IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

MISCELLANEOUS

SUIT NO. M130/2001

BETWEEN	TULLOCH ESTATE LIMITED	PLAINTIFF
A N D	INDUSTRIAL DISPUTES TRIBUNAL	DEFENDANT

Ms. G. Scott for plaintiff

Heard: 18th December, 2001 and 19th December, 2001

Campbell, J

The applicant, Tulloch Estate Limited, has filed an exparte notice pursuant to S564C of the Judicature (Civil Procedure Code), (Amendment) (Judicial Review) Rules, 1998 which provides as follows:

Application not to be made without leave

564C (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this section.

(2) An application for leave shall be made exparte to a judge by filing –

(A) notice containing a statement of:

(i) the name and description of the applicant,

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(i) the name and description of the applicant,

(ii) the relief sought and the grounds upon which it is sought,

(iii) the name and address of the applicant's attorney (if any) and

(B) an affidavit which verifies the fact relied on.

The notice seeks leave to apply for Judicial Review of an Order of the Industrial Disputes Tribunal (IDT) dated 28th June 2001. The application for Certiorari, is to have the IDT's Order squashed on the grounds that the IDT acted

(a) Without and/or in excess of its jurisdiction

(b) In such a manner that no such body properly directing itself on
Relevant law and acting reasonably could have reached the decision

(c) Failure to comply with the rules of natural justice

(d) Any further/additional grounds.

The IDT was considering a reference, by the Minister of Labour, under Section 11 of The Labour Relations and Industrial Disputes Act, to settle a dispute between Tulloch Estates Ltd (the

applicant), and the National Workers Union, over the dismissal of a Mr. Clinton Laing, an employee of the applicant.

Counsel submitted that the applicant needs only show "sufficient interest" on an application for leave. In support of her submission she relied on S.564c (8) of the Rules, which provide;

Locus standi of applicant

(8) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

And on the Supreme Court Practice (1997), 053/1 – 14/11 at page 854, where it is stated.

> "The overriding rule governing the standing of the applicant to apply for judicial review is that the court must consider that he "has a sufficient interest in the matter to which the application relates "....If the applicant has a direct personal interest in the relief he is seeking he will very likely be considered as having a sufficient interest in the matter to which the applicaion relates.....
> .... It should also be remembered that the requirement to establish a 'sufficient interest "must be shown at the stage of the exparte application for leave to apply for judicial review. At this stage the only question before the court is whether a sufficient interest has been shown to justify granting leave...."

Counsel's submission was that the applicant needs only demonstrate sufficient interest in order to prove locus standi; and

once locus standi has been proven, leave ought properly to be granted. With respect, such a submission is flawed. The nature of the prerogative orders are such that it is incumbent on applicants to satisfy the court of their standing, separate and apart from the merits of their case. The efforts of the court in determining who should have access to the court to make applications for judicial review is a threshold consideration.

Lord Diplocks' dictum on the issue of access for leave to apply for judicial review was stated in R v Inland Revenue Commissioners, ex p. National Federation of Self Employed and Small Business Ltd. (1982) AC617, at page 642h – 643;

> "The need for leave to start proceedings for remedies in public law is not new. It applied previously to applications for prerogative orders, though not to civil actions for injunctions and declarations. Its purpose is to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceeding of judicial review of it were actually pending even though misconceived."

The Supreme Court Practice 053/1 14/29 states:

> "The recommendation of the Law Commission, that an application for judicial review must be made in two stages, has been adopted and applied. Thus it is first necessary to apply for, and obtain leave, to move for

> judicial review, and only if and to the extent that such leave is granted will the court proceed to hear the substantive application for judicial review. The applicant for leave must;
>
> (a) have a 'sufficient interest'
>
> (b) have a case sufficiently arguable to merit investigation at a Substantive hearing
>
> (c) must apply for leave promptly

The Practice note to 053/1 – 14/30, identifies the reason for the hearing which is done at the stage of the application for leave,

(1) to eliminate at an early stage any applications which are either frivolous, vexatious, or hopeless.
(2) to ensure that an applicant is only allowed to proceed to a substantive hearing if the court is satisfied that there is a case fit for further consideration.

The burden of proof is naturally on the applicant for leave, in Lancashire County Council, ex p Huddlestone (1986) 2ALL ER 941, at page 945b Donaldson said:

> "If and when the applicant can satisfy a judge of the public law court that the facts disclosed by her are sufficient to entitle her to apply for judicial review..."

The Court of Appeal in the United Kingdom has offered guidance on the standard of proof that is required on an application for leave to seek judicial review. In the matter of R v Secretary of State for Home Department, ex p. Rukshanda Begun (1990) COD

107 CA ... The court directed that applications for leave for judicial review should be;

(a) refused where there was clearly no case

(b) granted where there was clearly an arguable case and

(c) adjourned for an inter parties hearing in an intermediate case.

In dealing specifically with a point of law, in R v Social Security Commissioner, ex p. Pattini (1993) 5 Administrative LR219 CA, the Court of Appeal reiterated that the burden is on the judicial review applicants to identify at the leave stage, a point of law, disclosing a prima facie case for intervention.

Section 564c (2) (B) of the Judicature (Civil Procedure Code) (Amendment) (Judicial Review) Rules, 1998, makes necessary an affidavit which verifies the facts relied on.

The affidavit of Roger Turner, filed in support of the notice fails to disclose any facts in support of the grounds in the notice, but it enumerates additional grounds, which the applicant is advised by his Counsel, could challenge the IDT's Award.

The applicant has failed to satisfy the court that there is a sufficiently arguable case to merit further investigation. Question of

merit aside, another important consideration was whether the applicant acted promptly.

One of the preconditions to the grant of Certiorari is that the applicant must have acted promptly.

Times for applying for judicial review

564D – (1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when the grounds for the application first arose (unless) the court considers that here is good reason for extending he period within which the application shall be made.

(2) where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.

(3) The preceding subsections are without prejudice to any statutory provision which as the effect of limiting the time within which an application for judicial review may be made.

The award which is sought to be impugned is dated 28th of June 2001. Although filed within the time allowed by the rules that govern these application, it was not filed until 24th September 2001. It should be noted that because of the nature of these applications expedition is an essential feature, and delay should be avoided. The need for certainity in public administration dictates that decision of public bodies be expeditiously reviewed." Lord Diplock, in O'Reilly v Mackman (1983) 2AC 237, said;

> "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."

Lord Goffe in examining the question of delay, intimated that an application although filed within the time stipulated by the rules may still fail to satisfy the criteria for promptness in R v Dairy Produce Quota Tribunal, ex parte Caswell (1990) 2 AC 738, he said;

> "When an application for leave to apply is not made promptly and in any event within three months, the court may refuse leave on the ground of delay unless it considers there is good reason for extending the period; but, even if it considers that there is such good reason, it may still refuse leave or (where leave has been granted) substantive relief, if in its opinion the granting of the relief sought would be likely to

> cause hardship or prejudice (as specified in section 31(6), or would be detrimental to good administration. I imagine that, on an ex parte application for leave to apply before a single judge, the question most likely to be considered by him, if there has been such delay, is whether there is a good reason for extending the period under rule 4 (1). Questions of hardship or prejudice, or detriment under section 31 (6) are, I imagine, unlikely to arise on an ex parte application when the necessary material would, in all probability, not be available to the judge."

.....The application for leave to apply for judicial review is dismissed.