IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

CLAIM NO. SU2023CV00221

CORAM: **THE HONOURABLE MS JUSTICE ANDREA THOMAS**
THE HONOURABLE MS JUSTICE ANNE-MARIE NEMBHARD
THE HONOURABLE MR JUSTICE DALE STAPLE

BETWEEN	**KENYA ROBINSON**	**CLAIMANT**
AND	**HER HONOUR MS SASHA ASHLEY**	**DEFENDANT**

Mr Lemar Neale and Ms. Ayana Worgs instructed by Jacobs Law for the Claimant

Mr Stuart Stimpson and Ms. Rochelle Brown instructed by the Director of State Proceedings for the Defendant

Heard: May 12 and July 11, 2025

Judicial Review – Committal proceedings – Committal proceedings conducted by a single judge of the parish court sitting as an examining justice in a court of petty sessions – Accused person committed to stand trial in the circuit court for the offence of murder – Whether the decision of the examining justice is amenable to judicial review – Whether the statutory requirements for a committal on paper were complied with – Whether the impugned witness statement met the statutory requirements for admissibility – Whether the impugned witness statement purports to be signed by the maker and the recorder in the presence of each other and in the presence of a senior member of the police force – Whether the examining justice erred in her finding that the impugned witness statement was admissible – Insufficiency of evidence – Whether the decision of the examining justice is intra vires the statute – Whether there is an adequate alternative remedy which is

available to the claimant – Whether the decision of the examining justice ought properly to be quashed – Statutory interpretation – Committal Proceedings Act, sections 2, 3 and 6, Committal Proceedings Rules, rule 26, Civil Procedure Rules, 2002, as amended, Part 56

THOMAS J, NEMBHARD J, STAPLE J

INTRODUCTION

[1] On or about March 10, 2022, Mr Kristoff Hibbert was killed in Montego Bay, in the parish of Saint James. Based on eyewitness evidence, the Claimant, Mr Kenya Robinson, was identified as being responsible for the death of Mr Hibbert and was subsequently arrested and charged with the offence of Murder.[1]

[2] In October 2022, Mr Robinson attended the first hearing to determine whether committal proceedings ought to be held in respect of the charge against him. This hearing was presided over by the Defendant, Her Honour Mrs Sasha-Marie Ashley, the then Senior Judge of the Parish Court for Saint James, in her capacity as an Examining Justice ("the Examining Justice").[2]

[3] On that occasion, Mr Robinson, through his then Attorneys-at-Law, identified certain procedural irregularities in respect of three (3) of the witness statements which were contained in the Committal Bundle.[3] One of these witness statements was given by the purported eyewitness to the alleged incident, Ms Zaria Wright ("the impugned witness statement"). Mr Robinson specifically asserted that the impugned statements failed to meet the key requirements of section 6 of the Committal Proceedings Act, 2013 ("the CPA"). At the Committal Proceeding, Mr Robinson's Attorneys-at-Law argued that these irregularities rendered the

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[1] See – Paragraphs 4 and 5 of the Affidavit of Kenya Robinson in Support of Fixed Date Claim Form, which was filed on 31 July 2024.

[2] See – Paragraphs 2, 4, 6 and 7 of the Affidavit of Her Honour Mrs Sasha-Marie Ashley in Response to Fixed Date Claim Form of Kenya Robinson, which was filed on 28 February 2025.

[3] See – Exhibit **"RB-1"** of the Affidavit of Rochelle Brown, which was filed on 10 March 2025, which contains a copy of the Original Committal Bundle for Information No. SJ2022CR00837, Rex v Kenya Robinson, dated 12 October 2022.

impugned statements inadmissible and that, consequently, a prima facie case could not properly be established against him. The Clerk of the Court for the Parish of Saint James ("the Clerk of the Court"), applied for an adjournment so that the irregularities could be rectified. The Examining Justice granted this adjournment, and the matter was subsequently adjourned to November 2022.[4]

[4] During the intervening weeks, the Clerk of the Court served on both the Examining Justice and Mr Robinson's Attorneys-at-law, a Supplemental Committal Bundle,[5] which contained a further witness statement.[6] At the subsequent hearing, the same objections were raised on behalf of Mr Robinson in relation to the impugned statements. Mr Robinson's Attorneys-at-Law contended that the inclusion of the further witness statement was not sufficient to rectify the problem with the impugned witness statements or to bring them in compliance with the requirements of section 6 of the Committal Proceedings Act.[7]

[5] Notwithstanding these objections, the Examining Justice, in exercising her discretion, deemed the impugned statements admissible as if they were the oral evidence of the makers of the statements. The Examining Justice also ruled that the prosecution had established a prima facie case against Mr Robinson. As a result of this finding of the court, Mr Robinson was committed to stand trial for the offence of Murder in the Circuit Court for the parish of Saint James.[8]

[6] On 26 January 2023, Mr Robinson filed an Application for Leave to Apply for Judicial Review, which was supported by the Affidavit of Courtney Rowe.

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[4] See – Paragraphs 7-13 inclusive of the Affidavit of Her Honour Mrs Sasha-Marie Ashley in Response to Fixed Date Claim Form of Kenya Robinson, which was filed on 28 February 2025.

[5] See – Exhibit **"RB-2"** of the Affidavit of Rochelle Brown, which was filed on 10 March 2025, which contains a copy of the Original Supplemental Committal Bundle for Information No. SJ2022CR00837, Rex v Kenya Robinson, dated 1 November 2022.

[6] See – Paragraph 13 of the Affidavit of Her Honour Mrs Sasha-Marie Ashley in Response to Fixed Date Claim Form of Kenya Robinson, which was filed on 28 February 2025.

[7] See – Paragraphs 8-10 inclusive of the Affidavit of Kenya Robinson in Support of Fixed Date Claim Form, which was filed on 31 July 2024.

[8] See – Paragraphs 10-12 inclusive of the Affidavit of Kenya Robinson in Support of Fixed Date Claim Form, which was filed on 31 July 2024.

The Initiation of the Claim

[7] On 17 July 2024, Mr Robinson was granted leave to apply for Judicial Review by The Honourable Mrs Justice S. Wint-Blair,[9] who, at paragraph 70, of her written judgment, made the following Orders: -

> *"1. The application for leave to apply for judicial review is granted limited to the statutory requirements of section 6 of the Committal Proceedings Act related to the statement of the purported eyewitness.*
> *2. Leave is conditional on the applicant filing a claim for Judicial Review within (14) days of the receipt of this Order granting leave."*

[8] On 31 July 2024, the Claimant, Mr Kenya Robinson, filed a Fixed Date Claim Form, portions of which were struck out by this Court at the commencement of the Judicial Review proceedings. Consequently, the Orders in respect of which Mr Robinson was permitted to proceed are as follows: -

1. An Order of Certiorari to quash the following decisions of the Defendant: -

i. To commit the Claimant to stand trial in the St. James Circuit Court.

ii. That all statements contained in the Committal Bundle, which was served on the Court and Defence Counsel in the matter of Rex v Kenya Robinson in SJ 2022 CR 00837 are compliant with section 6 of the Committal Proceedings Act.

2. A Declaration that the witness statement of Zaria Wright, dated March 11, 2022, contained in the committal bundle served on the court and defence counsel in the matter of Rex of Kenya Robinson bearing information number SU 2022 CR 00837, is not compliant with section 6 of the Committal Proceedings can therefore could not have been admitted as evidence to the like effect as oral evidence.

[9] See – **Kenya Robinson v Her Honour Ms Sasha Ashley** [2024] JMSC Civ 78

3. Liberty to apply.

4. Costs to be costs in the Claim.

5. Such further or other relief as this Honourable Court may deem necessary or appropriate.

[9] The Fixed Date Claim Form, which was filed on 31 July 2024, was supported by the Affidavit of Kenya Robinson in Support of Fixed Date Claim Form, which was also filed on 31 July 2024 as well as the Affidavit of Courtney N. Rowe in Support of Fixed Date Claim Form, which was filed on 2 September 2024.

THE ISSUES

[10] The Fixed Date Claim raises the following issues for the determination of the Full Court: -

i. Whether the impugned witness statement of Ms Zaria Wright complied with the requirements of section 6(2) of the Committal Proceedings Act.

ii. Whether the Further Witness Statement of Detective Sergeant Michael Chisholm was sufficient to rectify the irregularities with the impugned witness statement of Ms Zaria Wright.

iii. Whether the Examining Justice acted ultra vires her statutory authority by her ruling that the impugned witness statement of Ms. Zaria Wright was admissible as the oral evidence of the maker thereof.

iv. Whether the decision of the Examining Justice to commit the Claimant, Mr Kenya Robinson, to stand trial at the Circuit Court for the parish of Saint James, for the offence of Murder, is illegal, irrational and unreasonable and null and void ab initio.

v. Whether the Claimant, Mr Kenya Robinson, has a sufficient, alternate remedy, which is available to him.

vi. Whether the decision of the Examining Justice to commit the Claimant, Mr Kenya Robinson, to stand trial at the Circuit Court for the parish of Saint James for the offence of Murder, ought properly to be quashed.

THE CLAIMANT'S CASE

[11] Mr Robinson asserts that the impugned witness statement of Ms. Zaria Wright was deficient in that it did not meet the requirements of section 6(2)(b) of the CPA. Mr Robinson specifically asserts that, while the impugned witness statement contained the signature of the maker of the statement, it did not contain the recorder's signature. Without that signature, Mr Robinson contends, the impugned statement is an irregularity. The Clerk of the Court sought to rectify this irregularity by serving a Supplemental Committal Bundle, which contained a Further Statement of Detective Sergeant Michael Chisholm.[10] In his further witness statement, dated 19 October 2022, Detective Sergeant Chisholm stated that, on 11 March 2022, he recorded a statement from Ms Wright and that he did so in the presence of Inspector Vernon Fletcher. Detective Sergeant Chisholm further asserted that Ms Wright signed her witness statement in the presence of himself and Inspector Fletcher. At the close of the committal proceeding, the Examining Justice admitted the impugned witness statement 'as if [it] were oral evidence of the maker'.[11]

[10] See – Paragraphs 5(i)-(v) and 7 of the Affidavit of Courtney N. Rowe in Response to the Affidavit of Her Honour Mrs Sasha-Marie Ashley in response to the Fixed Date Claim Form of Kenya Robinson, which was filed on 4 April 2025.

[11] See – Paragraphs 9, 10 and 21 of the Affidavit of Courtney N. Rowe in Support of Fixed Date Claim Form, which was filed on 2 September 2024. See also, paragraphs 8 and 9 of the Affidavit of Courtney N. Rowe in Response to the Affidavit of Her Honour Mrs Sasha-Marie Ashley in response to the Fixed Date Claim Form of Kenya Robinson, which was filed on 4 April 2025.

[12] Mr Robinson further asserts that the decision of the Examining Justice to admit the impugned witness statement of Zaria Wright was arbitrary and unreasonable and was not in accordance with the requirements of the CPA. In those circumstances, Mr Robinson contends that the Committal Order for him to stand trial for the offence of Murder was irregular, ultra vires and unreasonable[12] and ought properly to be quashed by the Full Court.

THE DEFENDANT'S CASE

[13] For her part, the Examining Justice asserts that when the objection to the impugned statement was raised, she formed the view that the Committal Proceedings Rules afforded the Clerk of the Court two (2) alternative avenues for rectification. Firstly, to continue the hearing without the evidence of Ms Wright or, secondly, to request that Ms Wright gives oral evidence. Neither option was pursued by the Clerk of the Court. That notwithstanding, the Examining Justice determined that the intent of section 6(2)(b) of the CPA is the preservation of the integrity of the statement-taking process and the authenticity of the document being relied upon. Further, the Examining Justice formed the view that the Further Statement of Detective Sergeant Chisholm was a sufficient rectification of his failure to append his signature to the impugned witness statement. Based on this conclusion, she found that the impugned statement was admissible for the purpose of determining whether a prima facie case for the offence of Murder was made out against Mr Robinson.[13]

[14] It is the view of the Examining Justice that she was satisfied that the statutory requirements of section 6 of the CPA had been met. She maintained that "In the absence of Miss Wright's evidence, she being the sole witness to give an account

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[12] See – Paragraph 13 of the Affidavit of Kenya Robinson in Support of Fixed Date Claim Form, which was filed on 31 July 2024. See also – Paragraphs 26 – 28 of the Affidavit of Courtney N. Rowe in Support of Fixed Date Claim Form, which was filed on 2 September 2024.

[13] See – Paragraphs 15-18 of the Affidavit of Her Honour Mrs Sasha-Marie Ashley in Response to Fixed Date Claim Form of Kenya Robinson, which was filed on 28 February 2025.

of the alleged circumstances in which the Deceased met his death, I could not properly find a prima facie case made out against the Claimant."[14]

THE LAW

Judicial Review

The role of the court in judicial review proceedings

[15] 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.

[16] 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**.[15]

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

[14] See – The Affidavit of Her Honour Mrs. Sasha-Marie Ashley in Response to Fixed Date Claim Form of Kenya Robinson, which was filed on 28 February 2025, at paragraph 16.
[15] [1984] 3 All ER 935

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

> *"The duty of the court is to confine itself to the question of legality. Its concern is with whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal could have reached or abused its powers. The grounds upon which administrative action is subject to control by judicial review have been conveniently classified as threefold. The first ground is 'illegality': the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. The second is 'irrationality', namely Wednesbury unreasonableness. The third is 'procedural impropriety'. What procedure will satisfy the public law requirement of procedural propriety depends upon the subject matter of the decision, the executive functions of the decision-maker (if the decision is not that of an administrative tribunal) and the particular circumstances in which the decision came to be made.*
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> …
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> *On an application for judicial review the court has power to grant a quashing order (formerly known as an order of certiorari), a prohibiting order (formerly known as an order of prohibition) or a mandatory order (formerly known as an order of mandamus)."*

[19] The pronouncements of Campbell J in the authority of ***Olivine Daley-Edwards and Anor v Resident Magistrate for Parish of Saint Catherine Her Honour Mrs S. Wolfe-Reece and Ors***[16] are equally instructive. Campbell J is quoted as follows: -

> "[16] In the matter of Clynice Spence v Her Hon. Mrs Sonya Wint Blair *[2015] JMSC Civ 98, an application for judicial review and for certiorari to issue was made to quash the decision of the learned Resident Magistrate and to recuse herself from hearing a matter, in which both parties had no objection to her continuing. Anderson J, said, at paragraph 35 and 36 inter alia;*
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> *'[35] The ruling of a Resident Magistrate is amenable via certiorari, only if the Magistrate had either acted in excess of jurisdiction, or without jurisdiction. As such, if the Magistrate has allegedly erred in law and a challenge to that Magistrate's decision, is mounted on the basis of that alleged error of law, that challenge can only properly be mounted by means of an appeal. A judicial review court and a judicial review process are not the appropriate forum and means respectively, for the pursuit of such a challenge. In that regard See;* ***Brown and Others v Resident Magistrate, Spanish Town Resident Magistrate's Court, St Catherine*** *– [1995] 48 W.I.R. 232.*

[16] [2016] JMSC Civ 54

[36] The claimant herein, having mounted her judicial review challenge on the ground that the learned Senior Resident Magistrate erred in law, ought to have mounted her challenge by way of an appeal, if statute so permitted. Even if statute does not so permit though, this would not entitle the claimant to challenge the learned Senior Resident Magistrate's decision, by means of judicial review."

[25] Judicial review is a remedy of last resort, where there is an alternative remedy available which is effective and convenient as here, judicial review will not be available to launch a collateral attack. Part 56(3)(d) of the CPR states;

'(3) The application must state –

(d) whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued."

[26] In ***Gifford v Governor of HMP and Anor*** *[2014] EWHC 911 (Admin), CO/1333/2013, Coulson J, said at paragraph 37;*

'More recently, the courts have stressed that judicial review is generally a last resort. In ***Kay and others v Lambeth London Borough Council*** *[2006] UKHL 10, [2006] 2 AC 465, [2006] 4 All ER 128, Lord Bingham of Cornhill said at para 30 that "if other means of redress are conveniently and effectively available to a party they ought ordinarily to be used before resort to judicial review." Judicial review is not a power to be used "where a satisfactory alternative remedy has been provided by Parliament" (See para 71 of the judgment of Lord Philips of Worth Matravers in* ***R (Cart) v Upper Tribunal*** *[2011] UKSC 28, [2012] 1 AC 663, [2011] 4 All ER 127).'"*

THE STATUTORY FRAMEWORK
The Judicature (Resident Magistrates) Act, 1928

[20] Prior to the passing of The Committal Proceedings Act, 2013, ("the CPA"), an accused person charged with an indictable offence[17] would appear in the then Resident Magistrates Courts (now Parish Courts) before a Resident Magistrate.[18] The Resident Magistrate was required to conduct a preliminary enquiry to

[17] See – Section 2(3) of The Committal Proceedings Act, 2013 which defines indictable offences as an offence that is triable in the Criminal Division of the Supreme Court.

[18] The Judicature (Resident Magistrates) (Amendment and Change of Name) Act, 2015 changed the name of the Resident Magistrates Court to Parish Courts.

determine whether a prima facie case is made out against the accused person for the offence with which he or she is charged. Where a prima facie case is made out on the viva voce evidence adduced on the prosecution's case, the Resident Magistrate would make an Order that the accused person be committed to stand trial at the Circuit Court of the Supreme Court.

[21] The following sections of the Judicature (Resident Magistrates) Act are relevant for present purposes: -

> *"272. On a person being brought or appearing before a Magistrate in Court or in Chambers, charged on information and complaint with any indictable offence, the Magistrate shall, after such enquiry as may seem to him necessary in order to ascertain whether the offence charged is within his jurisdiction, and can be adequately punished by him under his powers, make an order, which shall be endorsed on the information and signed by the Magistrate, that the accused person shall be tried, on a day to be named in the order, in the Court or that a preliminary investigation shall be held with a view to a committal to the Circuit Court.*
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> *273. It shall be lawful for any Magistrate, in making any order under section 272 directing that any accused person be tried in the Court, by such order to direct the presentation of an indictment for any offence disclosed in the information, or for any other offence or offences with which, as the result of an enquiry under the said section, it shall appear to the Magistrate the accused person ought to be charged and may also direct the addition of a count or counts to such indictment. And, upon any such enquiry, it shall be lawful for the Magistrate to order the accused person to be tried for the offence stated in the information, or for any other offence or offences, although not specified in the information, and whether any such information in either case did or did not strictly disclose any offence.*
> *…*
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> *275. Whenever an indictment shall have been preferred before a Court, charging any person with the commission of any indictable offence within the jurisdiction of such Court, the Magistrate shall cause the same to be read to the person charged, and shall then ask him whether he is guilty or not of the charge.*
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> *If such person says that he is guilty, the Magistrate shall thereupon cause a plea of guilty to be entered; and if such person says that he is not guilty, the Magistrate shall cause such plea of not guilty to be entered, and unless good cause be shown to the contrary, the trial shall proceed.*
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> *Provided always, that it shall be lawful for any Magistrate, at any stage of the trial prior to calling on the accused person for his defence, if it shall appear to him that the accused person ought to have been charged with a more serious crime than that of which he is accused, and that more serious crime is beyond his jurisdiction,*

or that, having regard to the antecedents of the accused, or the nature and circumstances of the crime of which he is accused, the case cannot adequately be dealt with by him under his powers, to vacate the order for the trial of such accused person before him, and to proceed to treat and deal with the case as one for the Circuit Court; and in any such case, if the accused person has pleaded, and whether any evidence has been taken or not, the Magistrate shall declare the order aforesaid vacated and the trial at an end; and an endorsement shall thereupon be made on the information and signed by the Magistrate, that the said order has been vacated and that the trial is at an end, and thereupon the Magistrate shall deal with the case as one for the Circuit Court.

276. On the other hand, when the Magistrate has begun to deal with a case as for the Circuit Court, and to take the depositions of the witnesses with a view to a committal for trial, if the crime with which the accused is charged is within his jurisdiction, and it appears to him that such crime may be adequately punished by him, it shall be lawful for him to vacate the order for a preliminary investigation, and to make an order, to be endorsed on the information and signed by the Magistrate, that the accused person be tried in the Court, if the accused person consent, either forthwith or on a day to be named, within seven days after the date of such order. In such a case the evidence of any witness which had been taken before the Magistrate ordered an indictment to be preferred before himself, need not be taken again; but every such witness shall, if the accused person so require it, be recalled for the purpose of cross-examination or further cross-examination."

The Committal Proceedings Act, 2013

The role of the Judge of the Parish Court in Committal Proceedings

[22] Preliminary enquiries by their very nature were a lengthy and time-consuming process. Committal Proceedings were established to expedite that process and to do so in a fair and just manner. To reduce delay and expense, a person's written statement, where it satisfies certain requirements, will be admitted in Committal Proceedings as evidence to the same extent and effect as if such a person had given oral evidence before the Judge of the Parish Court in the Committal Proceedings. On that evidence alone, a Judge of the Parish Court may, if satisfied that the accused person ought to be tried for an indictable offence, commit the accused to stand trial before a Circuit Court.

[23] The Judge of the Parish Court, in the Committal Proceedings, is also empowered to take oral evidence of a person other than the Accused if he considers that, in

the circumstances of the case, this should be done. He may also take an oral statement from the Accused.

[24] Where a person is charged with a "committable" offence, the Clerk of the Court outlines to the Judge of the Parish Court, the allegations against the person charged. This is done in the presence and hearing of the accused person and his or her legal representative(s), if any.

[25] The Clerk of the Court also provides a preliminary report, which contains information such as: -

i. the name and date of birth of the accused person,

ii. the list of charges levied against the accused person,

iii. a summary of the evidence currently in the possession of the prosecution, including the main facts of the case,

iv. the number of witnesses,

v. the number of exhibits, and

vi. an identification of the issues which are likely to be raised.[19]

[26] Armed with the preliminary report, the Judge of the Parish Court is expected to determine whether it is an appropriate case in which to accept jurisdiction[20] and to try the accused person in the Parish Court. Conversely, the Judge of the Parish Court may decide to conduct a committal proceeding to determine whether there is a case in respect of which the accused person is to be committed to the Circuit Court for trial. Lastly, the Judge of the Parish Court is expected to set a realistic timetable for the prosecution and the defence to prepare for the committal proceedings.[21]

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[19] See - Rule 7 of The Committal Proceedings Rules

[20] See - Rule 12 of The Committal Proceedings Rules

[21] See - Rule 6 of The Committal Proceedings Rules. It should be noted that pursuant to rule 10(1) of The Committal Proceedings Rules, the Parish Court Judge shall not proceed without a Preliminary Report and would have to make one of five decisions as set out in rule 10(2).

[27] The CPA abolished the preliminary enquiry.[22] [23] [24]

[28] At present, a single Judge of the Parish Court, sitting as an Examining Justice in a Court of Petty Sessions, is obliged to preside over Committal Proceedings. The Examining Justice is tasked with the responsibility of assessing the evidence which is tendered to determine whether, on that evidence, a prima facie case is made out against the accused person for an indictable or committable[25] offence.[26] The Examining Justice may then elect to make one (1) of two (2) Orders. Firstly, that the accused person be committed to stand trial or, secondly, that the accused person be discharged.[27] Unlike its legislative predecessor, preliminary enquiries, committal proceedings may be conducted wholly on the basis of written

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[22] The Judicature (Resident Magistrates) Act refers to the procedure as preliminary investigations, however, it appears that the phrases 'preliminary examination' and 'preliminary enquiry' were interchangeably used. See also, section 2(2) of The Committal Proceedings Act, 2013 which states: - "*Reference in any enactment to "preliminary examination" or "preliminary enquiry" or other similar expression shall, unless the context otherwise requires, be construed as a reference to committal proceedings as provided in this Act*."

[23] See – Section 2(1) of The Committal Proceedings Act, 2013, which states: - "*Preliminary examinations of indicatable offences are hereby abolished and, in lieu thereof, committal proceedings as provided in this Act shall be held by a Resident Magistrate sitting as an examining Justice in a Court of Petty Sessions.*"

[24] See – Section 15 of The Committal Proceedings Act, which states: - "*15.-(1) Until other provision is made pursuant to this Act, the forms set out in the Schedule to the Justices of the Peace Jurisdiction Act shall, where relevant, apply mutatis mutandis to the provisions of this Act as respects committal proceedings, in like manner as, immediately prior to the commencement of this Act, they applied to preliminary examinations. (2) The forms referred to in subsection (1), in their application to proceedings under this Act, may be adapted or modified to meet the varying circumstances of each case which may have arisen, or may arise, under this Act*."

[25] See – Rule 3 of The Committal Proceedings Rules

[26] See also – Rule 13 of The Committal Proceedings Rules: "*13. - (1) The purpose of committal proceedings is for the Court to be satisfied that there is a prima facie case. (2) Committal proceedings shall not be conducted in a manner that gives a party to the proceedings an opportunity to test the witnesses; and except where there are substantial flaws in the evidence of prosecution witnesses, issues of witness credibility are for the ultimate tribunal of fact to resolve at trial."*

[27] See – Section 7 of The Committal Proceedings Act, which provides*: - "7. Where a Resident Magistrate, having examined all the evidence before him in any committal proceedings – (a) is satisfied that the evidence against the accused is not sufficient to establish prima facie proof of the charge so that the accused ought not to be committed to stand trial for any indictable offence disclosed by the evidence, he shall discharge him; or (b) is satisfied that the evidence against the accused is sufficient to establish prima facie proof of the charge and that the accused ought to be committed for trial for an indictable offence, he shall remand the accused in custody, or admit him to bail, to stand trial for the offence charged or any other indictable offence disclosed by the evidence."* Should the Examining Justice decide to commit the accused person, then the court is to issue a Certificate of Committal to the Circuit Court, which ought to bear the signature of the Examining Justice.

statements[28] [29] (with or without exhibits), which are submitted to the court.[30] [31] Rule 16 of The Committal Proceedings Rules, 2016 mandate that the Examining Justice shall decide the issue of whether to commit solely on the basis of the committal bundle, exhibits produced, and any oral evidence which may be adduced before him or her.

[29] Section 3 of the CPA reads as follows: -

> *"3-- (1) Where an accused person charged with an indictable offence, appears or is brought before a Resident Magistrate and, pursuant to the Judicature (Resident Magistrates) Act, the Resident Magistrate makes an order that committal proceedings be held with a view to committal of that person to the Circuit Court for trial, the proceedings in relation thereto (in this Act referred to as "committal proceedings") shall be conducted in accordance with this Act.*
>
> *(2) Subject to subsections (3) and (4), committal proceedings may be conducted wholly on the basis of written statements submitted to the Resident Magistrate; and accordingly, if the Resident Magistrate is satisfied –*
>
> *a) that all the evidence tendered (whether for the prosecution or the defence) in respect of the offence consists of written statements, with or without exhibits; and*
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> *b) that those statements comply with the requirements of section 6,*
>
> *c) that those statements comply with the requirements of section 6,*
>
> *The Resident Magistrate may, after examining the written statements and exhibits (if any), commit the accused to stand trial or discharge him, as the case may be, in accordance with section 7.*

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[28] See – Section 6(1) of The Committal Proceedings Act, which states: - "*6.- (1) In committal proceedings a written statement by any person shall, if the conditions mentioned in subsections (2) and (3) are satisfied, be admissible as evidence to the like effect as oral evidence by that person."*

[29] Section 9 of The Committal Proceedings Act mandates that every written statement and every document tendered as an exhibit in committal proceedings in accordance with section 6, is to be signed by the presiding parish court judge.

[30] See also – Sections 4 and 5 of The Committal Proceedings Act which provide the circumstances in which the Judge of the Parish Court may, in his/her discretion, allow the taking of oral evidence from the accused person and or any other person.

[31] Committal proceedings which are conducted without any oral evidence are termed "paper committals".

(3) Nothing in subsection (2) shall prevent the accused person or his attorney-at-law from making a submission to the Resident Magistrate that the evidence is not sufficient to commit the accused to the Circuit Court for trial of an indictable offence and, if any such submission is made, the Resident Magistrate shall take it into consideration in determining whether or not to commit the accused for trial.

(4) Where the accused person is not represented by an attorney-at-law, the Resident Magistrate shall, before making a determination as to the committal or discharge of the accused person, inform the accused person of his right under subsection (3) to make a submission as to the insufficiency of evidence."

The statutory requirements for the admissibility of written statements in Committal Proceedings

[30] Written statements are admissible as evidence once the conditions set out in section 6(2)[32] and (3) of the CPA are met. Section 6(2) and (3) of the CPA provides as follows: -

"6(2) The conditions referred to in subsection (1) are as follows –

a) The statement has been recorded (whether in writing or by electronic means) by a member of the Jamaica Constabulary Force or a senior officer of the Major Organized Crime and Anti-Corruption Agency, (hereinafter referred to as "the recorder") in the presence of the Justice of the Peace or in the absence of a Justice of the Peace, a senior member of the Jamaica Constabulary Force not below the rank of Sergeant, and read over to the person who made it (hereinafter referred to as "the maker"):

However, in the case of a person who is suffering from a physical disability, physical disorder or mental disorder within the meaning of the Mental Health Act, which renders it impracticable for him to communicate with in the absence of special assistance or equipment, the statement may be communicated in any other effective manner.

b) the statement purports to be signed by the maker and the recorder in the presence of each other and in the presence of –

(i) the Justice of the Peace (and has been sworn to by the maker before the Justice of the Peace); or, as the case may be; or

[32] This section was amended by section 45 (Sixth Schedule) of the Major Organized Crime and Anti-Corruption Agency Act, 2018.

(ii) an officer of the Major Organized Crime Anti-Corruption Agency;

(iii) the senior members of the Jamaica Constabulary Force;

c) the statement contains a declaration by the maker to the effect that it is true to the best of his knowledge and belief and in the case of a person who has attained the age of fourteen years, that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he willfully stated in it anything which he knew to be false or did not believe to be true; and

d) copies of the statement have been served on the parties to the proceedings in accordance with section 8.

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section –

a) the statement shall state whether it is made by a person who has attained the age of eighteen years, and if it is made by a person under the age of eighteen years, it shall state the age of that person;

…

f) if the statement refers to any other document as an exhibit –

(i) a copy of that document shall be given to the other parties to the proceedings; or

(ii) such information as may be necessary shall be given in order to enable any other party to the proceedings to inspect that document and to obtain a copy thereof; and

g) if the statement refers to any exhibit which cannot conveniently be copied, the statement shall include information as to where the exhibit shall be available for inspection."

[30] Rule 26 of The Committal Proceedings Rules, 2016 details the procedure to be followed in circumstances where Committal Proceedings are conducted without oral evidence. The rule provides as follows: -

"26. - (1) Where the committal proceedings are conducted without any oral evidence, the following procedure shall be followed –

a) the prosecution shall set out the charges upon which they seek committal.

b) except where both prosecution and defence agree that the statement can be summarized, the prosecution may read out each statement.

c) the Examining Justice (or the clerk of courts) will ensure that the original statement for each witness has been properly signed and dated by them or, where the defendant is represented and the parties agree, the Examining Justice may read the statements and exhibits privately and confirm, in open court, which statements and exhibits he has read.

(2) Where the Examining Justice acts in accordance with paragraph (1) he shall confirm, in open court, that each statement complies with the formalities required by section 6 of the Act.

(3) Each witness statement, document, or exhibit tendered in accordance with section 6 of the Act shall be signed by the Examining Justice presiding over the committal proceedings.

(4) Either party may request that one or more statements be read out in open court, even if the rest of the bundle is read privately by the Examining Justice.

(5) Once it has been confirmed that the formalities have been properly observed and the statement has been read, the Examining Justice will state, in open court, that this statement is admitted into evidence and, if the case is committed, that the witness is required to attend the trial at a date and time to be notified to them by the Court, unless notified to the contrary.

(6) If a statement is not admissible because of its failure to satisfy the formalities of the Act, the Examining Justice will decline to admit the evidence in its current form.

(7) The prosecution or defence may –

(a) apply to adjourn for the formalities to be rectified (which application the Examining Justice may allow or adjourn in his discretion);

(b) ask the Examining Justice to allow the witness to give oral evidence (which he may permit, if no injustice will follow); or

(c) choose to continue without evidence of that witness.

(8) At the end of all of the prosecution evidence, the Examining Justice, of his own motion, may require the prosecution to show why there is a case to answer.

(9) The accused person is entitled to submit that there is no case for him to answer.

(10) Following submissions from both parties, the Examining Justice shall decide whether there is a prima facie case and if, in his judgment, there is not a prima facie case, he shall –

(a) announce so in open court, giving brief reasons for his decision.

(b) discharge the accused person.

(11) If the Examining Justice finds that a prima facie case has been made out, he will ask the accused person or his Attorney-at-Law which of his options under section 5(1) of the Act[33] he wishes to exercise.

(12) If the accused person is not represented by an Attorney-at-Law, the Examining Justice shall –

(a) explain each option to the accused person and the effect of section 5(3) of the Act; and

(b) consider any application to adduce defensive evidence pursuant to section 4 of the Act and, if granted, permit that person to give evidence.

(13) A statement may be adduced on behalf of the defence, in the usual way, if all formalities are satisfied and the prosecution does not wish to apply for the witness to be present in court for cross-examination.

(14) If the defence does not seek to adduce any evidence at the proceedings the Examining Justice will act in accordance with subsection 15 below.

(15) If the defence has adduced evidence, at the close of all the evidence the Examining Justice will invite them to make any further submission as to whether there is a prima facie case.

(16) If the Examining Justice finds that a prima facie case has been made out on any charge, the Examining Justice will commit the accused person for trial on the charge and issue the standard directions for cases committed to Circuit Court as set out in Annex A.

(17) The Examining Justice may commit on the charges on the information and/or any other charge in respect of which a prima facie case is made out."

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[33] Section 5(1) of the CPA states: - *"5. - (1) An accused person may at his option – (a) tender in evidence his own written statement; (b) elect to make an unsworn statement; (c) give oral evidence; or (d) remain silent*."

The remedy of Certiorari

[31] Certiorari will not lie unless something has been done that a court can quash.[34] 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.[35]

[32] 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."*[36]

[33] 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 matter. The decision-maker may, as long as the error of law is not repeated and no other error committed, reach the same decision."*

[34] 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*."

[35] See paragraph 104 of Volume 61A (2023) of the Halsbury's Laws of England

[36] 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."*

[34] In the authority of **Danville Walker v The Contractor-General**[37], 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."***

[35] The House of Lords in the authority of ***Regina v Bedwellty Justices, Ex parte Williams***[38] opined that a committal for trial by jury was liable to be quashed in judicial review proceedings where there had been a procedural error by the Justices in performing their functions under section 6(1) of the United Kingdom's Magistrates' Courts Act of 1980. In those circumstances, the House of Lords had to determine the issue of whether a committal for trial by jury in the Crown Court can and should be quashed on judicial review if there was no admissible evidence before the justices of the defendant's guilt. Lord Cooke of Thorndon stated: -

> ***"To convict or commit for trial without any admissible evidence of guilt is to fall into an error of law. As to the availability of certiorari to quash a committal for such an error, I understood at the end of the arguments that all your Lordships were satisfied that in principle the remedy is available and that the only issue presenting any difficulty relates to the exercise of the court's discretion. This conclusion about principle reflects the position now reached in the development of the modern law of judicial review in England through a sequence of cases … In Ex parte Page the five members of the Appellate Committee (Lord Keith of Kinkel, Lord Griffiths, Lord Browne-Wilkinson, Lord***

[37] [2013] JMFC Full 1

[38] A.C. 225

> ***Mustill and Lord Slynn of Hadley were unanimous that usually any error of law made by an administrative tribunal or inferior court in reaching its decision can be quashed by certiorari for error of law. There were, however, observations to the effect that as regards an inferior court of law a statutory provision that its decision is to be "final and conclusive" or the like will confine the remedy to cases of abuse of power, acting outside jurisdiction in the narrow sense, or breach of natural justice."***

THE SUBMISSIONS
Submissions advanced on behalf of the Claimant

[36] Mr Neale submitted that the learned parish court judge at the committal proceeding relied on a statement of an eyewitness, Zaria Wright in circumstances where the claimant contends that the statement was not compliant with section 6 of the Committal Proceedings Act. He posited that in admitting this statement the Defendant acted outside the scope of section 6 the ***Committal Proceedings Act***.

[37] On the issue of whether there is an alternative remedy to Judicial Review available to the Claimant, Mr Neale argued that a right of appeal relevant to sections 293 of the Judicature Parish Court Act which provides for criminal appeals, is a right that can only be exercised on a decision relevant to a trial. Having quoted the section which reads:

> *"An appeal from any judgment of a Magistrate in any case tried by him on indictment or on information in virtue of a special statutory summary jurisdiction, shall lie to the Court of Appeal…."*

he asserted that the decision by the learned parish court judge is not one that was arrived at after a trial. He contends that this provision would not therefore be applicable in the circumstances.

[38] Mr Neale also submitted that when one looks at the Committal Proceedings Act and the Rules there does not appear to be any suitable or effective alternative remedy for somebody like the Claimant. He contends that alternative remedy is something contained in statute and there are several examples. He mentioned the Firearms Licensing Authority (FLA) regime, with a tiered system. He also referred

to the Education Act as another classic example where there is a teacher's appeal tribunal.

[39] He asserted that there is no express provision in either the Committal Proceedings Act or the Rules that provide for any right of appeal in Committal Proceedings. Mr Neale adverted to the **Judicature (Appellate Jurisdiction**) **Act** and the comments of counsel for the Defendant that an alternative approach is for the objection to be raised during the course of the murder trial of the Claimant at the Circuit Court and thereafter an appeal would lie to the Court of Appeal from the decision of the trial judge.

[40] In disagreeing with this position Mr Neale contended that once the matter is committed to the Circuit Court, anything arising from that in the Court of Appeal would be in relation to the process that was obtained in the Circuit Court. He asserted that he is unable to see how the Court of Appeal can look behind that process and go back to see what obtained at the Parish Court in relation to the Committal Proceedings. He contended that the decision of the learned parish court judge is not being challenged for its correctness or inconsistencies, it is the process on which she has embarked. As such, he maintained the position that Committal Proceedings and the decision-making process of the Examining Justice is one that is amenable only to judicial review.

[41] On the issue of procedure relative to committal proceedings Mr Neale submitted that:

> "*Before the Committal Proceedings there was the Preliminary Enquiry, but Parliament felt that it was not expedient to have two trials. It could not have been the intention of Parliament to relegate an accused man to watered down protection and so the Committal Proceedings Act as a safeguard, makes the statement admissible on condition that there was strict compliance with section 6(2)(b) of the Act. When Parliament says "shall" it must be understood through mandatory language*."

[42] Counsel pointed out that when one examines the statement of Ms. Wright, it is only her signature that appears on it, there does not appear to be any signature of a recorder's nor is there any indication that it was signed in the presence of the

Justice of the Peace or a member of the Jamaica Constabulary Force above the rank of Sergeant.

[43] He submitted that the opening words "shall" in Section 6(1) of the **Committal Proceedings Act** suggest that the intention of Parliament is that the provision should be strictly obeyed. He further submits that the admissibility of statements is conditional on the fulfilment of the conditions in Section 6, subsection (2) and (3). He further submitted that an irregularity cannot be rectified by a process or procedure und that is not contemplated by the Act. He argues that when one looks at the Act it is the statement being relied on that must be compliant, and if it is not compliant it cannot be admitted into evidence.

[44] Mr Neale also referenced *"Clause 6 of the* **Jamaica Hansard Parliamentary Proceedings of the Honourable House of Representative**. He indicates that in reference to Section 6 of the Act, the promoter is reported as saying:

> *"Clause 6 mandates what condition must…"*
>
> *"...It is a requirement that the statement must be taken down in writing by a member of the Jamaica Constabulary Force in the presence of a Justice of the Peace. In the absence of a Justice of the Peace a senior member of the Constabulary Force, not below the rank of Sergeant, should be present to witness the statement. The statement must have been read over to the person making it and it must have been signed by the maker and the person recording it in the presence of each other and in the presence of the Justice of the Peace or the senior member of the Jamaica Constabulary Force, as the case may be. The statement must also purport to have been sworn to by the maker before the Justice of the Peace or the senior member of the Jamaica Constabulary Force and the statement must contain a declaration by the maker as to its truth."*

[45] Mr Neale further referenced the Memorandum of Objects and Reasons which states as follows:

> *"To reduce delay and expense, a person's written statement, if it satisfies certain conditions, will be admitted in committal proceedings as evidence to the same extent and effect as if such person had given oral evidence before the Resident Magistrate in the committal proceedings. On the basis of such evidence alone, a Resident Magistrate may, if satisfied that the accused person ought to be tried for an indictable offence, commit the accused to stand trial before a Circuit Court."*

[46] Counsel expressed an awareness that the court do not necessarily resort to the use of Hansard where there is no ambiguity in legislation. He nonetheless submits that that there is an indication that it was the intention of Parliament that this section ought to be strictly complied with. Mr. Neale however submits that the words used by Parliament are so clear that the natural and ordinary meaning ought to be applied and in applying the natural and ordinary meaning to the opening words of section 6 of the legislation the defendant has failed to comply with the section. (He also relied on the cases of Brown **v Brown** [2010] JMCA Civ 12 and **Pepper v Hart** [1993] 1 All ER 42. **Powys v Powys** [1971] 3 All ER 116)

[47] On the issue of jurisdiction and illegality, relying on the judgment of , Lord Browne-Wilkinson in the case of ***R v Hull University Visitor, ex p Page [1993] AC 682, 701E*** *counsel* indicated that a "*decision maker who exercises his powers outside the conferred jurisdiction, in a procedurally irregular manner or in a way that is Wednesbury unreasonable, acts ultra vires and unlawfully…….the courts have developed principles of judicial review, one fundamental principle being that the courts intervene to ensure that the decision-making body lawfully exercised their power…. when the decision-making body exercises power outside their jurisdiction in a procedurally irregular or unreasonable manner, it is acting ultra vires and the decision is therefore unlawful"*. (He also relies on the **Halsbury's Laws of England**; ***R v Lord President of the Privy Council, ex p. Page [1993] AC 682****.*

[48] He submitted that Jurisdiction is to be understood in two contexts. These he points out as: (1) jurisdiction in the narrow sense, where the adjudicator had the jurisdiction to embark upon the material Act, (2) jurisdiction in the wider sense where the court would have committed some error for example natural justice might have been breached, there was condition precedent that the court did not follow, or the decision was by virtue of the process undertaken was unreasonable or irrational.

[49] Counsel contended that while the Parish Judge had jurisdiction in the narrow sense, under the Committal Proceedings Act to embark upon the proceedings she lacked jurisdiction in the wider sense in that in admitting the statement without the conditions for admission being satisfied she acted in excess of her jurisdiction and therefore acted illegally and ultra vires. (He also relies on the case of ***Regina v Bedwellty Justices, Ex parte Willimas*** [1996] A C 225. As such, Counsel submits that her decision should be quashed.

Submissions advanced on behalf of the Defendant

[50] Learned Counsel Mr Stuart Stimpson submitted that judicial review is concerned with legality and not with correctness. Mr Stimpson asserted that the function of the Court in these proceedings is not to revisit the merits of the decision of the Examining Justice but to determine whether she acted within the lawful boundaries of her jurisdiction and observed the requirements of fairness and procedural regularity.

[51] It was further submitted that the limited supervisory nature of judicial review in the context of committal proceedings is well-established. In this regard, Mr Stimpson referred the Court to the dicta of Wint-Blair J in her decision at the leave stage of these proceedings. Mr Stimpson submitted that Wint-Blair J confirmed the principle that judicial review lies only where there is a procedural flaw which resulted in real prejudice. It was explicitly noted that Mr Robinson's personal liberty is not in jeopardy because he remains on bail.

[52] This position, Mr Stimpson maintained, is consistent with the long-standing authority of **Brown v Resident Magistrate, Spanish Town**,[39] where the Court of Appeal held that a magistrate's decision is amenable to Certiorari only if it was made in excess of jurisdiction or without jurisdiction. Mr Stimpson submitted that mere legal or factual error, absent such jurisdictional infirmity, does not warrant the intervention of the supervisory court. It was also submitted that the Privy Council

[39] (1996) 48 WIR 233

in ***Sharma v Brown-Antoine***,[40] affirmed that an arguable case for judicial review must raise a matter going to the legality of the decision and not its merits. Mr Stimpson maintained that in the authority of Sharma, their Lordships of the Judicial Committee of the Privy Council noted that even where a decision is flawed in reasoning, there is no sufficient basis on which the supervisory court should intervene. The latter should not intervene unless the impugned decision results in unlawfulness in the strict public law sense.

[53] Mr Robinson's challenge to the decision of the Examining Magistrate is based on the alleged non-compliance of Ms. Zaria Wright's witness statement with section 6(2)(b) of the CPA. That requirement, Mr Stimpson submitted, is not absolute and must be read in conjunction with rule 25 of the Committal Proceedings Rules. It was submitted that rule 25(6) of the Committal Proceedings Rules recognizes that defects in form may arise and provides that where a written statement fails to satisfy the formalities of the Act, the examining justice will decline to admit the evidence in its current form. In rule 25(7) of the Committal Proceedings Rules, Mr Stimpson further submitted, the Examining Justice has the power to exercise discretion.

[54] Mr. Stimpson asserted that the Examining Justice exercised this discretion as contemplated by the Committal Proceedings Rules. Mr Stimpson submitted that, on 13 October 2022, when objections were raised by Mr Robinson's Attorneys-at-Law in relation to the absence of the recorder's signature on Ms Wright's witness statement, the Examining Justice adjourned the proceedings pursuant to rule 25(7)(a). The Further Statement of Detective Sergeant Michael Chisholm, dated 19 October 2022, was served on Mr Robinson's Attorneys-at-Law and the Examining Justice was entitled to rely on that evidence as being curative of any deficiency in the impugned witness statement. It was submitted that the Further Witness Statement of Detective Sergeant Michael Chisholm satisfied the

[40] [2006] UKPC 57

requirements of section 6(2)(b) of the CPA and substantiated the authenticity and procedural integrity of Ms. Wright's evidence.

[55] In this regard, Mr Stimpson relied on the authority of **Powell v Spence**.[41] He submitted that there the Privy Council held that a defect in form does not vitiate jurisdiction where the substance of the statutory process is observed and the error is capable of being remedied. This principle, Mr Stimpson asserted, is directly applicable in the present instance, as the Examining Justice acted within her jurisdiction, applied the remedial process under Rule 25 of the Committal Proceedings Rules and accepted supplemental evidence to confirm compliance with the requirements of section 6 of the CPA.

[56] Mr Stimpson asserted that the Privy Council in **Powell v Spence**[42] emphasized that while compliance with statutory formalities is important, the overriding objective is to ensure that justice is not sacrificed on the altar of rigid technicality. This, Mr Stimpson maintained, is applicable in the present instance as the Examining Justice did not disregard the requirements of section 6 of the CPA. The approach taken by the Examining Justice mirrors the reasoning approved by the Privy Council in ***Powell v Spence***.

[57] ***Powell v Spence*** demonstrates that defects of form, even where present, do not render a decision void, where the tribunal has the requisite jurisdiction and a statutory mechanism exists for correction. The defect, Mr Stimpson asserted, was a matter of form only, and the Examining Justice retained the power to amend and to proceed. Mr Stimpson submitted that non-compliance with procedural formalities under section 6 does not nullify a Committal Proceeding where there is substantial compliance and where there is no prejudice to the Claimant, Mr Robinson. Mr Stimpson further submitted that the use of rule 25 of the Committal Proceedings Rule to rectify irregularities contained in witness statements or to clarify witness statements is not only lawful but necessary to avoid absurd results.

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[41] [2021] UKPC 5 at paragraphs [27] and [34]

[42] supra

To buttress that submission, Mr Stimpson relied on the authority of ***Coke v Cole-Montaque***.[43]

[58] It was submitted that the Examining Justice had the jurisdiction to assess the sufficiency of the evidence contained in the documents which comprised the Committal Bundle, to determine the admissibility of the written statements and to decide whether the requirements of section 6 of the CPA were met. The Examining Justice's reliance on a supplemental statement from a senior police officer, Mr Stimpson asserted, is a textbook exercise of judicial discretion and is not an overreach.

[59] Mr Stimpson maintained that the distinction between a legal error and a jurisdictional error was made in ***Brown v Resident Magistrate, Spanish Town***.[44] In that authority, Mr Stimpson submitted, the Court of Appeal confirmed that a magistrate's judgment, even if legally flawed, is not subject to Certiorari unless it can be shown that the magistrate acted without or in excess of his or her jurisdiction. Mr Stimpson also submitted that Carey JA opined that Certiorari is reserved for the unlawful assumption or exercise of jurisdiction.

[60] Mr Stimpson submitted that Mr Robinson is seeking to bypass the remedy provided by the Committal Proceedings Rules. Mr Stimpson urged the Court to find that the Examining Justice acted lawfully and within her jurisdiction. Mr Stimpson urged the Court to find that any defect which was contained in the impugned witness statement of Ms. Zaria Wright was procedural in nature and was cured by virtue of the application of rule 26(7) of the Committal Proceedings Rules.

[61] Finally, Mr Stimpson submitted that Mr Robinson had and still has an adequate alternative remedy.

ANALYSIS AND FINDINGS

The Scope of Judicial Review

[43] SU 2019 CV 03066 at paragraphs [30] and [37]
[44] supra

[62] It is clear from a reading of the authorities to which the Court has referred in this Judgment that Judicial review is the courts' way of ensuring that the functions of public authorities or of public officers are executed in accordance with the law. It is the process by which public authorities or public officers are held accountable for any abuse of power, unlawful or ultra vires act. 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 against acts which are carried out that exceed their jurisdiction.

[63] In every case, the purpose of the remedies is to ensure that the individual is given fair treatment by the public authority or public officer to which he has been subjected. It is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority or officer 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 or officer by the law.

a. The purpose of judicial review

[64] The purpose of judicial review is therefore to ensure that the individual receives fair treatment and not to ensure that the authority or officer, 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.[45]

[65] Judicial review is therefore 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.

b. Whether the impugned witness statement of Ms. Zaria Wright complied with the requirements of section 6(2) of the Committal Proceedings Act

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

[66] In accordance with section 6(1) of the CPA, in Committal Proceedings, a written statement by any person shall be admissible as evidence to the like effect as oral evidence by that person, if the conditions mentioned in subsections (2) and (3) are satisfied.

[67] The conditions referred to in section 6(2) and 6(3) are that: -

i. The statement was recorded, whether in writing or by electronic means, by a member of the Jamaica Constabulary Force (the recorder).

ii. The statement was recorded in the presence of a Justice of the Peace or in the absence of a Justice of the Peace, a senior member of the Jamaica Constabulary Force not below the rank of Sergeant and must be read over to the person who made it (the maker).

iii. The statement purports to be signed by the maker and the recorder in the presence of each other and in the presence of –

(i) A Justice of the Peace (and has been sworn to by the maker before the Justice of the Peace); or a senior member of the Jamaica Constabulary Force.

iv. The statement contains a declaration by the maker to the effect that it is true to the best of knowledge and belief.

v. The statement shall state whether it is made by a person who has attained the age of eighteen (18) years.

[68] It is common ground between the parties that the recorder's signature is absent from the impugned witness statement of Ms. Zaria Wright. It is equally accepted by both parties that that was an irregularity.[46]

[46] See – The Witness Statement of Zaria Wright, which is exhibited to the Affidavit of Courtney N. Rowe in Support of Fixed Date Claim Form, which was filed on 2 September 2024, as exhibit **"CNR3"** and the Affidavit of Her Honour Mrs. Sasha Ashley in Response to Fixed Date Claim Form of Kenya Robinson, which was filed on 28 February 2025, at paragraph 8.

[69] On a careful examination of the impugned witness statement of Ms. Zaria Wright, which is dated 11 March 2022, it is apparent that the statement was recorded in writing, the content of which Ms. Wright signed to, after being read over to her, as "being true to the best of my knowledge and belief in the presence of Inspector V. Fletcher and the Recorder."[47] It is also apparent on the face of the document that Ms Wright's age was redacted from the witness statement but no issue was raised before this Court in relation to whether the impugned witness statement was made by a person who has attained the age of eighteen (18) years.

[70] Regrettably, there is no indication on the face of the impugned witness statement that it was recorded in the presence of a Justice of the Peace or in the presence of a senior member of the Jamaica Constabulary Force above the rank of Sergeant. Nor does the statement, on the face of it, purport to have been signed by the maker and the recorder, in the presence of each other, and in the presence of a Justice of the Peace or in the presence of a senior member of the Jamaica Constabulary Force.

[71] This Court finds that when the words which are used in section 6 of the CPA are given their natural and ordinary meaning, the intent of the section is clear and unambiguous. The language of the statute is mandatory. The section provides that a written statement by any person *'shall'* be admissible as evidence to the like effect as oral evidence by that person, if the conditions mentioned in subsections (2) and (3) are satisfied. A failure to comply with this mandatory requirement offends the statute.

[72] For these reasons, this Court finds that the impugned witness statement of Ms. Zaria Wright did not comply with the conditions set out in section 6(2)(a) and 6(2)(b)(ii) of the CPA.

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[47] See – The Witness Statement of Zaria Wright, which is exhibited to the Affidavit of Courtney N. Rowe in Support of Fixed Date Claim Form, which was filed on 2 September 2024, as exhibit **"CNR3"**.

Whether the Further Witness Statement of Detective Sergeant Michael Chisholm was sufficient to rectify the irregularities with the impugned witness statement of Ms. Zaria Wright

[73] The Committal Proceedings Rules, 2016 provide that where a witness statement is inadmissible because of its failure to satisfy the formalities of the statute, the Examining Justice will decline to admit the evidence in its current form.

[74] The options which are available to the Examining Justice are to adjourn the Committal Proceedings for the formalities to be rectified, to allow the witness to give oral evidence, or to choose to proceed without the evidence of that witness.

[75] Rule 26(6) and (7) of the Committal Proceedings Rules, 2016 bears repeating: -

> *(6) If a statement is not admissible because of its failure to satisfy the formalities of the Act, the Examining Justice will decline to admit the evidence in its current form.*
>
> *(7) The prosecution or defence may –*
>
> *(a) apply to adjourn for the formalities to be rectified (which application the Examining Justice may allow or adjourn in his discretion);*
>
> *(b) ask the Examining Justice to allow the witness to give oral evidence (which he may permit, if no injustice will follow); or*
>
> *(c) choose to continue without the evidence of that witness.*

[76] The Court observes that the Further Statement of Detective Sergeant Michael Chisholm, which is dated 19 October 2022, reads, in part, as follows: -

> *"On the 11th of March 2022 … I recorded a statement from Miss Zaria Wright at the Montego Bay Police Station in the presence of Inspector Vernon Fletcher.*
>
> *The statement was signed by Miss Zaria Wright in the presence of Inspector Vernon Fletcher and the recorder."*

[77] Section 6(2)(b)(i) and (ii) of the CPA stipulate that one of the conditions which must be met for a witness statement to be admissible as evidence in Committal Proceedings is that the statement must purport to have been signed by the maker and the recorder in the presence of each other. Additionally, the statement must

purport to have been signed by the maker and the recorder in the presence of a Justice of the Peace (and has been sworn to by the maker before the Justice of the Peace), or in the presence of a senior member of the Jamaica Constabulary Force.

[78] It therefore means that, to rectify the irregularities with the impugned witness statement of Ms. Zaria Wright, the prosecution would have had to demonstrate, on the face of the witness statement itself, that it conforms with these conditions. The specific conditions, for present purposes, are that: -

i. The statement was recorded in the presence of Inspector Vernon Fletcher, and

ii. The statement purports to be signed by the maker and the recorder in the presence of each other and in the presence of Inspector Vernon Fletcher.

[79] In the circumstances, this Court is constrained to find that because of the failure to comply with the conditions outlined above, the Further Witness Statement of Detective Sergeant Michael Chisholm, which is dated 19 October 2022, did not suffice to rectify the irregularities contained in the impugned witness statement of Ms. Zaria Wright.

Whether the Examining Justice acted ultra vires her statutory authority by her ruling that the impugned witness statement of Ms. Zaria Wright was admissible as the oral evidence of Ms. Wright

Whether the decision of the Examining Justice to commit the Claimant, Mr Kenya Robinson, to stand trial at the Circuit Court for the parish of Saint James, for the offence of Murder, is illegal, irrational and unreasonable and null and void ab initio

[80] The Defendant's evidence, as contained in the Affidavit of Her Honour Mrs. Sasha-Marie Ashley in Response to Fixed Date Claim Form of Kenya Robinson, which was filed on 28 February 2025, is that:

> *"I deemed the further statement of Detective Sergeant Michael Chisholm a sufficient rectification of his failure to append his signature to the statement*

> *of Zaria Wright dated March 11, 2022. I therefore, found the statement of Miss Zaria Wright dated March 11, 2022, was admissible for the purpose of determining whether a prima facie case of Murder was made out against the Claimant."* [48]

[81] The question then becomes whether the Defendant acted ultra vires her statutory authority when she made a finding that the impugned witness statement of Ms. Zaria Wright was admissible.

[82] In this regard, the following statement of the learned authors of the Textbook on Administrative Law, 7th Edition, at page 178, is uncontroversial: -

> *"If an authority acts outside or abuses its powers, or fails to perform a public duty, it will thus act in a manner that is ultra vires and the courts may grant a remedy to the aggrieved citizen (although…the remedies are discretionary)."*

[83] The Halsbury's Laws of England/Judicial Review (Volume 61A (2018))/2 states that:

> *"The courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. The term 'jurisdiction' has been used by the courts in different senses of the word. A body will lack jurisdiction in the narrow sense if it has no power to adjudicate upon the dispute, or to make the kind of decision or order in question. It will lack jurisdiction in the wider sense if, having power to adjudicate upon the dispute, it abuses its power, acts in a manner which is procedurally irregular, or in a* ***Wednesbury*** *sense, unreasonable, or commits any other error of law."*

[84] There can be no doubt that, by virtue of the CPA, the Defendant, Her Honour Mrs Sasha-Marie Ashley, sitting as an Examining Justice in a court of petty sessions, had the requisite jurisdiction to conduct the Committal Proceedings in respect of the offence with which the Claimant, Mr Kenya Robinson, is charged. Regrettably, this Court finds that she lacked jurisdiction in the wider sense in that she acted in a manner which was procedurally irregular and committed an error of law in her finding that the irregularities surrounding the impugned witness statement of Ms.

[48] See – Affidavit of Her Honour Mrs. Sasha-Marie Ashley in Response to Fixed Date Claim Form of Kenya Robinson, which was filed on 28 February 2025, at paragraph 18.

Zaria Wright were sufficiently rectified by the further statement of Detective Sergeant Michael Chisholm. This Court also finds that she committed an error of law in her finding that the impugned witness statement of Ms. Zaria Wright was admissible for the purpose of determining whether a prima facie case was made out against the Claimant for the offence of Murder.

[85] In the result, this Court finds that the decision of the Defendant is illegal, null and void ab initio.

Whether the Claimant, Mr Kenya Robinson, has a sufficient, alternate remedy, which is available to him

[87] The short answer to this question is no. The Claimant has no remedy available to him outside of judicial review. There was no appeal available to the Claimant to challenge the decision of the learned examining Justice. Nor could the Claimant compel the learned examining Justice to state a case to the Court of Appeal under s. 50 of the **Justice of the Peace Appeals Act**. Nor was there any other mechanism to challenge a decision of an examining Justice on Committal Proceedings conferred on the Claimant by the Committal Proceedings Act or the Rules made thereunder.

[86] In addressing this issue, we find it useful to first conduct a review of the mechanisms predating the Committal Proceedings Act for challenging the decisions of justices in Preliminary Enquires.

The Mechanisms for Challenging Decisions on Preliminary Enquiry Predating the Committal Proceedings Act

[87] Before the Committal Proceedings Act was enacted, Preliminary Examinations were conducted by Judges of the Parish Court sitting as a Justice of the Peace (now Lay Magistrates) in a Court of Petty Sessions (now Lay Magistrate's Court). This was pursuant to s***. 64 of the Judicature (Resident Magistrates) Act***, prior to the amendments to same by the passage of the Committal Proceedings Act and

the Judicature (Resident Magistrates) (Amendment and Change of Name) Act 2016).

[88] Before this, Preliminary Examinations were conducted by Justices of the Peace pursuant to the **Justices of the Peace (Jurisdiction) Act** or by District Judges (when they existed) pursuant to the **District Court Law**. Whilst Justices of the Peace could commit indictable offences to either the Circuit Court/Supreme Court or the District Court, District Court Judges would commit to the Circuit Court/Supreme Court.

[89] With the passage of the **Resident Magistrates Court Law** (1887), the District Courts were abolished, and the first Resident Magistrates Courts were established. The Resident Magistrates Court Law also removed the responsibility to carry out preliminary enquiries of indictable offences from Justices of the Peace to the Resident Magistrates. However, the Resident Magistrate would still be sitting as a Justice of the Peace in a Petty Session Court.

[90] The **Justices of the Peace (Appeals) Act** is the statute governing appeals from Justices of the Peace. By virtue of Section 3 of the said act -

> *"Any person aggrieved or affected by any judgment of **any** Justice exercising summary jurisdiction, or by the decision or report of any other officer **or** body taking any proceeding, or acting under any enactment either now or hereafter to be in force in this Island whereby the right of appeal is or shall be allowed, shall be at liberty to appeal therefrom to the Circuit Court **of** the parish in which such judgment shall be pronounced, or to a Judge **of** the Supreme Court, as hereinafter respectively provided".*

[91] "Judgment" is defined under s. 2 of the same Act. It says that *"judgment" means any conviction, judgment, order, or other affirmative adjudication, or any dismissal **of,** or refusal to hear or adjudicate on any complaint, information, or summons in a matter **of** summary jurisdiction*.

[92] In examining the provision, it becomes apparent that, the right of appeal conferred by s. 3 only concerns:

> (i) Judgments of any Justice, that is a Justice of the Peace exercising summary jurisdiction; or
>
> (ii) Decisions or reports of any **other officer** or body taking any proceedings, or acting under any enactment, now or hereafter to be in force in this island, **whereby the right of appeal is or shall be allowed.**

[93] In our view, an order for commitment made after a preliminary enquiry was not a judgment of a Justice exercising summary jurisdiction. This is because exercising summary jurisdiction means that the judge is conducting a summary trial of the matter. A preliminary enquiry is not a trial.

[94] Concerning decisions or reports of other officers or bodies taking proceedings or acting under any enactment, our view is that a right of appeal only exists if it is expressly provided for in the Justice of Appeals Act or in any other enactment conferring jurisdiction on the justices.

[95] An examination of the JPJA (prior to its amendment by the CPA) reveals that no right of appeal from the decision of a Justice of the Peace conducting preliminary examinations was conferred upon an aggrieved party by the JPJA.

[96] Neither could an aggrieved litigant force a Justice of the Peace to submit a case to the Court of Appeal under s. 50 of the **Justice of the Peace Appeals Act** if they felt aggrieved by their decision on a preliminary enquiry. Section 50 is set out below:

> After the **hearing and determination** (emphasis mine), or order of dismissal, **or** refusal to adjudicate, by a Justice or Justices of any information or complaint which he or they **have power to determine**

> **in a summary way** (emphasis mine) by any enactment now in force or hereafter to be made, either party to the proceedings before the said Justice or Justices may, if dissatisfied with the said judgment as being erroneous in point of law, apply in writing, within three days after the same, to the said Justice or Justices, to state and sign a case setting forth the facts and the grounds of such judgment or order, for the opinion thereon of the Court of Appeal, and the appellant shall, within fourteen days after receiving such case, transmit the same to the Registrar **of** the Court of Appeal first giving notice in writing of such appal, with a copy of the case so stated and signed, to the respondent.

[97] As highlighted in the provision above, the key to trigger this provision was that the Justice of Justices had the power to **determine** the matter. This means a final determination. A preliminary enquiry was not a final determination of the matter.

[98] The legal mechanism employed to challenge the decision of a Justice of the Peace conducting a preliminary enquiry was the writ of *Certiorari* to move the matter to the Supreme Court to quash the decision. This was only available in the Supreme Court and their inherent supervisory power over inferior tribunals or bodies (see s. 52(2) of the **Judicature (Supreme Court) Act)**.

[99] The ancient treatise known as **Stones Justices Manual** (108 ed. 1976 p. 585) also confirms the point. The authors of the text say as follows, “An order of *certiorari* is the recognised means of procuring through the medium of the Queen’s Bench Division [the equivalent of our Supreme Court] an inspection of the proceedings of the courts of inferior criminal jurisdiction in order that they may be reviewed and rectified.”

[100] It goes on to say at the same page 585 that, “It lies where there is some defect or informality apparent on the face of the proceedings, or where there is a want of

jurisdiction, or where it is clear and manifest that the adjudication has been obtained by fraud."

[101] In the matter of *R v Sam Chin* (1961) 3 WIR 156, the Federal Supreme Court (per Hallinan CJ) pointed out (obiter) that had there been a challenge by certiorari to a committal to the Circuit Court that was erroneously done, it would likely have been successful (see page 157). This statement provides a legal basis for saying that certiorari would have been the appropriate vehicle to challenge an erroneously committed matter and not an appeal.

a. Challenging Committal Proceedings Under the Committal Proceedings Act

[102] Counsel for the Defendant sought to argue that the JPAA provided the basis for there to be an appeal to the Circuit Court for St. James from this decision. This would be an alternate remedy that could have been pursued by the Claimant instead of judicial review proceedings. However, we are of the view that the JPAA does not apply to Committal Proceedings under the Committal Proceedings Act.

[103] The Committal Proceedings Act has abolished Preliminary Enquiries conducted by Judges of the Parish Court. Section 2(1) of the CPA makes this clear. Section 2(1) is set out below:

> 2(1) Preliminary examinations of indictable offences are hereby abolished and, in lie thereof, committal proceedings as provided in this Act shall be held by a Judge of the Parish Court sitting in a Lay Magistrate's Court.

[104] The CPA has also removed the jurisdiction, function and power from Lay Magistrates to conduct Preliminary Examinations. By the second schedule to the CPA, it deleted sections 34-38 inclusive of the JPJA. It was these sections that empowered Lay Magistrates to conduct preliminary enquiries. It is to be remembered that section 64 of the J(RM)A (as it was then known) only gave

exclusive authority to the Resident Magistrate (as they were then known) to conduct the preliminary enquiries in their parish. However, when so doing, they were acting as a Justice of the Peace in a Petty Sessions Court.

[105] The CPA has essentially preserved the role of Judge of the Parish Court sitting as a Lay Magistrate in a Court of Petty Sessions. The language "examining Justice" seems to have been preserved from previous legislation (e.g. see s. 64 of the JPJA).

[106] However, the critical distinction here is that the entire procedure is now governed by the Committal Proceedings Act. This means that the Judge of the Parish Court **derives** jurisdiction from the afore-mentioned enactment. There is no provision in the CPA, nor the Rules enacted there under conferring any right of appeal on an accused aggrieved by the decision of the Judge of the Parish Court who decides to commit him to the Circuit Court. Following from the JPAA, no right of appeal would exist under s. 3 of that Act.

[107] Similarly, an aggrieved accused does not acquire a right to compel the examining Justice under the CPA to state a case to the Court of Appeal under s. 50 of the JPAA as there is no final determination by an examining Justice conducting committal proceedings under the CPA. Essentially, Committal Proceedings are not final proceedings.

[108] As such, the only mechanism available to the Claimant is to apply to the Supreme Court for certiorari through Judicial Review.

Whether the decision of the Examining Justice to commit the Claimant, Mr Kenya Robinson, to stand trial at the Circuit Court for the parish of Saint James for the offence of Murder, ought properly to be quashed

[109] According to the authors *of Textbook on Administrative Law, 7th Edition,*

> *"If an authority acts outside or abuses its powers, or fails to perform a public duty, it will thus act in a manner that is ultra vires and the*

courts may grant a remedy to the aggrieved citizen although note that the remedies are discretionary).

"The term ultra vires is usually used to mean 'beyond the power" (See page 178)

[110] Lord Diplock, in the case of Council ***of Civil Service Unions and Others v Minister for the Civil Service*** [1985] AC 374 (CCSU v The Minister'), at page 408: made the point that

> ***"Judicial review…provides the means by which judicial control of administrative action is exercised. The subject matter of every judicial review is a decision made by some person (or body of persons) whom I will call the 'decision-maker' or else a refusal by him to make a decision)."***

[111] In the case of ***Latoya Harriott v University of Technology, Jamaica*****,** [2022] JMCA Civ 2 , Brooks P at paragraph 20 had this to say on this issue.

> ***"Another factor to be considered in determining whether a refusal is to be subject to a mandatory order is whether the making of the decision lies within the discretion of the decision-maker***
>
> ***(See also the case of <u>Medical Council of Guyana v Dr Hafiz</u> (2010) 77 WIR 277 page 283)***

[112] Counsel for the defendant submits that the requirements of Section ***6 (2) (b) of the Committal Proceedings Act*** when read in conjunction with Rule 25 are not absolute. He is of the view that when the learned parish judge granted the adjournment for the defect in the statement to be corrected, she did so by applying the discretionary framework as contemplated by the rules. He also takes the position that in allowing the prosecution to rely on the supplemental statement of Detective Sergeant Michael Chisholm as a measure of correcting the defect she applied her discretion," as precisely contemplated by the Rules". He relies on the case of ***Powell v Spence*** [2021] UKPC 5 in support of this position.

[113] Nonetheless, having reviewed the relevant authorities, it is our view that the only possible construction to be derived from a careful review of ***Section 6*** of the

Committal Proceeding Act and ***Section 25 (6) of Committal Proceeding Rules*** is that the procedure for the admission of a witness statement into evidence is prescriptive

[114] We form the view that the case ***of Powell v Spence*** is easily distinguishable from the instant case. The issue in the ***Powell v Spence*** was whether an application to a Parish Judge (formerly Resident Magistrate), for forfeiture of cash, pursuant to ***section 79 of the Proceeds of Crime Act*** could properly be made by way of a notice supported by an affidavit, and if not whether section ***190 of the Judicature (Parish Court) Act***, (formerly Judicature Resident Magistrates Court (Act) empowered the parish judge to cure the defects in the documents used to commence the proceeding

[115] In accordance with section **143 of the Judicature (Parish Court) Act** and the ***Judicature (Parish Court) Rules***, and as pronounce upon by the Court of Appeal in ***Metalee Thomas v The Asset Recovery Agency*** [2010] JMCA Civ 6, forfeiture proceedings are required to be commenced by the lodging of a "plaint. However, in the case of Powell v Spence, the Plaintiff, Sgt Powell used a document entitled "Notice", accompanied by a supporting affidavit.

[116] In those circumstances the Parish Judge took the view that no valid claim had commenced before him. He also took the view that section 190 of the Judicature ***(Parish Court) Act***, which permits a defect in proceedings to be corrected, nor ***Order XXXVI rule 23*** of the ***Judicature (Parish' Court) Rules***, which provides that non-compliance with the Rules shall not render proceedings void unless so directed were not applicable in the circumstances. He therefore dismissed the forfeiture application.

[117] The main issue on appeal to the Privy Council clearly turned on the interpretation of ***Section 190*** of the ***Judicature (Parish Court) Act***, as also ***Order XXXVI rule 23*** and the powers of the parish judge under that section. The section reads.

> "*The Parish Judge may at all times amend all defects and errors in any proceeding, civil or criminal, in his Court, whether there is anything in writing to amend by or not, and whether the defect or*

> *error be that of the party applying to amend or not; and all such amendments may be made, with or without costs, and upon such terms as to the Magistrate may seem fit;*
> *and all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties shall be so made*."

[118] **Order XXXVI rule 23** provides.

> *"Non-compliance with any of these Rules or with any Rule of Practice for the time being in force shall not render any proceedings void unless the Court shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court shall think* fit."

[119] At paragraph 27 of their judgment the Privy Council was of the view that

> ***"In so far as amendment was thought to be required to bring the documentation into line with the procedural requirements, there was power in the court to amend under section 190 of the … Act".***

[120] It is certainly apparent to us, that by employing the term "or *amended, or otherwise dealt with in such manner and upon such terms* ***as the Court shall think fit***", it was the intention of the legislature to give the parish judge wide discretion regarding the correction of procedural defects. Moreover, it is precisely because the parish judge is a creature of statute why the Privy Council in ***Powell v Spence*** had to examine the governing legislation, that is ***the Judicature (Parish Court) Act*** and Rules in order to determine the extent of the parish judge's discretion.

[121] Similarly, the defendant as the examining justice is a creature of the ***Committal Proceeding Act*** and Rules. Therefore, in order to determine the extent of her discretion the court must look to the governing legislation. Namely the ***Committal Proceeding Act and Rules***. In essence discretion cannot be manufactured where none is given.

[122] On a complete review of both pieces of legislation we take note of the distinct difference in the choice of words used by the legislature regarding the power given to the examining justice regarding the defect in procedure and those used in the

Judicature (Parish Court) Act and Rules. In our view, the employment of the term "*will decline to admit the evidence in its current form*" is indicative of the fact that there was no intent on the part of the legislature to give the examining justice any discretionary power to admit the statement in a form that is non-compliant with the formalities prescribed by the Act.

[123] In relation to the non-compliant statement, as examining justice, the defendant certainly derived a discretion under Rule 25(7) to determine how to proceed when faced with the issue of the inadmissibility of a statement that fails to comply with the formalities of the Act. However, this discretion could only be exercised within the narrow parameters provided for in Rule 25(7). Essentially, her discretion is circumscribed by the three options enumerated by this Rule These are, (i) adjourning the hearing for the formalities to be rectified (ii) allow the witness to give oral evidence if no injustice will follow or (iii) continue the hearing without the evidence of that witness.

[124] As such we agree with counsel for the Defendant that in granting the adjournment to the prosecution to have the defect remedied the learned parish judge had correctly engaged the discretionary framework within the Rules. However, considering the fact that the learned parish judge did not exercise any of the options mentioned in Rule25(7), it is our view that,in admitting the statement in the manner that she did the learned parish judge went beyond the ambits of the provisions within the Act and Rules. As such she would have taken a decision that was outside of her discretion and ultimately outside of her powers. This renders her decision ultra vires.

[125] It is noteworthy also that the Privy Council in holding that the Notice was capable of standing as a plaint, in the case of **Powell v Spence** did so on the basis that it found that the Notice contained all the information that was required for a Plaint. The only missing element was the title" Plaint". The same cannot be said in the instant case as up to the time of the admission of the statement into evidence, it was still devoid of the signature of the recorder and the signature of the person witnessing the recording of the statement.

[126] Essentially the failure of the learned parish judge to comply with the lawful procedure provided for by Committal ***Proceeding Act*** can engenders only one possible conclusion. That is, her decision was founded on unlawfully admitted evidence.

[127] Moreover, the learned parish Judge admitted in her affidavit that without the evidence of this only eyewitness she would have had no basis to commit the claimant to the Circuit Court for trial. Therefore, it cannot be said that this error in procedure was immaterial to her decision. Essentially, had she not acted contrary to law in relying on the inadmissible statement she could not have made the same decision.

[128] The case of ***Regina v Bedwellty Justice exparte Willimas*** (Supra), which was relied on by counsel Mr Neal has provided some useful assistance on the issue. In that case the appellant along with 4 other persons were charged with the offence of conspiracy to pervert the course of justice. During the committal proceedings for the appellant no oral evidence was given. The prosecution, however, relied on written statements and recordings including admissions of a co-accused implicating the appellant. The examining justices treated all these statements as admissible evidence against the appellant, despite the fact that there was no admission on her part.

[129] Further, the examining justice rejected the submissions of the appellant's counsel that there was no admissible evidence on which she could be committed to stand trial and nonetheless proceeded to commit her to stand trial. The matter went before the Divisional Court for judicial review. On an application for certiorari, that court, while acknowledging that the examining justice made the committal on inadmissible evidence, was of the view that based on a long line of authorities it should not exercise its discretion to quash the committal order of the examining justice. The case subsequently went before the House of Lords on appeal.

[130] At page 236 the of the judgment of the House of Lords, Lord Cooke of Thorndon opined that

> ***"a committal by examining justices can and normally should be quashed in judicial review proceedings if there was before them no admissible evidence of the defendant's guilt***"

[131] As such we hold that the decision of the learned parish judge should be quashed, and the matter be remitted to the Parish Court for fresh committal proceedings to be held before another parish judge. Consequently, we make the following Orders.

a. DISPOSITION

[132] -

1. It is hereby declared that the witness statement of Zaria Wright, which is dated March 11, 2022, and which is contained in the Committal Bundle which was served on the court and on Defence Counsel in the matter of Rex vs Kenya Robinson, bearing Information number SJ 2022 CR 00837, is not compliant with section 6 of the Committal Proceedings Act and therefore could not have been admitted as evidence to the like effect as oral evidence of the witness Zaria Wright.

2. An Order of Certiorari is granted to quash the following decisions of the Defendant: -

    i. That all statements contained in the Committal Bundle, which was served on the Court and Defence Counsel in the matter of Rex v Kenya Robinson, bearing Information number SJ 2022 CR 00837, are compliant with section 6 of the Committal Proceedings Act.

ii. To commit the Claimant to stand trial in the St. James Circuit Court.

3. The matter of Rex vs Kenya Robinson, bearing Information number SJ 2022 CR 00837, is to be remitted to the Parish Court for the parish of St. James for Committal Proceedings to commence *de novo* before a Judge of the Parish Court for the parish of St. James, sitting as an Examining Justice, other than the Defendant.

4. Costs are awarded to the Claimant and are to be taxed if not sooner agreed.

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Andrea Thomas

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Ann-Marie Nembhard

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Dale Staple