

SUPREME COURT LIEB
KINGSTON
JAMAICA
Judgment Book

IN SUPREME COURT OF JUDICATURE OF JAMAICA

MISCELLANAEOUS

SUIT NO. C.L. M/104/2002

IN THE MATTER of an application by
CAROL LENA WINSTON
CHURCHILL for an Order of Certiorari
Quashing the Decision of the General Legal
Council, sitting as a Disciplinary Committee
delivered on the 27th day of April, 2002

AND

IN THE MATTER of the Legal
Profession Act of 1972.

BETWEEN CAROL LENA WINSTON CHURCHILL APPLICANT
AND LLOYD BARNETT (as a member of the General Legal Council) RESPONDENT

Heard on the 11th and 13th of September 2002

Brown J.

This was an Exparte Application for leave to apply for Judicial
Review.

The applicant was an Attorney-at-Law.

On the 27th June 2001 Dr. Lloyd Barnett, Chairman of the General Legal Council filed a complaint against her based on a report from the Bar Council in United Kingdom. The applicant had been convicted in England on the 15th of February 2002. She was disbarred and was no longer entitled to practice in England and Wales.

On the 23rd of March 2002 the disciplinary committee of the General Legal Council heard the complaint. She was absent from the proceedings.

On the 27th of April 2002 the Disciplinary Committee found the applicant guilty of misconduct in a professional respect and ordered that her name be struck off the Roll of Attorneys-at-Law.

She filed an appeal in accordance with the Legal Profession Act. This appeal is pending in the Court of Appeal as the Disciplinary Committee has failed to respond and file the relevant records. She claimed that "this was a gross abuse of power on the part of the General Legal Council and therefore she had no other recourse under the Legal Profession Act but to turn to the Supreme Court as the last resort to have the decision quashed and to order a new hearing".

It was the applicant's contention that she was not served with the disciplinary proceedings and was deprived of a fair hearing. She

further contended that the tribunal relied on a false and or inaccurate certificate of conviction to come to their decision. The Committee had alleged that she was convicted for theft and using a false instrument instead of blackmail and forgery.

The application for leave was filed on the 30th of August 2002.

This was a delay of 4 months and 3 days.

S. 564D of the Judicature (Civil Procedure Code) Act reads:

(1) An application for leave to apply for Judicial Review shall be made promptly and in any event within 3 months from the date when grounds for the application first arose unless the court considers that there is good reason for extending the period within which the application shall be made.

(2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other the proceedings, the date when the grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceedings.

The applicant needed to obtain leave in order to apply for Judicial Review. However the application shall made ex parte.

It is settled Law that where an application for Judicial Review is sought it should be made promptly; and that the power to grant leave is discretionary and not as of right.

In R v. Senate of Univeristy of Aston Ex parte Roffey (1969) 2

A11 ER 964 at page 976, Donaldson J said

“the prerogative remedies are exceptional in their nature and should not be made available to those who sleep on their rights”.

In R v. Harrod, ex parte Leeds City Council (1976) QB 540 at page 574 Shaw LJ said

“ an applicant for a prerogative order (or, in early history, a prerogative writ) is not in the position of a litigant who seeks to assert some right to which he claims he is entitled. He is a suppliant who seeks to invoke those remedial measures on the ground that the High Court would wish to correct some irregularity in the administration of justice which has caused him to be aggrieved so that justice may be done. Whether the order sought will be granted or refused is a matter wholly within the court’s discretion; prerogative orders are not be claimed as of right”.

At the commencement of proceedings the Court advised the applicant that the application for leave for Judicial Review was filed out of time. She conceded that there was a delay but asserted that there was good reason for the court to extend the period within which the application to be made. She said the delay was as a result of her attempt to obtain a corrected certificate of convection from England. She then sought to have time extended without filing for an extension of time. This was fatal to her case.

The proper procedure would be for the applicant to:-

1. Make an application to have the time extended to the date of the filing of the application for leave for Judicial Review.
2. In the affidavit in support of the application she then sets out the facts from which the court will determine whether or not it will exercise its discretion to extend.
3. Notice be given to the proposed respondent who is entitled to be heard on the question of whether leave should be granted for making the application.

In the instant case there was no application before this court for an extension of time.

The application for leave for Judicial Review is therefore dismissed.