[**2019**] **JMSC Civ 40**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2016HCV04624

IN THE MATTER of all that parcel of land being part of **BOGUE HILL** in the parish of Saint James being lot **numbered SEVEN** on the plan of part of Bogue Hill deposited in the Office of Titles on the 5th day of February 1972 of the shape and dimensions and butting as appears by the plan thereof and being all of the land comprised in the Certificate of Title registered at Volume 1112 Folio 215, of the Register Book of Titles in the name of Cedar Ridge Limited.

AND

IN THE MATTER of **CEDAR RIDGE LIMITED**

AND

IN THE MATTER of sections 315 (2), 337 (5) & (6), 338 & 339 of the *Companies Act*

BETWEEN	**JOHN REGINALD MAIS**	**CLAIMANT**
AND	**ADMINISTRATOR-GENERAL OF JAMAICA**	**DEFENDANT**

IN CHAMBERS

Mrs. Trudy-Ann Dixon-Frith and Mr. Jordan Chin instructed by DunnCox, for the Applicant

Mrs. Althea Jarrett instructed by the Director of State Proceedings for the Respondent

HEARD: 26th June 2016, 11th January 2019, 14th February 2019 and 22nd March 2019

JUDICIAL REVIEW – SUBSTANTIAL CHANGE OF CIRCUMSTANCES OF CASE AFTER LEAVE TO APPLY GRANTED – WHETHER NEW APPLICATION FOR LEAVE TO APPLY NEEDS TO FILED – WHETHER CLAIMANT'S STATEMENT OF CASE CAN BE AMENDED WITH THE LEAVE OF THE COURT, SPECIFYING NEW GROUNDS FOR JUDICIAL REVIEW – APPLICATION FOR SPECIFIC DISCLOSURE – VARIATION OF EARLIER COURT ORDER MADE BY A JUDGE OF CONCURRENT JURISDICTION –EXTENSION OF TIME TO APPLY FOR LEAVE – JUDICIAL REVIEW PROCEDURE

ANDERSON K., J.

BACKGROUND

[1] John Reginald Mais, (hereinafter described as 'the Claimant') is one of the shareholders of a company known as Cedar Ridge Limited. Cedar Ridge Limited is the registered owner of land known as part of Bogue Hill in the parish of Saint James being Lot numbered seven and being all the lands comprised in the Certificate of Titles registered at Volume 1112 Folio and 215 Registered Book of Titles.

[2] On July 27, 1989 Cedar Ridge Limited was struck off the Register of Companies, due to that company's failure to file annual returns by the Registrar of Companies. Consequently, Cedar Ridge Limited was dissolved. By virtue of Section 339 (1) of the Companies Act the said land is now Bona Vacantia, owned by the Crown.

[3] By letter dated June 9, 2016, the Claimant made an application to the Defendant, the Administrator-General of Jamaica, to disclaim the title to the said land, known as part of Bogue Hill in the parish of Saint James pursuant to ***Section 339 (1) of the Companies Act*** that Section stipulates that *'where any property vests in the Crown under section 339 (*1) *(c) the Crown's title thereto under that section may be disclaimed by a Notice signed by the Administrator-General.'*

[4] By letter dated August 17, 2016, the Administrator-General of Jamaica advised that it had submitted the request to the Commissioner of Lands for consideration. Consequently, in letter dated August 31, 2016 the Administrator-General of Jamaica, communicated its decision to refuse to issue the Notice of Disclaimer on the basis that '*the Commissioner of Lands will not consent to disclaim the Crown's title'* to the said land and no reasons were provided regarding the decision made. Enclosed in said letter from the Administrator-General of Jamaica was a missive dated August 24, 2016 from the Commissioner of Lands stating that the Commissioner of Lands will not consent to disclaim the title to the Crown regarding said land and no reason for refusal to consent was given by the Commissioner of Lands.

[5] It was on that basis, that the Claimant filed an Application for Judicial Review, contending that the consent of the Commissioner of Lands was not necessary, relative to the Administrator-General of Jamaica's determination to issue a Notice of Disclaimer and that the Administrator-General of Jamaica had relinquished her statutory discretion, to the Commissioner of Lands.

[6] The Claimant then obtained leave to apply for Judicial Review by Order dated January 10, 2017 from the Honourable Justice Stamp to challenge the decision of the Administrator-General of Jamaica, not to issue a Notice of Disclaimer in respect of said land. Having obtained leave, a Fixed Date Claim Form was filed on January 17, 2017 supported by the Affidavit of the Claimant. That Fixed Date Claim Form sought an Order of Certiorari to quash the decision of the Administrator-General of Jamaica, a Declaration that the Administrator-General of Jamaica's decision was ultra vires and thereby null and void and an Order for Mandamus compelling the Administrator-General of Jamaica to issue a Notice of Disclaimer.

[7] On June 26, 2017, that claim came up for First Hearing in this Court and that hearing was presided over, by me, whereupon certain Orders were made, inclusive of that being the parties were to file Submissions and Authorities by August 11, 2017. It is to be noted that, on that date, June 26, 2017, the learned counsel for

the Administrator-General of Jamaica, Ms. Althea Jarrett, indicated that there was no intention to file a defence on behalf of Administrator-General of Jamaica, as the facts that were outlined in the Affidavit of the Claimant were not being disputed.

[8] A second decision was later communicated to the Claimant's attorneys-at-law Messrs. Dunn Cox, by the Defendant, by means of a letter dated July 14, 2017 stating that the Administrator-General of Jamaica *'will not consent to disclaim the Crown's Title to property registered at Volume 1112 Folio 215 in the name of Cedar Ridge Limited'* and on July 26, 2017 the Administrator-General of Jamaica filed an Affidavit of Kedia Delahaye. In said Affidavit, Ms. Delahaye averred that the Application to disclaim title to the said land was 'considered' by the Administrator-General of Jamaica and that the Administrator-General of Jamaica decided not to issue Notice of Disclaimer.

THE NOTICE OF APPLICATION AND AFFIDAVITS FILED

[9] The Claimant filed a Notice of Application for Court Orders on August 9, 2017 and supporting Affidavits on the basis that the Administrator General of Jamaica had advised that '*it will not consent to disclaim the Crown's Title to the property registered at Volume 1112 Folio 215 in the name of Cedar Ridge Limited.*' It should be noted that this decision was the second decision being made by the Administrator General of Jamaica not to disclaim the title, as the Administrator General had previously issued its decision, not to disclaim title, by letter dated August 31, 2016. Hereafter, that second decision of the Administrator General of Jamaica, is described as, 'the second decision.'

[10] For the sake of better understanding, it is worthwhile to set out in full, the main aspects of that Notice of Application for Court Orders. The Notice of Application for Court Orders sought the following Orders:

i. *'The 1st Defendant shall provide specific disclosure of all documents within seven (7) days of the date hereof, relative to the decision in its letters dated July 14, 2017, in particular:*

   a. *All documents used in arriving at the said decision, namely an outline of all relevant facts taken into account in arriving at this decision, minutes of relevant meeting and other considerations and or discussions, letters and or other correspondence including those with the Commissioner of Lands, internal memoranda, recommendations, file notes, emails, record of the decision; and*

   b. *Any other relevant documents.*

ii. *The 1st Defendant shall permit inspection of the documents disclosed in Order Number 1 within seven (7) days after their disclosure.*

iii. *The Claimant is permitted to amend the Fixed Date Claim Form filed on January 17, 2017 within fourteen (14) days of the date hereof to add further grounds being relied upon to wit:*

   a. *On July 18, 2017, the 1st Defendant again refused to disclaim title to the said property and issued letter of even date advising of that decision. No reasons were given by the 1st Defendant for this second decision not to disclaim the title to the said property.*

   b. *The decision made by the 1st Defendant was made without giving the Claimant an opportunity to be heard and to make representations to the 1st Defendant, and is thereby in breach of the cardinal principles of natural justice.*

   c. *Based on foregoing, the second decision made by the 1st Defendant is unlawful, unreasonable, irrational and illogical.*

iv. *The Order of the Honourable Mr. Justice Anderson made on the 26th day of June 2017 is hereby varied to permit all parties a further thirty (30) days of the date hereof to file the Bundle of Skeleton Submissions and Authorities.*

v. *Costs of this application to the Claimant to be taxed, if not agreed.*

vi. *Such further and other orders as this Honourable Court deems fit.'*

[11] The grounds on which the Claimant is seeking the Orders, are as follows:

a. *'The Claimant is a shareholder of Cedar Ridge Limited, a company which has been dissolved by the Registrar of Companies. By virtue of certain provisions of the Companies Act, property registered at Volume 1112 Folio 215 in the name of Cedar Ridge Limited is now vested in the Crown;*

b. *By letter dated July 14, 2017, the 1st Defendant advised the Claimant's Attorneys-at-law that "it will not consent to disclaim the Crown's Title to the property registered at Volume 1112 Folio 215 in the name of Cedar Ridge Limited." This was a second decision being made not to disclaim the title as the 1st Defendant had previously issued its decision not to disclaim title by letter dated August 31, 2016;*

c. *The 1st Defendant has not provided any reason for this second decision as communicated in her letter dated July 14, 2017;*

d. *By letter dated August 4, 2017, the Claimant requested reasons for the second decision of the 1st Defendant. Such reasons have not yet been provided by the 1st Defendant;*

e. *The second decision by the 1st Defendant has been made without giving the Claimant an opportunity to be heard and to make representations thereon;*

f. *On the 26th day of July 2017, the 1st Defendant filed an Affidavit in this Honourable Court, exhibiting her letter dated July 14, 2017;*

g. *The 1st Defendant as a public body against whom judicial review proceedings have commenced, has a duty to make full, frank and fair disclosure and also has an obligation to candour to this Honourable Court to set out the relevant facts and reasoning behind the decision made and to produce all documents associated therewith;*

h. *Rule 56.13 of the Civil Procedures Rules recognizes the jurisdiction of this Honourable Court to grant the Orders sought herein;*

i. *The 1st Defendant has now raised additional issues which the Claimant wishes to have an opportunity to respond thereto.*

j. *The Claimant would be severely prejudiced if the Orders being sought herein are not granted;*

k. *The overriding objective favours the granting of the Orders being sought herein;*

l. *The Applicant places reliance on the Affidavit of John Mais filed contemporaneously herewith, as well as the Affidavit of John Reginald Mais filed in this Honourable Court on January 17, 2017.'*

[12] The Affidavit in Support of the Notice of Application for Court Orders was filed on August 9, 2017. Exhibited to that Affidavit was:

1. A copy of letter dated August 4, 2017 from the Attorneys-at-law for the Claimant-DunnCox to the Administrator-General of Jamaica.

[13] In said Affidavit, reliance was also sought on the previous Affidavit filed herein on January 17, 2017 filed in support of the Fixed Date Claim Form January 17, 2017 which had set out the entire factual circumstances underlying the instant claim.

[14] The Claimant then indicated that he was in attendance at the hearing on June 26, 2017 and the Administrator-General of Jamaica, had averred that they would not be filing a Defence and informed the Court that the facts as stated in the affidavit of the Claimant filed on January 17, 2017 were not being disputed and were not in issue. That is factual. I had presided over that hearing.

[15] The Claimant alleged that an affidavit of Kedia Delahaye was then filed on behalf of the Administrator-General of Jamaica on July 26, 2016 and he was advised by his Attorneys-at-law that the said affidavit of Ms. Delahaye, was filed out of the prescribed time in contravention of the procedural rules of this Honourable Court.

[16] It was also indicated by the Claimant that in the affidavit of Ms. Delahaye, which was filed on behalf of the Administrator-General of Jamaica, it was specified that the application to disclaim title registered at Volume 1112 Folio 215 in the name of Cedar Ridge Limited was considered by the Administrator-General of Jamaica and it was decided that a notice of disclaimer will not be issued.

[17] The Claimant contended that a first decision was already made, not to issue a Notice of Disclaimer and that on the advice of his Attorneys-at-law, the letter dated July 14, 2017, entailed that the Administrator-General of Jamaica '*will not consent to disclaim the Crown's Title to the property registered at Volume 1112 Folio 215 in the name of Cedar Ridge Limited.*' It was also noted by the Claimant that the Administrator-General of Jamaica had not provided any reasons, or outlined any considerations which was taken to account for the underlying second decision neither has the Administrator-General of Jamaica provided any documents that was utilized or relied on, to make the decision.

[18] A Letter dated August 4, 2017, which was marked and exhibited as "JM 13" and attached to the Affidavit of the Claimant filed on January 17, 2017 was then sent to Administrator-General of Jamaica from the Attorneys-at-law representing the Claimant requesting reasons for the second decision.

[19] It was alleged by the Claimant that he was not given an opportunity to be heard and to make a representation on the decision which was made, adverse to his interest and the additional shareholders.

[20] The Claimant also stated in his Affidavit that he was informed by his Attorneys-at-law that the second decision was unlawful, unreasonable, irrational and illogical.

[21] On July 26, 2017 the Affidavit of Ms. Delahaye was filed on behalf of the Administrator-General of Jamaica. In said affidavit, Ms. Delahaye swore that she was the Senior Legal Executive in the Administrator General's Department and is authorized to depone to said affidavit.

[22] Further, Ms. Delahaye stated that the information in the Affidavit was based on her personal knowledge or where it is not so based, the sources of the information contained therein, are the institutional records, practices and procedures of the Administrator General's Department.

[23] Ms. Delahaye also stated that she had attended the adjourned first hearing of the Fixed Date Claim on June 26, 2017 and based on legal advice obtained by the Administrator-General of Jamaica, the application by the Claimant pursuant to ***Section 339 (1) of the Companies Act*** for the Crown to disclaim any title it may have, to property registered at Volume 1112 Folio 215, in the name of Cedar Ridge Limited, was considered by the Administrator-General of Jamaica.

[24] The application to disclaim the Crown's Title to the property registered at Volume 1112 Folio 215 in the name of Cedar Ridge Limited was considered and the Administrator-General of Jamaica decided not to sign a Notice of Disclaimer. That decision was communicated to the Claimant, by letter dated July 14, 2017 and exhibited at "KD1". Ms. Delahaye also highlighted that the letter was written by her and sent to the Claimant Attorneys-at-law.

THE SUBMISSIONS

[25] Counsel for both parties made and filed written submissions and at the hearing, those submissions were supplemented by oral submissions. For the sake of brevity, no specific details regarding the case laws relied on by the Claimant will be referred to, in these written reasons. It should however, be noted that, counsel for the Claimant submitted that the Courts should allow for the Claimant to make amendments to the Judicial Review Claim which had earlier been filed, pursuant to the leave of this Court, which had earlier been granted by this Court. Counsel relied on the ***Civil Procedure Rules ('C.P.R.'), Rule 56.13 (1) and (2) (b) (i) and (ii)***. The Claimant's counsel contended that, given the established rules in the ***C.P.R.***, the powers of Court in claims of this sort are wide and definitely include powers to permit amendment to a claim for Judicial Review, as well as add or substitute new grounds upon which the Claimant relies. Further submissions were made that the Administrator-General of Jamaica was a public body, therefore it has a duty of disclosure and candour in respect of all information relevant to its decision making process.

[26] Regarding the extension of time for skeleton submissions, counsel for the Claimant submitted that there can be no realistic challenge that the Court has the power to extend the time for filing submissions and reliance was placed on ***Rule 56.13 (1) and (2) (a) (iv) and Rule 26.1 (c) of the C.P.R***.

[27] Counsel for the Administrator-General of Jamaica began her written submissions by re-stating the grounds on which the Claimant had relied on, in making the Notice Application for Court Orders. Counsel submitted that decision makers make new decisions all the time and that to grant the Order as now sought by the Claimant in this case, would be an Order of futility.

[28] Counsel for the Administrator-General of Jamaica did not cite any new authorities when giving oral submissions, but buttressed her arguments by illustrating the weaknesses and inapplicability of the cases relied on by counsel for the Claimant.

Suffice it to state though, her contention was largely that with respect to the authorities relied on, by counsel for the Claimant, all of those cases are distinguishable, based on particular facts with respect to England and statutory provisions which are unique to England and which in Jamaica, either do not exist, or which would not apply in a similar way, in Jamaica.

[29] Counsel for the Administrator-General of Jamaica did not contend that in Jamaica, our Courts do not have the power to amend the Fixed Date Claim filed on January 17, 2017. Her contention is that instead, with respect to Judicial Review proceedings, the rules that exist in Jamaica have to be applied in a specific manner and one has to begin the process with an application for Court Orders, whilst in England, Judicial Review matters begin by way of a claim form.

[30] Counsel for the Administrator-General of Jamaica had no issue with the fact that there must be a duty of disclosure and candour, with respect to all relevant information, by litigants in Judicial Review matters and that there is a high duty on public authority Defendants to assist the Court in the provision of all relevant information. The facts however and the circumstances of this case, arose out of the fact that the Administrator-General of Jamaica, abdicated her duties when the first decision was made. Counsel pointed out that public authorities can re-visit their decision, hence the second decision, that was made on July 14, 2017.

[31] Counsel for the Administrator-General of Jamaica stated that the question in these circumstances was whether or not a challenge can be made by the amending the Fixed Date Claim Form, after the grant of leave relevant to the first decision, in circumstances wherein, the first decision has been replaced by a second decision, which although being the same in its terms, was made in a different context. Additionally, since the Claimant did not seek to obtain leave to apply for judicial review of the Defendant's second decision, it is the view of the defence counsel, that the Claimant's application to amend the existing claim, must, of necessity, fail.

[32] Counsel also reiterated and highlighted that distinctions can be made amongst all the cases that counsel for the Claimant relied on and contended that the cases used, will not assist the Court with the present case. Each case turned on their particular facts and the Court should not rely on cases from the United Kingdom ('U.K') regarding Jamaica's procedural issues in terms of a claim for Judicial Review. Counsel also contended that U.K claims in Judicial Review matters, commence on a Claim Form and the same form is used, throughout the entire proceeding, once leave has been granted. It is seen as a 'rolled-up' proceeding, given that the application filed is a part of the claim; hence amendments can be done at any time. In Jamaica, there is an application that must be made to seek leave for Judicial Review matters. Once leave is granted, then the matter proceeds with the filing of a Fixed Date Claim Form, within a specific time frame which highlights that there is a bifurcated process in Judicial Review proceedings in Jamaica, that must be followed. Given the above issues stated, the amending of the Fixed Date Claim Form should be denied, on the basis that the requirements prescribed in the ***C.P.R.*** have not been fulfilled.

[33] Counsel for the Claimant's response to the above submissions by counsel for the Administrator-General of Jamaica, was that the Court document used in Judicial Review proceedings in the U.K made no difference, as the process and considerations are the same in Jamaica, since there is still a two-step procedure in both Jamaica and the U.K. Further, ***Rules 25-27*** of the ***C.P.R.*** are applicable throughout the entire Judicial review process and hence the Fixed Date Claim Form should be amended.

THE ISSUES

[34] The over-arching issue, is whether or not the requested Order for Amendment to Fixed Date Claim Form in a claim for Judicial Review to address the second decision by the Administrator General of Jamaica and add new grounds, being further relied, on should be granted.

[35] A secondary issue, is whether or not the requested Order for Specific Disclosure in this claim, should be granted. That issue though, can only properly arise for further consideration, if the amendment as sought, to be permitted to the Fixed Date Claim Form, is so permitted. If that amendment is not permitted, this claim can go no further, as the grounds on which this claim is based at present, are grounds which no longer have any 'weight' moving forward, since the Administrator-General of Jamaica has clearly accepted that those grounds were valid and thus, made her second decision, fully having taken into account those grounds and not having acted contrary to same. That is the different context in which, as I had earlier stated, the first decision of the Administrator-General of Jamaica was made.

[36] As regards whether or not the Order by Justice K. Anderson made on the June 26, 2017 relative to submissions and authorities, in a claim for Judicial Review, that were to be filed, can be varied, equally also, said issue will not have to be addressed at all, unless the amendments as sought to this claim, are permitted.

THE LAW AND ANALYSIS

JUDICIAL REVIEW

[37] ***Part 56*** specifically ***Rule 56.2 (1)*** of the ***Civil Procedure Rules 2002 ('C.P.R.')***, allows for an application for Judicial Review to be made by any person, group or body which has sufficient interest in the subject matter of the application. Such persons include any person who has been adversely affected by the decision which is the subject of the application.

[38] There is no dispute in relation to the whether the Claimant has *locus standi* to bring the application. The applicant is an individual with sufficient interest and the party adversely affected by the decision of the Administrator-General of Jamaica. It is also not disputed between the parties that if an amendment is to be made to this claim at this time, the permission of this Court, would be required in order for the

same to be lawfully effective. That is so, because of the provisions of ***Rule 56.15*** of the ***C.P.R.*** and the general recognition that case management orders can be made by this Court, at any stage of the Court proceedings related to any claim.

[39] It is by way of Judicial Review that Courts exercise supervisory jurisdiction over bodies that exercise public law functions and make administrative decisions which affect the public. Judicial Review is concerned with the process by which the decision is arrived at and not the substance or merit of the decision made. It is used where there is a need for relief from unfair and capricious action, which have been carried out by organs of the state, or any body entrusted with statutorily prescribed functions, which have used their powers in ways which were unreasonable and oppressive. A Court will therefore seek to correct a decision where it is unreasonable or where the decision-maker has acted outside of that which he/they or it is authorised to do and to ensure that the rule of law is maintained.

[40] I think it is well recognized and accepted that the starting point for any consideration for Judicial Review is that, an application for leave for Judicial Review must first be made. ***Rule 56.3 (1)*** has established that:

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

[41] It was laid down in the Privy Council case: ***Sharma v. Deputy Director of Public Prosecutions & Ors (Trinidad and Tobago)*** *[2006] UKPC 57* and several other decisions of the Courts in Jamaica, that the Applicant must show that there is an arguable case with a realistic prospect of success. I think that there is no debate as to what is the test. The test to be applied to determine the application is outlined by the Judicial Committee of the Privy Council in ***Sharma v. Deputy Director of Public Prosecutions & Ors (Trinidad and Tobago)*** *[2006] UKPC 57* where the Board declared at paragraph 14:

*'**The ordinary rule 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*** (highlighted for emphasis) *and not subject to a discretionary bar such as delay or an alternative remedy: see **R v Legal Aid Board ex p Hughes** (1992) 5 Admin LR623, 628 and Fordham, Judicial Review Handbook 4th ed (2004) p426. **But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application.** As the English Court of Appeal recently said with reference to the civil standard of proof in **R (N) v Mental Health Review Tribunal (Northern Region)** [2006] QB 468, para 62 in a passage applicable mutatis mutandis, to arguability,*

> *'**the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation must be proved to a higher degree of probability), but in the strength and the quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities**"* (highlighted for emphasis). *It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to "justify the grant of leave to issue proceedings of the court on a speculative basis which it is hoped the interlocutory processes of the court may strengthen" **Matalulu v Director of Public Prosecutions** [2003] 4 LRC 712, 713'*

[42] Several cases in the Jamaican Courts have adopted and applied this test. Two such cases were: ***Digicel Jamaica Ltd v. Office of the Utilities Regulations***

[2012] JMSC Civ. 91 and ***Regina v Industrial Disputes Tribunal (exparte J. Wray and Nephew Limited)*** *Claim No. 2009 HCV 04798 (unreported) delivered October 23, 2009*.

[43] Mangatal J ***in Digicel (Jamaica) Limited v The Office of Utilities Regulation*** *[2012] JMSC Civ. 91 at paragraph 21* has considered the purpose of an application for leave to apply for Judicial Review, it was affirmed that:

> *'It is part of the Court's function ... to be astute to avoid applications being made by busybodies with hopeless, weak, misguided or trivial complaints. Public authorities need protection from unwarranted interference and plainly, the business of government could grind to a halt and good administration be adversely affected if the Courts do not perform this sifting role efficiently and with care.'*

[44] In **Regina v Industrial Disputes Tribunal (exparte J. Wray and Nephew Limited)** Claim No. 2009 HCV 04798 (unreported) delivered October 23, 2009 Justice Sykes, as he then was, examined the applicable test for an application for leave for Judicial Review under the new Civil Procedure Rules. He described the test as being a new and higher test than what had previously obtained. I am in agreement with his analysis, and that the ***C.P.R.***, being a new procedural code has prescribed how Judicial Review matters should procedurally be addressed by this Court. At paragraph 58, he discussed the leave requirement in the following terms:

> *'58. The point then is that leave for application for judicial review is no longer a perfunctory exercise which turns back hopeless cases alone. Cases without a realistic prospect of success are also turned away. The judges, regardless of the opinion of the litigants, are required to make an assessment of whether leave should be granted in the light of the now stated approach…. (This) also means that an application cannot simply be dressed up in the correct formulation and hope to get by. An applicant cannot cast about expressions such as "ultra vires", "null and void",*

"erroneous in law", "wrong in law", "unreasonable" without adducing in the required affidavit evidence making these conclusions arguable with a realistic prospect of success. These expressions are really conclusions.'

[45] The ***C.P.R.*** has provided the method of application and the details that must be given when an application is made. Based on ***Rule 56.3 (1)*** of the ***C.P.R.*** and the robust authorities referred to above '*a person wishing to apply for Judicial Review must first obtain leave*'. Note the word **'must'** (highlighted for emphasis). Further, ***Rule 56.3 (3)*** states that the application for leave should also include, inter alia, the relief, including in particular, details of any interim relief, sought; the grounds on which such relief is sought; whether an alternative form of redress exists and, if so, why Judicial Review is more appropriate or why the alternative has not been pursued; 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; whether any time limit for making the application has been exceeded and, if so, why; whether the Applicant is personally or directly affected by the decision about which complaint is made; and finally, the application must be verified by evidence on affidavit which must include a short statement of all the facts relied on.

[46] It is clear then, that the Court's function at the application for leave stage is to eliminate claims which are hopeless, frivolous, and vexatious. A claim should only proceed to a substantive hearing upon the Court being satisfied that there is a case suitable for consideration. Along with the fact that there needs to be an arguable case with a realistic prospect for success, the Court will also consider the promptness of the application***. Rule 56.6 (1)*** requires for the application be ***'made promptly and in any event within three months from the date when the grounds for the application first arose****'* (highlighted for emphasis). Additionally, it has been established that the Court may extend the time, if good reason for doing so, is shown.

[47] It should also be noted that it is prescribed within ***Rule 56.6 (5)*** that, '*when considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to (a) cause substantial hardship to or substantially prejudice the rights of any person; or (b) be detrimental to good administration*.' These sentiments were exemplified in ***R v Stratford-on-Avon District Council and another, ex parte Jackson*** *[1985] 3 All ER 769,* where Judicial Review proceedings were commenced by Mrs. Jackson via an application for planning permission, for a supermarket in Alcester in Warwickshire. The grounds of the application are that when the planning committee which resolved to grant the planning permission were considering the application they were misled by the planning officer, who had to make a report to them, and as a result they failed to consider various highly relevant matters. It was on that basis that the Court's supervisory jurisdiction was invoked. The notice of motion originally sought an Order of certiorari to quash the grant of planning permission. Mrs Jackson was granted leave to apply for Judicial Review 'without prejudice to the right of the respondents to argue that the application is out of time' and the presiding judge gave directions to the Crown Office that the respondents should be told that if they wished to challenge the application as being out of time they should do so, by interlocutory notice to be given within 21 days of service on them. As a result of said direction, the Stratford-on-Avon District Council, and International Stores Ltd (who were interested in the site as developers) sought to set aside the leave granted. The application was heard inter partes by Forbes J on 17 July 1985. The Judge was told in detail, how it was that, notwithstanding that the resolution was passed on 30 August 1984, it was not until 10 May 1985 that the applicant's notice of motion applying for leave was lodged. The Judge, expressing some regret, concluded that he should not exercise his discretion and extend the time for making the application. It was accordingly dismissed.

[48] As reported at page 772 paragraph d, in said ***Stratford Case*** (op.cit.), Ackner LJ opined that:

'The essential requirement of the rule is that the application must be made 'promptly'. The fact that an application has been made within three months from the date when the grounds for the application first arose does not necessarily mean that it has been made promptly. Thus there can well be cases where a court may have to consider whether or not to extend the time for making the application, even though the application has been made within the three-month period.'

[49] Thus, if good reason is held to exist for the failure to act promptly as required, then the time for applying for leave to make the Judicial Review application may be extended. If there is however, undue delay, the Court could refuse either leave for the making of the application, or relief sought on the application. The Court has also concluded, as reported at page 774 paragraph c-e that:

'*whenever there is a failure to act promptly or within three months there is 'undue delay'. Accordingly, even though the court may be satisfied in the light of all the circumstances, including the particular position of the applicant, that there is good reason for that failure, nevertheless the delay, viewed objectively, remains 'undue delay'. The court therefore still retains a discretion to refuse to grant leave for the making of the application or the relief sought on the substantive application on the grounds of undue delay, if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration*.'

[50] The England Court of Appeal case of **R *v Dairy Produce Quota Tribunal for England and Wales, ex parte Caswell and another*** [1989] 3 All ER 205 also agreed with the ***Stratford Case*** (op.cit.). In the ***Dairy Produce Quota Tribunal Case*** (op.cit.), the applicants were dairy farmers in South Wales. In 1985 they were milking 70 cows, although they had expectations to increase their herd to 150 cows in the next few years. In 1985 the Dairy Produce Quota Tribunal for England and Wales fixed their dairy produce quota under the Dairy Produce Quotas Regulations

1984 on the basis that for that year they were expecting to milk 70 cows and that when the applicants increased their herd to the expected 150 cows they could re-apply to have their quota increased. When the applicants later increased their herd to 150 cows they were charged a superlevy on the production in excess of their quota and discovered that the quota set in 1985 could not be changed. Accordingly, in May 1987, which was over two years after the tribunal's decision, the applicants applied for leave to apply for judicial review of the tribunal's decision. The judge hearing the substantive claim for judicial review held that the tribunal had misconstrued the 1984 regulations and should have set the applicants' quota on the basis of 150 cows, but he exercised his discretion under s 31(6)[a] of the Supreme Court Act 1981 to refuse relief because there had been undue delay on the part of the applicants in applying for judicial review and the grant of relief would be likely to be detrimental to good administration. The applicants appealed to the Court of Appeal.

[51] It was held as reported at page 205 paragraphs g –j that:

> *'(1) When leave to apply for judicial review was not made promptly or within three months at the latest, as prescribed by RSC Ord 53, r 4(1)[b], the judge hearing the ex parte application for leave had to refuse leave unless the applicant showed good reason for the delay, but even if the time for making the ex parte application was extended the judge could, under s 31(6) of the 1981 Act, still refuse leave on the ground that the grant of relief would be likely to cause substantial hardship or would be detrimental to good administration, although in practice leave would normally be granted ex parte if good reason was shown and the question of substantial hardship or detriment to good administration would be left to be argued at the inter partes application.*
>
> *(2) If the time for applying was extended for good reason and leave was granted ex parte it was not open to the applicant to argue on the*

substantive hearing of the application for judicial review that there had not been undue delay in making the application, since the fact that the application had been made outside the time limit prescribed by RSC Ord 53, r 4(1) automatically meant that there had been undue delay for all purposes even if the applicant was able to show good reason for the delay; but the court hearing the substantive application could refuse relief under s 31(6) of the 1981 Act on the ground that the grant of relief would be likely to cause substantial hardship or would be detrimental to good administration even if leave had been granted ex parte.'

[52] Further, as reported at page 206 paragraphs a-c, it was posited that:

'(*3) The grant of relief would be likely to be 'detrimental to good administration' for the purposes of s 31(6) of the 1981 Act if the foreseen consequences of granting judicial review would be positive harm rather than mere inconvenience to good administration. In determining whether the consequence would be harmful the court could look not only at the particular case but also at the effect of the decision in the particular case on other potential applicants and the consequence if their applications were successful. However, there had to be affirmative evidence of detriment or at least evidence from which detriment could be inferred.*

(3) On the facts, there had been undue delay on the part of the applicants in applying for judicial review since the application had been made outside the time limit specified by Ord 53, r 4(1) and the grant of relief would be likely to be detrimental to good administration since if the applicants were successful either a significant number of claims would have to be reopened or the applicants would enjoy an unfair advantage over other unsuccessful claimants in the same

position. Accordingly, the judge had been right to refuse relief. The appeal would therefore be dismissed.'

[53] It should also be noted that ***Rule 56.4 (12)*** in the ***C.P.R.*** is of great importance for the purpose of seeking Judicial Review. That rule specifies that an application for Judicial Review is conditionally subject to the requirement that the Applicant must make a claim for Judicial Review within fourteen (14) days of receipt of the order granting leave.

[54] Accordingly, in seeking leave to apply for Judicial Review the pre-requisite requirement is that the grounds on which the proposed claim is based and evidence presented before the Court must disclose that there is an arguable case with a realistic prospect of success. In the present case, however, there is an over-arching issue which surrounds the request for the amendment of the Fixed Date Claim, which is the initiating document that is filed after the application seeking leave for Judicial Review has been granted. That over-arching issue, is as to whether or not the claim that was originally filed, pursuant to the grant of leave order which was earlier made, ought to be permitted to be amended so as, to now add new grounds, in order to properly reflect what has occurred since leave was granted and thus, the amendments, if permitted by this Court, would thereafter constitute the entirely new grounds on which this claim would thereafter be based.

[55] I will go on to consider the request for the amendment to the Fixed Date Claim Form because if it is not granted, then specific disclosure could not be granted as there will be no claim. Judicial Review is time sensitive and the grounds should be substantial, to make a claim for Judicial Review.

[56] It should in fact be noted that the Notice of Application for Court Orders seeking leave to amend this claim, encapsulates a material change in circumstances. That being that the second decision, made on the Administrator-General's own initiative and consideration that, '*it will not consent to disclaim the Crown's Title to the property registered at Volume 1112 Folio 215 in the name of Cedar Ridge Limited,*

is different in context, than the first decision that was made, whereby the Administrator-General had abdicated her duties, by refusing to grant the Notice of Disclaimer in relation to said land, on the basis that the Commissioner of Lands had not consented to the issuance of the said Notice.

[57] At first glance, the matter seems to be on the basis of form over substance, but when closely examined, this Court has recognized that there is need for further and a more detailed reflection. Reflection surrounding whether or not the Order set out in the Notice of Application for Court Orders to amend the Fixed Date Claim Form filed on January 17, 2017 should be granted, given the nature of Judicial Review Matters and the prescribed procedural Rules that govern said matters.

[58] What is being asked for, is to Amend the Fixed Date Claim Form to challenge the second decision by way of Judicial Review and if one was to examine the requirements set out above, in particular, ***Rule 56.3 (1)***, the established rule would not have been met if the amendment was to be granted, that being that there would have been an application for leave to apply for judicial review of the second decision. Such an application, if it had been made, would, of necessity, have had to have been made, on entirely different grounds than those grounds which were earlier put forward by the Claimant, in respect of his only supplication for leave- which pertained to the first decision only.

[59] This Court may allow for the amendment of a judicial review application for leave. Such is prescribed in ***Rule 56.4 (6)*** which states that '*the judge may allow the application to be amended*.' It should be pointed out however, that this is at the application for leave stage. Further on, upon first hearing of the claim form, which is the case management conference, with respect to the judicial review claim, ***Rule 56.13 (2)(b)*** of the ***C.P.R.*** provides than an amendment may be permitted and that ***Parts 25*** to ***27*** of the ***C.P.R.*** may be applied. Those parts of the ***C.P.R.*** pertain to the wide-ranging case management powers which this Court has. Furthermore, it is now taken as well-established that this Court's powers of case management, in

respect of a claim, do not only exist at case management stage, but rather, exist throughout all stages of this Court's consideration/hearing of that claim.

[60] According to ***Blackstone's Civil Practice 14th ed., (2014*) *p. 477*** '*in accordance with the overriding objective, as a general statement of principle, it can be said that amendments should be allowed where this is just and proportionate*,' so that the real dispute can be adjudicated. The real dispute however, that surrounds the second decision made by the Administrator-General of Jamaica is whether that decision is properly before the Court for Judicial Review, bearing in mind that no leave to apply for Judicial Review, so as to effectively challenge that second decision, has, as yet, been sought. In fact, the leave that was provided by the Honourable Justice Stamp on January 10, 2017 was regarding the dispute of the first decision, on the basis that the Administrator-General of Jamaica had not exercised her own independent judgement to determine whether the Notice of Disclaimer was to be issued and had accordingly, unlawfully abdicated her statutory duties. The said decision was said to be unlawful, unreasonable, irrational and illogical. Further grounds were mentioned that spoke to a 2nd Respondent, who is no longer a party to this claim, that being the Registrar of Companies. It was on this basis, supported by the Affidavit of the Claimant filed on November 4, 2016, that the Court found that there was indeed, an arguable case with a realistic prospect of success. This is not what has transpired though, as regards the second decision, where it has been stated that the Administrator-General of Jamaica had exercised her own independent judgement to refuse to issue the Notice of Disclaimer and further, that no reasons were given for this second decision and no opportunity was given to the Claimant to be heard.

[61] It is my belief, based on sound authority, that leave must be obtained and the ground(s) relied on, have to be presented before the Court. The Claimant, in the case at bar had obtained leave, the first hearing had taken place and the matter came up for trial. The trial was 'heard' on paper and while judgement on that claim was pending, a second decision was made on an entirely different basis, resulting

in the nullification of all of the pre-requisite requirements in compliance with the ***C.P.R.*** regarding a Judicial Review matter. In the first decision, the Administrator-General of Jamaica refused to issue the Notice of Disclaimer on the basis that '*the Commissioner of Lands will not consent to disclaim the Crown's title to property registered at Volume 1112 Folio 215 in the name of Cedar Ridge Limited'* (italicized for emphasis). The second decision was considered solely by the Administrator-General of Jamaica not to sign a Notice of Disclaimer. In these circumstances, at this stage, what the Claimant is seeking to do is to amend the existing claim regarding the first decision, in order to avoid the procedural pre-requisite of applying for leave for Judicial Review regarding the second decision. If the Fixed Date Claim Form was to be amended, the Claimant would be bypassing all of the relevant requirements prescribed in ***Part 56*** of the ***C.P.R.*** and it would be a disregard of the Rules prescribed in the ***C.P.R.***, given that the Claimant was already given leave for the first decision based on the grounds provided. The arguments and grounds laid down in support of the first decision could not assist as regards the second decision, because there needs to be, according to the ***Sharma Case*** (op.cit.), an arguable case with a realistic prospect of success and this has not been met.

[62] In fact, thus far, in respect of the second decision, since no application for leave has ever been filed, by the Claimant, in respect thereof, this Court could not now, properly determine whether or not, the Claimant would have an arguable case with a realistic prospect of success, in respect of any challenge to that second decision.

[63] Further, under ***Rule 56.6 (1)*** of the ***C.P.R.***, the application for Judicial Review *'must be made promptly and in any event within three months from the date when grounds for the application first arose.'* If that time has passed, there needs to be an application for extension of time and such an application should be served on the opposing party and the Judge hearing that application, ought to consider prejudice and delay when considering same. This will not be done if the Fixed Date Claim Form, filed in this claim is amended. The Judge will not get to consider the

issue of whether to refuse leave or to grant relief because of delay and whether the granting of leave or relief would be likely to cause substantial hardship to, or substantially prejudice the rights of any person; or be detrimental to good administration. No application for leave has been filed, in relation to the second decision, as required by the prescribed Rules of Court and no application for extension of time has been sought and furthermore, no good reasons for the extension of time, has been shown.

[64] In ***R v Ashford, Kent Justice Ex parte Richley*** *[l955] 1 W.L.R. 562*. An applicant for judicial review applied for leave, ex parte, outside of the time limit set by the extant rule. At the application, the respondent was not present and neither was she represented. Leave was granted. It is not clear from the report how this was possible but, sometime later, there was an application for extension of time within which to apply for leave. It was in this context that Lord Goddard observed at page 563 that:

> *'where a person intends to apply to the court for an extension of time he must give notice to the person whom he would serve in the ordinary way as one who would be affected if the order challenged were quashed, that he intends to apply for an extension of time because the person affected has a right to be heard and to object to such an extension. He very likely has what I will call a vested interest in the upholding of the order. In the same way as if you go to the Court of Appeal out of time you have to give notice of motion for the time to be extended and as you have to so in this court when the justices have not stated a case within the requisite time, so, if you are going to move for certiorari out of time, you must give notice to the person who would be made in the ordinary way a respondent to the motion in order that he may be heard as to whether or not it is a fit case in which to extend the time.'*

[65] It should be noted then, that in the case at bar, the grounds of the Judicial Review have changed and also, the context within which such Judicial Review could

possibly be pursued, has also changed and there is evidence that an application for the extension of time may be relevant given when the grounds for seeking judicial review first arose, that being July 14, 2017, which is the date when the second decision was made, by the Administrator-General of Jamaica.

[66] Again, the Court has not been given the opportunity to examine if there is undue hardship or detriment to the administration of justice. The issue of delay has not been dealt with in the Notice of Application for Court Orders and neither was the Administrator-General of Jamaica given an opportunity to even address her mind to any application for leave regarding the second decision. That is so, solely because no such application for leave to apply for Judicial Review, as regards that second decision, has been made by anyone. Even if the substantial aspect of the application were to show that the Claimant has an arguable case with a realistic prospect of success, as regards the second decision of the Administrator-General of Jamaica, how is delay to be treated?

[67] The Court of Appeal has made the point most clearly in ***Golding (Orrett Bruce) & The Attorney General of Jamaica v Portia Simpson Miller (Portia) SCCA 3/2008*** that it is not open to the Courts to waive compliance with specific rules of Court in Judicial Review cases, because Judicial Review cases are to be considered sui generis, that is, applying within their own particular context, as such cases are a special category. In the ***Golding Case*** (op.cit.), the Court of Appeal allowed the appeal and set aside the Order of Donald McIntosh, J. made on January 10, 2008 extending the time to apply for Judicial Review consequent on the Order of Miss Justice Beckford, made on December 13, 2007. The decision of McIntosh, J. was considered against the background of the earlier proceedings before Beckford, J. It is to be noted that Beckford, J. had granted leave to the respondent to apply for Judicial Review and had ordered a stay of all proceedings connected with the application until January 10, 2008, the date of the next hearing. The claim was filed outside of the fourteen (14) days. At first, the claimant wanted to rely on the provision of ***Part 26*** and it does not apply to Judicial Review

proceedings at the stage of an application for leave to apply for Judicial Review. ***Part 26*** instead, applies after leave has been granted and a claim for Judicial Review has been filed within fourteen (14) days of the date of the order granting leave. Thereafter, at first hearing of that claim, it is then that ***Part 25*** to ***27*** of the ***C.P.R.*** will be applicable. Panton, P at page 10 in ***Golding*** (op.cit.) has opined that, the ***C.P.R.*** has provided the general rules in relation to applications for Court Orders, whereas ***Part 56*** deals specifically with Administrative Law. The wording of ***Rule 56.13 (1)*** of the ***C.P.R.*** makes that clear. As such, it was stated by Panton P. that:

> *'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 Part 25 and Part 27 of Rules apply…..it cannot be that without there being a statement to that effect, the 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 the orderly conduct of litigation would be defeated.'*

[68] Further, Smith, J.A in ***Golding*** (op.cit.) also posited at pages 14-15 that:

> *'Part 56 of the Civil Procedure Rules 2002 deals with the applications for Judicial Review. Such applications are referred to generally in Part 56 as applications for Administrative Orders…A person wishing to apply for Judicial Review must first obtain leave- rule 56. 3 (1). An application for leave must first be considered forthwith by a Judge of Court- rule 56.4 (1).'*

[69] The ***Golding Case*** (op.cit.) basically highlighted that this Court cannot invoke the general powers that exist in the general rules of the ***C.P.R.*** to whittle down ***Part 56***. The essence of this matter, at this stage, is that there is a two-tiered process that the Claimant needs to undergo, that being, to apply for leave and then for leave to be considered at a hearing by a Judge of this Court. During that hearing,

the issue of delay may very well, be relevant. It may therefore be, that the Claimant needs to apply for an extension of time, for the purposes of any such application. Also, the Claimant would be properly described as 'Applicant' and not as, 'Claimant.' In these circumstances it is my view that it is not open to this Court to treat the issue at bar as though the application for leave, surrounding the second decision was already made. Even though the second decision and the first decision are the same, the context in which those decisions were made, are not the same, therefore, the grounds of Judicial Review, if it is to be pursued, in respect of both decisions, will not and cannot, be the same. Further any application for extension of time has to be served on the other side. In this case, at this stage, since the Clamant has not applied for leave in respect of the second decision, none of these other matters which this Court must address its mind to, upon any application for leave, can now be considered.

[70] In the present case, leave was granted regarding the first decision and the grounds relied on at that time, are now debunked due to the second decision. A fresh application for leave, accounting for the delay in in the filing of same, would, it seems to me, therefore now have to be pursued, if that second decision is to be effectively challenged.

[71] Even though it is my belief and well established, that the matter of placing form over substance, when dealing with matters is no longer a good practice and that where there exists grounds and evidence capable of grounding Judicial Review, the request should be granted; the circumstances surrounding the matter at hand having been changed, it would only make sense to apply for leave in a time-sensitive manner, regarding the second decision, given the requirements that have to be met. Leave would need to be obtained and the new grounds that must be incorporated in order of the Court to consider if there is an arguable case with a realistic prospect of success for leave to be granted. This would not be a matter of placing form over substance, but rather, would be a matter of recognizing that these procedural matters are of a substantive nature.

[72] My decision is fortified by the ***C.P.R.*** and other established authorities. I therefore will not grant the Claimant permission to amend the Fixed Date Claim Form filed on January 17, 2017 to add further grounds being relied upon.

[73] My Orders therefore, will be as follows:

1. The Claimant's application for Court Orders which was filed on August 9, 2017 is denied in its entirety.
2. No order is made as to the costs of that application.
3. The Defendant shall file and serve this Order.

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Hon. K. Anderson, J.