[2019] JMSC Civ. 270

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISON

CLAIM NO. 2018HCV04198

BETWEEN	**YVETTE REID**	**APPLICANT**
AND	**THE REGISTRAR OF CO-OPERATIVES AND FRIENDLY SOCIETIES**	**1ST RESPONDENT**
AND	**FIRST HERITAGE CO-OPERATIVE CREDIT UNION LIMITED**	**2ND RESPONDENT**

IN CHAMBERS

Mrs. Yvette Reid, the Applicant, appearing in person and unrepresented
Ms. Kamau Ruddock, instructed by the Direct of State Proceedings on behalf of the 1st Respondent
Mrs. Tamara Francis Riley-Dunn instructed by Nelson Brown Guy & Francis for the 2nd Respondent

APPLICATION FOR EXTENSION OF TIME TO APPLY FOR LEAVE FOR JUDICIAL REVIEW – DELAY – WHETHER GOOD REASON SHOWN

Heard: November 11, 2019 & November 29, 2019

WOLFE-REECE, J

INTRODUCTION

[1] The Respondent brought a claim by way of Fixed Date Claim Form filed on the 14th February, 2019 seeking the following orders:

i. an extension of time for the making of an application for leave to apply for Judicial Review

ii. An order of certiorari quashing the decision of the Arbitrator appointed under the Co-operative Societies Act

iii. An order that the matter be remitted to the original tribunal for a determining on **All** the facts

[2] As a member of the 2nd Respondent, the Applicant maintained several accounts and several loans with the society. In January, 2014 the Applicant had a loan balance of between $3,208,668.65 to $3,11,592.73 (the parties have put forward two different figures as to this amount) and at the same time she had a term deposit valued approximately $3,446,518.73 which she used as a security to cover the loan balance.

[3] The Applicant wrote to the 2nd Respondent requesting that the interest from the term deposit be applied to the loan. This was done to cover the arrears for a particular month, however, the 2nd Respondent asserts that the interest was not sufficient to cover all the arrears and the monthly payment of $55,000.00.

[4] In February, 2014 the loans fell into arrears. In March, 2014 the Applicant asked for a moratorium, her request was denied. By April, 2014 the applicant was still in arrears and the monies in the term deposit were liquidated to cover the loan balance.

[5] The loan was restored with a lower monthly payment and the monies placed back in the Applicant's shares account. The Applicant signed a promissory note acknowledging her indebtedness to the 2nd Respondent in the sum of $3,446,335.24.

[6] In letter dated July 28, 2014 issued by Scotiabank Jamaica Limited, a copy of which the Applicant exhibited to her Affidavit filed on the 5th March, 2019, Scotiabank issued a letter of undertaking to pay the balance of the loan in exchange for the sum of $3,400,000.00 in the Applicants shares account being paid over to them. This request was honoured on the 28th July, 2014.

[7] Pursuant to section 50 of the Co-operative Societies Act the Applicant requested that the matter be referred to an Arbitrator claiming an award of $7,339,5552.98 for damages on the following grounds:

I. Breach of Contract for that:

a. the 2nd Respondent failed to pay interest from her term deposit to the loan as per her letter.

b. The 2nd Respondent confiscated and illegally used treasury deposit account to clear loan balance
c. The 2nd Respondent liquidated her loan of $3,311,592.00 despite standing instructions and sufficient interest to cover loans

II. That the 2nd Respondent obtained the money by fraud and deception when it used duress to secure her signature to a loan and Promissory Note on July 17, 2014;
III. Misrepresentation as she was led to believe that the loan was being reinstated when in fact it was a new loan;
IV. The 2nd Respondent fraudulently sold her loan to Bank of Nova Scotia; and
V. By paying the money over to Nova Scotia the 2nd Respondent committed theft and money laundering

[8] At first instance, the Arbitrator found in favour of the 2nd Respondent on the following grounds:

I. Notice was not fatal as there is evidence that the Applicant had notice that she was in default and it was specifically provided in the loan agreement that “in the event of default” loan balances are immediately payable.
II. The Applicant had irrevocably and unconditionally waived the right to any demand or notice
III. There was no evidence to uphold claims of theft, fraud, solicitation and obtaining money by false pretence.

[9] The Applicant once again invoked the jurisdiction of the 1st Respondent by appealing the decision of the Arbitrator. The matter was determined on the 20th December, 2016, the tribunal dismissed the Appeal and ordered costs to the 2nd Respondent in the sum of $50,000.00.

APPLICANT’S SUBMISSIONS

The Applicant seeks the Judicial Review on the following grounds:

[10] The Applicant contends that the Registrar's decision to conduct the hearing of the appeal as the sole adjudicator was an error of law.

[11] The Applicant complained of the fact that emails sent to her on the 17th November, 2017 on behalf of the secretary were sent from a private email account and requested that she resubmit documents which was already sent to the Registrar. The Applicant claims that this act was what she termed as "procedural impropriety" and that the process of the judicial review should be voided for that reason.

[12] The Applicant asserts that both the Arbitrator and the Registrar erred in their analysis of the information before them as they failed to take into account '*critical evidence'* which she provided for their consideration.

[13] In explaining the reason for the delay, the Applicant noted that on the 26th December, 2016 she wrote a letter to the Honourable Minister of Industry, Commerce Agriculture and Fisheries, the Honourable Minister Karl Samuda, expressing that she has lost all confidence in the process and seeking some means of redress. The Applicant exhibited a copy of letter dated June 6, 2017 where the Honourable Minister explained that a throughout investigation was conducted and that the Registrar is empowered to conduct the appeal. It was further noted that there was no legal objection to the Registrar's decision.

[14] The Applicant argued that the delay in initiating the Judicial Review proceedings was as a result of her seeking solutions outside of the justice system as an alternative. The applicant relied on rule 56.3(d) to justify the delay.

SUBMISSIONS OF THE 1ST & 2ND RESPONDENT

The submissions of the 1st and 2nd Respondent are hereinafter summarised as follows:

Leave to apply for Judicial Review

[15] The Respondents submit that the Applicant failed to comply with rules 56.3(1) and 56.6(1) of the Civil Procedure which requires that an interested party must obtain

leave to apply for Judicial Review and that said application must be made promptly and in any event with 3 months. The Respondents contention is therefore that the Fixed Date Claim Form is not properly before the Court as the Applicant failed to obtain the necessary leave for Judicial Review.

[16] Both Counsel for the Respondents relied on the case of City of Kingston Co-operative Credit Union Ltd v Registrar of Co-operative Societies and Friendly Societies and Yvette Reid to substantiate the point that the time expired for the applicant to bring the application for Judicial Review on the 21st March, 2017 as the case law established that the "*time begins to run"* when the decision was made and not when the objector has actual or imputed knowledge.

Discretion of the Court to Grant an extension of time for making of an application for leave

[17] The 2nd Respondent contents that in the exercise of the Court's discretion to grant an extension of time for the making of an application for leave to apply for Judicial Review the Court should consider the following:

I. Whether there is a reasonable objective excuse for applying late?

II. What, if any, is the damage, in terms of hardship or prejudice to third-party rights and detriments to good administration, which would be considered if permission is granted?

III. And in any event, does the public interest require that the application should be permitted to proceed.

[18] The 2nd Respondent rebuts the Applicant's submission that the delay was due to her exhausting other avenues of relief before approaching the court by relying on the case of **Randean Raymond v Principal Ruel Reid and The Board of Management of Jamaica College [2015] JMSC Civ 76** where this Court took the stance that delay created in similar circumstances is not a good reason.

[19] Counsel also relied on the case of **R (Law Society) v Legal Services Commission** [2010] EWHC 2550 and in particular the dicta of Moses LJ to emphasise that the court ought not to grant leave for the extension of time as the

Applicant's case is weak. The principle to be taken from the case is that: "it is well established that the stronger the case the more willing a court will be to extend time."

[20] The 1st Respondent simply stated that the Applicant proffered no good reason for the delay and relied on the dicta of McDonald-Bishop J in the case of **George Anthony Levy v The General Legal Council** [2013] JMSC Civ 1 to say that the claim should be dismissed as to grant leave would be "inimical to good administration."

Extension will cause hardship or prejudice to the good administration

[21] The 1st Respondent argued at paragraph 23 of the submission "that in the interest of good administration public bodies should be able to make decisions and not be kept in limbo while they are questioned." Both Counsel relied on the case of **O'Reilly v Mackman** (1983) 2 AC 237 to express this point.

[22] Counsel for the 2nd Respondent went further in submitting that granting leave will cause the Respondents hardship by depriving the Respondent of a 'limitation defence' in circumstances where the Applicant is au fait with Judical Review.

[23] Counsel for the 2nd Respondent also relied on the Trinidadian case of **Jones v Solomon** 41 WIR 299 wherein Edoo JA rejected the idea that the burden is on the Respondent to such an application to proof that the grant of the relief will case substantial hardship or substantial prejudice irrespective of the length of time which may elapse.

Extension would be granted in futility

[24] The 2nd Respondent submits that if the Court should grant leave it will be acting in vain as the Applicant's claim is riddled with defects. Such as, the Applicant started the case without leave, the Applicant's Affidavit is difficult to make sense of which makes it unfair to the 2nd Respondent as they have the right to be clearly and sufficiently informed of the case against them and the Applicant's affidavits are not

properly before the court as they are in breach of rules 30.4(1)(b) and 30.4(2) of the CPR requiring the affidavit to be sworn and requiring that the jurat should not be on a page by itself. The 1st Respondent made similar submissions.

Court has no jurisdiction to review a final decision on its merits

[25] Counsel for the 2nd Respondent submitted that Section 50(4) of the Co-operative Societies Act provides that "a decision of the Registrar in an appeal under subsection (3) shall be final and shall not be called in question in any civil court" and that this provision prevents the Court from reviewing the decision of the registrar in the absence of illegality, irrationality or procedural impropriety.

LAW AND ANALYSIS

[26] Judicial review is the means by which the Supreme Court exercises a supervisory jurisdiction over persons or bodies that perform public law functions or make decisions which affects the public. Part 56 of the Civil Procedure Rules of Jamaica (hereinafter referred to as CPR) sets out the procedure to be followed when making an application for judicial review and the conditions or circumstances which a Judge ought to take into consideration when considering an application for leave for judicial review. The starting point is Rule 56.3(1) of the CPR which states that "a person wishing to apply for judicial review must first obtain leave."

DELAY

Application should be made promptly

[27] It is now trite law that in making an application pursuant to rule 56.3(1) the application should be made promptly. This has been a long existing common law principle which is now codified in rule 56.6(1) of the CPR which provides that *"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."*

[28] The gravity of the need to act promptly in making an application for leave judicial review is oft discussed in cases on judicial review. For example, in the Jamaican case **Miguel Pine v Commissioner of Police** [2015] JMSC Civ. 182 at paragraph 48 of the said judgment Campbell J expressed as follows:

> *"The issue of delay is an important consideration in determining whether or not the court ought to grant leave to apply for judicial review. An application for leave for judicial review ought to be made promptly or within three (3) months after the grounds to make the claim first arose. There are cases that have been brought within three (3) months but have failed this promptitude test."*

Time began to run when the decision was made

[29] In the case of **City of Kingston Co-Operative Credit Union Ltd v Registrar of Co-Operative Societies and Friendly Societies and Yvette Reid**, unreported Claim No. 2010HCV0204, (*a case in which the present Applicant is named as the 2nd Respondent),* Sykes J, as he then was, explored several decisions to highlight the principle that time begins to run from the date when the decision was made.

[30] The undisputed fact before this court is that there was "undue delay" in making the application for leave to apply for judicial review. Time began to from the 20th day of December, 2016 and the applicant only made an application for leave in February, 2019 which is about 2 years and 2 months from the date when the decision was made. Even if the Court were to give consideration to the fact that applicant made an application for leave October 30, 2018 which was later abandoned, this would still not avail the applicant as that application would still be deemed to be made way out of time.

[31] Counsel for the 2nd Respondent noted that the Applicant ought to have made her application for leave to apply for judicial review by 21st March, 2017, it is my view that it would be safer to say had the Applicant applied on or before the 21st March, 2017 there would have been a rebuttable presumption in her favour that the

application was made promptly. As Sedley J pointed out in the case of **R v Chief Constable of the Devon and Cornwall Constabulary, ex p Hay** [1996] 2 All ER 711

"for promptness, irrespective of the formal time limit, the practice of this court is to work on the basis of the three-month limit and to scale it down wherever the features of the particular case made that limit unfair to the respondent or to third parties."

Court may extend time if good reason for doing so is shown.

[32] It is important to note that delay is not an absolute bar to obtaining leave to apply for judicial review, a Judge is empowered by virtue of Rule 56.6(2) to extend time if good reason for doing so is shown.

[33] There is no hard-or-fast rule as to what amounts to good reason and the task of determining what constitutes good reason in a particular case is left to the discretion of the judge. F. Williams JA (Ag) (as he then was) in **Randean Raymond v The Principal Ruel Reid and the Board of Jamaica College** [2015] JMCA Civ 5 expressed that *"in these circumstances where no hard-and-fast rules exist, the one clear principle that can be discerned is that in considering what amounts to "good reason" for extending time, a very great deal is left to the discretion of the particular judge hearing an application. The discretion given to the judge in these matters is a very wide one, not circumscribed by a "checklist" of any sort."*

[34] The applicant noted that the delay in applying for leave within the prescribed time was due to her attempt to exhaust other options before bringing her matter to the court. I am afraid that delay caused in such circumstances is not good reason to justify the granting of an extension of time. Similarly, in the Supreme Court decision of **Randean Roy Raymond v The Principal Ruel Reid and the Board of Jamaica College**, (supra) which decision was upheld by the Court of Appeal, the applicant, Mr Raymond, said that the reason for the delay was that he was seeking

to resolve the matter without resorting to litigation. Sykes J, as he then was, found that delay caused by exploring other options is not good reason so as to justify the delay in applying for leave.

[35] The applicant's assertion that rule 56.3(d) of the Civil Procedure Rule somehow justifies the delay is wholly misguided. The section does not vitiate from the requirement laid down in rule 56.6(1) that requires the litigant to act promptly. In any event, the Honourable Minister responded to the Applicant's letter in June, 2017, yet her application for leave was made almost eight (8) months later. I concur with the reasoning of the learned Judge in the aforementioned case of Randean Roy Raymond v The Principal Ruel Reid and the Board of Jamaica College (supra) in reasoning that delay caused by exploring other avenues of redress is not good reason to justify the delay in making the application in time.

[36] Even though there is evidence to suggest that the applicant is not ignorant to the process of judicial review as she was a party in the matter of City of Kingston Co-operative Credit Union Limited v Registrar of Cooperatives Societies and Friendly Societies and Yvette Reid Claim no. 2010 HCV 0204, I have taken into consideration the fact that the applicant is unrepresented. Nevertheless, I still find that there is no good reason for the delay. V Harris J, was similarly minded in the case of **Odean Grant v Commissioner of Police and the Attorney General of Jamaica** [2017] JMSC Civ 78 where she found that delay which is purportedly caused by hardship or an inability to obtain legal representation could not be considered as good reason so as to grant relief as there was no evidence that the party seeking the relief sought to obtain legal aid representation in the matter.

[37] Lastly, I find that to grant leave in the circumstance would be wholly futile as the applicant's case is without merits. The dicta of Sykes J, in the case of **City of Kingston Co-operative Credit Union Limited v Registrar of Cooperatives Societies and Friendly Societies and Yvette Reid** (supra) is quite instrumental on this point. Sykes J noted, inter alia, that an important principle to be taken from the case of **O'Reilly v Mackman** [1983] 2 AC is that "the leave requirement is not

a mere formality but an important screening device to bar unmeritorious applications."

Whether the granting of leave or relief would be likely to cause substantial hardship to or substantially prejudice the rights of any person or be detrimental to good administration

[38] Rule 56.6(5) provides that the court must take into consideration whether the granting of leave or relief would be likely to cause substantial hardship to or substantial prejudice to the rights of any person or be detrimental to good administration.

[39] The dicta of Sharma J in the Trinidadian Court of Appeal case of **Jones v Solomon** (supra) is often citied in our courts with approval on the point that the burden ought not to be placed upon the party who challenges the relief being sought to prove that the grant of such relief would cause them substantial hardship or substantial prejudice, irrespective of the length of time which has elapsed since the decision in dispute was made.

[40] It is my view that it would be an affront to good administration for the Respondents to be kept in abeyance for an inordinate time period without any certainty as to the validity of decision made by the Registrar appointed under the Cooperative Societies Act. Lord Diplock adequately expressed this point in the case of **O'Reilly v Mackman** (1983) 2 AC 237 when his Lordship stated that *'the public interest, in good administration, requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision of the authority has reached in purported exercise of decision making powers for any longer period than is absolutely necessary in fairness to the persons affected by the decision. "*

Whether a finality clause operates so as to oust the jurisdiction of the court

[41] Section 50(4) of the Co-operative Societies Act provides that "a decision of the Registrar in an appeal under subsection (3) shall be final and shall not be called in question in any civil court."

[42] The general rule is that provisions which seek to oust the ordinary jurisdiction of the court should be construed strictly. However, it must be noted that this presumption is rebuttable where the court finds that there was an error of law, a breach of natural justice or where the decision is so unreasonable that a reasonable person making the decision would not have come to the said conclusion.

[43] I find that the decision of the Registrar ought not to be disturbed as there is no evidence of irregularity or impropriety in the process of arriving at his decision. My brother, Batts J in the case of **JOSA Investments Limited v Promotions and Print Essentials Limited** [2018] JMCC Comm 37 came to a similar conclusion where he expressed at paragraph 19 that courts are slow to upset the decision of an arbitrator. Batts J went forward to endorse the dicta of Anderson J in the case of **Belize Natural Energy Ltd. v Maranco Ltd**. [2015] CCJ 2 (AJ) wherein it was stated as follows:

"This court recognises that arbitration is an increasingly preferred method of resolving complex commercial disputes and that it rests on the key principle of party autonomy. Parties to an arbitration agreement make the conscious decision to prefer the prompt expedient and final settlement of their disputes through the arbitral process rather than the often protracted process of court adjudication. As it is sometimes put, they choose finality over legality. Conflict resolution by arbitral means assists and encourages modern commercial activity and therefore the finality of arbitral awards is supported by public policy considerations. This is crystallized in S. 8 of the Arbitration Act which provides that, "the award to be made by the arbitrators or umpire shall be final and binding on the parties." I too endorse the dicta of Anderson J and further note that the decisions of arbitrators should not be readily disturbed unless such decisions are deemed to be a nullity.

The validity of the Fixed Date Claim Form

[44] The Applicant filed her fixed date Claim Form on the 14th day of February, 2019 in breach of rules 56.3(1) and 56.6(1) by failing to make an application for leave to apply for judicial review promptly and in any event within three months and failing to ensure that she secured such leave before making her application for judicial review. I therefore find that the filing of the Fixed Date Claim Form is premature and is therefore a nullity.

Disposal

(1) The application for extension of time to apply for leave is dismissed

(2) The Fixed Date Claim Form filed on 14th February, 2019 is struck out as a nullity.

(3) Costs to the Respondents to be agreed or taxed.