IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2010 HCV 02529

IN CHAMBERS

BETWEEN	CHRISTOPHER MICHAEL COKE	**APPLICANT**
AND	THE MINISTER OF JUSTICE	**1ST RESPONDENT**
AND	THE DIRECTOR OF PUBLIC PROSECUTIONS	**2ND RESPONDENT**
AND	THE ATTORNEY GENERAL	**3RD RESPONDENT**

Paul Beswick instructed by Don O. Foote for the Applicant.

R.N.A. Henriques, Q.C., Allan Wood, Q.C., and Garcia Kelly instructed by the Director of State Proceedings for the 1st Respondent.

Miss Paula Llewellyn Q.C, Director of Public Prosecutions, Jeremy Taylor, Deputy Director of Public Prosecutions,(Ag.),Miss Claudette Thompson, Assistant Director of Public Prosecutions,(Ag.) and Vaughn Smith, Assistant Director of Public Prosecutions,(Ag.) for the 2nd Respondent.

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW-ORDER OF CERTIORARI AND PROHIBITION-STAY OF EXTRADITION PROCEEDINGS-WHETHER AUTHORITY TO PROCEED UNLAWFULLY ISSUED-ALLEGATIONS OF INTERFERENCE WITH MINISTER'S DISCRETION-WHETHER APPLICATION FOR JUDICIAL REVIEW IS PREMATURE.

HEARD: MAY 31, JUNE 2, 3, 4, & 9, 2010.

McCALLA, C.J.

1. In this application, Christopher Coke, ("the applicant"), seeks leave of this court to apply for judicial review of the decision of the Minister of Justice, The Honourable Dorothy Lightbourne, C.D, Q.C., ("the 1st respondent") to issue an authority to proceed on a request by the Government of the United States of America for his extradition. The applicant seeks the following reliefs:

i. "An order of certiorari to remove into this Honourable Court and quash the decision of the 1st Respondent issued or purported to be issued on 17th or 18th May, 2010, to issue authority to proceed pursuant to Section 8 of The Extradition Act;

ii. An order of prohibition directed to the 1st Respondent to restrain her from carrying into effect the said decision;

iii. An order of prohibition directed to the 2nd and 3rd Respondents to restrain them from proceeding with the Extradition request from the United States of America, or providing assistance for the implementation of the said Extradition request;

iv. A stay of any proceedings in the Resident Magistrates Court arising from the 1st Respondent's decision to proceed with Extradition proceedings pending determination of the action herein;

v. Such further and other relief as to this Honourable Court may seem just."

2. The application initially named the Attorney General as 3rd Respondent, but by consent, an order was made on May 31, 2010 to have the Attorney General removed as a party to the proceedings.

3. The requirement for an applicant to obtain leave to apply for judicial review is stated in the case of **Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd. [1981] 2 All E.R. 93 at 105 (j).** Lord Diplock stated as follows:

> "The need for leave to start proceedings for remedies in public law is not new. It applied previously to applications for prerogative orders, though not to civil actions for injunctions or declarations. Its purpose is to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived."

This requirement is also stated in the **White Book, 2007, Civil Procedure,** in relation to comparable rules in the English jurisdiction, **Volume 1, Section 54.4.2** states:

> "Permission will be granted only where the court is satisfied that the papers disclose that there is an arguable case that a ground for seeking judicial review exists which merits full investigation at a full oral hearing with all parties and all the relevant evidence, (*R. v Legal Aid Board Ex P. Hughes* (1992) 5 Admin. L. Rep. 623).

4. The learned authors of **De Smith's Judicial Review,** 6th Edition, have stated at paragraph 16-020 that:

> "...in most situations there can be no constitutional or practical objection to the Administrative Court routinely refusing permission to proceed with a judicial review claim where there is a statutory appeal to a tribunal or a court. To hold otherwise would risk subverting Parliament's intention in creating such appeals."

5. Part 56 of the Civil Procedure Rule 2002 (CPR) deals with applications for judicial review and sets out the relevant requirements for an applicant wishing to apply for judicial review.

6. The applicant seeks leave to apply for judicial review of the decision of the 1st respondent to issue an authority to proceed on the request for his extradition and he is required to comply with the relevant provisions of this part of the CPR.

7. The request for the extradition of the applicant was made on August 25, 2009 for the purpose of preferring criminal charges against him in the United States of America.

8. The authority to proceed was issued by the 1st respondent on May 18, 2010 by virtue of section 8 of the Extradition Act of 1991, ("the act") and as a consequence, a warrant for the arrest of the applicant was issued by a Resident Magistrate for the Corporate Area Criminal Court in accordance with the provisions of that Act. The relevant sections are as follows:

Section 8: *Authority to Proceed:*

> (1) "Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Act except in pursuance of an order of the Minister (in this Act referred to as "authority to proceed") issued in pursuance

of a request made to the Minister by or on behalf of an approved State in which the person to be extradited is accused or was convicted.

(2) There shall be furnished with any request made for the purposes of this section by or on behalf of any approved State-

(a) in the case of a person accused of an offence, a warrant for his arrest issued in that State; or

(b) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in that State and a statement of the part, if any, of that sentence which has been served,

together with, in each case, the particulars of the person whose extradition is requested, and of the facts upon which and the law under which he is accused or was convicted, and evidence sufficient to justify the issue of a warrant for his arrest under section 9.

(3) On receipt of such a request the Minister may issue an authority to proceed, unless it appears to him that an order for the extradition of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act."

Section 9: Arrest for purposes of committal:

(1) "A warrant for the arrest of a person accused of an extradition offence, or alleged to be unlawfully at large after conviction of such an offence, may be issued-

(a) on receipt of an authority to proceed, by a magistrate within the jurisdiction of whom such person is or is believed to be; or

(b) without such an authority, by a magistrate upon information that such person is in Jamaica or is believed to be on his way to Jamaica; so, however, that the warrant, if issued under this paragraph, shall be provisional only.

(2) A warrant of arrest under this section may be issued upon such information as would, in the opinion of the magistrate, authorize the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence, within the jurisdiction of the magistrate.

(3) A warrant of arrest issued under this section (whether or not it is a provisional order) may, without an endorsement to that effect, be executed in any part of Jamaica, whether such part is within or outside the jurisdiction of the magistrate by whom it is so issued, and may be so executed by any person to whom it is directed or by any constable.

(4) Where a provisional warrant is issued, the magistrate by whom it is issued shall forthwith give notice of the issue to the Minister, and transmit to him the information and evidence, or a certified copy of the information and evidence, upon which it was issued; and the Minister may in any case, and shall, if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested thereunder, discharge him from custody.

(5) ..."

9. There is no statutory provision for a challenge before an authority to proceed is issued. In accordance with the procedure laid down in the Extradition Act, on apprehension or surrender of the applicant, he would be taken before a Resident Magistrate's Court for a hearing. If a *prima facie* case for his extradition is made out, the Resident Magistrate is required to advise him of his right to apply for *habeas corpus* within 15 days, to enable the matter to be brought before the Supreme Court, for a hearing before the full court.

10. The request for the extradition of the applicant was received by the 1st respondent on August 25, 2009, but as noted at paragraph 8, the authority to proceed was not issued until May 18, 2010. It is common ground that the 1st respondent filed an application in the Supreme Court seeking certain declarations from the court. The assertions contained in the affidavit filed by the 1st respondent in support of her affidavit which sought declarations from the court and her subsequent signing of the authority to proceed, has given rise to the applicant's contention that this court ought to grant him permission to seek the reliefs referred to at paragraph 1.

11. There is no evidence that the warrant issued pursuant to the authority to proceed has been executed and consequently among the reliefs being claimed in these proceedings, is a stay of the authority to proceed.

12. In the affidavit dated May 19, 2010 filed by the applicant, he makes reference to the application filed by the 1st respondent in the Supreme Court, in which she sought declarations including:

> "Declaration that where the Minister is of the opinion that the Requesting State has acted in breach of the Treaty pursuant to which extradition of a person is being sought or in breach of any agreement between the Requesting State and Jamaica pertaining to extradition, the Minister is authorized and/or

under a duty to deny the request to issue the authority to proceed."

13. The applicant quoted extensively from the affidavit filed by the 1st respondent in support of her said application to seek declarations and the relevant sections are reproduced hereunder as follows:

> "29. I am of the view that it cannot now be doubted that the 'evidence' on which the request for the extradition of the First Defendant is founded was not obtained by the US in accordance with the provisions of the Memoranda of Understanding and the Treaty between the GOJ and the US on Mutual Legal Assistance in Criminal Matters and the Mutual Assistance (Criminal Matters) Act. It is also my considered opinion that most of the 'evidence' being relied on by the US to support the said extradition request was obtained in breach of the Extradition Treaty and in contravention of the constitution of Jamaica and Interception of Communication Act. The process by which the evidence was obtained was also in violation of an Order made by the Supreme Court of Jamaica.
>
> 30. In those circumstances, I consider that it would be unlawful and/or inappropriate for me to issue an authority to proceed which would result in the arrest of the First Defendant. In the discussions so far, the US has consistently maintained a position that the request conforms with Jamaican law, the Treaty and the established procedures and understanding between the respective law enforcement agencies in Jamaica and the United States.

31. Having regard to the apprehended breaches of the Treaty by the US, contraventions of our Constitution and the Interception of Communications Act, and the violation of an order of a Judge of the Supreme Court, issues of national importance have arisen as to whether the process leading up to the request in this case involves the aforementioned factors which I can or should take into account in the exercise of my discretion, duty and jurisdiction under section 8 of the Extradition Act; and further whether these factors can be taken into account in my determination as to whether to issue an authority to proceed under the Extradition Act."

14. In the above circumstances the applicant contends that:

"The 1st respondent has therefore identified the breach of the Applicant's constitutional rights which would arise from her exercise of the authority granted to her in the current circumstances, but has nevertheless proceeded to exercise this authority so as to create the breach of the applicant's constitutional rights to which she warned."

15. The applicant further asserts in his affidavit that the 1st respondent:

"Unlawfully issued the authority to proceed on the direction and dictates of the Prime Minister in breach of the duties imposed on her under the Extradition Act" and that she "unlawfully and in breach of her duty took into account the Prime Minister's direction to issue the authority to proceed."

The application for declarations filed by the 1st respondent in which the applicant was named as one of the respondents has not been pursued for reasons outlined by her in the following paragraph.

16. On May 28, 2010, the 1st respondent filed an affidavit in which she denies the assertions of the applicant relating to the issuing of the Authority to Proceed. She has denied that she has acted without independent thought and has set out the circumstances in which she made the decision to sign the authority to proceed. In her affidavit, the 1st respondent also alluded to circumstances in which she sought the declarations previously referred to and asserted that no final decision rejecting the request for extradition of the applicant had been taken. The relevant paragraphs are set out below:

> "3. It is important to note that contrary to the Applicant's contention, I never refused the request for the extradition of the Applicant. Rather by reason of the matters which were referred to in my previous Affidavit, it was clear that there were several legal questions that arose which required clarification from the Court.
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> 4. In addition further information was requested by me from the Charge d' Affaires of the Embassy of the United States of America by letters dated 30th October 2009 and 8th March 2010 that are referred to a paragraphs 22 and 26 of my previous Affidavit and which are exhibits DL3 and DL6 to my previous Affidavit. The replies are also exhibited to my previous Affidavit. To date no further information has been forthcoming.
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> 5. In an effort to obtain directions from the Court as to points of law that were of concern to me, particularly with regards to the evidential material derived from intercepts obtained pursuant to the Interception of Communications Act, I took advice from senior

independent counsel and on his advice I instituted action on 14th April 2010 seeking declarations from the Supreme Court. The Defendants to that action included the Applicant who was not served, as his then attorney had refused to accept service and it was not possible to locate him to effect personal service. The other Defendants were the Leader of the Opposition and the President of the Private Sector Organisation of Jamaica, who made applications to be dismissed from the action. Those applications were heard on 5th May 2010 by the Hon Justice Roy Jones who gave a written decision on 11th May 2010 granting the applications releasing the two Defendants and leaving the Applicant as the sole Defendant. That action could not therefore proceed further nor was it proper in my view to proceed in the absence of any contesting party, and particularly in the absence of the Government of the United States of America who declined to appear and indicated by letter to Ministry of Foreign Affairs and Foreign Trade dated 4th May 2010 from the Charge d' Affaires of the Embassy of the United States of America a copy of which is exhibit "DL 8" that Article 17 of the Extradition Treaty made between the GOJ and the Government of the United States of America, requires the GOJ, being the requested State to represent the requesting State being the Government of the United States of America in any proceedings in the requested state arising out of a request for extradition. In the circumstances, to have proceeded with the action in the absence of the Government of the United States of America and in the absence of the Applicant to pursue points on the Applicant's behalf that he is entitled to raise in the extradition proceedings before the Jamaican Courts might have resulted in allegations that the GOJ had breached its obligations under the Extradition Treaty.

6. In view of the facts herein before mentioned and taking into account that there was some evidence against the Applicant even if the material gained by the intercepts were excluded and also considering what was in the public interest, which included that the GOJ not be placed in a position where it could be accused of having breached its solemn obligations under the Extradition Treaty made with the Government of the United States of America, while balancing the consideration that the Applicant would not be precluded from contesting before the Jamaican Courts the request for his extradition, I determined that the proper course of action in all the circumstances was to issue the authority to proceed whereupon the applicant would be able to canvas before the Courts all points by way of objection to his extradition should he wish to do so and he would also be able to apply for bail upon his arrest. Accordingly I advised the Prime Minister and the Cabinet at a meeting held on the 17th May 2010 at approximately 11:00 am that I would be signing the authority to proceed. On the evening of the same day at approximately 8:30 pm the Prime Minister in an address to the Nation announced that the authority to proceed would be signed. It is not true that I acted under the direction of the Prime Minister who dictated that my discretion under s.8 of the Extradition Act should be exercised by issuing the authority to proceed as alleged by the Applicant or at all. Further it is wholly untrue for the Applicant to assert that I have not applied any independent thought or mind to exercise of my discretion under the Extradition Act."

17. Rule 56.3 (d) of the CPR requires that an applicant seeking leave for judicial review must state:

"Whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued;"

Therefore, in circumstances where an applicant has an alternative means of redress the court is obliged to refuse the request for leave to pursue judicial review.

18. At paragraph 4 of his application, the applicant states that:

> "To the best of my knowledge no alternative form of redress now exists;"

19. The applicant in order to obtain leave must also establish that he has an arguable case which has a realistic prospect of success and the more serious the allegations the stronger must be the evidence adduced by the applicant to satisfy the test. The test was explained by Lords Bingham and Walker in **Sharma v Brown –Antoine [2007]1 WLR 780,** a decision of the Judicial Committee of the Privy Council, **at 787 (4)**:

> "The ordinary rule now 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 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 LR 623*, 628 and *Fordham, Judicial Review Handbook 4th ed. (2004)*, p 426. 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:
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> > "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': *Matalulu v Director of Public Prosecutions* [2003] 4 LRC 712,733."

20. At paragraph 3 of the grounds of his application, the applicant states inter alia that:

> "(a) On the 14th of April, 2010, the 1st Respondent Minister swore to an Affidavit dated the (sic) April 14, 2010, and filed same in ...this Honourable Court in Claim No. HCV 01860/2010..."

21. In considering the application before me it is not necessary to express an opinion regarding the likely outcome of the declarations sought by the 1st respondent as they were not pursued for reasons stated by her. However, as the applicant has placed reliance on certain aspects of the affidavit filed in support of the declarations sought by the 1st respondent, I am obliged to have regard to the relevant sections, as well as the contents of the subsequent affidavit filed by her on May 27, 2010, in considering whether the applicant has satisfied the test for leave to be granted to seek judicial review.

22. I remind myself that in considering the application I am not concerned with findings of fact, therefore I will make no comments regarding the reason for delay by the 1st respondent in signing of the authority to proceed. I am concerned with applying what I understand to be the legal principles to which I should have regard in the exercise of my discretion in dealing with the issue as to whether leave should be granted for judicial review.

23. It must be noted that the applicant was named as a respondent in the application in which the 1st respondent herein sought declarations referred to in the affidavit of the applicant as stated at paragraphs 12 and 13.The applicant was not served and it is common ground that he did not participate in those proceedings.

24. As it relates to Rule 56.3 (3) (d) of the CPR which deals with the question of the existence of an alternative means of redress, there is an abundance of authorities which state that where the applicant has alternative redress the application for leave ought to be refused. See **R (Sivasubramanian) v Wandsworth County Court [2003] 1 WLR 475.** In that case the court held that permission to claim judicial review would normally be refused where there was a suitable alternative remedy such as a statutory appeal procedure. The court held that there was a coherent and sensible statutory scheme governing appeals from county court decisions which an applicant ought not to be permitted to bypass by pursuing a claim for judicial review, unless there were exceptional circumstances. Mr Allan Wood, Q.C. argued that this is a general principle of law which should be followed and is applicable to the instant application.

25. The case of **R v Secretary of State for the Home Department, Ex *parte* Norgren [2000] Q.B. 817** which deals with certain comparable provisions under the English Extradition Act, is instructive. There, the applicant was a Swedish citizen. In May 1994, a federal grand jury issued an indictment against the applicant charging him with committing "insider trading", security frauds and other offences. The United States requested

his extradition and on September 30, 1997 the Secretary of State issued his order to proceed. On receipt of that order, the magistrate issued a warrant for the arrest of the applicant. At the time that the applicant's solicitors were informed of the issue of the warrant for the arrest of the applicant, he was out of the jurisdiction and remained so. He applied for certiorari to quash the order to proceed. He contended *inter alia* that the crime of which he was accused was not in law an extradition crime and the issue was to be decided by the Secretary of State and not one where the Magistrate was permitted to decide following the making of an order to proceed.

26. In dismissing the application, the court held that the Secretary of State's role was to make an order to proceed if he was satisfied that the fugitive offender's conduct appeared to constitute an extradition crime.

27. The court stated at page 835 of the judgment that:

> "This was not in our view a matter on which the Home Secretary was required to form a correct legal judgment before issuing his order to proceed. Nor, in our judgment, is it a matter on which we should at this stage, before there is any ruling by the magistrate, make any decision. ***The statutory scheme envisages that a challenge of this kind should follow and not precede a decision by the magistrate, and it would in our view distort that scheme if we were now to rule.***" [Emphasis supplied]

28. Further, in **Sharma** *(supra)* where it was alleged that as a consequence of political pressure a case was brought against the applicant, the refusal by the Court of Appeal of Trinidad and Tobago to grant leave for judicial review was affirmed by the Judicial Committee of the Privy Council. Their Lordships' Board opined that the court will rarely interfere by way of judicial review with the exercise of a decision to prosecute as the applicant was entitled to raise the issue of prosecutorial

misconduct in criminal proceedings. This case establishes that judicial review should not be pursued where other means of redress exist.

29. **Government of the United States of America v Bowe [1990] A.C. 500,** dealt with an appeal from the Court of Appeal of the Commonwealth of the Bahamas to the Judicial Committee of the Privy Council against an order for costs and a grant of certiorari to quash a warrant that had been issued in extradition proceedings. Lord Lowry at page 526 (f), opined that:

> " The way in which the proceedings before the magistrate were interrupted in order that the fugitive might apply to the Supreme Court for orders of certiorari and prohibition has meant that their Lordships' decision in the extradition appeal does not achieve finality, since the evidence against him remains to be heard and considered. Their Lordships here take the opportunity of saying that, generally speaking, the entire case, including all the evidence which the parties wish to adduce, should be presented to the magistrate before either side applies for a prerogative remedy. ***Only when it is clear that the extradition proceedings must fail (as where the order to proceed is issued by the wrong person) should this practice be varied."*** (Emphasis supplied)

30. On the question as to whether there are exceptional circumstances to justify the grant of leave to the applicant, counsel for the 2nd respondent, Mr. Jeremy Taylor, drew the court's attention to the case of **Yates v Wilson and Others (1989) 168 C.L.R. 338**, an appeal from the Federal Court of Australia to the High Court of Australia, where judicial review of a decision to commit to trial was sought. Sir Anthony Mason in delivering the judgement of the court said at page 339:

> "It would require an exceptional case to warrant the grant of special leave to appeal in relation to a review by the federal court of a magistrate's decision to commit a person for

trial. ***The undesirability of fragmenting the criminal process is so powerful a consideration that it requires no elaboration by us..."*** (Emphasis supplied)

31. **Yates** was not an extradition case but the reasoning of the court is persuasive. Where an alternative means of redress exists, the court will not grant leave to seek judicial review.

32. Counsel for the 2nd respondent also referred to a case of **John Scantlebury, Sean Gaskin and Christopher Hawkesworth v the Attorney-General and Clyde Nicholls Appeals Nos. 18, 20 and 21 of 2007**, a case from the Barbados Court of Appeal, where committal proceedings in an extradition matter were interrupted to seek judicial review. The court held that the applicants ought to have allowed committal proceedings to be concluded before seeking to challenge them and also that an adequate remedy was available to the respondents under section 20 of the Extradition Act.

33. Counsel Mr. Paul Beswick for the applicant, sought to distinguish the authorities cited by the 1st and 2nd respondents. He submitted that the relevant threshold test for the grant of leave has been satisfied. He made reference to the relevant passages quoted from the 1st respondent's affidavit filed in support of her application seeking the declarations referred to and submitted that the 1st respondent exercised her discretion in knowledge of the breach of the applicant's constitutional rights. Further, she has placed the interest of the public and the interest of the requesting state over the interest of the applicant, contrary to the principles set out in the case of **R v Secretary of State for the Home Department, ex parte Launder [1996] 2 LRD 377** from which he quoted several passages.

34. Mr. Beswick argued that the 1st respondent had identified serious defects in the evidence submitted by the requesting state, namely that it was in contravention of the Constitution of Jamaica, the Interception of Communications Act and an order of a Judge of the Supreme Court of

Jamaica. She has recognised the breach of the applicant's constitutional rights which would arise from the exercise of the authority granted to her, but has nevertheless proceeded to exercise this authority so as to create the very breach of the applicant's constitutional rights of which she had warned.

35. The case of **Launder** (*supra*) dealt with an application for judicial review after *habeas corpus* proceedings had been concluded, in accordance with Section 12 of the Extradition Act (U.K.), similar to section 12 of our Extradition Act.

36. On the issue of whether an alternative remedy is available to the applicant so as to satisfy one of the requirements for the grant of this application, Mr. Beswick asserted that there is none. He contended that *habeas corpus* proceedings cannot be used to challenge the ministerial decision to issue the authority to proceed and accordingly it is not an alternative remedy.

37. He said that in the case of **Bowe** (*supra*), the proceedings had commenced but were interrupted to pursue judicial review, whereas in the application before the court the proceedings have not commenced as a challenge is being mounted to the issue of the authority to proceed and the applicant should not be required to go through the statutory procedure. On that basis he distinguished the authorities of **Sivasubramanian** and **Norgren** (*supra*), on which the respondents relied. He states that the applicant has no remedy under section 11 of the Extradition Act and referred the court to the wording of section 11, in contending that the reliefs available under that section are circumscribed by section 11 (a), (b) and (c).

38. Extradition proceedings commence when the request is made to the Minister by virtue of section 8 (1) and (2) of the Extradition Act. That section sets out the procedure and the documents that are required to support an extradition. Extradition proceedings do not commence with committal

proceedings, but rather, committal proceedings are held at a further stage of the statutory scheme enacted by Parliament that is to be followed in compliance with the Treaty obligations of contracting sovereign states, in this case the United States of America and Jamaica. I find support for this view from the words of the learned authors of **Halsbury's Laws of England, 4th Edition Reissue, Volume 17 (2)**, at paragraphs 1184 and 1186.

39. The affidavit filed by the applicant in support of this application states at paragraph 1-3 as follows:

> "1. The matter of a request by the United States for the extradition to the United States to stand trial on narcotics and firearm trafficking crimes first came to my attention by a Press Release issued dated August 28, 2009 by the United States Attorney, Southern District of New York. And I exhibit hereto marked **"CMC1"** a photocopy of the said Release.
>
> 2. That since that time the issues of the request for my extradition have been widely published and discussed in the electronic and print media.
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> 3. That sometime in March of this year the Prime Minister of Jamaica stated in Parliament that the Government of Jamaica has received a request for the extradition of Michael Christopher Coke to the United States, however the request could not have been honoured due to the failure of the United States to comply with the Treaty provisions."

40. It is therefore abundantly clear that the applicant was aware of the request for his extradition from August 2009. This is not a situation where there are no available remedies, but rather one in which the applicant has chosen not to avail himself of them. His surrender to the jurisdiction of the

court would have enabled him to pursue remedies under the statutory provisions at each stage outlined in the statutory scheme.

41. In **Extradition: Law and Practice,** 2nd Edition, the learned authors state at paragraph 9.51 that:

> "... It is possible to imagine circumstances where there could be grave unfairness which would certainly justify the interference of the court by way of judicial review not covered by Section 11 (discharge on the ground of injustice or oppression). It is no doubt for this reason that the legislation itself expressly makes clear that the statutory application for *habeas corpus* is not to be the only remedy available to a person who is the subject of a committal order."

42. The above statement is contrary to what is being contended by counsel for the applicant as to the effect of section 11 of the Act. Judicial review would also be available to the applicant in *habeas corpus* proceedings and should not be invoked unless the applicant has exhausted alternative remedies. This is an extradition matter in which extradition proceedings have commenced against the applicant and there are alternative remedies available to him under the Extradition Act. This application for leave to pursue judicial review is therefore premature.

43. The authorities state that save in exceptional circumstances (such as when as authority to proceed is bad on its face), leave should not be granted and the statutory scheme should take its course.

44. Having regard to the evidence presented at this stage, I am not able to conclude on an examination of the evidence that there is an arguable case with a realistic prospect of success, so as meet the threshold test required for the matter to proceed to the full court for judicial review.

45. The authorities have established that at the stage where the authority to proceed is issued, an abundance of evidence is not required. (See **R. v. Governor of Pentonville Prison *Ex Parte* Osman (No.3) [1990] 1 WLR 878**

46. The decision in **Norgren** (*supra*) is persuasive. In that case permission to seek judicial review was granted in circumstances where it was being contended that there was no reciprocal offence in the requested state. The court in reversing the decision of the lower court, stated that there was no requirement for the Secretary of State to come to a correct legal judgement before signing the authority to proceed. The authority to proceed had been signed and a warrant of arrest was issued for the fugitive. It was not executed as he was at that time outside of the jurisdiction of the court.

47. In **Norgren**, counsel for the applicant had urged the court to deal with the matter of judicial review as the applicant was in danger of the warrant being executed on his return to the jurisdiction. The court heard the application, but declined to grant the remedy sought for reasons stated at paragraph 25 herein.

48. There are no exceptional circumstances in this case that would entitle this court to grant leave to apply for judicial review. I do not agree that there are no alternative remedies available to the applicant as there are alternative remedies available to him under the Extradition Act

49. Having regard to Rule 56.3 (3) (d) of the CPR and the authorities cited, I am constrained to refuse this application for leave to seek judicial review. Consequently, pursuant to Rule 56.4 (9), the relief being sought for a stay of proceedings does not arise for consideration.