

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV-02877 of 2009

BETWEEN	DWIGHT REID	CLAIMANT
A N D	GREG CHRISTIE (CONTRACTOR-GENERAL OF JAMAICA)	1 <sup>st</sup> DEFENDANT
A N D	THE ATTORNEY GENERAL OF JAMAICA	2 <sup>nd</sup> DEFENDANT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV-02878 of 2009

BETWEEN	DONNETTE SPENCE	CLAIMANT
A N D	GREG CHRISTIE (CONTRACTOR-GENERAL OF JAMAICA)	1 <sup>st</sup> DEFENDANT
A N D	THE ATTORNEY GENERAL OF JAMAICA	2 <sup>nd</sup> DEFENDANT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV-02879 of 2009

BETWEEN	LAFETTE EDGHILL	CLAIMANT
A N D	GREG CHRISTIE (CONTRACTOR-GENERAL OF JAMAICA)	1 <sup>st</sup> DEFENDANT
A N D	THE ATTORNEY GENERAL OF JAMAICA	2 <sup>nd</sup> DEFENDANT

Derrick McKoy and Cavelle Johnston for Dwight Reid and Donnette Spence instructed by Williams, McKoy & Palmer

Carlton Williams for Lafette Edghill instructed by Williams, McKoy & Palmer

Jacqueline Samuels-Brown and Tameka Jordan for the 1<sup>st</sup> Defendant  
Michelle Shand-Forbes for the 2<sup>nd</sup> Defendant instructed by the Director of State Proceedings

Heard: October 20<sup>th</sup> and 22<sup>nd</sup> 2009 and April 30<sup>th</sup> 2010

Cor: Rattray, J.

1. By letters dated April 30, 2009, the contracts of employment of Dwight Reid, Donnette Spence and Lafette Edghill were terminated by the Contractor General, Greg Christie. On June 3, 2009, those individuals filed three separate actions by way of Fixed Date Claim Forms against the Contractor General seeking Orders of Certiorari to quash their dismissals, for certain Declarations with respect to their dismissals and for Damages.
2. On that same date; Applications for Leave to Apply for Judicial Review, as well as Affidavits of each of the Claimants were also filed. Those Ex Parte Applications were heard on July 3, 2009 by a Judge in Chambers and the sole Order made in each suit was as follows:-  

“Leave granted to the Applicant to apply for judicial review.”
3. It is accepted that after that Order was made, the Fixed Date Claim Forms as well as the Affidavits in Support previously filed on the 3<sup>rd</sup> June, 2009, together with the Order granted in each

action were served on the Defendants. Acknowledgments of Service were filed on the 17<sup>th</sup> July, 2009 and on the 21<sup>st</sup> July, 2009 on behalf of the Attorney General and the Contractor General respectively. Subsequently, other Affidavits were filed including one by a Mr. Craig Beresford on behalf of the Contractor General.

4. When this matter came up for hearing, Counsel Mrs. Shand-Forbes referred to an application filed on behalf of her client seeking an Order that the Attorney General be removed as a party to these proceedings. None of the other parties opposed this application and the Order was granted as prayed. Certain procedural objections were then raised focusing on whether the provisions of the Civil Procedure Rules, as they relate to applications for Judicial Review had been complied with, and if not, the consequences of such non-compliance. I should point out that these three actions have not been consolidated. However, as the issues raised affect all three applications, the submissions advanced with respect to one relate to all, and therefore the ruling made herein will also be so applicable.

5. Part 56 of the Civil Procedure Rules is entitled 'Administrative Law' and deals inter alia with applications for Judicial Review. See Rule 56.1(1)(a). Applications under this Part are generally referred to as 'applications for an administrative order'. See Rule 56.1(2). Subsection (3) refers to the term 'Judicial Review' as including the remedy of Certiorari for quashing unlawful acts.

6. Rule 56.3(1) provides that:-

“A person wishing to apply for judicial review must first obtain leave.”

Such an application may be made without notice. The requisite information to be contained in the application is set out in detail in subsections (3) and (4) of Rule 56.3.

7. In light of the importance of applications for administrative orders, Rule 56.4(1) prescribes that:-

“An application for leave to make a claim for judicial review must be considered forthwith by a Judge of the Court.”

Further subsections of that Rule outline the options open to the Judge hearing the application for leave, after careful consideration of the evidence contained in the Affidavit. If the Judge is minded to grant the leave sought, the following provisions of Rule 56.4(11) and (12) become applicable:-

“(11) On granting leave the judge must direct when the first hearing or, in case of urgency, the full hearing of the claim for a judicial review should take place.

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

8. For completeness, reference should also be made to Rule 56.9(1) which states:-

“(1) An application for an administrative order must be made by a fixed date claim in form 2 identifying whether the application is for-

(a) judicial review; ...

and must identify the nature of any relief sought.

(2) The claimant must file with the claim form evidence on affidavit.”

Subsection (3) sets out the information that must be contained in that affidavit.

9. In the present case, neither Counsel for the Applicants has sought to argue that the rules have been strictly complied with. Nowhere is it alleged by Counsel for either of the Applicants, that a Fixed Date Claim Form was filed subsequent to the Order of the Court on the 3<sup>rd</sup> July, 2009, granting their clients leave to apply for Judicial Review. Mr. McKoy suggested that it is possible that the Court may feel that no harm has been done by that omission, and that perhaps this Court could now order that a new Fixed Date Claim Form be filed.
10. Mr. Williams for his part confirmed that the application for leave to apply for Judicial Review was started by way of a Fixed Date Claim Form supported by affidavit and conceded that after the Order granting leave was made on the 3<sup>rd</sup> July, 2009, a new Fixed Date Claim Form was not filed. He explained that it was based on advice obtained from someone in the Supreme Court Registry that the matter was commenced by way of Fixed Date Claim Form. However he indicated that if the Court were to be of the view that the Applicant should re-file the action, he was prepared to do so without any change to the documents.
11. Counsel for the Contractor General Mrs. Samuels-Brown firmly and concisely contended that the issue was one of jurisdiction.

She raised the question, “Does the Court have jurisdiction to proceed without more, on claims not properly founded or not properly brought by the correct procedure?” She further contended that it is undisputed that there is no claim before the Court in accordance with the Order of the single Judge made on the 3<sup>rd</sup> July, 2009. That being the case, she maintained that there is nothing for the Court to adjudicate on and that that breach, which she described as a “fundamental jurisdictional failing” cannot be said to be cured by the Respondent filing an Acknowledgement of Service or an Affidavit in Response. She asserted that the errors in these matters go to the root of the claims and she urged the Court to strike out the matters.

12. After the submissions were completed but before I gave my ruling, Counsel Mrs. Samuels-Brown brought to the attention of the Court the case of **Orrett Bruce Golding and the Attorney General of Jamaica v Portia Simpson Miller** SCCA No. 3 of 2008, a decision of the Jamaican Court of Appeal handed down on the 11<sup>th</sup> April, 2008. I therefore delayed my ruling to allow Counsel for the Applicants time to peruse this authority and make any submissions they thought necessary.
13. In that case, the Respondent was granted leave to apply for Judicial Review by a Judge in Chambers on the 13<sup>th</sup> December, 2007, with the first hearing set for the 10<sup>th</sup> January, 2008. In accordance with the provisions of Rule 56.4(12), the Respondent was required to make her claim for Judicial Review within fourteen (14) days of the 13<sup>th</sup> December 2007, that is, by the 27<sup>th</sup> December, 2007. This she failed to do. On the 10<sup>th</sup> January, 2008

when the matter came up for hearing in Chambers, her Attorneys at Law applied for and obtained an Order extending the time to apply for Judicial Review by a period of fourteen (14) days from that date. On appeal to the Court of Appeal, it was held that the grant of leave to make a claim for Judicial Review was conditional on the Applicant presenting her claim within 14 days of the said grant. Failure to do so within that time frame caused the condition to remain unfulfilled and the leave thereby lapsed. The Order made on the 10<sup>th</sup> January, 2008 therefore was set aside for want of jurisdiction.

14. Counsel Mr. McKoy, in his written submissions filed on behalf of the Claimants Dwight Reid and Donnette Spence, sought to distinguish the **Golding** case on the ground that there, no Fixed Date Claim Form had been filed, whereas in the present case, a Fixed Date Claim Form applying for Judicial Review had already been filed. He argued that as the Applicants could not have proceeded with their claims without the leave of the Court, once they obtained that conditional leave from a Judge of the Supreme Court, as the Fixed Date Claim Form was already on the Court file, his clients had satisfied that condition and the Order made was in effect an Order to proceed with the application for Judicial Review.

15. There was nothing in the Civil Procedure Rules, Mr. McKoy argued, that stated that the Fixed Date Claim Form cannot be filed before permission is granted to proceed. Counsel further argued that the Civil Procedure Rules could not have intended that Applicants, who had already filed a Fixed Date Claim Form

and subsequently obtained permission to proceed, should then discontinue the existing claim and file a new Fixed Date Claim Form in the exact terms as the former proceedings. This he contended would be irrational, cumbersome and untidy and not what the Civil Procedure Rules on a true construction would have required.

16. Mr. McKoy, as his closing submission, relied on the general power of the Court to rectify matters pursuant to Rule 26.9, where there has been a procedural error. The provisions of that Rule with which Counsel sought to bolster his case state:-

26.9(2) “An error of procedure or failure to comply with a rule, practice direction or court order does not invalidate any step taken in the proceedings, unless the court so orders.

26.9(3) Where there has been an error of procedure...the court may make an order to put matters right.”

He contended that if the Court was of the view that the Applicants ought to have filed a Fixed Date Claim Form after they had obtained leave, and not before as his clients had done, the Court nevertheless had the power to make matters right by treating the claim form filed, as having been filed after the grant of leave.

17. Counsel Mr. Carlton Williams, in his submissions on behalf of the Claimant Lafete Edghill, referred to the **Golding** case, as well as the unreported case of **R v The Commissioner of The Taxpayers Audit and Assessment Department/Commissioner of Inland Respondent(sic), Ex Parte Andrew Willis** Claim No.



HCV-5719 of 2006. In that latter mentioned case, the Fixed Date Claim Form was filed twenty-eight (28) days after leave had been granted to the Applicant to make a claim for Judicial Review. The Court held that as the leave granted was conditional on the making of a claim for Judicial Review within fourteen (14) days, and no claim had been made within that time, the leave had lapsed and could not be renewed.

18. Mr. Williams sought however to distinguish these cases on the ground that in both matters, there were no Fixed Date Claim Forms before the Court. However in the present case, he argued that such a Claim Form, filed in accordance with Rule 56.9(1) of the Civil Procedure Rules to initiate the case, was before the Court. As his argument goes, the Claimants were constrained not to proceed with their claims as filed without first obtaining the leave of the Court in accordance with Rule 56.3. Once the Order granting leave was obtained, the Claimants invoked the process of making the claim for judicial review by having the Fixed Date Claim Form issued within the fourteen (14) day period prescribed by Rule 56.4(12).
19. Counsel drew a distinction between the filing and the issuing of a Fixed Date Claim Form. He asserted that there was nothing wrong with the manner in which the Claimants' case was commenced in the Court. He referred to the definition of a Fixed Date Claim Form as "a claim form in form 2 upon which there is stated a date, time and place for the first hearing of the claim". See Rule 2.4. He therefore asserted that the Fixed Date Claim Form as filed was imperfect, as at the time of filing no date had

been inserted for the hearing of the matter. The document up to that point he submitted was not a Fixed Date Claim Form. Counsel however argued that once leave was granted to make the claim for Judicial Review, his client was obliged to activate the Fixed Date Claim Form which had been filed. This was done by the Registry when it issued a date and time for the hearing of the Fixed Date Claim Form within fourteen (14) days of the Order granting leave, in compliance with Rule 56.4(12) of the Civil Procedure Rules. Mr. Williams therefore contended that the matter was properly before the Court.

20. The rules governing the procedure to be followed with respect to applications for Judicial Review are clear and unambiguous. Whilst it is true that the factual scenario in the **Golding** case differs from that in the cases before this Court, I am satisfied that the general principles outlined in that Judgment are equally applicable, whether or not a Fixed Date Claim Form had been filed in the circumstances outlined in both cases. In particular, I accept and respectfully adopt the dicta of Her Ladyship Harris J.A. where she opined at page 31 of that Judgment:-

“Part 56 of the C.P.R. outlines the procedure with respect to applications for administrative orders. It mandates that the judicial review process be carried out in two stages. An application for leave to apply for judicial review must first be made. This is followed by the filing of a Fixed Date Claim Form supported by evidence on affidavit for judicial review, after leave has been granted. Under rule 56.4 (12) of the C.P.R. leave is conditional upon the applicant making a claim within 14 days from the date of the obtaining of leave.

At page 33, Harris J.A. went on to state:-

“It is a cardinal rule of construction that words must be given their ordinary and natural meaning. The words of the rules are plain. There can be no doubt that the grant of leave to proceed to judicial review under rule 56.4 (12) is provisional. It is not absolute. It imposes a condition on an applicant to present his or her claim within 14 days of the grant of the leave. To satisfy this condition a Fixed Date Claim Form with an affidavit in support thereof must be filed, in obedience to rule 56.9(1)(a) and 56.9(2). It follows therefore that it would be obligatory on the part of the applicant to present the requisite documents within the time specified.”

and finally at page 34:-

“On a true construction of rule 56.4 (12) the grant of leave is dependent upon the respondent filing a Fixed Date Claim Form and supporting affidavit within 14 days of the grant of leave. The pleading having not been filed within the prescribed time, the condition remained unfulfilled and the leave thereby lapsed.”

21. I am of the opinion that Judicial Review proceedings are in a different category from ordinary civil proceedings and this is perhaps exemplified by the explicit rules applicable to administrative actions, as provided for in Part 56 of the Civil Procedure Rules. It is therefore of importance that Applicants adhere to the specific procedure delineated in Part 56. In the matters before the Court, the Applicants filed their actions seeking, inter alia, Orders of Certiorari to quash their dismissals by the Contractor General Greg Christie, without first obtaining

the leave of the Court. This was not a mere technicality. This was a clear breach of Rule 56.3(1) of the Civil Procedure Rules

22. Sir Thomas Bingham M.R. when speaking of the English Rules of Court in the case of Costellow v. Somerset County Council [1993] 1 W.L.R. 256 at page 263 stated:-

“The prescribed time limits are not targets to be aimed at or expressions of pious hope but requirements to be met.”

Similarly, Panton P. in the **Golding** case at page 11 issued a comparable warning in the following terms:-

“... I have to remind litigants and their attorneys-at-law that they ignore the Civil Procedure Rules at their peril. The days of paying scant regard to the Rules are over. Those days went out with the 1990's.”

There is no shortcut to obtain access to the corridors of Justice. The procedural rules must be obeyed.

23. Contrary to Mr. McKoy's submission that in matters of this nature, there is no rule prohibiting the filing of a Fixed Date Claim Form before permission to proceed is granted, Rule 56.9 (1) obliges an Applicant seeking an administrative order of Judicial Review to make such a claim by way of a Fixed Date Claim Form. Before such a claim can be made however, that Applicant must first obtain the leave of the Court. See Rule 56.3 (1). The very wording of those two (2) rules and their numerical sequence indicates as a matter of common sense, that the first step must be the application for leave, which once granted permits the Applicant to proceed to the next step of filing the

Fixed Date Claim Form. That this is the correct procedure to be followed is confirmed by the dicta of Harris J.A. referred to earlier in this Judgment.

24. In the matters before the Court, after having obtained leave to apply for Judicial Review on the 3<sup>rd</sup> July, 2009, the Applicants made no attempt to comply with that Order by filing the Fixed Date Claim Form. Instead they sought to rely on the Fixed Date Claim Forms previously filed in their attempt to proceed with their matters. I do not accept that the Orders of the Court granting the Applicants leave to apply for Judicial Review were in essence Orders for them to proceed in reliance on the documents already filed. Those Orders did not have retroactive effect, but were Orders granted on condition that the Applicants made their claims for Judicial Review by way of Fixed Date Claim Forms within fourteen (14) days of the grant of such leave. That condition was not and could not have been satisfied by the Applicants applying to the Registry and obtaining a date for hearing, as submitted by Mr. Williams.

25. I am of the view that when Rule 56.4(12) speaks to the grant of leave being conditional on the Applicant 'making a claim for judicial review within 14 days of receipt of the order granting leave', that simply means that that Applicant **must** file the claim within the time specified. The distinction that Mr. Williams has attempted to draw between the filing and the issuing of a Fixed Date Claim Form, as interesting as it may appear on the face of it, is in my opinion devoid of merit. The rules provide for an Applicant making an application for an administrative order for

Judicial Review to do so by way of Fixed Date Claim Form after leave has been granted. Under the Civil Procedure Rules, the methods of commencing legal proceedings are by Claim Form, Fixed Date Claim Form or by Petition - this last mentioned method not being relevant for these proceedings. Rule 8.1(2) states that legal proceedings are started when a claim form is filed. The filing of the Fixed Date Claim Form on the 3<sup>rd</sup> June, 2009, being a Claim Form prepared in a specified format (form 2), as indicated in the definition section of these rules, started the legal proceedings in this matter. This was a step taken without the leave of the Court, in breach of Rule 56.3(1) of the Civil Procedure Rules.

26. In passing, I must comment that even the step taken by the Applicants in applying to the Registry for a date for hearing of the Fixed Date Claim Form was not strictly in accordance with the rules. In Judicial Review proceedings, it is the function of the Judge, on granting leave to the applicant to apply for judicial review, to direct when the first hearing of the claim for Judicial Review is to take place. See Rule 56.4(11). The contention that in the circumstances of this case, the Fixed Date Claim Form was therefore issued within the time ordered by the Court to make a claim for Judicial Review, cannot succeed.
27. Both Counsel Mr. McKoy and Mr. Williams placed reliance on the provisions of Rule 26.9, which empowers the Court to make an Order to rectify matters where it is of the view that there has been an error of procedure or failure to comply with a rule,

practice direction or Court Order. A perusal of subsection (1) of this Rule however reveals that it cannot assist them, as it reads:-

26.9(1) “This rule applies only where the consequence of failure to comply with a rule, practice direction or court order has not been specified by any rule, practice direction or court order.”

This Rule is only applicable where the consequence of a failure to comply has not been specified, which is not the situation in the case before the Court. In the present case, leave was granted on condition that the Applicant take a certain step by a specified time. Smith J.A. succinctly dealt with this same issue at page 20 of the **Golding** case when he stated:-

“It seems to me that under rule 56.4(12) the consequence of failure to make a claim for review within the prescribed time is that the leave will lapse – it will become invalid.”

28. In the circumstances where no claim for Judicial Review has been filed within the time prescribed by the rules, the leave of the Court lapsed, thereby removing any vestige of jurisdiction to which the Applicants had hoped to cling in their desire to continue their legal excursion. I find that this Court has no jurisdiction to proceed further with these matters. The Claims herein are therefore struck out with costs to the 1<sup>st</sup> Defendant against the Claimants in each case to be taxed if not agreed.