[2020] JMSC Civ 205

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISON**

**CLAIM NO. SU2019CV04288**

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| **BETWEEN** | **COMMISSIONER, INDEPENDENT COMMISSION OF INVESTIGATIONS** | **APPLICANT** |
| **AND** | **DIRECTOR OF PUBLIC PROSECUTIONS** | **RESPONDENT** |

**IN CHAMBERS**

Mr. Richard Small & Ms. Krystle Blackwood for the Applicant

Mr. Adley Duncan, Deputy Director of Public Prosecutions (Ag.) & Mrs. Nikeisha Young Shand, Crown Counsel instructed by the Director of Public Prosecutions for the Respondent

**Heard: September 22, 2020 & October 22, 2020**

**ADMINISTRATIVE LAW – Judicial Review – Application for Leave to apply for Judicial Review – Review of a decision made by the Director of Public Prosecutions – Whether there is a reasonable prospect of success –Sections 1(9) and 94 of the Constitution of Jamaica**

**WOLFE-REECE, J**

**INTRODUCTION**

**[1]** On November 4, 2019 the Applicant, the Commissioner of the Independent Commission of Investigations (INDECOM) filed a Notice of Application for leave to apply for Judicial Review of a decision of the Director of Public Prosecutions (DPP)

not to prosecute Deputy Superintendent Alfred McDonald for the offences of Murder and Misconduct in a Public Office. The Applicant is also seeking to review the DPP's decision not to charge Corporal Kirk Adlam for Attempting to Pervert the Course of Justice, which arose from an incident which resulted in the fatal shooting of Jamar Walford.

**[2]** The application was supported by the Affidavit of Makiedah Messam filed on the same date. The specific Orders being sought are as follows:

(a) An order of Certiorari quashing the ruling of the Respondent of October 8, 2019 not to charge:

1. Deputy Superintendent Alfred McDonald for Misconduct in Public Office; and

2. Corporal Kirk Adlam for Attempting to Pervert the Course of Justice

(b) An Order of Certiorari quashing the decision of the Respondent of October 8, 2019 not to charge Deputy Superintendent Alfred McDonald for Murder

(c) An Order of mandamus directing the Respondent to cause:

1. Deputy Superintendent Alfred McDonald to be charged for Misconduct in Public office and Murder; and

2. Corporal Kirk Adlam to be charged for Attempting to Pervert the Course of Justice

(d) A Declaration that there is a prima facie case against:

1. Deputy Superintendent Alfred McDonald for the offence of Misconduct in Public Office and Murder; and

2. Corporal Kirk Adlam for the offence of Attempting to Pervert the Course of Justice

(e) A Declaration that in the instant case, the Respondent erred in the purported application of the case law in arriving at her decision;

(f) A Declaration that failure to charge:

1. Deputy Superintendent Alfred McDonald for the offence of Misconduct in Public Office and Murder; and

2. Corporal Kirk Adlam for the offence of Attempting to pervert the Course of Justice,

breaches the procedural obligations implied by virtue of the constitutional guarantee of the right to life; and

(g) An Order extending time within which to apply for Judicial Review pursuant to Part 56.6(2) of the Civil Procedure Rules, if in the event that this Honourable Court finds that the time limit has been exceeded in the circumstances.

**Background**

**[3]** On the 27th May, 2016 at approximately 7:00 am members of the Jamaica Constabulary Force went on a joint operation in Denham Town, Kingston. This operation was led by Superintendent Alfred McDonald, and the team comprised of at least four other officers, namely Constable Duwayne Kelly-James, Corporals Kirk Adlam, Rhamone Scott, and Gregory South.

**[4]** At the end of the operation Mr. Jamar Walford was found fatally shot. The statements collected disclose that Mr. Walford was first shot and injured by Corporal Gregory South at a premises situated at 70 Bond Street, Kingston. However, when he ran to an adjoining premises, he was fatally shot by Corporal Rhamone Scott. The police officers are not denying that they shot Mr. Walford but

they contend they did so in self-defence as he was armed with a firearm and fired gunshots at them in an effort to escape detention.

**[5]** The Applicant did an investigation and collected several witness statements from civilians who were present during the operation. These witnesses state that at all material times during this operation Mr. Walford was unarmed. They also contend that Mr. Walford was in his room which he occupied, when the police officers entered the room and shot him. The Applicant's investigation also revealed that the Taurus 9mm pistol serial number B64182 containing four (4) live 9mm rounds, that the police alleged was recovered from Mr. Walford, was the same firearm recovered by the police from a previous operation led by DSP Alfred McDonald on April 28, 2016.

**[6]** On conclusion of the Applicant's investigation and in line with the agreement between the Office of the Director of Public Prosecutions (ODPP) and the Applicant's office the file was sent to the DPP for a ruling to be made by her. The Applicant recommended that the following charges be laid against the officers.

1. Corporal Rhamone Scott for Murder
2. Corporals Gregory South & Dwayne Kelly-James for Wounding with Intent
3. Corporal Kirk Adlam for Attempting to Pervert the Course of Justice and;
4. Deputy Superintendent Alfred McDonald for Misconduct in a Public Office

**[7]** The DPP by way of a letter dated August 13, 2018 ruled as follows;

1. Constable Duwayne Kelly-James & Corporal Gregory South be charged with Wounding with Intent
2. Corporal Rhamone Scott be charged with Murder
3. Recommendation that strong disciplinary proceedings be instituted against DSP Alfred McDonald and Corporal Kirk Adlam

**[8]** The Applicant approached the DPP to reconsider her decision. After a face to face meeting and discussions between the Applicant and the Respondent, the Respondent indicated that she would further reconsider the matter. On October 8, 2019 the DPP indicated in writing that she stood by her ruling of August 13, 2018. This has led the Applicant to seek the leave of the Court to apply for Judicial Review of the Respondent's decision not to prosecute.

**[9]** The Applicant's grounds in support of the Application are outlined as follows;

a. *"That the Respondent erred in law in deciding not to prosecute Deputy Superintendent Alfred McDonald and Corporal Kirk Adlam for Misconduct in a Public Office, Murder and Attempting to Pervert the Course of Justice;*

b. *That the Respondent erred in law in her interpretation of* ***Michael Adams and Frederick Lawrence v R [2002] UKPC No. 14 of 2001***

c. *That the Respondent's decision not to prosecute the aforementioned officers was irrational;*

d. *That the Respondent erred in failing to adequately consider, or misconstrued the elements of the offence of Misconduct in Public Office;*

e. *That the Respondent erred in failing to adequately consider, or misconstrued that inferences of culpability could be drawn from the evidence;*

f. *That the Respondent acted contrary to and/or failed to pay sufficient regard to the guidelines prescribed in "the Decision to Prosecute: A Jamaican Protocol";*

*g. That the decision not to charge breaches the procedural obligations implied by virtue of the constitutional guarantee of the right to life;*

*h. That there is no adequate alternative form of redress available to the Applicant;*

*i. That the Respondent has been adversely affected by the decision of the Applicant;*

*j. That the application for Judicial Review is in the public interest and the Applicant possesses expertise in the matter;*

*k. That the application has been made within the time limit but, in the event the time limit for the filing of this Claim has been exceeded, the Claimant hereby makes an application for leave to extend time within which to apply for Judicial Review as:*

*(i) the delay in pursuing Judicial Review has not been serious or significant;*

*(ii) there is a good reason for the delay in the pursuit of Judicial Review, in that:*

*[1] the Applicant explored alternative remedies as provided for in a Record of Agreement between the Respondent, the Jamaica Constabulary Force, and the Applicant dated the 29th day of March, 2018 for a reconsideration of her decision in the matter; and*

*[2] the delay in seeking of Judicial Review is explained by the Respondent's failure to promptly reply to written requests and*

*submissions made at a meeting on the 16th day of May, 2019.*

iii. *that the Respondent and third parties have not been prejudiced by the delay in seeking leave to apply for Judicial Review, and there would be no unfairness to the Respondent or Third Parties;*

iv. *that the refusal of the relief is likely to cause substantial hardship to, or substantially prejudice the rights of persons, and would be detrimental to good administration and the administration of justice;*

v. *that should the Court find that there was undue delay, time should be extended nevertheless;*

vi. *that the issues involved in the proposed Judicial Review application are important as the case involves a breach of the procedural obligations attendant upon the constitutional guarantee of the right to life;*

vii. *that there is a good arguable case, and reason to believe that there is a strong prospect of success given that this is a case involving an error and misapplication of law by the Respondent;*

viii. *that the public interest requires that the Application for Judicial Review be permitted to proceed;*

ix. *that the aforementioned grounds amount to good and sufficient reasons to grant an Order extending time, if required;*

*(l) It is within the power of the Court to grant the relief sought; and*

*(m) That it is just and equitable for the Court to grant the orders as prayed."*

**[10]** Both parties provided the Court with detailed written submissions which were extremely helpful. I have read them in detail and though I may not refer to every point raised I have taken the submissions in its entirety into my consideration to determine the Application before the Court.

**[11]** The **Civil Procedure Rules (2002) Part 56.6** sets out the requirements for an applicant to be prompt when making an application for leave to apply for judicial review. That rule provides that:

> *56.6 (1) An application for leave to apply for judicial review must be made promptly and in any event within three months from the date when the grounds for the application first arose.*
>
> *(2) However the court may extend time if good reason for doing so is shown.*
>
> *(3) Where leave is sought to apply for an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date on which grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceedings.*
>
> *(4) Paragraphs (1) to (3) are without prejudice to any time limit imposed by any enactment.*
>
> *(5) When considering whether to refuse leave or grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to:*
>
> *(a) cause substantial hardship to or substantially prejudice the rights of any person; or*
>
> *(b) be detrimental to good administration.*

**[12]** Although the Applicant addressed the issue of delay, Counsel Mr. Duncan based on the chronology of events rightly submitted that the Respondent would not pursue the issue of delay. I agree that the issue of delay does not arise in this case, as the parties were in discussions and the final decision was communicated to the Applicant via letter dated October 8, 2019. The Application was filed in this

Court on November 4, 2019, less than a month from the date of the letter from the Respondent to the Applicant indicating her final decision.

***Issue 1: Whether or not the Court has the jurisdiction to review the decisions of the Director of Public Prosecutions***

**[13]** Counsel Mr. Richard Small submitted that the Court has the inherent jurisdiction to review the Respondent's exercise of the powers conferred on her by Section 94 of the Constitution, notwithstanding that Section 94(6) of the Constitution states:

> "that the Respondent shall not be subject to the direction or control of any other person or authority in the exercise of her Constitutional powers."

**[14]** The Applicant stated that the power to review can be gleaned from Section 1(9) of the Constitution which states;

> *"No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in exercising any functions under this Constitution shall be construed as precluding a court from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law."*

Further, it was submitted that Section 1(9) should be applied when interpreting Section 94 (6) of the Constitution:

> *"In the exercise of the powers conferred upon him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority."*

**[15]** Counsel Mr. Duncan for the Respondent took no issue with this submission. He accepted that the Respondent's decision can be subject to the review of the Court but this is to be done in certain circumstances. He argued that the circumstances

of this case did not give rise to the exceptional circumstances that this Court should exercise its jurisdiction to review the decision of the Respondent.

**[16]** The Court must therefore assess the circumstances to determine whether these are exceptional circumstances that would give rise to the need for the Court to review the decision of the Director of Public Prosecutions.

***Issue 2: Whether the Applicant has an arguable case with a realistic prospect of success***

**[17]** Judicial Review is a remedy of last resort, where the Court in its inherent jurisdiction is called upon to exercise its supervisory functions over decisions of public bodies and inferior courts. The Court's sole purpose is to ensure that the decisions are made free from illegality, irrationality and procedural impropriety.

**[18]** In any application for leave to apply to Judicial Review, the Court must ask itself whether the Applicant has an arguable case with a realistic prospect of success. In **Sharma v. Browne-Antoine (2007) 1 WLR 780** Lords Bingham and Walker stated:

> "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 alternate remedy" [Emphasis Mine]**

**[19]** The Respondent is a public officer who derives power from the Constitution of Jamaica to institute, take over and continue or discontinue criminal proceedings in cases in which she considers it desirable to do so. (See Section 94 (3) of the Constitution). Based on Section 1(9) of the Constitution, there is no contention as to whether or not the Court has the jurisdiction to review the decision of the Respondent. The Court's inherent jurisdiction in this regard should not be

exercised on a whim. The parameters that should be used to guide the Court to invoke its jurisdiction to interfere with the exercise of the DPP's powers, are where the exercise of her powers are considered improper and/or unlawful.

**[20]** In **Matalulu v. DPP (2003) 4 LRC 712** the Supreme Court of Fiji highlighted five grounds for reviewing a decision of the DPP. The Law Lords stated at page 735

> **"It may be accepted, however that a purported exercise power would be reviewable if it were made:**
>
> 1. "In *excess of the DPP's Constitutional or statutory grants of power- such as an attempt to institute proceedings in a court established by a disciplinary law.*
>
> 2. *When contrary to the provisions of the Constitution the DPP could be shown to have acted under the direction or control of another person or authority and to have failed to exercise his or her own independent discretion---if the DPP were to act upon a political instruction the decision could be amenable to review.*
>
> 3. *In bad faith, for example dishonesty, an example would arise if a prosecution were commenced or discontinued in consideration of the payment of bribe*
>
> 4. *In abuse of the process of the court in which it was instituted, although the proper forum for review of that action would ordinarily be the court involved*
>
> 5. *Where the DPP has fettered his or her discretion by a rigid policy- e.g. One that precludes prosecution of specific class of offences."*

**[21]** The Court made it clear that the grounds for such consideration were not limited to these five (5). I am of the view that where one is faced with determining whether there is an arguable case for the review of the DPP's decision with a realistic prospect of success the following grounds must be the starting point to guide the Court. I must conclude that none of the five grounds outlined are present in the case at bar.

**[22]** It was further acknowledged by the Supreme Court of Fiji in the **Matalulu** case (supra) that other circumstances outside of those noted above may open the doors of judicial review of a prosecutorial discretion.

**Error in the application of the Law**

**[23]** Counsel Mr. Small submitted that the decision of the Respondent was based on an error in her interpretation of the law. In a letter to the Applicant dated August 13, 2018 the Respondent wrote:

> *"After careful review of this case once more, we are of the view that the Crown would not be in a position to mount a viable prosecution in the matter. It is our considered view that the case will fall short of the evidential substrata required to prove the offence s of Misconduct in Public office and Attempting to Pervert the Course of Justice against Superintendent Alfred McDonald and Corporal Kirk Adlam respectively.*
>
> *In Assessing this matter practically, we are of the view there would be no one to provide the evidence of "planting the firearm" and the Crown would only be left with a high suspicion. The evidence of the "planting of the firearm" on the now deceased Jamar Walford would need to come from one of the participants in the commission of the crime. Please see the Privy Council decision in the case of* ***Michael Adams and Frederick Lawrence vs. Regina (2002) UKPC No. 14 of 2001 (1).*** *To this end the prosecution of this matter rests with the charges of Murder against Corporal Rhamone Scott and Wounding with Intent against Constable Duwayne Kelly-James and Corporal Gregory South.*

**[24]** In the **Adams** & **Lawrence** case supra), the Privy Council had indicated that the Judge had fallen into error as there was absolutely no evidence from which an inference could be drawn that the applicant Lawrence or the other policemen planted a firearm on the scene that night. Mr. Small was of the view that the Respondent relied heavily on this finding to make her ruling. He submitted that the

circumstances of that case are easily distinguishable from the present case and that for the offences of Attempting to Pervert the Course of Justice and Misconduct in a Public Office there would be no requirement to prove that the firearm was planted on the deceased by the police.

**[25]** With regard to whether the Respondent has a mistaken view of the law and on that basis has failed to initiate a prosecution, the Court in the case of **Matalulu v. DPP** (supra) at page 736 stated;

> ***"****Where the DPP decides to discontinue a prosecution on the mistaken view of the law then, by the definition, there is no Court proceedings within which to that view may be tested and it may be a stronger case for review can be made. In R v. DPP ex p Kebeline [2000] 3 LRC 377 @420. Lord Steyn stated as a general principle, that in the case of a decision not to prosecute judicial review is available. His Lordship cited R v. DPP ex p C [1995] 1 Cr App R 136 observing that 'in such a case there is no other remedy. That however was a case in which the Crown prosecutor acting on behalf of the DPP in making the decision not to prosecute had failed to comply with settled policy of the DPP set out in a Code for Crown Prosecutors issued by the DPP…****It was nevertheless accepted by the Divisional Court in that case that the power to review a decision of the DPP not to prosecute was to be sparingly exercised (Emphasis Mine]***
>
> ***Again, an error of law which informs a decision not to continue with a prosecution is not an error which goes to the scope of the DPP's power or vitiates the proper exercise of the DPP's discretion. Decisions to initiate or not to initiate or to discontinue may be based on judgments about the prospects of success on questions of law and fact. <u>The DPP is empowered to make such judgments even though they may be wrong on the law and mistaken on the facts.</u> (Emphasis Mine)***

**[26]** It is my considered view that this submission does not have a reasonable prospect of success. An error in the application of the law by itself is not a sufficient basis for the Court to review the decision of the Respondent. Even if the Respondent was erroneous in her interpretation of the law, she has power to determine the prospects of a successful prosecution on questions of law and fact and exercise her discretion accordingly.

**[27]** It is clear from the Respondent's letter to the Applicant that having considered and reconsidered the evidence and after discussions with the Applicant, that she concluded that a viable prosecution could not be mounted against DSP McDonald and Corporal Adlam for the recommended offences. In her letter to the Commissioner dated October 8, 2019 the learned Director stated at paragraphs 3 and 4;

> *"In light of the fact that a month had elapsed between the two incidents, "something more" would be needed to prove the cases to requisite high standard.* ***There is only an assumption as to how the firearm came to be in the possession of the deceased Jamar Walford****. If DSP McDonald had sole custody of the firearm from the time of the first incident until the time of the second incident and based upon the fact that he led both operations, then there would have been sufficient evidence to lay charge against him for the offence of Misconduct in a Public Office.*
>
> *In respect of Corporal Adlam, whilst he asserts that the Taurus pistol in question was the firearm that was recovered from the deceased Jamar Walford, there is no evidentiary material as to how the said firearm came to be removed from the custody of the police after it was first recovered April 28, 2016 and how it reappeared on the street once more on May 27, 2016. We are mindful that there are two civilian witnesses who state the deceased was unarmed at the time the police shot and killed him.* ***However, it is our view that there is an evidential gap in proving a case beyond a reasonable doubt against Corporal Adlam for the offence of Attempting to Pervert the Course of Justice. The Crown would be hard pressed to negative the inevitable suggestion that other persons could have had custody of this firearm. This could provide an explanation as to how this firearm came to be in possession of the deceased. (Emphasis Mine)***

**[28]** It was noted by the Privy Council in **Mohit v. Director of Public Prosecution (2006) UKPC 20** at 233:

> *"Recognition of a right to challenge the DPP's decision does not involve the courts in substituting their own administrative decisions for his: where grounds for challenging the DPP's decision are made out, it involves the courts in requiring the decision to be made again in (as the case maybe) a lawful proper or rational manner."*

I am of the view that nothing has been put before this Court that grounds the view that the decision made by the Respondent was done in an unlawful or irrational manner that would require the Court to order the DPP to revisit the circumstances and that the decision be made again.

**Failure to have sufficient regard to the guidelines as prescribed in "The Decision to Prosecute: A Jamaican Protocol"**

**[29]** The Applicant has submitted that the decision of the Respondent runs contrary to the policy and procedures of her office. The guiding policy is embodied in the guidelines issued by the ODPP entitled: "The Decision to Prosecute: A Jamaican Protocol. At paragraphs 8, 9, 9A and 9B it sets out how the prosecutors are to approach a case to make the determination of whether to prosecute.

**[30]** The Applicant advanced the position, that the learned DPP failed to take into account other relevant public interest considerations as outlined in paragraph 9B of the Protocol. It was their view that the learned DPP failed to be guided in particular by the following as stated in the protocol:

"A prosecution is more likely to be in the public interest if:

- The offence was committed by a public officer who was abusing his office;
- The offence was committed in order to facilitate a cover-up thereby attempting to or actually perverting the course of justice;
- The suspect/accused was in a position of authority or trust and he or she took advantage of this
- The suspect/accused was a ringleader or an organizer of the offence;
- The degree of culpability of the suspect/accused in connection with the offence was high;
- A failure to prosecute would have profound effect upon public order and morale;
- The prevalence of the alleged offence and the need for deterrence both personal and general is high; and

- The necessity to maintain public confidence in such basic institutions as the Parliament and the Courts exists

**[31]** The issue that the Respondent failed to take into account the public interest is not an issue that stands by itself. This consideration can only be exercised where there is sufficient evidence to lay charges against the individual. The learned Director was of the view that the clear gaps in the evidence would result in a short fall of the evidential substratum that is required as the standard of proof in criminal cases.

**[32]** In **Warren Williams, Commissioner of the Independent Commission of Investigations v. The Director of Public Prosecutions (2016) JMSC Civ 96** Laing J at paragraph 73 opined;

> *".. the Protocol states that a prosecution is more likely to be in the public interest if the offence was committed by a public officer who was abusing his office, as the Court in Re King's Application (1988) 40 WIR 15 at page 35 F opined: "it cannot be accepted that a police officer should be charged and prosecuted for murder if a prima facie case is not made out" [which in my view applies equally to any offence]. It cannot be in the public interest that a police officer should be treated differently from a civilian in such matters"* ***In light of the DPP's view of the evidence, the fact that the accused was a police officer ought not to have been accorded any significant weight, or certainly not such weight as to require a prosecution where the DPP was of the opinion that there was no reasonable prospect of securing a conviction." (Emphasis Mine)***

**[33]** I can only conclude that this argument failed to persuade me of any reasonable prospect of success.

**Irrational decision**

**[34]** The Applicant submits that the Respondent's decision not to prosecute was irrational due to her misconstruction of or failure to adequately consider the elements of the offence of Misconduct in a Public Office and Attempting to Pervert

the Course of justice. In addition, Mr Small submitted that the Respondent's decision not to prosecute was taken on a premise which was entirely wrong in law and fact. He concluded that the DPP's failure to consider the inferences of culpability that could be drawn from the evidence resulted in a perverse/ irrational decision.

**[35]** Attached to the affidavit of Makiedah Messam filed on November 4, 2019 is the opinion of Mr. Kent Pantry CD QC, retired Director of Public Prosecutions, who analysed the evidence in the case at bar. Queens Counsel offered his considered opinion that DSP Alfred McDonald should be charged for Misconduct in a Public Office and Corporal Kirk Adlam for Attempting to Pervert the Course of Justice.

**[36]** A difference in opinion of legal minds is not conclusive that either decision is irrational. In the case **Council of Civil Service Unions v Minister for the Civil Service (1985) AC 374** at 410G Lord Diplock stated that irrationality is to be understood as meaning Wednesbury reasonableness and;

> "It applies to a decision which is so outrageous in it defiance of logic or of accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at."

**[37]** In my opinion the Applicant has not shown that that the decision of the learned Director was so outrageous, that it defied logic or accepted moral standards. Queens Counsel Mr. Pantry opined that the Crown would have to be establish that the firearm was planted. The Respondent's decision not to prosecute is based on what she described as gaps in the evidence and an inability to be able to prove the case to the requisite standard.

**[38]** In **Marshall v The Director of Public Prosecutions (2007) 4 LRC 557** the Court stated;

> *"Where the decision is based on the assessment of the evidence and the prospects of securing a conviction, the courts will accord great weight to the judgment of experienced prosecutors on*

*whether s jury is likely to convict: R v DPP, ex p manning (2001) QB 330 at 339 per Lord Bingham"*

**[39]** I therefore conclude that where there has been no demonstration or allegation of fraud, dishonesty, blatant misapplication of the law to the circumstances put before the Respondent that this Court will not exercise its jurisdiction and grant the Applicants leave to apply for judicial review. The Applicants have not mounted an arguable basis for judicial review which has a realistic prospect of success.

**DISPOSAL**

1. The application for Leave to apply for Judicial Review is refused.

**……..**
**Hon. S. Wolfe-Reece, J**