are five main final remedies available: a declaration, a quashing order, a prohibiting order, a mandatory order and an injunction…A quashing order, a mandatory order, a prohibiting order, and an injunction restraining a person from acting in an office in which he or she is not entitled to act may only be granted on a claim for judicial review (30.1 - 30.2).

11. Claims for judicial review (including mandamus) are brought under the direction of the CPR, Part 56. The CPR Part 56 governs applications for Administrative orders and states at CPR, Rule 56.1

> 56.1 (1) This Part deals with applications—
> (a) for judicial review (which includes mandamus, prohibition and certiorari);
> (b) by way of originating motion under s.14(1) of the Constitution;
> (c) for a declaration in which a party is the State, a court, a tribunal or any other public body; and

3 De Smith's Judicial Review. The Rt Hon the Lord Woolf, Professor sir Jeffrey Jowell QC, Professor Andrew Le Suer, Catherine Donnelly and Ivan Hare. 7th Edition 2013 – Sweet and Maxwell.

4 Judicial Review Principles and Procedure. Jonathan Auburn, Jonathan Moffett and Andrew Sharland. 2013 Oxford University Press.

(d) where the court has power by virtue of any enactment to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a minister or government department or any action on the part of a minister or government department.

(2) In this Part such applications are referred to generally as "applications for an administrative order

12. In this claim the applicant has sought to bring a claim for a writ of mandamus or a mandatory order as a substantive claim separate and apart from the subsisting Claim CV2014-02749. The subsisting claim is not a claim for judicial review.

13. The CPR, Rule 56.1 (1) (a) has subsumed mandamus, prohibition and certiorari as part of the judicial review application process as stated earlier. The CPR is explicit in laying down strict rules and guidelines for the bringing of an application for judicial review (including mandamus) and for administrative orders generally. These rules are detailed in the CPR, Part 56 and provide as follows at Rule 56.7

56.7 (1) An application for an administrative order must be made by a fixed date claim identifying whether the application is—

(a) for judicial review;
(b) under section 14(1) of the Constitution;
(c) for a declaration; or
(d) for some other administrative order (naming it).

(2) The claim form in an application under section 14(1) of the Constitution shall serve as the originating motion mentioned in that section and shall be headed "Originating Motion".

(3) The claimant must file with the claim form an affidavit.

(4) The affidavit must state—

(a) the name, address and description of the claimant and the defendant;
(b) the nature of the relief sought identifying—
(i) any interim relief sought; and
(ii) whether the claimant seeks damages, restitution or recovery of a sum due or alleged to be due, setting out the facts on which such claim is based and, where practicable, specifying the amount of any money claimed;
(c) in the case of a claim under s. 14(1) of the Constitution, the provision of the Constitution which the claimant alleges has been, is being or is likely to be breached;
(d) the grounds on which such relief is sought;
(e) the facts on which the claim is based;
(f) the claimant's address for service; and

(g) the names and addresses of all defendants to the claim.

14. A review of the application in this case shows that it does not comply with the CPR in many respects. In the first instance there is no application for judicial review of a decision of an inferior tribunal. There are no circumstances where it can be said that judges of the High Court are inferior to another judge of the High Court. This court therefore has no jurisdiction to direct or order judges of the High Court to perform any act.

15. There is also the third issue of the immunity of suit for judges. One of the core pillars of the independence of the judiciary is that judges enjoy immunity from suit from the decisions made by them while performing their judicial functions. The issue of judges' immunity from suit has been settled. In M'Creadie v Thomson[5] it was held

> Upon the question of immunity of the Judges of the Supreme Court there can be no doubt. The principle is clear and the decisions are emphatic. The principle is that such Judges are the King's Judges directly, bound to administer the law between his subjects, and even between his subjects and himself. To make them amenable to actions of damages for things done in their judicial capacity, to be dealt with by Judges only their equals in authority and by juries, would be to make them not responsible to the King, but subject to other considerations than their duty to him in giving their decisions, and to expose them to be dealt with as servants not of him but of the public. Accordingly the remedy in this case, if they flagrantly offend against duty, is not by proceedings in any Court, but only by addresses to the Crown from the Houses of Parliament. Between their position and that of Judges appointed not by the King but by the community or some authority in the community not having the kingly prerogative, but only acting by a delegated authority for local administration,
>
> Strachan v. Stoddart, 7 S. 4; Bell's Prin., sec. 2038.
>
> As in the case of Justices of the Peace appointed by the Lord Chancellor, there is no analogy. Therefore any claim for immunity for acts done in local summary Courts cannot be based on the fact of the immunity of the Supreme Court Judges. That the highest Courts of justice are designated 'Supreme Courts' of itself indicates the distinction. The Supreme Courts have power to right wrongs done in the inferior Courts, their jurisdiction being universal, and their duty being to see justice done throughout the land. The other Courts have no jurisdiction beyond their own border, and cannot review the conduct of any other Judge within their own border. (1185-1186)

[5] 1907 SC 1176

16. In that case it was made pellucid that such immunity is not limited to words spoken but extends to anything done by him while sitting in his judicial capacity. In that regard this action against the judicial officers is misconceived and unsustainable.

17. The fourth issue is the action brought against The Court Office of the Docket Management System as the 1st Respondent in the application. The Court Office of the Docket Management System is clearly not a human person nor has the applicant proven by evidence, that it has a legal personality capable of being sued. In The Attorney General of Trinidad and Tobago v Carmel Smith[6], Lord Walker stated

> An unincorporated body (by definition) has no legal personality, and can sue or be sued only through one or more natural persons representing it. But this happens as a matter of course both in private law (where partners, clubs, trustees and personal representatives are often parties to litigation) and in public law (where unincorporated authorities of all sorts, including tribunals, school governors, and visitors to educational charities) are often parties to judicial review or other proceedings. (paragraph 20)

18. As a consequence, no action can be brought or sustained against The Court Office of the Docket Management System.

Decision

19. For the reasons outlined above, the court will not grant the reliefs sought in this application. Leave to reconsider the decision to refuse leave to issue a mandatory order is hereby refused. There is no order as to costs.
20. Leave Granted to Appeal

Dated this 10th day of January, 2018

Avason Quinlan-Williams

Judge

(Leselli Simon-Dyette, Judicial Research Counsel)

[6] [2009] UKPC 50. Privy Council Appeal No 0021 of 2009