

Whether the decision of the commission is invalidated by the participation of commissioners who were also members of the in and out committee

Remedy – Certiorari – Whether an order of certiorari ought properly to be made to quash the decision of the operations stewards – Whether an order of certiorari ought properly to be made to quash the decision of the commission – The Jamaica Racing Commission Act, 1972, sections 15, 24 and 25 and The Jamaica Racing Commission Racing Rules, 1977, rule 15(v)

Costs – Whether a cost order should properly be made in the circumstances –The appropriate cost order to be made in the circumstances – Civil Procedure Rules, 2002, rules 56.15(4) and (5), 64.3, 64.6(1), 64.6(3), 64.6(4)(a),(b),(d)(i) and (ii), (e)(i), (ii) and (iii), 64.6(4)(f) and 64.6(4)(g)

A. NEMBHARD J

INTRODUCTION

[1] This matter raises important considerations in relation to the legality and procedural propriety of the decision of an enquiry of Operations Stewards to suspend the Claimant, Samantha Fletcher, for a period of twenty-five (25) race days. Ms Fletcher, a jockey by profession, challenged this decision, which was made on 7 March 2023, by lodging an appeal with the Defendant, the Jamaica Racing Commission (“the Commission”). The appeal was dismissed and at the hearing on 21 March 2023, the decision of the Operations Stewards was upheld. Consequently, Ms Fletcher sought judicial review of the decisions made by the Defendant and opted to institute the present proceedings.

[2] By way of a Fixed Date Claim Form, which was filed on 6 July 2023, Ms Fletcher seeks the following Orders for Administrative and Declaratory relief: -

- i. A Declaration that the Decision of Enquiry made on March 7, 2023, is illegal, void and of no effect.

- ii. A Declaration that the Decision of the Defendant made on March 21, 2023, is illegal, void and of no effect.
- iii. An Order of Certiorari quashing the Decision of Enquiry made on March 7, 2023.
- iv. An Order of Certiorari quashing the Decision of the Defendant made on March 21, 2023.
- v. Costs to the Claimant to be paid by the Defendant.
- vi. Such further and other relief as this Honourable Court deems fit.

[3] These Orders are sought on the following bases: -

1. That by summons dated February 27, 2023, the Claimant was charged with failing to take all reasonable and permissible measures throughout a race (the 7th race on February 4, 2023, at Caymanas Park), to ensure that a horse she was riding, '*Gone A Negril*', was given the best possible placing in the race, and she was required to attend a hearing on March 7, 2023.
2. That the decision to charge the Claimant was instructed by a body of persons called The In and Out Running and Observation Committee ("the In and Out Committee"). The In and Out Committee, at the material time, was comprised of Messrs. Derrick Smith, Anthony Shoucair and Paul Ramsey.
3. That the In and Out Committee had no lawful authority under the Jamaica Racing Commission Act or the Racing Rules, 1977 ("the Rules") to instruct or direct that charges be brought against the Claimant.

4. That at the hearing on March 7, 2023, the Claimant was suspended by the Stewards for twenty-five (25) race days with effect from March 18, 2023. The decision of March 7, 2023, was made by, inter alia, Mr Ramsey, and otherwise involved persons not permitted by the Act or Rules to be present at or to attend the hearing. Further, the penalty imposed, that is, the suspension, was not authorized by the applicable parts of the Rules and was therefore unlawful.
5. That the Claimant appealed the decision made on March 7, 2023. The appeal was heard on March 21, 2023, and despite objections as to the:
 - i. legality of the In and Out Committee's directive that the Claimant be charged.
 - ii. involvement of Mr Ramsey at the hearing on March 7, 2023.
 - iii. composition of the panel that heard the appeal, which included the abovementioned Messrs. Smith and Shoucair.

the appeal was dismissed, and the decision made on March 7, 2023, upheld, save that the period of suspension was reduced to twenty race (20) days.

6. That in the premises, the decision made on March 21, 2023, was illegal and was made in breach of the rules of natural justice.

THE ISSUES

[4] The Court finds that the following issues are determinative of the Claim: -

- i. Whether the decision of the Operations Stewards, which was made on 7 March 2023, was illegal and procedurally improper.

- ii. Whether the decision of the Commission, which was made on 21 March 2023, with respect to the appeal lodged by Ms Fletcher, was illegal and procedurally improper.

BACKGROUND

- [5] The Commission is a body corporate established under The Jamaica Racing Commission Act, 1972 (“the Act”). It is the body established to regulate and control horse racing and the operation of racecourses and related functions in Jamaica.¹ Ms Fletcher is a jockey who is licensed with the Commission. For the period commencing October 2022 and ending March 2023, Ms Fletcher avers that she had One Hundred and Seventeen (117) rides or Twenty (20) rides per month.
- [6] On or about 4 February 2023, Ms Fletcher avers that she had a few rides aboard a horse named ‘*Gone A Negril*’, at the Caymanas Park Tracks. After the running of race number seven for that day, in which Ms Fletcher participated astride *Gone A Negril*, in position number five, she was interviewed by a steward, Mr Antoine Nembhard.
- [7] By way of summons dated 27 February 2023 and bearing the signature of Mr Paul Ramsey, the Operations Steward, Ms Fletcher was summoned to an inquiry under Rule 200(2) of the Jamaica Racing Commission Racing Rules, 1977 (“the Rules”). Ms Fletcher alleges that, although the summons required her to attend for a hearing on 7 March 2023, it was served on her only two (2) days prior, on 5 March 2023. The summons charged Ms Fletcher with failing to take all reasonable and permissible measures throughout the seventh race which took

¹ See – Sections 3(1) and 4 of The Jamaica Racing Commission Act

place on 4 February 2023, to ensure that *Gone A Negril* was given the best possible placing in the race.²

The position advanced by the Claimant

- [8]** Ms Fletcher alleges that she was charged by the Stewards on the instruction of a body of persons known as ‘The In and Out Running and Observation Committee’ (“the In and Out Committee”), which, at that time, was comprised of Messrs. Derrick Smith, Anthony Shoucair and Paul Ramsey. Ms Fletcher contends that the In and Out Committee had no lawful authority under the Act or the Rules to instruct or direct that charges be brought against her.

The Hearing of the Tribunal of Stewards on 7 March 2023

- [9]** The hearing of 7 March 2023 was presided over by a Tribunal of Stewards, including Mr Ramsey of the In and Out Committee, as well as Ms Annakay Barrett, Mr Casey Brown and Ms Alicia Lindo. Other Trainee Stewards were present.³ Ms Fletcher asserts that she was questioned in relation to the charge of not taking all reasonable and permissible measures throughout the race to ensure that the horse she was riding got the best possible placing. She was then asked to wait outside the room while the Stewards deliberated. Upon her return to the meeting room, she was informed that, among other things, she had failed to allow the horse to run on its merits and consequently, the decision was taken to suspend her for twenty-five (25) race days, with effect from 18 March 2023 to 25 June 2023.⁴

- [10]** Ms Fletcher contends that the decision of the Tribunal of Stewards significantly hampered her prospects of securing rides in the future and that she stood to lose

² See – Exhibit “**SF-1**”, which contains a copy of the summons dated 27 February 2023, issued by the Jamaica Racing Commission and bearing the signature of the Operations Steward, referred to in the Affidavit of Samantha Fletcher in Support of Application for Administrative Order, which was filed on 22 November 2023.

³ See – Exhibit “**SF-3**”, which contains a copy of the Verbatim Notes of the Investigation into the riding of the horse *Gone A Negril* by Jockey Samantha Fletcher in the 7th race on Saturday, 4 February 2023, referred to in the Affidavit of Samantha Fletcher in Support of Application for Administrative Order, which was filed on 22 November 2023.

⁴ See – Exhibit “**SF-2**”, which contains a copy of the Decision of Enquiry, dated 7 March 2023, referred to in the Affidavit of Samantha Fletcher in Support of Application for Administrative Order, which was filed on 22 November 2023.

about in excess of Two Hundred and Fifty Thousand Dollars (\$250,000.00), should its decision be allowed to stand.⁵ Aggrieved by the decision of the Tribunal of Stewards, Ms Fletcher challenged the decision and submitted her appeal the following day, on 8 March 2023.⁶

The Hearing of the Appeal before the In and Out Committee on 21 March 2023

- [11] On 21 March 2023, the Commissioners of the In and Out Committee, Messrs. Clovis Metcalfe, Anthony Shoucair and Derrick Smith and Mrs Pamela Wade-Fearon, heard Ms Fletcher's appeal. Ms Fletcher and her legal representatives, Mr Douglas Thompson, assisted by Mr Ed Barnes, were also in attendance. Ms Fletcher alleges that the Chairman revealed that the members of the In and Out Committee had not received their certificates of appointment or instruments of delegation, as required by sections 24 and 26 of the Act, respectively.
- [12] It is further alleged that an objection was raised to Messrs. Smith and Shoucair sitting as Commissioners for the purpose of the appeal because of their prior involvement as members of the In and Out Committee, which instructed the Stewards to charge Ms Fletcher. Ms Fletcher further alleges that an email, dated 19 February 2023, with a report attached, was presented at the hearing of the appeal. This document, Ms Fletcher asserts, contained a direct reference to her and that it was on the instruction of the In and Out Committee that the Stewards charged her with not taking all reasonable and permissible measures throughout the race to ensure that the horse is given the best placing.⁷
- [13] At the hearing of the appeal it was argued on Ms Fletcher's behalf that the Defendant's actions were highly irregular and improper. It was also argued that it was a breach of the rules of natural justice for Mr Ramsey to have sat as a

⁵ See – Paragraphs 13 and 14 of the Affidavit of Samantha Fletcher in Support of Application for Administrative Order, which was filed on 22 November 2023.

⁶ See – Exhibit “SF4”, which contains a copy of the letter of appeal dated 7 March 2023 from Samantha Fletcher to the Stewards of the Caymanas Park Track Limited, along with a copy of the Grounds of Appeal prepared and submitted by Mr Ed Barnes, referred to in the Affidavit of Samantha Fletcher in Support of Application for Administrative Order, which was filed on 22 November 2023.

⁷ See – Exhibit “SF5”, which contains a copy of a report from the In and Out Running and Observation Committee, purportedly dated February 4, 2023 referred to in the Affidavit of Samantha Fletcher in Support of Application for Administrative Order, which was filed on 22 November 2023.

Steward on the first tribunal, because he was a member of the In and Out Committee which had instructed that Ms Fletcher be charged. It was further argued on Ms Fletcher's behalf that it was irregular and improper and a breach of the rules of natural justice for Messrs. Smith and Shoucair to sit as part of the panel hearing her appeal, having regard to their involvement as part of the In and Out Committee. That notwithstanding, the appeal was dismissed, and the period of Ms Fletcher's suspension was reduced from twenty-five (25) days to a period of twenty (20) days.

The position advanced by the Defendant

[14] Mr Clovis Metcalfe, the Chairman of the Commission, in an affidavit filed in response to allegations made by Ms Fletcher, largely denies that Ms Fletcher was charged on the instruction of the In and Out Committee.^{8 9} For its part, the Jamaica Racing Commission denies that the members of the In and Out Committee, having observed Ms Fletcher's race, recommended and requested that the Stewards look at Ms Fletcher's actions as stated in an email. The Defendant asserts that section 15 of the Jamaica Racing Commission Act empowers the Commission to appoint and employ at such remuneration and on such terms and conditions as it thinks fit a manager, a secretary and such other officers, servants and agents as it thinks necessary for the performance of its functions, without the need for an Instrument of Delegation or Certificate of Appointment. The Commission also relies on rule 15 (v) of the Jamaica Racing Commission Racing Rules, which, it asserts, further empowers it to allow or to refuse to allow any person to act or to continue to act as an authorized agent.^{10 11}

⁸ The Defendant accepts that the members of the In and Out Committee at the relevant time comprised Messrs. Derrick Smith, Anthony Shoucair and Paul Ramsay. See paragraphs 6(b)(i) and 10(a) of the Affidavit of Clovis Metcalfe in response to Affidavit of Samantha Fletcher in support of Application for Administrative Order filed 22nd November 2023, which was filed on 20 December 2023.

⁹ See – Paragraph 3 of the Affidavit of Annakay Barrett in response to Affidavit of Samantha Fletcher filed on 22nd November 2023.

¹⁰ See – Paragraph 6(b)(iii) of the Affidavit of Clovis Metcalfe in response to Affidavit of Samantha Fletcher in support of Application for Administrative Order filed 22nd November 2023, which was filed on 20 December 2023.

[15] The Commission contends that the Stewards who comprised the First Tribunal were authorized under the Racing Rules to impose the penalty of suspension for twenty-five (25) race days. Further, the Commission maintains that the Trainee Stewards who were present at the First Tribunal had no input or influence on the decision arrived at by the Stewards.^{12 13}

[16] The Commission does not refute that Ms Fletcher's legal representation raised objections at the hearing of the Appeal on 21 March 2023. It is the Defendant's case that the appeal was dismissed, and the decision of 7 March 2023 was upheld although the earlier penalty was reduced from a suspension of twenty-five (25) race days, to twenty (20) days. The Commission maintains that the decision made on 21 March 2023 was not illegal and that it did not breach the rules of natural justice.¹⁴

The Hearing of the Appeal on 21 March 2023

[17] Mr Metcalfe avers that he chaired the appeal by Ms Fletcher to the Commission, the hearing of which took place on 21 March 2023. It is alleged that at the hearing, Mr Nembhard and Ms Bagwandeem refuted Ms Fletcher's allegations that there was a discussion between herself and Mr Nembhard after the race.¹⁵

¹¹ See – Paragraph 18 of the Affidavit of Clovis Metcalfe in response to Affidavit of Samantha Fletcher in support of Application for Administrative Order filed 22nd November 2023, which was filed on 20 December 2023. See also, Exhibits “**CM6**” and “**CM7**”, which contain the Contracts for Service Employment for Anthony Shoucair and Mr Derrick Smith respectively.

¹² See – Paragraphs 6(c)(ii) and 6(c)(iv) of the Affidavit of Clovis Metcalfe in response to Affidavit of Samantha Fletcher in support of Application for Administrative Order filed 22nd November 2023, which was filed on 20 December 2023.

¹³ See – Paragraph 7 of the Affidavit of Annakay Barrett in response to Affidavit of Samantha Fletcher filed on 22nd November 2023. See also, paragraph 8 of the Affidavit of Annakay Barrett in response to Affidavit of Samantha Fletcher filed on 22nd November 2023. It is Ms Barrett's evidence that the hearing by the panel of Stewards on 7 March 2023 was chaired by her.

¹⁴ See – Paragraph 6(e) of the Affidavit of Clovis Metcalfe in response to Affidavit of Samantha Fletcher in support of Application for Administrative Order filed 22nd November 2023, which was filed on 20 December 2023.

¹⁵ See – Paragraph 8(b) of the Affidavit of Clovis Metcalfe in response to Affidavit of Samantha Fletcher in support of Application for Administrative Order filed 22nd November 2023, which was filed on 20 December 2023. See also Exhibits “**CM3**”, “**CM4**” and “**CM5**”, which contain the transcripts of the evidence of Mr Antoine Nembhard, Ms Lorna Bagwandeem and the Verbatim Notes of the Investigation into the riding of the horse Gone A Negril by Jockey Samantha Fletcher in the fifth race on Saturday, 4 February 2023, respectively.

[18] Mr Metcalfe maintains that in view of the fact that no decision or instruction was given to the Stewards to charge Ms Fletcher, the Commissioners were of the view that the participation of the two members of the In and Out Committee in the appeal was neither irregular nor illegal particularly having regard to the fact that Ms Fletcher had the benefit of the full presentation of the appeal and the hearing of evidence by the Commissioners.¹⁶

THE LAW

The role of the court in judicial review proceedings

[19] Part 56 of the Civil Procedure Rules, 2002, as amended (“the CPR”), is entitled Administrative Law and deals with matters such as this. The role of the court in judicial review is to provide supervisory jurisdiction over persons or bodies that perform public law functions or that make decisions that affect the public.

[20] The approach of the court is by way of review and not of an appeal. The grounds for judicial review have been broadly based upon illegality, irrationality or impropriety of the procedure and the decision of the inferior tribunal. These grounds were explained in the case of **Council of Civil Service Unions v Minister for the Civil Service**.¹⁷

[21] Roskill, LJ stated as follows: -

“...executive action will be the subject of judicial review on three separate grounds. The first is where the authority concerned has been guilty of an error of law in its action, as for example purporting to exercise a power which in law it does not possess. The second is where it exercises a power in so unreasonable a manner that the exercise becomes open to review on what are called, in lawyers' shorthand, Wednesbury principles (see Associated Provincial Picture Houses Ltd v Wednesbury Corp [1947] 2 All ER 680, [1948] 1 KB 223). The third

¹⁶ See – Paragraph 20(b) of the Affidavit of Clovis Metcalfe in response to Affidavit of Samantha Fletcher in support of Application for Administrative Order filed 22nd November 2023, which was filed on 20 December 2023.

¹⁷ [1984] 3 All ER 935

is where it has acted contrary to what are often called 'principles of natural justice'."

- [22] Judicial review is the courts' way of ensuring that the functions of public authorities are executed in accordance with the law and that they are held accountable for any abuse of power, unlawful or ultra vires act. It is the process by which the private citizen (individual or corporate) can approach the courts seeking redress and protection against the unlawful acts of public authorities or of public officers and acts carried out that exceed their jurisdiction. Public bodies must exercise their duties fairly.
- [23] Since the range of authorities and the circumstances of the use of their power are almost infinitely various, it is of course unwise to lay down rules for the application of the remedy which appear to be of universal validity in every type of case. It is important to remember that, in every case, the purpose of the remedies is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law.
- [24] The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court.¹⁸
- [25] Judicial review is concerned, not with the decision but with the decision-making process. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power.

¹⁸ See – **Chief Constable of the North Wales Police v Evans** [1982] 3 All ER 141, at pages 143 g-h and 144 a

Certiorari

[26] Certiorari will not lie unless something has been done that a court can quash.¹⁹ It is an order which quashes decisions of an inferior court or tribunal, public authority or other body and this decision is one which is susceptible to judicial review. Such an order may be made where the decision-maker has acted in breach of one of the principles of public law; for example, where there has been a breach of the rules of natural justice or procedural fairness, or where there has been a breach of a legitimate expectation in the absence of overriding public need, or where the decision-maker has made an error of law.²⁰

[27] In the 8th edition of the text, Garner's Administrative Law, the effect of the remedy of certiorari is described. At page 307, it is stated: -

*"The effect of the grant of an order of certiorari is to quash the decision or order in question, thus rendering it null and void. The consequences of such action may potentially be quite serious."*²¹

[28] Paragraph 109 of Volume 61A (2023) of the Halsbury's Laws of England states: -

"The effect of a quashing order is that the unlawful decision or order is set aside and deprived of all legal effect since its inception. If the decision is quashed, the court may remit the matter to the decision-maker for them to reconsider the

¹⁹ See – Paragraph 16-017 of the 5th edition of De Smith, Woolf and Jowell's **Judicial Review of Administrative Action**. See also, paragraphs 2-028 and 7-022 respectively; *"In summary, it can be said where an application is for an order of certiorari, logic may require that there be some "decision" or "determination" capable of being quashed. Certiorari (and prohibition) would issue to "anybody of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially."*

²⁰ See – Paragraph 104 of Volume 61A (2023) of the Halsbury's Laws of England

²¹ At footnote number 5 on the same page, it is noted: *"Note that the Court quashes a decision but does not substitute its own decision in its place (as an appellate body normally does). See, however, the power in Ord 53, r 9(4) to direct that the inferior Court, tribunal or authority shall reconsider the matter and reach a decision in accordance with the Court's findings."*

matter. The decision-maker may, as long as the error of law is not repeated and no other error committed, reach the same decision.”

[29] In the authority of **Danville Walker v The Contractor-General**,²² Campbell J (as he then was) espoused: -

“[30] Certiorari is one of three prerogative writs which form the trilogy of certiorari, prohibition and mandamus. It is of significant importance in administrative law. Its foundation lies in the governance of the sovereign’s realm. It is an instrument to ensure the efficient administration of government. It was meant to bring up the records of inferior courts for an examination for any errors on their face. The sovereign, wishing to be certified of some matters, would order that the necessary information be provided for him. Certiorari would move to quash decisions and orders on the grounds of illegality, procedural impropriety and irrationality. The supervising court could not impose its own version of the impugned order. The remedy being discretionary, the court would refuse the remedies at its disposal on the basis of delay, or that the applicant did not make full and frank disclosure, or that there was an adequate alternative remedy available or that to make the remedy would be pointless.”

THE SUBMISSIONS

The submissions advanced on behalf of the Claimant

[30] In his fulsome and comprehensive written submissions, Learned Counsel Mr Douglas Thompson asserted that the challenge to the administrative decision of the In and Out Committee is grounded on two bases, namely, illegality and procedural impropriety. Mr Thompson asserted that the court would interfere, by way of judicial review proceedings, to quash an illegal decision which is made by a decision-maker. It was further asserted that an administrative decision is illegal if it contravenes or exceeds the terms of the power which authorizes the making of the decision. To substantiate these submissions, Mr Thompson relied on the

²² [2013] JMFC Full 1

authorities of **R v Lord President of the Privy Council ex parte Page**²³ and **Council of Civil Service Unions v Minister for the Civil Service**.²⁴

- [31] In determining whether a decision is illegal, the court must interpret the content and scope of the instrument which confers the duty or power on the decision-maker. In this regard, Mr Thompson submitted, the role of the court is to ensure that the rule of law is maintained, by insisting that decision-makers act within the ambit of their scope and powers.²⁵
- [32] It was further submitted that an administrative decision may be quashed if there exists a real likelihood of bias, as justice must not only be done but must also be seen to be done. Mr Thompson submitted that the existence of apparent bias is an established basis on which a decision of a quasi-judicial body may be quashed. Bias is established where a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. To buttress these submissions, Mr Thompson referred the Court to the authorities of **Rex v Sussex Justices**²⁶ and **Porter v Magill**.²⁷
- [33] Mr Thompson maintained that the In and Out Committee had no lawful authority to instruct those charges be brought against Ms Fletcher. It was accepted that every jockey is required to take all reasonable and permissible measures throughout a race to ensure that his/her horse is given every opportunity to obtain the best possible placing in the race. Any failure to do so constitutes an offence under section 200(2) of the Rules. The Act provides that the investigation of complaints, including breaches of the Rules, lies within the ambit of authorized persons who have been issued certificates of appointment under section 24(1) and (2) of the Act.
- [34] There is no dispute between the parties that the Operations Stewards are charged with hearing complaints and with determining whether there have been

²³ [1993] A.C. 682

²⁴ [1985] A.C. 374

²⁵ **De Smith's Judicial Review**, 6th edition, at paragraph 5-003, page 226

²⁶ [1924] 1 KB 256

²⁷ [2002] 1 ALL ER 465

breaches of the Rules. Nor is there any dispute between the parties that the members of the In and Out Committee were not authorized persons as defined by section 24 of the Act.

The submissions advanced on behalf of the Defendant

- [35] For his part, Learned Kings Counsel Mr Garth McBean referred the Court to the dicta of the Honourable Ms Justice Straw (as she then was) in the authority of **Linton C. Allen v His Excellency the Right Hon. Sir Patrick Allen and the Public Service Commission**. There, Straw J outlined the role of the court when determining an application for judicial review and the threshold which is required to be met.²⁸
- [36] Secondly, Mr McBean KC referred the Court to section 15 of the Act and rule 15(v) of the Rules and submitted that the section and the rule do not require a Certificate of Appointment or an Instrument of Delegation. Mr McBean KC further submitted that these provisions empower the Commission to employ and appoint the members of the In and Out Committee and that the appointments of the members of the In and Out Committee were valid.
- [37] Mr McBean KC maintained that the words used in the email from the In and Out Committee clearly indicated that the Committee neither made a decision nor a conclusion, in respect of the alleged conduct on the part of Ms Fletcher.
- [38] Additionally, Mr McBean KC submitted that the participation of members of the In and Out Committee in the hearing before the Operations Stewards did not constitute procedural impropriety or a breach of the rules of natural justice.²⁹
- [39] Mr McBean KC maintained that there was no procedural impropriety nor was there a breach of the rules of natural justice for the following reasons: -
- a) the members of the In and Out Committee made no decision.

²⁸ [2017] JMSC Civ 24

²⁹ See – **Easton Wilberforce Grant vs Teacher’s Appeal Tribunal** 2006 [UKPC] 59

- b) as in the case of **Grant**, the mere fact that the members of the In and Out Committee participated in the various hearings, does not amount to procedural impropriety nor does it amount to a breach of the rules of natural justice.
- c) as in the case of **Grant**, the members of the panel of Stewards and the Commissioners who heard the appeal gave “genuine and fair consideration to the case and any further facts or arguments put before it on the second occasion”.
- d) notwithstanding the fact that a member of the Committee in the case of **Grant** had expressed a conclusion adverse to the Appellant, the Judicial Committee of the Privy Council found no unfairness or impropriety. In the instant case, no adverse conclusion was made by any of the members who sat on the In and Out Committee.
- e) considering the foregoing, the fair minded and informed observer, having considered the facts, would not conclude that there was a real possibility that the tribunal was biased.

ANALYSIS AND FINDINGS

- [40]** In its consideration of the issues raised in the present instance, the Court is guided by the principle that the process of judicial review is the basis on which courts exercise supervisory jurisdiction in relation to inferior bodies or tribunals which exercise judicial or quasi-judicial functions, or which make administrative decisions which affect the public.
- [41]** There are three bases on which an application for judicial review may be made. These are illegality, irrationality and procedural impropriety. By illegality is meant that the decision-maker must understand correctly the law which regulates its decision-making power and must give effect to it. By irrationality is meant what can now be succinctly referred to as “Wednesbury unreasonableness”. It applies

to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it. By procedural impropriety is meant, not only a failure to observe basic rules of natural justice or a failure to act with procedural fairness towards the person who will be affected by the decision but also a failure by an administrative tribunal to observe procedural rules which are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.³⁰

[42] For present purposes, the Court finds it helpful to adopt the following sub-issues as they have been identified and framed by Mr McBean KC: -

- i. Whether the members of the In and Out Committee were validly appointed by the Defendant Commission.
- ii. Whether the In and Out Committee made a decision or conclusion in relation to the conduct of Ms Fletcher in the race on 4 February 2023.
- iii. Whether there was a hearing by the Operations Stewards on 4 February 2023.
- iv. Whether the decision of the Operations Stewards in the hearing on 7 March 2023 is invalidated by the participation of Mr Paul Ramsey, Operations Steward, who was also a member of the In and Out Committee.
- v. Whether the hearing of the appeal is invalidated by the participation of Commissioners Derrick Smith and Anthony Shoucair who were members of the In and Out Committee.
- vi. Whether there is a real prospect of success of the Claim.

³⁰ See – **Council of Service Unions v Minister of the Civil Service** [1985] AC 374, at page 410F-H, per Lord Diplock

Whether the members of the In and Out Committee were validly appointed by the Defendant Commission

The statutory framework

The Jamaica Racing Commission Act

- [43] Any consideration of this first sub-issue must involve a consideration of the proper interpretation to be applied to the Act and in particular, sections 15, 24 and 26 of the Act.
- [44] Section 3(1) of the Act provides that there shall be established a body to be called the Jamaica Racing Commission to regulate and control horse-racing and the operation of racecourses in the Island and to carry out such other functions as are assigned to it by or in pursuance of the provisions of the Act or any other enactment. Section 3(2) provides that the Commission shall be a body corporate to which the provisions of section 28 of the Interpretation Act shall apply.
- [45] Section 4 of the Act treats with the functions of the Commission and provides that subject to the provisions of this or any other enactment the Commission shall have power to do all such things as are in its opinion necessary for or conducive to the proper discharge of its functions, and in particular, but without prejudice to the generality of the foregoing the Commission shall have the power: -
- (a) to grant such licences and permits as may be required by virtue of the provisions of this Act;
 - (b) to recommend to the Minister the methods of utilizing sums under the Betting, Gaming and Lotteries Act for the assistance of the breeders of horses and horse-racing generally; and

(c) to introduce and implement or to assist in or undertake the implementation of any scheme for the development of the horse-racing industry.

[46] Sections 5 and 6 of the Act make provisions for the funds and resources of the Commission and the application of those funds, respectively.

[47] Sections 7, 8 and 9 of the Act deal with the borrowing powers of the Commission, advances and guarantee of borrowings and the repayment of, and interest on, advances and sums issued to meet guarantees, respectively.

[48] Section 10 of the Act treats with reserves; section 11 of the Act treats with accounts and audits of the Commission and section 12 of the Act treats with annual reports of the Commission. Section 14 of the Act makes provision for the power of the Minister to give directions to the Commission.

[49] Section 15 of the Act reads, in part, as follows: -

“15.- (1) The Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a manager, a secretary and such other officers, servants and agents as it thinks necessary for the proper performance of its functions:

Provided that no salary in excess of the prescribed rate shall be assigned to any post without the prior approval of the Minister.

(1A) In subsection (1) the prescribed rate means a rate of four hundred thousand dollars per annum or such higher rate as the Minister may, by order, prescribe.”

[50] This Court is of the view that the proper interpretation to be applied to section 15 of the Act is that it empowers the Commission to employ staff, such as a manager and a secretary, for the purpose of its internal organization and operation, for the proper performance of its functions. These functions are (1) the granting of such licences and permits as may be required by virtue of the provision of the Act; (2) making recommendations to the Minister in relation to the

methods of utilizing sums under the Betting, Gaming and Lotteries Act for the assistance of the breeders of horses and horse-racing generally; and (3) introducing and implementing or assisting in or undertaking the implementation of any scheme for the development of the horse-racing industry.

[51] This Court is constrained to find that section 15 of the Act does not empower the Commission to appoint persons for the purpose of investigating complaints or for the purpose of otherwise securing the proper observance of the provisions of the Act, the Regulations and the Racing Rules.

[52] In fact, pursuant to section 24 of the Act, the Commission has a statutory discretion to appoint such persons as it thinks fit, for the purpose of investigating complaints and otherwise securing proper observance of the provisions of the Act, the regulations and the Rules. These persons are referred to as authorized persons. The Commission is required to furnish every such authorized person with a certificate of appointment.³¹

[53] Section 24 reads as follows: -

“24(1) The Commission may appoint such persons as it thinks fit {including persons who are members of the Commission} for the purpose of investigating complaints and otherwise securing the proper observance of the provisions of this Act and the regulations and the Racing Rules made thereunder, and any such person is in this Act referred to as an “authorized person”,

(2) The Commission shall furnish every authorized person with a certificate of appointment.

(3) An authorized person may {subject to the production by him if so required of his certificate of appointment as such} at all reasonable times enter any premises which are used or which he has reasonable cause to believe are used –

(a) for the operations of a racecourse;

³¹ See – Section 24(1), (2) and (3) of The Jamaica Racing Commission Act

- (b) *for controlling the operations of a racecourse;*
- (c) *for keeping horses in training for races; or*
- (d) *for the breeding of horses for racing,*

and may examine the entries required to be made in the records kept in connection therewith and copy the whole or any part of such records.”

[54] Furthermore, section 25 of the Act allows the Commission to do the following: -

“25. The Commission may, where it considers it expedient so to do, hold or cause to be held an investigation –

(a) to determine whether any licence granted under Part III should be suspended or revoked;

(b) in respect of the breach of any of the regulations or of the Racing Rules made under this Act or of any terms of conditions of any licence or provisional licence; or

(c) as respects any matter related to or connected with its functions so as to determine whether any of such functions should be exercised,

And with respect to any such investigation the following provisions shall have effect–

(i) the person or persons holding the investigation (hereinafter in this section referred to as “the tribunal” shall do so in such manner and under such conditions as the tribunal may think most effectual for ascertaining the facts of the matter under investigation;

(ii) the tribunal shall have for the purpose of the investigation all the powers of a Resident Magistrate to summon witnesses, call for the production of books and documents and to examine witnesses and the parties concerned on oath;

(iii) any person summoned to attend or to produce books or documents under this section, and refusing or neglecting so to do or refusing to answer any question put to him by or with the concurrence of the tribunal shall be guilty of any offence against this Act and be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred dollars and in default of payment to imprisonment for a term not exceeding three months:

Provided that no person shall be bound to incriminate himself and every witness shall, in respect of any evidence given by him at such an investigation be entitled to the same privileges to which he would be entitled if giving evidence before a court of justice;

(iv) any witness attending at the request of or upon summons by the tribunal shall, subject to any order made by the tribunal be entitled to like allowances for expenses as if summoned to attend a Resident Magistrate's Court.

[55] The Commission may, by an instrument in writing and subject to such conditions as may be specified in the instrument, delegate to any person any of the functions exercisable by the Commission by virtue of the provisions of the Act or any other enactment. Persons to whom a delegation is made is to furnish to the Commission such information as the Commission may require with respect to the exercise of any of the functions.³²

[56] In the present instance, this Court is of the view that it is sections 24 and 25 of the Act which are the applicable provisions of the Act. It is by virtue of section 24 of the Act that the Commission is empowered to appoint such persons as it thinks fit (including persons who are members of the Commission) for the purpose of ensuring the proper observance of the provisions of the Act, and its regulations as well as the Racing Rules. Every authorized person is to be furnished with a certificate of appointment. The rationale for this may very well be informed by the gravity of such a position, the extent of the powers which are

³² See – Section 26(1), (2) and (3) of the Jamaica Racing Commission Act

vested in every authorized person and the sanctions which he/she is able to impose under the statute. For example, the statute provides that the tribunal shall have, for the purpose of the investigation, all the powers of a Resident Magistrate (now referred to as a Judge of the Parish Court) to summon witnesses, to call for the production of books and documents and to examine witnesses and the parties concerned on oath.

- [57] In this regard, the Court accepts the submissions of Mr Thompson. The Court finds that the members of the In and Out Committee were not validly appointed by the Commission. The Act provides that the investigation of complaints, including breaches of the Rules, lies within the ambit of authorized persons who have been issued certificates of appointment under section 24(1) and (2) of the Act. The members of the In and Out Committee having not been so appointed by the Commission, their decision was illegal, null and void ab initio.
- [58] In the result, the decision of the Operations Stewards made on 7 March 2023 as well as that of the Commission made on 21 March 2023, are illegal, null and void ab initio.

Whether the In and Out Committee made a decision or conclusion in relation to the conduct of Ms Fletcher in the race on 4 February 2023

Whether there was a hearing by the Operations Stewards on 4 February 2023

- [59] In this regard, the Court accepts the submissions of Mr McBean KC. The Court accepts the evidence of Mr Antoine Nembhard and Ms Lorna Bagwandeem and finds that there was no substantive decision or conclusion which was made by the In and Out Committee in relation to the conduct of Ms Fletcher in the race on 4 February 2023. The Court observes, however, that there must have been something which was said or done by Ms Fletcher, which informed the request that the Operations Stewards should “take a look at the actions of the jockey Samantha Fletcher”.

[60] The Court also accepts the submission that there was no hearing by the Operations Stewards on 4 February 2023.

Whether the decision of the Operations Stewards in the hearing on 7 March 2023 is invalidated by the participation of Mr Paul Ramsey, Operations Steward, who was also a member of the In and Out Committee

Whether the hearing of the appeal is invalidated by the participation of Commissioners Derrick Smith and Anthony Shoucair who were members of the In and Out Committee

[61] In this regard, Mr McBean KC submitted that the participation of the members of the In and Out Committee in the hearing before the Operations Stewards does not constitute procedural impropriety or a breach of the rules of natural justice for the following reasons: -

- (a) The members of the In and Out Committee did not make a decision.
- (b) The mere fact that the members of the In and Out Committee participated in the hearings does not amount to procedural impropriety or to a breach of the rules of natural justice.
- (c) The members of the panel of Stewards and the Commissioners who heard the appeal gave “genuine and fair consideration to the case and any further facts or arguments put before it on the second occasion.”
- (d) No adverse conclusion was made by any member who sat on the In and Out Committee.
- (e) The fair minded and informed observer, having considered the facts, would not conclude that there was a possibility that the tribunal was biased.

- [62] To substantiate this submission, Mr McBean KC referred the Court to the decision of the Judicial Committee of the Privy Council in **Easton Wilberforce Grant vs The Teacher’s Appeals Tribunal and the Attorney General**.³³
- [63] This Court is of the view that the circumstances which obtained in the authority of **Grant** can properly be distinguished from those which obtained in the present instance. The appellant, Easton Wilberforce Grant, was a teacher at the Montego-Bay Community College (“the College”), where he had taught economics, mathematics and statistics to A-Level students since 1992. Regrettably, he found himself at odds with the then principal, Dr Lorna Nembhard, over the administration of the College. Following a series of acrimonious interruptions and exchanges at a staff meeting in September 1998, and his subsequent refusal to attend meetings with the principal to discuss the academic performance of his students, the principal made a complaint to the Board of Management. The ensuing disciplinary proceedings eventually resulted in the termination of his employment. The appellant brought an application for judicial review of the decision to dismiss him, but this was dismissed. The Court of Appeal dismissed his appeal against the decision of the Supreme Court and the appellant appealed to the Judicial Committee of the Privy Council with the leave of the Court of Appeal.
- [64] The College was at all material times administered by a Board of Management (“the Board”) constituted as provided for by Regulation 41 of the Education Regulations 1980 (“the Regulations”). The term of office of the members of the Board was a maximum of three (3) years.
- [65] At the hearing on 7 October, the principal stated that she was charging the appellant with indiscipline, unprofessional conduct and neglect of duty. The appellant made a detailed statement in his defence. Before the Personnel Committee could report to the Board, as required by Regulation 85, it was appreciated that the term of appointment of the Board of members had expired. Accordingly, neither the Board nor the Personnel Committee had the authority to

³³ [2006] UKPC 59

act. A New Board was appointed by the National Council, the appointment to be effective for three (3) years from 1 December 1998. The Chairman, Deputy Chairman and academic staff representative were all re-appointed. No decision was made by the members of the Board, prior to the appreciation that the term of their appointment had expired.

- [66]** In the present instance, the Operations Stewards decided that Ms Fletcher should be suspended. Mr Paul Ramsey, as a member of the In and Out Committee, having observed Ms Fletcher's race on 4 February 2023, recommended that the Operations Stewards should "take a look at the actions of the jockey Samantha Fletcher." Having made that recommendation, Mr Ramsey participated in the enquiry before the Operations Stewards on 7 March 2023. Further to that, Messrs. Derrick Smith and Anthony Shoucair, members of the In and Out Committee, also participated in the hearing of Ms Fletcher's appeal against the decision of the Operations Stewards.
- [67]** The Court finds that it was procedurally improper and a breach of the rules of natural justice for Mr Paul Ramsey to have sat as part of the enquiry before the Operations Stewards. It is he who, having observed the race in which Ms Fletcher participated on 4 February 2023, recommended that the Operations Stewards should "take a look at the actions of the jockey Samantha Fletcher."
- [68]** The Court also finds that it was procedurally improper and a breach of the rules of natural justice to have trainee Stewards remain present with the Operations Stewards during their deliberations.
- [69]** More substantially, the Court finds that it was procedurally improper and a breach of the rules of natural justice for Messrs. Smith and Shoucair to have sat as part of the panel which heard Ms Fletcher's appeal, having regard to their involvement as part of the In and Out Committee.

Costs

[70] On the issue of the appropriate cost Order to be made in the present instance, this Court is guided by the pronouncements of Sykes CJ in the authority of **Julian Robinson vs The Attorney General of Jamaica**.³⁴ The general principle, in relation to judicial review, is that claims ought not to be discouraged. It is that reluctance to discourage claimants from applying for judicial review which motivated rule 56.15(5) of the Civil Procedure Rules. The general rule is that no Order for costs may be made against an applicant for an administrative Order unless the Court considers that the applicant has acted unreasonably in making the application or in the conduct of the application.

[71] Additionally, the general rule is that costs follow the event. In the present instance, the Court does not find that there are any circumstances which warrant a deviation from the general rule.

DISPOSITION

[72] It is hereby ordered as follows: -

- (1) An Order of Certiorari is granted to quash the Decision of the Defendant which was made on 7 March 2023.
- (2) An Order of Certiorari is granted to quash the Decision of the Defendant which was made on 21 March 2023.
- (3) Costs are awarded to the Claimant against the Defendant and are to be taxed if not sooner agreed.
- (4) The Claimant's Attorneys-at-Law are to prepare, file and serve these Orders.

³⁴ [2019] JMCC Full 5