



[2019] JMSC Civ 96

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2017HCV01074

BETWEEN **MERVIN CAMERON** **CLAIMANT**
AND **THE DIRECTOR OF PUBLIC PROSECUTIONS** **DEFENDANT**

IN CHAMBERS

Mrs Valerie Neita Robertson, QC, Mr. Hugh Wildman and Miss Barbara Hines for the Claimant

Miss Maxine Jackson, Mrs. Latoya Bernard, Yannick Forbes and Kemoy McEkron for the Defendant

Heard: April 30, 2019

LEIGHTON PUSEY, J

- [1] This matter is unique. The applicant seeks judicial review against the Director of Public Prosecutions (DPP) to terminate his trial which has already started in court.
- [2] The applicant has suffered unreasonable delay in the trial of his case before the courts. He has also suffered imprisonment while awaiting trial. He applied to the Constitutional Court for redress and received a judgment in his favour and damages as redress for the breach of his constitutional rights.
- [3] It is one aspect of the order of the Constitutional Court that has birthed this application. In its judgment on March 22 2018, the court ordered that the applicant be tried in the Hilary term of 2019 unless the delay was occasioned by the defence.

- [4] The applicant's trial did not start in the Hilary term but started on April 29 2019, the first Monday of the Easter Term. The applicant deponed that the matter came on for hearing in the Hilary term but was delayed because the applicant's co-accused was absent and the attorney of the co-accused was also absent. The attorney of the co-accused was later unfortunately found dead. The co-accused was not located and the trial proceeds against the applicant solely.
- [5] The applicant indicated in his affidavit that Mr Hugh Wildman wrote to the learned Director of Public Prosecutions and indicated to her that to continue the matter would be contrary to the ruling of the Constitutional Court. When the case came on for trial on 29 April 2019, Mr Wildman applied to the trial judge for the charges to be stayed based on the order of the Constitutional Court.
- [6] The learned trial judge heard the arguments and refused the application. She also refused to delay the trial to allow counsel to file documents for judicial review. The applicant was pleaded, the jury put in charge and the trial has proceeded. The applicant indicated that his attorneys continued the trial in protest.
- [7] The applicant seeks leave to apply for judicial review for the following orders:
- (1) A declaration that the decision by the Respondent to proceed with criminal charges, contained in an indictment dated 29th April 2019, against the Applicant, is a breach of a Court Order granted by the Constitutional Court contained in a judgment delivered on the 22nd March 2018: in which the Constitutional Court declared that if the trial of the applicant in the Supreme Court, in the absent [sic] of fault of the defence, the said charges against the applicant shall be stayed rendering the said decision by the respondent to proceed with the said charges is in breach of the applicants Constitutional rights
 - (2) A Declaration that the effect of the order of the Constitutional Court ... where the applicant was not tried within the Hilary term of the Circuit Court, due to

no fault of the Applicant, is to immediately result in the stay of charges brought against the Applicant by the Respondent contain [sic] in the indictment dated 29th April 2019

- (3) An Order of prohibition against the Respondent preventing the Respondent from proceeding with the indictment... against the Applicant.
- (4) A stay of the said charges contained in the indictment ... brought against the Applicant by the Respondent.
- (5) Cost [sic] of the Application to the Applicant
- (6) The Court on the grant of leave grant a stay of the said charges pending the determination of the application.

Applicant's submissions

- [8] Mr Wildman averred that the delay was in no way the fault of the defence. He pointed out that the applicant was the only person who made an application before the Constitutional Court and the order of that court referred to him only. Therefore, any delay in relation to a co-accused was not a delay on the part of the defence. He argues that the prosecution could have separated the indictment and proceeded against the applicant solely, during the Hilary term.
- [9] In his Notice of Application and in submissions, Mr Wildman asserted that the learned trial judge stated that although the applicant was not at fault in the delay, a delay caused by the co-accused amounted to a delay by the defence. The Notice of Application goes on to refer to the learned trial judge's ruling as a clear breach of the ruling of the Constitutional Court.
- [10] It is in that context that this court queried whether judicial review or constitutional redress was being sought. Mr Wildman reiterated that the remedy sought was one of judicial review of the DPP's decision to lay the indictment before the court. He asserts that an order staying the indictment would stop the trial. When

pressed by the court he indicated that he seeks an order restraining the DPP or her staff from continuing with the case. I understood Mr Wildman not to be seeking any order against the learned trial judge

- [11] Mr Wildman also indicated that the order of the Constitutional Court was an unless order and that the breach of the conditions meant that the matter should be automatically stayed.

Respondent's Submissions

- [12] Mr Yannick Forbes for the DPP indicated that the order sought by the applicant was injunctive and seeks a stay of proceedings of a court of concurrent jurisdiction. He pointed out that the application that Mr Wildman was making had been heard by the learned trial judge, considered and refused and reasons given. He also sought to refer to several issues of fact that were raised before the learned trial judge but were not found in the affidavit. Mr Forbes was at a disadvantage as he had no affidavit before the court. The DPP was served at 1:45 pm 30th April 2019 and the matter was set before me for 3:00pm.
- [13] Mr Forbes was able to refer to copies of the transcript of the delayed hearings in the Hilary term. Those transcripts were disclosed to the defence and put before the learned trial judge. Mr Forbes argued that there was material to indicate that the defence consented to and/ or was responsible for some of the delay.
- [14] The Crown contended that the order of the constitutional court had two conditions. firstly, that there was delay and secondly that the delay was attributable to the defence. Mr Forbes pointed out that implicit in her ruling was the fact that the learned trial judge had come to the view that these conditions had been satisfied. What this court was being asked to do therefore was to quash or set aside the decision of the learned trial judge.

Reasons

- [15] This court took the view that a grant of leave to apply for judicial review in the terms set out in the Notice of Application, would be meaningless and inappropriate. Firstly, the trial having already started the remedy sought by the applicant against the DPP would be of no effect. The DPP has already proceeded with laying the indictment in court and the jury has been put in charge of the case. Therefore, even though decisions by the DPP are reviewable, a stay of her actions at this stage would not stop the trial.
- [16] Secondly, the court understands the issue to be one of interpretation of the order of the Constitutional Court, in particular whether the conditions for the trial to be heard after the Hilary term of 2019 have been met. The learned trial judge has ruled on this issue. The parties were before her and there appear to have been fulsome submissions and the presentation of copies of the relevant transcript. The operating decision that has resulted in the trial proceeding is the decision of the learned trial judge, not that of the DPP. This court is of the opinion that it is effectively being asked to overturn a decision made by the learned trial Judge.
- [17] It is my view that to grant a stay would effectively be judicial review of a court of concurrent jurisdiction. I am of the view that judicial review is limited to supervision of inferior tribunals and statutory bodies. It is not a remedy open to be applied against the circuit court of the Supreme Court. I asked Mr Wildman, on at least three separate occasions, if constitutional redress was the remedy he ought to seek. He insisted that it was.
- [18] I am not of the view that the powers of judicial review extend to staying a trial which has already started in the Supreme Court
- [19] Even if that power exists, it is questionable whether it would be exercised when a judge of concurrent jurisdiction has heard these submissions and made a ruling, which she had the jurisdiction to make. In other words, there is no argument that the learned trial judge acted outside of her jurisdiction.

[20] For these reasons I refused the application for leave to apply for judicial review and I also refused leave to appeal.