

Judgement book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2004/HCV 01386

IN CHAMBERS

BETWEEN MILLICENT FORBES CLAIMANT

AND THE ATTORNEY GENERAL
 OF JAMAICA DEFENDANT

Richard Small and David Wong Ken for Claimant

Mrs. Nicole Foster-Pusey and Miss Carlene Larmond for Defendant

HEARD: September 20 and October 1, 2004

CORAM: WOLFE, C.J.

This is an application for leave to apply for Judicial Review.

The circumstances giving rise to this application are, to say the least,

tragic.

The police report that on April 14, 2000 a party of policemen were on operations in West Kingston. It is alleged that they came under fire from gunmen. They returned the fire. Janice Allen, a young girl aged 13 years, was fatally shot during the crossfire.

This version of how young Janice Allen lost her life is denied by her sister, Anne Marie Allen, who contends that Janice was shot after the shoot out had ceased.

Arising out of the incident Rohan Allen, a member of the Jamaica Constabulary Force, was arrested and charged for the murder of Janice Allen and duly committed to stand trial before the Circuit Court.

When the matter came on for trial in the Circuit Court for the parish of Portland the accused pleaded not guilty and a jury was duly empanelled to hear the case before the Honourable Mr. Justice Hibbert.

Mr. Herbert McKenzie of the Director of Public Prosecutions Office appeared for the Crown. He outlined to the court the allegations and then advised the court that the Crown was not in a position to prove its case against the accused due to the unavailability of certain vital evidence. He offered no evidence and the learned Trial Judge directed the jury to return a verdict of not guilty. The jury relying upon the direction of the learned Trial Judge entered a verdict of not guilty and the accused was discharged.

Subsequently, it turned out that the information upon which the Prosecution relied, as to the availability of the crucial evidence, was false.

The application before me is for leave to apply for Judicial Review, with a view to obtaining an Order of Certiorari to quash the verdict of

acquittal of Rohan Allen for the murder of Janice Allen and also a declaration that the trial resulting in the acquittal of Rohan Allen was a nullity.

The grounds upon which the relief is sought are –

- (i) The acquittal of Rohan Allen was obtained by improper means, to wit, a fraud upon the office of the Director of Public Prosecutions and the Court.
- (ii) The Administration of Justice in relation to Regina v Rohan Allen was perverted.

The Attorney General, the defendant herein, seeks an Order striking out the Fixed Date Claim Form of the applicant on the following grounds –

- (i) The claimant has failed to comply with rule 56.3(1) of the CPR in that the claimant did not obtain leave to apply for Judicial Review prior to the filing of the Fixed Date Claim Form.
- (ii) By filing and pursuing this action, the claimant is abusing the process of this Honourable Court.
- (iii) This Honourable Court has no jurisdiction to hear the action.

In listening to Mr. Small's submissions it was patently clear to me that he realized that he had embarked upon an uphill task. His approach was essentially that this was an opportunity to break new ground as to the extent

to which an Order for Judicial Review could be granted. He conceded that the application was unusual in that it invited the Supreme Court to exercise its supervisory jurisdiction over the proceedings of the Supreme Court as well as to look behind a verdict of acquittal returned by a jury.

He submitted that leave should be granted in order that there may be a full hearing of the issues raised.

He noted that the court has an inherent jurisdiction to investigate and review any circumstances where it appears that there may have been an abuse of its process.

Mrs. Foster-Pusey for the defendant submitted.

(1) That the Supreme Court has no jurisdiction to review proceedings in the Circuit Court.

Relying upon section 27 of the Judicature (Supreme Court) Act she argued that the Supreme Court as a superior Court of Record, is not amenable to Judicial Review.

Section 40 of the said Act she submitted stipulates that a Judge of the Supreme Court holding a Circuit Court constitutes a Court of the Supreme Court and is therefore not subject to judicial review.

In support of this submission she sought comfort in the dictum of Lord Scarman in *Re Racal Communications Ltd.* [1980] 2 All ER 634 at p.646.

“But the High Court is not an inferior tribunal. It is one of Her Majesty’s Courts of law. It is a superior court of record. It was not in the past, subject to control by prerogative writ or order, nor today is it subject to the judicial review which has taken their place. It has inherited the jurisdiction of the superior common law courts of first instance”.

The Learned Authors of Administrative Law, Seventh Edition, at page 640 state:-

“The High Court and other superior courts are beyond the scope of these remedies, not being subject to judicial review”.

This view is supported by the Learned Author of Judicial Remedies in Public Law at para. 2 – 104.

“Judicial review is not available against superior courts. These include the House of Lords and the Supreme Court. The Court of Appeal and the High Court form part of the Supreme Court and decisions of these courts are not amendable to judicial review”.

But specifically the applicant seeks leave to apply for an order of certiorari.

In dealing with the matter of Certiorari the Learned Author of Halsbury's Laws of England, Fourth Edition, Volume 1 at page 150 has this to say –

“Certiorari lies, on application of a person aggrieved to bring proceedings of an inferior tribunal before a High Court for review so that the court can determine whether they shall be quashed or to quash such proceedings”.

Continuing, the Author further states –

“The order cannot be directed by the High Court to any tribunal which is a branch of the High Court for the purpose of quashing its proceedings”.

In opposing the application Mrs. Foster-Pusey also submitted that the Attorney General was not a proper defendant in a matter of Judicial Review. She pointed out that Judicial Review is at the instance of the crown. For this proposition she relied upon the decision in *Kool Temp. Co. v The Comptroller of Customs and Excise and the Attorney General*(1992) TLR 523 at 54, a decision of the High Court of Trinidad and Tobago, in which Warner J held that the Attorney General is not a proper party in cases where prerogative remedies are sought.

I am satisfied on the basis of the authorities cited that the proceedings of the Circuit Court, in particular the verdict of the jury, is not amenable to Judicial Review and cannot be quashed by certiorari.

I am also satisfied that the Attorney General is not a proper defendant in Judicial Review Proceedings.

Tragic as the circumstances may be, the court has to be guided by principles of law rather than by emotion. Merely to grant leave so that a full hearing can be had in circumstances where the claim is hopeless, is an exercise in futility.

To grant leave in this matter, is in my view, to act in vain. The jury's verdict of acquittal cannot be impeached by Judicial Review or indeed at all.

The only course open to the applicant is to move the proper authority to have the matter properly investigated and if it is established that the course of justice was perverted, to have those responsible for so doing brought to justice.

The application for leave is refused.
