[2020] JMSC Civ. 15

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISON

CLAIM NO. SU2019HCV03757

BETWEEN	**LOUIS SMITH**	**APPLICANT**
AND	**DIRECTOR OF PUBLIC PROSECUTIONS**	**1ST RESPONDENT**
AND	**PARISH COURT JUDGE FOR THE PARISH OF SAINT JAMES SANDRIA WONG-SMALL**	**2ND RESPONDENT**

IN CHAMBERS

Mr. Hugh Wildman & Miss Faith Gordon instructed by Hugh Wildman & Company on behalf of the Applicant
Mrs. Andrea Martin-Swaby instructed by the Director of Public Prosecutions for the 1st Respondent
Miss Faith Hall & Miss April July instructed by the Director of State Proceedings for the 2nd Respondent

Application for leave for Judicial Review - Part 56.6 Of The Civil Procedure Rules- Delay- Whether the Applicant has a realistic prospect of success- Section 25(2) Of The Interpretation Act, 1968- The Proceeds of Crime Act- Charges being laid pursuant to the provisions Money Laundering Act, 1998 (Repealed)

Heard: January 27, 2020 & February 6, 2020

WOLFE-REECE, J

INTRODUCTION

[1] The Applicant, Mr. Louis Smith, is jointly charged with Robert Dunbar, Delroy Gayle and Melford Daley for drug trafficking and money laundering contrary to section 3(1)(C) of the **Money Laundering Act, 1998** (repealed) (hereinafter

referred to as **MLA**) for offences, which the 1st Respondent alleges were committed on divers days between 1999-2005. The matter is presently being adjudicated in the Parish Court for the parish of Saint James before the 2nd Respondent who is the presiding Judge.

THE APPLICATION

[2] The Applicant, Louis Smith pursues this application on his own and seeks to challenge the legality of being prosecuted under the **MLA** when the said act was repealed by **Proceeds of Crime Act**, 2007 (hereinafter referred to as **POCA**), which came into effect on the 30th May of 2007. The Applicant filed a Notice of Application for Leave to Apply for Judicial Review on the 19th September, 2019 for the following orders and declarations regarding the pending proceedings levied against him in the Saint James Parish Court:

I. A Declaration that the initiating of criminal proceedings by the 1st Respondent in the Parish Court of St. James and presided over by the 2nd Respondent, of charges of Drug Trafficking and Money Laundering against the Applicant is illegal, null and void and of no effect.

II. A Declaration that the initiating of criminal proceedings by the 1st Respondent in the parish Court of St. James and presided over by the 2nd Respondent, of charges of Drug Trafficking and Money Laundering against the Applicant, is in clear breach of provisions contained in the Proceeds of Crime Act of May 2007, rending the said criminal proceedings illegal, null and void and of no effect.

III. An Order of certiorari quashing the decision of the 1st Respondent to initiate charges against the Applicant as contained in the Information which is amended in which the 1st Respondent has commenced criminal proceedings against the Applicant and being presided over by the 2nd Respondent of drug trafficking and money Laundering in the parish court of St. James.

IV. *A Stay of the decision of the 1st Respondent to commence criminal proceedings against the Applicant being presided over by the 2nd Respondent as Parish Court Judge for the Parish of St. James, the said charges being contained in Information, until the determination of the Application for Leave to apply for Judicial Review.*

V. *Damages to the Applicant to be assessed for the illegal action of the 1st Respondent in commencing criminal proceedings against the Applicant for Drug Trafficking and Money Laundering in breach of the Proceeds of Crime Act of May, 2007.*

VI. *Cost of Application to the Applicant;*

VII. *The Court may on the grant of the leave, give such other consequential directions as may be deemed appropriate.*

UNDISPUTED FACTS

[3] The case against the Applicant first came before the Saint James Parish Court on the 5th day of September 2013 when information dated the 3rd day of September 2013, was laid against him. The allegations contained in the information were that the Applicant:

> *"Did on diverse days on or about 1999-2005 engaged in the exportation of Cocaine through Air Jamaica with Convicted Drug Trafficker Dean Drummonds and used the proceeds to acquire assets. Contrary to Section 3(a) of the Money Laundering Act."*

[4] The matter came before the Parish Court for Plea and Case Management Hearing on the 12th day of April, 2019 when the date of 16th September, 2019 was confirmed as the date the trial was to commence.

[5] Approximately six (6) years after the information was laid against the Applicant, the matter came on for hearing on 16th September, 2019 before Her Honour Mrs. Sandria Wong-Small who is the Senior Parish Court Judge for Saint James and who is named as the 2nd Respondent.

[6] On the first day of the trial, being 16 September, 2019, Mrs. Martin-Swaby who appeared on behalf of prosecution made an application to amend the information, specifically, the charging section was amended to read as 3(1)(c) of **MLA** whilst the particulars of offence remained the same. Counsel for the Applicant was absent on the 16th day of September, 2019 and the 17th September, 2019 and the trial proceeded in his absence.

[7] Counsel for the Applicant made an appearance on the 18th September, 2019. Based on all the evidence presented, this was the first time Counsel made an objection to the continuation of the matter on the basis that the charges as presented in the information is a nullity as the **MLA** was repealed by section 139 of **POCA.** Counsel based his argument on the undisputed fact that **POCA** came into effect on the 30th May, 2007 and repealed and replaced both the **MLA** and **Drug Offences (Forfeiture of Proceeds) Act.**

[8] That this application came before the Supreme Court on 19th September 2019 Daye, J granted a stay of the proceedings before the Parish Court pending the hearing of this application.

SUBMISSIONS ON BEHALF OF THE APPLICANT

Legality of the charges against the Applicant

[9] Mr. Wildman submitted that the ground on which his application was built was that the charge contained in the information that was levied against the Applicant was illegal, null and void. Learned Counsel stated that because the **MLA** was repealed by **POCA** it ceased to be a part of the corpus of laws of the land. It was therefore illegal to charge the Applicant under an act which no longer formed a part of the laws of the land. Counsel submitted that in so doing, the 1st Respondent had breached the Applicant's right to only be charged for offences which are known to law.

[10] Counsel for the Applicant relied, in part, on the cases of **Meek v Powell** [1952] 1 KB 164 and **Stowers v Darnell** [1973] CLR 528 to support his point. In each case the respective Appellants were charged on indictments under provisions which were repealed at the time when the charges were brought. In each case, the conviction was quashed.

[11] It is the Applicant's contention that delay is not an issue in the instant case. He noted that applications for leave for Judicial Review are to be made within the 3 months as stipulated by Part 56 of the **Civil Procedure Rules** (hereinafter called the **CPR**). Mr. Wildman urged on the Court that in the instant case time would begin to run from the date when the trial commenced (September 16, 2019) and not the date when the information was first laid in 2013.

[12] To support his point, Mr. Wildman relied heavily on the House of Lords decision of **Regina (Burkett) v Hammersmith and Fulham London Borough Council and another** - [2002] 1 WLR 1593 which involved an application for leave to apply for judicial review against the local planning authority. The House of Lords was asked to consider, inter alia, whether time began to run from the date when the local planning authority passed a resolution authorising one of the authority's officers to grant outline permission for a large development, subject to two conditions precedent or whether time began to run from the date when the planning permission was actually granted. The board found that the time for bringing Judicial Review proceedings began to run from the date when planning permission had actually been granted, not from the date of an earlier resolution.

[13] Further he relied on several other English authorities where by virtue of policy considerations, the court found that where the matter was of general importance, it would be wrong for the Court to exercise its discretion to refuse leave on the ground of delay, *"thereby leaving substantive issues unresolved"* **See Regina v Secretary of State for the Home Department, ex parte Ruddock and others** [1987] 1WLR 1482.

[14] Learned Counsel, Mr. Wildman, argued that *"there is absolutely no scope for the application of the Interpretation Act as there is nothing to be interpreted."* It was his considered opinion that the **Interpretation Act,** 1968 could not be used to defeat the clear intention of parliament, by the passing of **POCA.** He relied on the words of Lord Morris in the case **Blue Metal Industries, Ltd and Another v. R.W. Dilley and Another** [1969] 3 All E.R. 437 @ 442 H "the Interpretation Act is a drafting convenience. It is not expected that it would change the character of legislation.

SUBMISSIONS OF BEHALF OF THE 1ST RESPONDENT

[15] In summary the 1st Respondent submitted that the application for leave for Judicial Review ought to be refused on the basis of:

i. Delay (breach of rule 56.6);
ii. Failure to give any good reason or any reason at all for the delay (breach of rule 56. (3)(f));
iii. The Applicant has no realistic prospect of success; and
iv. To grant leave would amount to a stay of proceedings and would cause substantial hardship to the 1st Respondent.

[16] Mrs. Martin-Swaby submitted that the Applicant failed to make the Application expeditiously as the application is being made some 6 years after the matter was first brought before the court in September, 2013.

[17] Counsel highlighted that the matter was ready for trial as far back as 2016 when the Applicant and another co-accused made an application for Judicial Review to challenge the decision of the Parish Court to allow the main witness to give his evidence by video link. Counsel noted that after the application was denied in the Supreme Court, the applicant's co-defendant made an application for leave to apply to the Court of Appeal. The Court of Appeal in refusing to grant the application handed down judgment in the matter on the 8th February, 2019. Counsel's contention is that at the time when the first application for Judicial Review was made the Applicant failed to assert any challenge to the validity of the

charges at that time. She contends that the application is only an exercise in furthering the delay of the trial of the matter.

[18] On the point of delay Mrs. Martin-Swaby relied on the case of **Andrew Finn-Kelcey v Milton Keynes Council** [2008] EWCA Civ 1067 where the Court highlighted that the two requirements as set out in paragraphs (a) and (b) of the rules are separate and independent of each other, in that, filing for leave to apply for judicial review within 3 months does not necessarily mean that the party acted promptly. The Court went on to note that the importance of the need to act promptly is because these decisions do not only affect the parties to the matter but the public at large and people need to know that the decisions are valid so that they can plan their lives accordingly.

[19] Counsel also noted that no explanation nor reason was given for the delay. The Court therefore without any proper explanation could not entertain nor would have any basis to grant an extension of time to the Applicant.

[20] Mrs. Martin Swaby submitted to the Court the case of **Sharma v Brown-Antoine and others** [2007] 1 WLR 780, in particular paragraph 14 which laid down the test to be applied by the Court in granting leave for judicial review. It is her contention that in such applications the Court must ask itself if there is an arguable ground for judicial review having a realistic prospect of success. The 1st Respondent's submission is that the Applicant does not satisfy the test of having an arguable case with a realistic prospect of success.

[21] The 1st Respondent highlighted the fact that **POCA** only relates to Offences which occurred on or after the appointed day which is the 30th May, 2007 whilst the offences for which the Applicant is charged occurred between the years of 1999-2005. It was submitted that given that **POCA** has no retroactivity clause, therefore section 25(2) of the **Interpretation Act**, 1968 should be applied in giving effect to the relevant provisions of the repealed **MLA.**

Preliminary point

[22] Mrs. Faith Hall on behalf of the 2nd Respondent, Her Honour Mrs. Sandria Wong-Small submitted that the learned Senior Judge of the Parish Court of Saint James should not be a party to this claim. It was her view that when one looked at the orders being sought by the Applicant in his Notice of Application for Leave to apply for Judicial Review he had failed to state any complaint being made in relation to any decision of the Honourable Parish Court Judge. She submitted that is what is required and which would form the grounds upon which the Parish Court Judge could be rightly named as a Respondent in these proceedings.

[23] The Applicant did not state anywhere in the documents placed before the Court that he was challenging any decision made by the 2nd Respondent. Instead, the entire application seeks to challenge the decision of the 1st Respondent to prosecute the Applicant on an information which Counsel for the Applicant described as illegal, null and void.

[24] Mr. Wildman in response submitted that he having made an application to the Court and made these submissions to the Learned Parish Court Judge which she refused. The Applicant was seeking to have the decision of the Judge to continue the trial reviewed.

[25] However, on perusal of the Notice of Application for Leave to apply for Judicial review filed on September 19, 2019 (as outlined in paragraph 2) I can see no basis on which Her Honour Mrs. Sandria Wong-Small is named as a respondent in this matter as the focus of the Orders being sought is on the charges that have been laid against the Applicant. I have therefore come to the conclusion that the 2nd Respondent ought not to have been named as a party to these proceedings and accordingly the case is struck out as against the 2nd Respondent.

ISSUES

1. **Whether the application for leave for Judicial Review was made promptly?**
2. **Whether the applicant has an arguable case with a realistic prospect of success?**
3. **Whether there are any alternate remedies available to the Applicant?**

LAW AND ANALYSIS

[26] Judicial Review is a remedy of last resort, whereby the court is called upon to exercise its inherent jurisdiction to supervise the functions and decisions of public bodies and inferior courts to ensure that their decision making process is free from illegality, irrationality and procedural impropriety. The Court's inherent jurisdiction should not be exercised on a whim, rather there are rules and well established case law which guide the court's supervisory function in this arena.

[27] Pursuant to Civil Procedure Rules, in particular, **CPR 56**.**3(1)** and **56.6** a person wishing to apply for judicial review must first obtain leave and in so doing, they must act promptly and at the very least ensure that they apply for leave within three months from the date when the grounds for the application first arose.

[28] **CPR 56.6** sets out the requirements for making an application for leave to apply for judicial review. That rule provides that:

> *56.6 (1) An application for leave to apply for judicial review must be made promptly and in any event within three months from the date when the grounds for the application first arose.*
>
> *(2) However the court may extend time if good reason for doing so is shown.*
>
> *(3) Where leave is sought to apply for an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date on which*

> *grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceedings.*
>
> *(4) Paragraphs (1) to (3) are without prejudice to any time limit imposed by any enactment.*
>
> *(5) When considering whether to refuse leave or grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to:*
>
> *(a) cause substantial hardship to or substantially prejudice the rights of any person; or*
>
> *(b) be detrimental to good administration.*

The Need to Act Promptly

[29] This issue of delay is a pivotal point when considering whether to grant leave to apply for judicial review. Campbell J spoke on the issue of delay in **Miguel Pine v Commissioner of Police** [2015] JMSC Civ. 182 at paragraph 48 when he expressed as follows:

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

[30] In the case **Finn-Kelcey v Milton Keynes Council**, **supra**, which was relied on by the 1st Respondent a similar point was enunciated by the Court. It was noted that making an application within 3 months does not necessarily mean that the application was made promptly. The court examined the English equivalent to rule 56.6(1) of the **CPR** and noted that the rule has two components which should be considered separately. On the one hand the court should consider whether the application was made within 3 months, the court is then required to consider a separate issue, which is whether in the circumstance, it can be said that the Applicant acted promptly even though the application was made within the 3 month period.

When did time begin to run

[31] In determining whether the application was made promptly the Court must first determine when time began to run. **CPR** 56.6(3) provides that the date when time begins to run is "*the date on which grounds for the application first arose*.*"*

[32] As noted earlier, Counsel for the Applicant submitted that the application was made in time as time began to run from the date when the trial began as opposed to the date when the information was first laid against the Applicant. The 1st Respondent argued that time began to run over six (6) years ago when the matter was first brought before the Court on September 5, 2013.

[33] Counsel for the Applicant relied on the case of **Regina (Burkett) v Hammersmith and Fulham London Borough Council and another** - [2002] 1 WLR 1593 to support his point that time began to run from the date of the trial. The brief facts of the case are that on the **15 September 1999** the local planning authority passed a resolution conditionally authorising the grant of planning permission provided that certain condition precedents were met. On **12 May 2000,** the agreement was completed and the planning permission was granted. The relevant applicants in that case had sought permission on 6 April 2000 to apply for judicial review of the local planning authority's resolution of **15 September 1999**. At first instant, leave was refused on the merits and on the ground of their delay in applying. The applicants made a renewed application for leave to apply for Judicial Review on the on **29 June 2000, *this time they sought to review the grant itself***. Again, at first instant the Applicants were refused leave to apply for judicial review on the ground of delay. The court found that the date when grounds for the application had first arose had been the date of the local planning authority's resolution of **15 September 1999**. The Court of Appeal gave the Applicants permission to appeal from that decision but dismissed the appeal. The matter was then brought before the House of Lords. The House granted the appeal and ruled that time began to run from the date of the grant itself and not the date of the passing of the resolution.

[34] It is my view that the case of **Regina (Burkett) v Hammersmith and Fulham London Borough Council and another**, **supra,** is highly distinguishable from the case at bar. The first distinction is that the relevant appellant in the **Regina (Burkett) v Hammersmith case** did not seek to challenge the resolution as counsel contends. Instead, the application was amended to challenge the grant of the planning permission itself. As Lord Slynn of Hadley noted at paragraph 4 of the judgment *"**it is clear that if the challenge is to the resolution (as it may be) time runs from that date,** but the question on the present appeal is whether, if the application is amended to challenge the grant of the planning permission rather than the resolution time runs from 15 September 1999 or 12 May 2000. In my opinion, for reasons given by Lord Steyn, **where there is a challenge to the grant itself, time runs from the date of the grant and not the date of the resolution.***" **[Emphasis mine]**

[35] The second distinction is that learned Counsel for the Applicant failed to consider the judgment of the House of Lords on a whole and the special policy considerations that drove to court to reason as they did. On page 1604 at paragraph 32 of the judgment Lord Steyn opined as follows:

> *"**It is common ground that the resolution by itself created no legal rights.** Only upon the fulfilment of both conditions precedent, and the grant of planning permission, did rights and obligations as between the local authority, the developer and affected individuals come into existence. Until all these things had happened the resolution was revocable not by the designated official but by the local authority itself." **[Emphasis mine]***

[36] When one compares the dicta of Lord Steyn in the aforementioned case to the facts in the instant case, it cannot be said that at the time when the information was laid there was no creation of any legal rights or obligations. In fact, the contrary is true, at the time when the information was laid, the applicant's right to a fair trial and the right to be tried for only an offence known to law must have been sufficiently provoked to lead his attorney to challenge the application at that time or as soon thereafter as was reasonably practicable. In the circumstance, the delay

of 6 years is manifestly excessive and failure to offer a reason for the delay only exasperates the situation.

Whether the Applicant has an arguable ground with a realistic prospect of success

[37] Delay is not a complete bar to an application for leave to apply for Judicial Review. **CPR 56.6(2)** provides that the Court may extend time if good reason for doing so is shown. There are several factors that the court will take into consideration when deciding whether there are good reasons for doing so. One such factor is the reason for the delay.

[38] Based on the submissions of learned Counsel Mr. Wildman that there is no delay it is not surprising that the Applicant has not sought an extension of time and has offered absolutely no reason why the application was not made until 6 years after the information was laid.

[39] I therefore turn to a second factor which the Court should consider, that is, whether the Applicant has an arguable case with a realistic prospect of success.

[40] The test to be applied by the court in determining whether to grant leave to apply for judicial review has been set out in the Privy Council decision of **Sharma v Brown Antoine** [2007] 1 WLR 780. At paragraph 14 (4) (page 787) of the joint judgment of Lord Bingham of Cornhill and Lord Walker of Gestingthorpe their Lordships noted that the test to be applied is whether the Applicant has an arguable case with a realistic prospect of success. Their Lordships expressed that:

> *"**The ordinary rule now is that the court will refuse leave to claim judicial review unless satisfied that there is an arguable ground for judicial review having a realistic prospect of success and not subject to a discretionary bar such as delay or an alternative remedy**: see* R v Legal Aid Board, Ex p Hughes *(1992) 5 Admin LR 623, 628 and* Fordham, Judicial Review Handbook *4th ed. (2004), p 426. But arguability cannot be judged without reference to the nature and gravity of the issue to be argued. It is a test which is flexible in its application. As the English Court of Appeal recently said with reference to the civil standard of proof in* R (N) v Mental

> Health Review Tribunal (Northern Region) *[2006] QB 468, para 62, in a passage applicable, mutatis mutandis, to arguability:*
>
> *"the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability), but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."*
>
> ***It is not enough that a case is potentially arguable: an applicant cannot plead potential arguability to "justify the grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen":*** Matalulu v Director of Public Prosecutions *[2003] 4 LRC 712, 733."* ***[Emphasis mine]***

[41] It is common ground that **POCA** repealed the **MLA** and it is also agreed that **POCA** has no retroactivity clause. **S 2(10) of POCA** provides as follows:

> *"Nothing in section 5 (making of order, 6 (criminal lifestyle), 7 (conduct and benefit), 8 (assumptions for determining benefit from general criminal conduct), 9 (effect of forfeiture order), 10 (voidable transfers), 20 (reconsiderations of case where no order is made), 21(reconsideration of benefit where no order was made), 22 (reconsideration of benefit after order is made) or 30 (court's power on appeal)* ***refers to conduct occurring, offences committed or property transferred or obtained, before the 30th May, 2007." [Emphasis mine]***

[42] It therefore begs the question whether with the passing of the **POCA,** Parliament intended to grant immunity for all relevant offences which were committed prior to May, 2007. I find that this could not have been the interpretation that Parliament intended. Rather I find that sufficient safeguards have been implemented by virtue of **s 25(2) of the Interpretation Act**, 1968 to prevent against what would appear to be blatant absurdity. **S 25(2) of the Interpretation Act,** 1968 provides as follows**:**

> *"25 (2) Where any Act repeals any other enactment, then****, unless the contrary intention appears****, the repeal shall not-*
>
> > *(a) revive anything not in force or existing at the time at which the repeal takes effect; or*

> *(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or*
>
> *(c) affect any right, privilege, obligation, or liability, acquired, accrued, or incurred, under any enactment so repealed; or*
>
> *(d) affect any penalty, fine, forfeiture, or punishment, incurred in respect of any offence committed against any enactment so repealed; or*
>
> *(e) affect any investigation, legal proceedings, or remedy, in respect of any such right, privilege, obligation, liability, penalty, fine, forfeiture, or punishment, as aforesaid,*
>
> ***and any such investigation, legal proceeding, or remedy, may be instituted, continued, or enforced, and any such penalty, fine, forfeiture or punishment may be imposed, as if the repealing Act had not been passed." [Emphasis mine]***

[43] Learned Counsel for the Applicant argued that the **Interpretation Act**, 1968 should not be applied in this situation and he has made the assertion by stating that "*there is nothing to be interpreted*.". I do not agree with Counsel for the Applicant and find that the correct view is that of 1st Respondent, that is, given that **POCA** does not contain a retroactivity clause, the Court must look to the **Interpretation Act**, 1968so as to construe the effect of the repeal.

[44] It is my considered conclusion that the applicant was rightly charged for the offences allegedly committed prior to May 30th 2007 under the **MLA.** That by virtue of s 25(2) of the **Interpretation Act**, 1968 it is clear that where no contrary intention is shown by the new legislation, the rights, liabilities, obligations remain and may be instituted, continued or enforced as if the repealing Act had not been passed. Based on the forgoing, I am of the view that Applicant has not satisfied the required test that he has an arguable ground with a realistic prospect of success.

Whether the Applicant has an alternate remedy available

[45] In the case of **Glencore Energy UK Ltd v Revenue and Customs Commissioner**s [2017] EWHC 1476 (Admin) Green J expressed that the general principle as it relates to alternate remedy is as follows:

> *"The basic principle is that judicial review is a remedy of last resort such that where an alternative remedy exists that should be exhausted before any application for permission to apply for judicial review is made. Case law indicates that where a statutory alternative exists, granting permission to claim judicial review should be exceptional. The rule is not however invariable and where an alternative remedy is nonetheless ineffective or inappropriate to address the complaints being properly advanced then judicial review may still lie."*

[46] The view as expressed by Green J is of equal bearing in Jamaica. In the Jamaican Court of Appeal decision of **Independent Commission of Investigations v Everton Tabannah and Worrell Latchman** [2015] JMCA Civ 54 Brooks J.A. noted at paragraph 62 that:

> *"It is unnecessary to decide definitively in this judgment whether rule 56.3 of the CPR allows for leave to apply for judicial review where an alternative remedy exists. A reading of the rule certainly suggests, as the learned judge held, that at the leave stage the existence of an alternative remedy is not an absolute bar to the grant of leave. The relevant part of rule 56.3(3) states:*
>
> > *"The application [for leave to apply for judicial review] 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. …"*
>
> *The issue is whether the alternative is more suitable than judicial review."*

[47] In the instant case, the Applicant has a statutory alternative remedy which is available to him in the event that the Parish Court should reach a decision which is not favourable to him, that is, the Applicant can always appeal the decision. In determining whether this is the most appropriate avenue and whether judicial review should be favoured over an appeal I turn to much cited Privy Council decision of **Sharma v Brown-Antoine and others, supra,** where at paragraph

[34] of the joint judgment of Baroness Hale of Richmond and Lord Carwell and Lord Mance it was expressed that:

> *"viewing the matter generally, the present is clearly a case where all issues should if possible be resolved in one set of proceedings. There are potential disadvantages for all concerned, including the public, in a scenario of which one outcome might be long and quite probably public judicial review proceedings followed by criminal proceedings. We add that, in our view, it will in a single set of criminal proceedings be easier to identify and address in the appropriate way the different issues likely to arise."*

[48] Their Lordships went on to note that a criminal judge would be better placed to address the different potential issues which may arise. In light of the foregoing, I have come to the conclusion that this is not a case where leave to apply for judicial review ought to be granted. Only where there is a clear case of abuse of power will this Court interference with the decision making process of the Court below. To allow judicial review in circumstances such as these would be contrary to good administration of Justice as it would open a flood gate for attorneys to petition the High court to resolve matters which can be adequately addressed by the sitting judge in the Parish Court. To my mind, the clear remedy where a Parish Court should err in their reasoning is to appeal the decision of that judge.

[49] Lord Diplock expressed in the celebrated case of **O'Reilly v Mackman** (1983) 2 AC 237 when his Lordship stated that;

> *"the public interest, in good administration, requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision of the authority has reached in purported exercise of decision making powers for any longer period than is absolutely necessary in fairness to the persons affected by the decision. "*

[50] In the case of **Fritz Pinnock, Ruel Reid v Financial Investigations Division** [2019] JMSC CIV 257, Sykes C.J stated at para 86

> ***"****The court cannot help but note the increasing frequency with which resort is had to the supervisory jurisdiction of the Supreme Court in respect of matters in the Parish Courts. This court wishes to say that applications of this type should be discouraged except in exceptional circumstances*

> *[87] It is this Court's considered view that where the legislature has conferred jurisdiction on an inferior court such as the Parish court it must be rare or exceptional for a superior court to grant declarations during the course of a trial or proceedings, regardless of the stage that those proceedings are, that may have the effect of undermining the authority of those courts. Once the matter is before the Parish Court then the matter ought to proceed along the normal course to completion. In the event of an adverse outcome then the remedy is by way of an appeal.*

[51] This Court adopts this view and concludes that the Applicant has not placed before this Court any exceptional or special circumstances that warrant the Supreme Court intervening. It appears that this is an exercise to use the Supreme Courts' supervisory powers as an "appellate Court" whilst the matter is in the middle of the trial that is before the Parish Court and this Court deems this approach to be an inappropriate.

DISPOSITION

1. It is determined the 2nd Respondent is not a proper party to this application and is struck out as a Respondent herein.

2. The application for leave to apply for Judicial Review is refused.

3. The Stay granted on 19th September, 2019 of the trial of **R v Robert Dunbar, Louis Smith, Delroy Gayle and Melford Daley** for the offences of Drug Trafficking and Money Laundering being held in the Parish Court of Saint James before Senior Parish Judge Wong-Small is lifted.

4. Costs awarded to the 1st Respondent to be taxed if not agreed.

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Hon. Mrs. S. Wolfe-Reece, J