[2025] JMSC Civ. 53

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2025 CV00114

BETWEEN	**ORAINE BALDIE**	**Applicant**
AND	**THE PAROLE BOARD**	**Respondent**

IN CHAMBERS

Mr. Hugh Wildman, instructed by Hugh Wildman and Company for the Applicant.

***Ms. Karessian Gray instructed by the Director of State Proceedings for the Respondent*.**

Application for leave for Judicial Review – Whether the court has jurisdiction to hear the Application – Whether there is an arguable case with a realistic prospect of success.

Heard: April 9, 2025, and May 9, 2025

THOMAS: J

Introduction

[1] This is an application by Mr. Oraine Baldie, headed **"Application for leave for Judicial Review"** It is grounded on the refusal by the Parole Board of Jamaica ("the Board") to grant parole to the Applicant. Mr Oraine. Baldie. The Applicant contends that the procedure employed by the Board in order to arrive at the decision to refuse his application for parole violated his constitutional right to a fair hearing guaranteed by ***Section 16 of the Charter of Fundamental Rights and Freedoms, of the Constitution of Jamaica***.

[2] In 1998, Baldie was convicted of non-capital murder and sentenced to serve a term of 20 years before eligibility for parole. In accordance with the provisions of

the ***Parole Act***, he became eligible for parole in 2015. Between 2015 and 2024 he has made 4 applications for parole, all of which have been denied by the Board. The most recent forms the basis of this application before the court.

[3] The Applicant alleges that he was not made aware of the information contained in adverse reports that the Board relied on to come to an adverse decision regarding his application for parole. He asserts that he was denied the opportunity to make representation in relation to these reports. As such he contends that his right to a fair hearing has been violated.

[4] The Applicant by way of this application for judicial review filed on the 14th of January 2025 seeks the following Orders.

i A Declaration that the refusal of the Respondent to place the Applicant on parole by way of letter dated November 15, 2024, is procedurally improper, rendering the said decision unlawful, null and void and of no effect.

ii. A Declaration that the decision of the respondent not to place the Applicant on parole by way of letter dated the 15th of November 2024, is irrational rendering the said decision unlawful, null and void and of no effect.

iii. An order of certiorari quashing the decision of the respondent not to place the Applicant on parole as contained in the said letter dated the 15th of November 2024.

[5] The grounds for the Application are expressed as follows.

i. ***Part 56.3*** of the ***Civil Procedure Rules*** provides that anyone wishing to apply for judicial review must first obtain leave.

ii. The Applicant received a letter from the Respondent dated the 15th of November 2024, refusing his application for parole.

iii. The Applicant has not been given an opportunity to a hearing in any of his four applications which were all refused.

iv. The Respondent's failure to provide any reasons for the decision against the Applicant has further undermined the fairness of the process.

v. The Applicant has no alternative means of redress and judicial review is the Applicant’s only remedy.

vi. The Applicant has been adversely affected by the decision of the Respondent.

vii. The Applicant has a legitimate expectation that his application should be considered once he has shown improvement and after having served more than 10 years in prison.

viii. The Applicant has shown impressive progress of rehabilitation, and this is evident in his achievements of an associate’s degree through the University of the Caribbean Business Administration Course that he graduated from while in prison.

ix. The Applicant’s peer in a similar situation to him has had his application for parole considered even though the Applicant has shown much better improvements than he.

x. The decision made against the Applicant has been made against him unfairly and without any basis.

xi. The Applicant has been incarcerated since 1998 and has been eligible for parole since 2016.

xii. The Application was made promptly after the Applicant was notified of the decision.

xiii. The Applicant has a good arguable case for Judicial Review.

The Factual Background

[6] In his affidavit filed on the 14th of January 2025, Mr. Baldie, avers that he is an inmate at the Tower Street Adult Correctional Centre.; He was convicted of non-capital murder in 1998 and has been eligible for parole since 2016. Mr. Baldie contends that he has applied on three previous occasions for parole He says on the last occasion, being the fourth, in a letter dated the 15th of November 2024 from Ms. Shanieka Robinson, secretary of the Parole Board, he was informed that his application for parole was once again refused.

[7] Mr. Baldie further states that he has never been given an opportunity to have a fair hearing of his application nor the reason for the refusal of said application.

He states that he has never been given the opportunity to answer any of the allegations being made against him in his suitability for parole.

[8] The Applicant avers that he has the right to be heard in all such matters regarding his application and any allegations that affect the consideration of his application for parole or otherwise. He indicates that this right further extends to being given reasons for any decisions made against him.

[9] The Applicant states that he was not given reasons for the denial of his application and further states that he has been going to school at the General Penitentiary, where he has achieved his Associate Degree in Business Administration with Second Class Honours from the University of the Commonwealth Caribbean

[10] He says further that no one has taken any report from him personally, but they did a report without his knowledge and made claims that he was suspended from the school during his tenure and that he needed psychiatric evaluation. He says that those allegations are completely false, and he has not to this day been given an opportunity to answer those allegations.

[11] The Applicant avers that he has in his possession a letter from an inmate in a similar situation as he, who even though the Applicant was performing much better,

in the rehabilitative programs, such as education. had his application considered and approved.

[12] Mr. Baldie states that his overall performance while incarcerated has been exemplary. He further states that he has not been given any opportunity to appear at his hearing nor any reason for the refusal of his application to appear in person nor the continued refusal of his parole. He says that his continued incarceration is unfair and unjustified when he has clearly improved more than his peers, and they have been granted parole while he had all four of his applications refused.

[13] Attached to The Applicant's affidavit are the following correspondence.

(i) A letter written to the Board by the Attorney- at- Law for the Applicant on September 19. 2024 stating inter alia that the Applicant is" eligible and suitable for parole ". That the Applicant "has derived maximum benefit from incarceration ". He urged the board to take into consideration that the applicant has completed an associate degree in administration among other initiatives that he has undertaken to improve himself. He further opined that the Applicant is not a danger to society. He invited the Parole Board pursuant to ***sections 5 and 7 of the Parole Act,*** to invite the Applicant to appear at the hearing to determine his suitability for a grant of parole.

(ii) A letter dated October 22nd, 2024; signed by the Chairman of the Parole Board, stating that the Board did not agree with the attorney's request for the Applicant to appear at the Parole Hearing.

(iii) A further correspondence dated the 15th of November 2024; whereby the chairman of the Parole Board informed the Applicant of the decision of the board. It states that "*based on adverse report his application has been considered and refused*"

The Issues

[14] The issues that arise in this matter are

(i) Whether the court has jurisdiction to hear this matter.

(ii) Whether there is an arguable case pointing to non-adherence to the principles of fairness and Natural Justice. with a realistic prospect of success

The Law

[15] The procedure for the application for judicial review is governed by ***Rule 56 of the Supreme Court Judicature Rules***. The rule states.

> "A person wishing to apply for judicial review must first obtain 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) whether an alternative form of redress exists and, if so,
>
> why judicial review is more appropriate or why the alternative has not been pursued.
>
> (e) 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.
>
> (f) whether any time limit for making the application has been exceeded and, if so, why.
>
> (g) whether the applicant is personally or directly affected by the decision about which complaint is made; or

(h) where the applicant is not personally or directly affected, what public or other interest the applicant has in the matter.

(i) the name and address of the applicant's attorney-at-law (if applicable); and

(j) the applicant's address for service

[16] The court in the well-known case ***of Sharma v Brown-Antoine and Ors.*** [2006] UKPC 57), in pronouncing on the threshold that the Applicant needs to meet for a grant of leave to apply for judicial review stated that.

> *"The court will refuse leave unless satisfied that there is an arguable ground for judicial review, having a realistic prospect of success, not subject to a discretionary bar or an alternative remedy"*

Submissions by Counsel for the Applicant

[17] Counsel, Mr. Wildman submits that the Applicant has been adversely affected by these decisions of the Board in not giving the Applicant an opportunity to be heard. He maintains that there was a legitimate expectation that his applications would be considered favourably, having shown significant improvement including the earning of an associate degree in Business Administration through the University of the Commonwealth Caribbean, while incarcerated and after serving more than ten years in prison.

[18] He further points out that the granting of parole to a peer in a similar situation as the applicant, despite him demonstrating less progress than the Applicant demonstrates that the decisions were made unfairly and without any basis.

[19] Counsel submits that the Respondent's failure to provide the Applicant with an opportunity to be heard, as well as the lack of reasons for the decisions, amount to a breach of his constitutional right to due process and a fair hearing under

Section 16 of the Charter of Fundamental Rights and Freedoms of the Constitution of Jamaica.

[20] In support of this, point he relies on the case of **Neville *Whyte v Attorney General*** [2008] HCV 05481. He highlights the dicta of Justice L. Campbell where he stated at paragraph 10 of the Court's judgment that:

> *"…. the Crown has maintained that Justice Cooke was acting as a judicial officer and conceded that the Applicant had a right to a fair hearing before Cooke J.A. which had been contravened. The denial of a fair hearing is a procedural failure that constitutes an error that amounts to failure to observe one of the fundamental rules of Natural Justice and is likely to further his deprival of liberty".*

[21] Counsel points out that the Applicant's parole applications, four in number, were refused without affording him any opportunity to present evidence or address any of the issues in the hearing whether personally or with representation by Counsel. Counsel emphasizes that the Respondent's conduct in not disclosing the real rationale behind the decisions prevented the Applicant from understanding or challenging the decisions, rendering the process arbitrary and unjust.

[22] For the reasons set forth above, counsel submits that the Applicant's constitutional rights have been breached by the Respondent's failure to provide a fair hearing and adequate reasons for refusing his parole applications and that the Respondent's conduct has led to an unjust deprivation of liberty.

[23] He submits that the Applicant's efforts at rehabilitation, combined with his long period of incarceration, give rise to a legitimate expectation recognised under both constitutional principles and case law and that his efforts and long period of incarceration would be properly considered when reviewing his parole applications.

[24] Counsel further submits that the fact that a similarly situated peer has had his parole application favourably considered, despite less demonstrable progress, underscores the unfairness of the decision against the Applicant.

[25] Counsel also urges the court to consider that the overriding objective of the Civil Procedure Rules gives the court a wide discretion to grant relief where procedural defaults lead to manifest injustice. He asserts that the breach of natural justice arising from the administrative malpractice is irreparable and no monetary remedy could adequately compensate for the loss of liberty suffered by the Applicant.

[26] Given these circumstances, Counsel urges the Court to exercise its jurisdiction to grant leave to quash the Respondent's decision and order a rehearing of the Applicant's parole applications with proper notice and an opportunity to be heard.

Submissions by Counsel for the Respondent

[27] Counsel Ms. Gray raised the preliminary point that the application before the court is not a proper one to be considered, as within the remedies being sought, the applicant seeks judicial review and not leave for judicial review. She takes the point that the Applicant has not complied with the provisions of the ***Judicature Supreme Court Rules*** **(The *Rules*)** as there is no indication in his application that the remedy being sought is leave for judicial review and as such his application should not be granted.

[28] She further points out the test to be applied to an application for leave for Judicial Review as outlined in the case of ***Sharma v Brown-Antoine and Others*** [2007] 1 WLR 780' That there should be an arguable case with a realistic prospect of success

[29] She continued by high lighting the following passage in the judgment which reads

> *"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)*** *[2005] EWCA Civ 1605, [2006] QB 468, para 62, in a passage applicable mutatis mut…the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the 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 has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities. 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 upon a speculative basis which it is hoped the interlocutory processes of the Court may strengthen."

[30] She posits that it is not sufficient to say without more that the Applicant's right to procedural fairness was breached as the law does not stipulate that the Parole Board must share the information in the respective reports with the Applicant.

[31] She argues that ***Section 7 of the Parole Act*** sets out the requirements for parole and the relevant documents and information that should be put before the Board which include the case history of the Applicant, a copy of a report from correctional officer on the conduct of the applicant while in the adult correctional centre, and a copy of a psychologist report***. Subsection 4*** provides that the hearing shall be held in camera and if the Board sees fit each applicant may be given permission to appear. This she says, means that it is within the discretion of the Parole Board to determine whether or not the Applicant appears in person; it is not an entitlement of the Applicant

[32] She contends that **Section 7 (6) and (7)** of the Act outline the relevant factors the Parole Board must consider when deciding whether to grant parole. The relevant provisions are as follows:

"(6) The Board shall, for the purpose of deciding whether or not to grant parole to an applicant, take into account the following-

(a) the nature and circumstances of the offence for which the applicant was convicted and sentenced,

(b) remarks (if any) made by the Judge at the time of sentencing;

(c) the information contained in the reports mentioned in subsection (3); and

(d) any report made by a parish parole committee.

"(7) The Board shall grant parole to an applicant if the Board is satisfied that

> *(a) he has derived maximum benefit from imprisonment, and he is, at the time of his application for parole, fit to be released from the adult correctional centre on parole.*
>
> *(b) the reform and rehabilitation of the applicant will be aided by parole; and*
>
> *(c) the grant of parole to the applicant will not, in the opinion of the Board, constitute a danger to society*

[33] She also contends that the statutory provisions show that the resolution of the question of parole is entrusted solely to the Parole Board and in exercising this important role, it was for the Board to determine if they were satisfied by his written representations in view of the reports before the board whether the Applicant was suitable for parole. She asserts that it is clear from the Board's letter of November 15, 2024, that the Board considered the reports submitted along with the Applicant's written representations and was not satisfied that he had met the requirements under **subsection (7)** of the Act.

[34] She submits that it is well established that the standards of fairness are not immutable, changes over time, are flexible and are dependent on the legal and administrative context. She points out that the grant of parole is not a right but is subject to the discretion of the Parole Board and that in considering what procedural fairness is in the present context, account must first be taken of the interest at stake. On one hand the factors set out under **subsections (6) and (7)** of the Act, and on the other the Applicant's freedom. Counsel submits that the decision-making process is not rendered unfair because it took into account interest other than that of the Applicant.

Whether the Court has Jurisdiction to grant the leave

Discussion

[35] Counsel for the Respondents takes objection to the grant of leave on the basis that the application before the court is not proper. She contends that the application

does not appear to be one for leave for judicial review but appears to be the Claim for the judicial review itself. Her contention is based on the premise that each paragraph regarding the remedies being sought should include the word, “leave”. That is each paragraph should indicate that the Applicant is seeking leave to apply for judicial review for each remedy.

[36] Mr. Wildman is of the view that this objection is without merit. He contends that the heading of the application clearly indicates that the application is one for leave for judicial review. He is also of the view that whereas the ***Rules*** provide that the applicant should indicate the remedies being sought, such indication relates to the remedies that he intends to pursue in the Judicial Review Court and as such there is no necessity for the word” leave” to be inserted before each remedy that is listed.

[37] Evidently, my determination as to, whether the failure to insert the word,” leave” before each remedy mentioned in this application for leave is fatal to the application is dependent on a proper construction of ***Rule 56.***

[38] ***Rule 56.3 2***. indicates that any claim for judicial review must be preceded by an application for leave. As such, it has been clearly outlined in the ***Rules*** and also acknowledged by the parties that the first step in pursuing a claim in judicial review is an application for leave from the court to file such a claim. That is, there can be no claim for judicial review prior to the grant of permission by a judge to the Applicant to file this Claim.

[39] The heading of Mr. Baldies’ application clearly states it is one for leave for judicial review. Additionally, in paragraph one of the grounds for the application, reference is made to ***Rule 56.3 of the Civil Procedure Rules*** and the clear understanding is expressed by the Applicant that” anyone wishing to apply for judicial review must first obtain leave” In essence the Applicant has clearly demonstrated by the words used in his application that his intended purpose of this application is one for leave to apply for judicial review. Moreover, Counsel for the Respondent in her submissions has clearly demonstrated that she came to meet an application for

leave for Judicial Review. That is, there is nothing in her response indicating that she was in any way led to believe that this application was anything otherwise than an application for leave for judicial review.

[40] It is apparent, certainly to this court that the remedies that the Applicant has mentioned in his application can only be granted on the eventual determination of the issues raised in a claim for judicial Review. ***Rule 56.3 (3)(b)*** states that the application for leave must state "the **relief**, including in particular details of any interim relief, sought;"

[41] My understanding of this provision is that in his application for leave the Applicant should state the final remedy that he would be seeking at the judicial review, for which he is asking the court to grant leave. I am fortified in this position by virtue of the fact that this rule also makes provision for the applicant to indicate whether he is seeking any interim remedy. Indubitably therefore, there is no necessity for the Applicant to insert the word "leave" before the indication of each of the remedies he is seeking leave to pursue in the Judicial Review Court.

[42] In my view, the Applicant has complied with the provisions in the rule by stating the remedies he is seeking leave to pursue in a claim for judicial review. Essentially, I find that it is clearly understood that the application is one for leave to pursue a claim in judicial review for these remedies. Consequently, I do not share the view of Counsel for the Respondent that the application indicates that the Applicant at this stage is seeking final orders. In any event I find that the choice of the Applicant to exclude word "leave" in the paragraphs containing the reliefs being sought is procedural and is not of a nature that affects the merits of his application.

Whether the Applicant has an Arguable case

Discussion

[43] The essential facts in this application are undisputed. However, the Board in opposing the application, denies violating any rights of the Applicant. It has not refuted the Applicant's assertions that he was not afforded the opportunity to appear before the board However, through the submissions of its attorney at law the Board maintains that it acted in accordance with the provisions of the ***Parole Act*** as under the Act, there is no entitlement to an oral hearing The Board further contends that there is no requirement under the Act to provide detailed reasons for its refusal to grant the applicant's parole. As such it is the position of the Board that the Applicant has no arguable case with any realistic prospect of success as it acted within its statutory mandate,

[44] In considering this issue the case of ***Huntley v Attorney General of Jamaica*** (1994) 46 WIR 272 becomes relevant. The circumstances surrounding that case are as follows; In Jamaica, prior to the amendment of the **1864 Offences Against the Person Act** with the ***(Amendment) Act of 1992)*** anyone convicted of murder was required to be sentenced to "suffer death as a felon". The 1992 Act repealed section 2 of the 1864 Act and substituted for that section a new section 2 which established two separate categories of murder: capital murder and non-capital murder. ***Section 7 of the 1992 Act*** provided that those who were under a sentence of death when the 1992 Act came into force were to have the murder of which they were convicted classified as capital or noncapital murder. They were also to have their appropriate sentence re-determined.

[45] The Applicant, Mr. Huntley, who was convicted of murder on the 13th of July 1983 and sentenced to death. had his conviction re classified as capital murder. The judge of the Court of Appeal who reviewed his case under ***section 7 (2) (a)*** of the 1992 Act came to the conclusion that his murder was to be classified as capital murder and a notice of this was sent to him on the 17th of December 1992.Mr. Huntley did not receive any prior notice of the consideration of the classification and he made no representations to the judge. Section 7 did not expressly require the judge to give reasons for his classification and the notice given to Mr. Huntley contained no reasons for the decision.

[46] One of the points of appeal raised by Mr. Huntley to the Privy Council was grounded on his constitutional right to a Fair Hearing. The Privy Council made the following comment.

> *"Although there is no express provision in section 7 to this effect, the fact that there is a right to make representations, does involve a prior entitlement to the reasons for the initial classification. The reasons do not need to be extensive but they should give the basis of the initial decision. Armed with this knowledge the person in the position of the appellant should be able to make meaningful representations.*

[47] Despite the fact that in the instant case, the decision that the Applicant is seeking to challenge is post sentence, in my view, and contrary to the posture of counsel for the Respondent, the fact that it involves the liberty of the Applicant (that is his continued incarceration) the principle in ***Huntley*** is applicable. That is the rights to a fair hearing guaranteed under ***Section 16 of the Constitution*** is a relevant consideration. In fact, the case of ***Neville Whyte v Attorney General*** involved a hearing under the ***Parole Act*****.** In that case the case of ***Huntley*** was applied.

[48] In the former case, Mr, Whyte was convicted of murder and sentenced to death. His death sentence was commuted to life imprisonment on the 2nd of July 1997. Mr, Whyte was thereafter served with a notice of a decision of a single Judge of Appeal, advising him that it had been determined that a period of 20 years should elapse before he became eligible for parole. That period would commence from the 2nd of May 1990. He applied for parole sometime in February 2005 and on the 16th of February 2006, his application was refused. He would be eligible to re-apply after the expiration of one year. On the 19th of February 2007, he submitted his further application, and did the necessary interviews, and examinations which preceded the Parole Board's consideration of his application.

[49] On the 23rd of November 2007, the Parole Board informed him of their receipt of Justice Cooke's Order and advised him, that based on that Order, his eligibility for the grant of parole was May 2010, therefore, his application would not be considered before that date.

[50] When the decision came up for review in the Full Court Campbell J observed that, "the Crown Counsel quite properly conceded that a failure to give the applicant the opportunity to be heard before Justice Cooke was wrong". In commenting on the decision in the Huntley case, at paragraph 15 Campbell J pointed out that

> *"They held that in relation to a person for whom a determination of a period should elapse before the eligibility of parole, such a person has the right to make representation before a period was specified. The decision in Doody and in Huntley, on this point was the reason for the concession by the learned Crown Counsel".*

[51] The court in the case of ***Neville Whyte***, determined that Mr. Whyte's' constitutional right to fair hearing was breached. The court also declared that Mr. Whyte was entitled to be heard and/or to make representations before a decision in his case was made by a Judge of the Court of Appeal pursuant to *section* **5A of the Parole Act.**

[52] In the case of ***R v. Secretary of State for the Home Department ex parte Doody and Others*** [1994] 1 A. C. 531, at page 560 Lord Mustill had this to say.

> *"Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modifications; or both. Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer".*

[53] In the instant case, this court has taken note of the fact that the Applicant did make a written application for parole and the fact that his attorney- at- law wrote to the Board highlighting the reasons he believed that the Applicant was suitable for a grant of parole Counsel for the responded has submitted that these are sufficient indications that the Applicant was afforded the right to make representation.

[54] An examination of ***Section 7(1) of the Parole Act*** does reveal that an inmate who is eligible for parole is allowed to make a written application to the Board for parole and to include any written representations in support of the application

Additionally, it is undeniable that in accordance with ***Section 7(5) of the Parole Act***, the Board is not obligated to conduct an oral hearing with the Applicant. The section states that the "*hearing by the Board shall be held in camera, and if the Board sees fit, the applicant may be given permission to appear* ..."

[55] Admittedly, and as pointed out by counsel for the Respondent, despite being eligible for parole, this eligibility does not automatically translate into an entitlement to be granted parole. However, in exercising its discretion with respect to the procedure it employs with regards to the applicant's parole hearing, the Board was obligated to adhere to the principles of Natural Justice.

[56] The letter that the Board sent to the Applicant informing him of its decision to deny his parole did indicate that its decision was influenced by adverse reports. It has not been denied that the content or the gist of these report were not provided to the Applicant prior to or subsequent to the hearing. It is an established principle of law that if a decision maker relies on prejudicial information without giving the person adversely affected by it, the opportunity to refute or explain it then that decision maker would have acted contrary to the principles of natural justice (See the case of ***Kanda v Government of Malaya*** [1962] AC 322 (PC)

[57] Consequently, I find that the case that the Applicant's right to a fair hearing was breached by him not being made aware of the adverse reports nor afforded the opportunity to deny, challenge or make any representation in relation to these reports has a realistic prospect of success.

[58] Moreover, while there is no specific provision for the Board to provide reasons for its refusal to grant parole, the procedure under the Act is subject to the principles of Natural Justice and the Constitutional right to fair hearing. Additionally, section ***16 (1) of the Parole Act*** gives an inmate whose application for parole has been refused the right to re-apply for parole after the expiration of 12 months from the date of refusal. Considering, this fact there is an arguable case with a realistic prospect of success that the Board in failing to give sufficient reasons for its refusal

to grant parole, denied the Applicant the opportunity to take corrective measures to enhance his opportunity for a grant of parole in a future application. As such there is an arguable case with a realistic prospect of success that the Board acted unfairly in this regard

[59] As explained by the court in the case of Chief ***Constable of the North Wales Police v Evans*** [1982] 3 All ER 141, judicial review "is not an appeal from a decision, but a review of the process by which the decision was made." (as per Lord Bingham at page 155)

[60] Additionally, while it is recognized that each case should be considered on its own merit, there is an arguable case with a realistic prospect of success that the Board acted arbitrarily and un unfairly, in that a person with comparable antecedents as the Applicant, whose application was considered during the same period as that of the Applicant was granted parole without any clear reason for the difference in decision.

Conclusion

[61] Having considered the facts, cases, and submissions presented, I am of the view that the Applicant has established that he has an arguable case with a realistic prospect of success that the Parole Board acted unfairly in the manner in which it conducted the hearing of the Applicant's application for parole. As such I find this is a proper case where leave to apply for judicial review is to be granted. Consequently, I make the following orders.

Orders

(i) Leave is granted to the Applicant to apply for Judicial Review by way of an order of certiorari, quashing the decision of the Respondent not to place the

Applicant on parole as contained in the letter dated the 15th of November 2024

(ii) The Claim is to be filed within 14 days of the date hereof.

(iii) The cost of this Application is to be cost in the proceedings for Judicial Review.

…….
Andrea Thomas
Puisne Judge