

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA
CLAIM NO. DOMHCV2022/0214

BETWEEN:

KEVIN PATRICK ETIENNE

Applicant

-and-

THE CHIEF MAGISTRATE OF DOMINICA, CANDIA CARETTE GEORGE

Defendant

Before her ladyship, the Honourable Justice Jacqueline Josiah-Graham

Appearances: Dawn Yearwood – Stewart for the Applicant; and
Tameka Burton for the Respondent

2023: March 01
March 13
June 26

RULING

Application for leave to apply for judicial review

- [1] **JOSIAH-GRAHAM, J:** - These are a summary of the Court's reasons for its decision in this matter. The Court reserves the right to amplify these reasons in a fuller judgment in the event of an appeal if requested.
- [2] Before the Court is an application filed on the 15th of November, 2022 for leave to apply for judicial review for an Order of Prohibition and Certiorari to quash the Respondent's decision not to stay the proceedings in the Magisterial Matter of Police and Kevin Patrick Etienne DOMMCR 2022/06/2-A and DOMMCR 2022/06/2-B on the ground of abuse of the process.
- [3] The crux of the application for the stay is an alleged promise by the police to the Applicant through his Attorney at Law during the course of police investigations that he, the Applicant would not be prosecuted indictably but summarily only and further to release his girlfriend from custody only if he cooperates with the investigation and gives an accused statement.
- [4] In the appearance before the Respondent, the accused, charged indictably with gun-related offences, requested that he be heard on an abuse of process application after the charges were read to him. The application was granted by the Respondent. He asked for a stay of the proceedings on the basis of his allegation of manipulation by the Police during the investigative stage of the matter.

- [5] After hearing the Application, the Respondent made findings of no abuse of process in the case, and dismissed the application. A written decision evidencing the decision exhibited with the Affidavit in Support of the Application is before the Court.
- [6] In her Affidavit in Opposition to Leave filed on the 14th December, 2022 the Respondent avers that the application before her was not that there was a “promise not to prosecute”, but that there was a “promise to charge” the Applicant summarily and to release his girlfriend. The Respondent avers further that the giving of such a promise was disputed by the witnesses for the prosecution.
- [7] The basis of this application for leave to appeal appears to be two-fold in that the Applicant in his Affidavit in Support of the Application for Leave at paragraph 11 says “I relied on to my detriment and reneged on the same and this is an abuse of process which should have caused the Respondent to issue a stay of the proceedings as it would be unfair to have me tried in all the circumstance” and simultaneously, Counsel for the Applicant submits that the decision of the Respondent offends against the Court’s sense of justice and propriety to try the Applicant in the particular circumstances of this case.
- [8] The relevant facts of the case are as stated in the submissions filed on behalf of the Applicant. At paragraphs 4-8 of the Affidavit in Support of the Application filed 15th November, 2022 the Applicant sets out the circumstances which led to the promise being made to him by the police.
- [9] The Applicant alleges, that based on this alleged agreement, he the Applicant acted on the promise by fully cooperating with the police in their investigations by answering all questions posed to him and even writing his own accused statement in complete reliance on the promise. He states in his affidavit in support of the application at paragraph 13 that the charges against him were filed in breach of the agreement made with the investigating officers and will cause him to be prejudiced to the extent that a fair trial cannot be had and that the prosecution of the case against him is now abusive and ought to have been stayed. He avers further that the behavior of the police reeks of bad faith and manipulation of the process and undermines the moral integrity of the process.

Applicant’s submissions

- [10] Counsel for the Applicant submits that the findings of the Respondent were perverse and unreasonable in all the circumstances and should be the subject of judicial review hence leave should be granted for an order of prohibition to prevent the hearing of committal proceedings against the Applicant. Counsel argues that there is authority for the proposition that “if the police speak to the lawyer for the Accused and the information is communicated to the Accused who acts to his detriment then this is an abuse of process.

The case of **R v Carl Mason**¹ was cited as the authority for this proposition. In this case, it was held inter-alia that the trial judge had wrongly exercised his discretion when he failed to consider the deceit practiced on the Appellant and his solicitor for if he had done so he would have been bound to exclude the confession.

- [11] In submissions on behalf of the Applicant, Learned Counsel identified several instances which she alleges give rise to an arguable ground and contends that the Respondent Chief Magistrate, having heard all the evidence, gave a perverse decision, the said decision being against the weight of the evidence and accordingly, the proceedings are subject to review. With regard to the seriousness of the offence, Counsel for the Applicant cited the case of **R v Grant**² mentioned and referred to in Andrew Choo's text pages 127-128 as instructive.
- [12] In that case the accused was charged with murder and the police deliberately eavesdropped on a conversation that the accused had with his Solicitor. Though nothing was recovered which was of value to the Prosecution the police misconduct led to a stay of proceedings. The Court said that on the one hand it was the Court's duty to protect the public from crime, especially serious crime that consideration may militate against the refusal of a stay. However, they made it quite clear that the deliberate interference with the detained suspect's right to the confidence to the privileged communications with his solicitor, such as they have found was done, seriously undermines the rule of law and justice requires a stay on the grounds of abuse of process, notwithstanding the absence of prejudice.
- [13] Learned Counsel submits further that in any event, where police are speaking to a lawyer for the accused and hold out promises they are speaking to the accused: **See R v Carl Mason** 86 Cr. App R. 348. In that case, the Court stated that there was deceit practiced upon the appellant's solicitor. (See page 10). At the end of the case, Lord Justice Watkins stated thus " ... we think we ought to say that we hope never again to hear of deceit if such as this being practiced upon an accused person, and more particularly possibly on a solicitor whose duty it is to advise him, unfettered by false information from the police." Reference to the case was given to show that where police practice deceit on a solicitor the effect of this is that they hoodwinked both solicitor and client.
- [14] On the principle of alternative remedy, learned Counsel for the Applicant cites the book, Commonwealth Caribbean Administrative Law where the author³ references the Cayman Island Court of Appeal's decision of **Kirk Freeport Plaza Ltd v Immigration Board**⁴ for the proposition that the Court has the discretion to

¹ [1988] 86 Cr App R 349

² (2005) EWCA Crim 1089

³ Ventose, Eddy: Commonwealth Caribbean Administrative Law, Routledge; at pages 103 to 104

⁴ KY 1997 CA 5

determine whether judicial review is the most effective and convenient remedy for deciding the issues involved in this matter. The author of the text posited that it is not automatic that where an alternative remedy exists that it must be ventilated. The author observed that the cases suggest that in certain circumstances judicial review may be granted where there is an alternative remedy of appeal. There is a discretion in the judge to decide the appropriate remedy...". In the case "the court concluded that in its view judicial review was the most effective and convenient remedy for deciding the issues which were involved in the matter".

- [15] Counsel claims as a result that to continue the proceedings is an abuse of the process of the Court because it offends the Court's sense of justice and propriety to be able to be asked to try the accused in the circumstances of this particular case, there being an arguable case with a realistic prospect of success.

Respondent's Submissions

- [16] The Respondent opposes the application for leave on the grounds that the Applicant does not have an arguable case with a realistic prospect of success and further that the Applicant has in the criminal proceedings, alternative remedies available to him.
- [17] In relation to the argument of no good arguable case, Learned Counsel for the Respondent contends that the Chief Magistrate in her assessment of the evidence correctly found that the Applicant's contention and the evidence on his behalf was not that there was a promise not to prosecute, but a promise of charges that would attract lesser penalties. Learned Counsel asserts that based on the evidence before the Respondent, it was correct and open to her to find that the Applicant always knew that he would be facing charges for the firearm offences and accordingly, the Respondent's findings is not unreasonable, neither is it one that a reasonable person acting reasonably could not have made it.
- [18] The Respondent argues further that the part of the Applicant's case that the oral ruling of the Respondent differs from the written ruling is unsupported by evidence; being only the belief of the affiant who, in her affidavit states this to be true, was in fact not present when the ruling was given. Counsel also submits that for the reneging on a promise not to prosecute to amount to an abuse of process, there must be a clear and unequivocal representation upon which the Defendant relies to his detriment, and even so, there are circumstances where it would be an abuse to proceed. She argued that competing public interest must be balanced where it is usually in the public's interest that those reasonably suspected of criminal conduct be brought to trial. Counsel relied on **Blackstone's Criminal Practice**⁵ to assert that it is only in rare circumstances that it would be offensive to justice to give effect to this public interest. Counsel also cites

⁵ Blackstone's Criminal Practice (2003) Part D/Section D3/D3.94

the case of **Vynette Frederick v Chief of Police**⁶ where it was held that the Court is entitled to weigh, in any particular case, all the facts and circumstances and conclude whether its process has been or is being abused to support the contention that there is no arguable case with a reasonable prospect of success.

[19] To the second limb of the test for leave to apply for judicial review, whether there is an alternative remedy available, the Respondent vigorously opposes the application. The Respondent contends that leave to apply for judicial review ought not to be granted where there is the discretionary bar or an alternative remedy citing, in support of the submission, the case of **Sharma v Browne-Antoine**⁷. In that case their Lordships were of the view that the criminal procedure provided adequate safeguards to the complaints made by the applicant. Learned Counsel for the Respondent similarly submitted that in the case at bar, judicial review is not an appropriate remedy as the criminal procedure provides an adequate remedy for the Applicant.

[20] As judicial review is concerned not with the merit of a decision by a public body but with the lawfulness of the decision-making process itself, at the point of considering an application for permission to apply for judicial review, this Court will be concerned with identifying whether or not one or more grounds of judicial review may be established.

LAW:

[21] The doctrine of judicial review holds that the courts are vested with the authority to review laws, decisions, acts and omissions of public authorities to determine the legitimacy of the acts within their given powers. In applications for leave to apply for judicial review, it is well settled that the Court is concerned only to examine whether the applicant has an arguable ground for judicial review that has a realistic prospect of success. The Applicant must also show that his ground is not the subject of a discretionary bar such as delay or an alternative remedy: see governing principle (4) identified in **Sharma v Brown-Antoine**⁸

[22] The principle is properly understood to mean that both limbs must be satisfied before an application for leave to apply for judicial review is granted. **Part 56.3(1) of the Civil Procedure Rules, 2000 (CPR)** provides that a person seeking judicial review must first obtain leave to do so. **Lord Bingham in R v Secretary of State for Trade and Industry exp Eastaway** said “the requirement of permission to apply for judicial review is imposed primarily to protect public bodies against weak and vexatious claims.”⁹ This is supported by **De Smith's Judicial Review**¹⁰ which states that the purpose of an application for leave to

⁶ SVGMC2014/0009 delivered August 3, 2017 [2]

⁷ [2006] UKPC 57; [2007] 1 WLR 780, para 14

⁸ Ibid.

⁹ [2000] 1WLR 2222, 2227H

¹⁰ Smith's Judicial Review, 6th Edition, p. 839, para. 16-045

bring judicial review proceedings includes:

1. To safeguard public authorities by deterring or eliminating ill-founded claims without the need for a full hearing of the matter;
2. To provide a mechanism for the efficient management of the ever-growing judicial review caseload, as a large number of cases may be disposed of at this stage with the minimum use of the court's limited resources; and
3. To enable an applicant to expeditiously and cheaply obtain the views of the High Court on the merits of his application.

[23] In the determination, the threshold for the grant of leave to apply for judicial review is low. This low threshold would usually not be met "if a court were confident at the leave stage that the legal position was entirely clear and to the effect that the claim could not succeed": see **Attorney General v Ayers-Caesar** [2019] UKPC 44 at para 2. Accordingly, the Court is mindful that it is called upon not to review the merits of the Chief Magistrate's decision but rather to consider whether the Applicant has made out a prima facie case that the procedure adopted by the Respondent was unfair, unreasonable, or in violation of the principles of natural justice. The primary facts that are relevant for consideration, therefore, are those in relation to the series of events which culminated with the Respondent's decision.

[24] In relation to the law on abuse of process, the principles, well-established in a number of cases, is succinctly explained in **R v Maxwell**¹¹ and **Warren v AG for the Bailiwick of Jersey**¹². The court explained the power to stay proceedings is in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. The two categories are distinct and should be considered separately. Fairness is the focus of the first category, the second focuses on the Court's sense of justice and propriety and public confidence in the criminal justice system.¹³ At paragraph [13] **Lord Dyson**, in explaining the two categories of cases opined the manner in which the court can exercise its jurisdiction thus:

"It is well established that the court has the power to stay proceedings in two categories of case, namely (i) where it will be impossible to give the accused a fair trial, and (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay proceedings without more. No question of the balancing of competing interests arises. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will offend the court's sense of justice and propriety (per Lord Lowry in **R v Horseferry Road Magistrates' Court, ex p Bennett** [1994] 1 AC 42 (at 74G)) or **will undermine public confidence in the criminal justice system and bring it into disrepute** (per Lord Steyn in **Latif** [1996] 1 WLR 104 (at 112F)) [emphasis mine]."

¹¹ [2011] 1 WLR 1837

¹² [2012] 1 AC 22

¹³ *Curtis Francis Warren and others (Appellant) v Her Majesty's Attorney General for the Bailiwick of Jersey (Respondent)* [2011] UKPC 10 [35]

[25] In **Warren v AG of Jersey**, cited earlier, **Lord Kerr** at **paragraph 83** listed a summary of a number of principles emerging from recent case law on abuse of process which I find helpful:

“In **R v Latif** [1996] 1 WLR 104, 112H Lord Steyn suggested that the law was settled in relation to what has been described as the second category of cases in which an abuse of process application may be made. That may have been an optimistic forecast, as this case and the recent decision of the Supreme Court in **R v Maxwell** [2010] UKSC 48 demonstrates. Be that as it may, it appears to me that a number of principles have emerged from recent jurisprudence. These may be stated as follows: —

- (i) the principal purpose of the examination, in the second category of cases, of the question whether proceedings should be stayed is to determine whether this is necessary in order to protect the integrity of the criminal justice system – see **R v Maxwell** at para 13. This principle has been expressed in various, slightly differing ways in a number of judgments on the subject. Thus, in **R v Horseferry Road Magistrates' Court, Ex p Bennett** [1994] 1 AC 42 at 74G Lord Lowry said that a stay will be granted where a trial would “offend the court's sense of justice and propriety.” In **Latif** Lord Steyn stated, at p 112F, that a stay should be granted where to allow the trial to proceed would “undermine public confidence in the criminal justice system and bring it into disrepute”. In **R v Mullen** [2000] QB 520 Rose LJ said, at p 534C-D, that a stay should be granted notwithstanding the certainty of an accused's guilt where to refuse it would lead to “the degradation of the lawful administration of justice”. **I consider that it should now be recognised that the best way to describe this basis for a stay is that chosen by Lord Dyson in R v Maxwell – that it should be granted where necessary to protect the integrity of the criminal justice system.**
- (ii) **A balancing of interests should be conducted in deciding whether a stay is required to fulfil this primary purpose.** As Lord Steyn observed in **Latif**, the various factors that might arise in the range of cases in which this issue may have to be considered are potentially extensive and it is unwise to attempt to list these exhaustively or, as Lord Dyson has said in para 26 of his judgment in this appeal, to rigidly categorise those cases in which a stay will be granted. But where a stay is being considered in order to protect the integrity of the criminal justice system, “the public interest in ensuring that those that are charged with grave crimes should be tried” will always weigh in the balance — Lord Steyn in **Latif** at 113A-B. **Lord Steyn mentioned that a possible countervailing factor was that the impression should not be created that the court is giving its sanction to an approach that the end justifies any means. With the emphasis that is given in this and other cases to statements that prosecutorial or police misbehaviour will never be condoned, this may not be as significant a consideration as heretofore.** Other factors that will commonly call for evaluation are those referred to in the passage from the book by Professor Choo, *Abuse of Process and Judicial Stays of Criminal Proceedings*, 2nd ed (2008), quoted by Lord Dyson in para 24 of his judgment but, again, these should not be regarded as exhaustive.
- (iii) The “but for” factor (i.e., where it can be shown that the defendant would not have stood trial but for executive abuse of power) is merely one of various matters that will influence the outcome of the inquiry as to whether a stay should be granted. It is not necessarily determinative of that issue.
- (iv) **A stay should not be ordered for the purpose of punishing or disciplining prosecutorial or police misconduct. The focus should always be on whether the stay is required in order to safeguard the integrity of the criminal justice system.** [emphasis added]

[26] Lastly, in **R v Crawley**¹⁴, it was noted that there is a high threshold for granting a stay of proceedings and that it should only be done in exceptional circumstances. At **paragraphs 18-19**, **Sir Brian Leveson** reasoned thus:

“Furthermore, **it is clear from the authorities and beyond argument that there is a strong public interest in the prosecution of crime and in ensuring that those charged with serious criminal offences are tried. Ordering a stay of proceedings, which in criminal law is effectively a permanent remedy, is thus a remedy of last resort.** As Lord Bingham of Cornhill observed in **Attorney General’s Reference** (No.2 of 2001) *supra* (at [24G]):

“The public interest in the final determination of criminal charges requires that such a charge should not be stayed or dismissed if any lesser remedy will be just and proportionate in all the circumstances.”

[27] The threshold is, therefore, quite high.

[28] As such, this Court ought to grant permission, only if satisfied that the papers disclose 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, which merits full investigation at a full oral hearing with all the parties and all the relevant evidence.

ANALYSIS

[29] The Court has broad discretion as to whether or not to grant leave to apply for judicial review. An applicant for judicial review must satisfy the Court about the availability or non-availability of any alternative form of redress. Notably, an exercise of balancing the interests of justice in granting a stay of proceedings for an abuse of process by the Court is only relevant in relation to where it offends the Court’s sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. Importantly, also, is that the test for leave to apply for judicial review requires that the Court be satisfied whether there is a discretionary bar of alternative remedy. If an alternative form of redress exists, the applicant must indicate why judicial review is the more appropriate remedy and why the alternative has not been pursued.

[30] There is no doubt that before the Court can grant a stay on the grounds of the alleged agreement, findings of the facts on the actions of the police would have to be made. Further, there would no doubt be the issue of the legality of such an agreement. At this stage, none of these facts having been resolved and the prosecution not having closed its case, on the authorities, judicial review is not well suited to the determination of disputed questions of fact.

¹⁴ [2014] 2 Cr App R 16

- [31] With respect to the test set out in **Sharma v Brown-Antoine**, it is clear that there is grave dispute of facts and rival contentions between the Applicant, his then legal Counsel, and the investigating officer. Counsel for the Applicant pointed to various aspects of bad faith, unfairness, abuse, manipulation, and undermining of the moral integrity of the process to which the Counsel for the Respondent submits that the Applicant, therefore, seeks review not only of the Respondent's decision but also a review of whether the alleged reneging of the promised charges that attracted lesser penalties amounted to an abuse of process to justify a permanent stay of the proceedings.
- [32] The Court agrees with the Respondent. At this stage, these different contentions between the Applicant and the investigating officer and the Applicant's former counsel require resolution and findings of facts for which judicial review is not well suited. Proceedings should only be stayed before fact-finding as an abuse of process only if no useful purpose could be served by finding the facts: **The State v Dularie Peters HC No 24 of 1994; CA Crim No 34 of 2008**. Even further, the Chief Magistrate has it within her powers to assess whether the promise is unequivocal: **Mansfield v DPP [2021] EWHC 2938 (Admin)**.
- [33] In the Court's duty to protect the integrity of the justice system and to guard against situations likely to bring it into disrepute and to undermine public confidence, this is a balancing exercise. In the case of **R v Grant** cited by Counsel for the Applicant on the standard of proof, the Privy Counsel in the case of **Warren v AG of Jersey** held that when considering whether to grant a stay on the premise that it offends the Court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case, Lord Dyson held:
- "the balance must always be struck between the public interest in ensuring that those who are accused of serious crimes should be tried and the competing public interest in ensuring that executive misconduct does not undermine public confidence in the criminal justice system and bring it into disrepute. Whilst in abduction and entrapment cases, the court will generally conclude that the balance favours a stay, there are, however, no hard edged rules or rigid classifications: [21]-[26]. Further, the fact that but for the abuse of executive power, there would have been no trial is a relevant factor to be taken into account in conducting the balancing exercise, but no more than that. It is not necessarily determinative: [28]-[30]. **In light of this, the decision of the Court of Appeal of England and Wales in R v Grant [2005] EWCA Crim 1089 was wrong.** In particular, the Privy Council emphasises that a stay should not be granted in order to express the court's disapproval of the police misconduct and/or to discipline the police.¹⁵
- [34] The Privy Council emphasised that a stay should not be granted in order to express the Court's disapproval of the police misconduct and/or to discipline the police. Indeed, the idea that notions of abuse of process might be an appropriate means to constrain prosecuting authorities involves the Court in evaluations which

¹⁵ Paragraphs 31-37

the Courts are unfitted to undertake and unsurprisingly, the Courts have generally refused to undertake¹⁶. This does not mean that prosecutorial misconduct should be condoned or ignored (**See Warren v AG of Jersey** paras [45], [61]-[63], [70]-[71], [81]-[82] where their Lordships stressed its condemnation of the police misconduct in the case. They stated “it was a sustained and deliberate act of law-breaking. The outcome of this appeal should not be seen to condone or overlook such behaviour. It should not be taken by Jersey police as any kind of signal that they can repeat this kind of conduct with impunity. Indeed, future repetition of such behaviour may well tip the balance in favour of granting a stay.”

- [35] The law is clear that where a stay is being considered to protect the integrity of the justice system, the public interest in the final determination of serious criminal charges must always weigh in the balance. I note the importance of determination of serious criminal charges to both public and the accused as stated by Mason CJ in the case of **Jago v District Court of New South Wales**:

“The community has an immediate interest in the administration of criminal justice to guarantee peace and order in society. The victims of crime, who are not ordinarily parties to prosecutions on indictment and whose interests generally go unacknowledged within the criminal justice system, must be able to see that justice is done if they are not to be driven to self-help to rectify their grievances. Refusal by a court to try a case does not undo the anxiety and disability which the pendency of a criminal charge produces, but it leaves the Accused with an irremovable cloud of suspicion over his head. And it is likely to engender a festering sense of injustice on the part of the community and the victim. The reasons for granting stay orders, which are as good as certificates of immunity, would be difficult of explanation for they would be largely discretionary. If permanent stay orders were to become commonplace, it would not be long before courts would forfeit public confidence. The granting of orders for permanent stays would inspire cynicism, if not suspicion, in the public mind.”

- [36] In addition, the Applicant needs to satisfy the Court that he has an arguable case that is not subject to any discretionary bar such as delay or an alternative remedy. The Privy Council in the **Sharma v Browne Antoine et al** observed in relation to the test to be applied on an application for permission to apply for judicial review:

“...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. 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.”¹⁷

- [37] On the evidence, the Applicant faces the hurdle of alternative remedies. The Court, therefore, agrees and accepts the submission of the Respondent on the issue of alternative remedy. The Applicant has available to him alternative remedies which bar this application for leave to apply for judicial review. The first and

¹⁶ Mason CJ in *Jago v District Court of New South Wales* [1989] HCA 46, an appeal from the Supreme Court of New South Wales, para 28

¹⁷ [2006] UKPC 57 at page 787 paragraph E

most obvious is to await the determination of the criminal matter. The criminal procedure provides avenues for the Applicant to challenge the accused statement. At the end of the prosecution's case, the Applicant would have the opportunity to pursue the Court to rule in his favour. He can also seek to judicially review any decision to commit him to stand trial on the charges. This step is fundamental and determinative.

[38] Even if the Applicant is committed to stand trial at the assizes, he still has options to pursue his application for a stay. He can make representation to the DPP not to file an indictment. This second option is equally fundamental.

[39] Even further, if an indictment is filed, the Applicant has the opportunity to make a motion to quash the indictment before the assizes. An appeal would also exist: **R v Carl Mason**¹⁸.

[40] The Court, therefore, accepts the submission by the Respondent that the Applicant appears to invite the Court to substitute its own decision for that of the Chief Magistrate and to find that there was impropriety on the part of the Police, who at the time of investigating the matter, acted in such a manner that it ought to offend the Court's sensibilities and amount to an affront of justice.¹⁹

[41] The Court is resolute that in exercising its supervisory jurisdiction it has to be mindful of its jurisdiction and the fact that there are alternative remedies available to the Applicant. As stated in the case of **Matalula v Director of Public Prosecutions**²⁰,

"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 process of the court may strengthen".

[42] As summarized by Counsel for the Applicant, the two accused appeared before the Respondent charged indictably with gun-related offences. It is the Applicant's case that his attorney was promised that if he gave an accused statement he would be charged summarily and his girlfriend would not be charged. The prosecution disputed that version of events. The evidence of the investigating officer, a Sergeant of Police, was that consideration would be given to laying summary charges but the final decision rested with the higher command.

[43] Allowing the Applicant to pursue this claim for leave at this stage will permit him to leapfrog over the safeguards within the criminal justice system where no exceptional circumstances exist on the evidence. The Court is mindful that it is only in exceptional cases that a magistrate's decision not to stay proceedings should be interfered with beforehand: **Taylor on Criminal Appeals; Sharma v Browne-Antione**²¹.

¹⁸ 86 Cr. App R. 348

¹⁹ Paragraph 14 of the Submissions of the Applicant for Leave

²⁰ [2003] 4 LCR 712, 733

²¹ See paragraphs [30] and [31]

[44] For the reasons set out above, leave to apply for judicial review of the decision of the Learned Magistrate is refused.

COSTS:

[45] On the issue of costs, the Court finds the bringing of the claim was not unreasonable. As such there shall be no order as to costs.

ORDER:

[46] It is hereby ordered that:

1. The application for leave to apply for judicial review filed on November 11, 2022 is dismissed;
2. There be no order as to costs on the application.

POSTSCRIPT:

[47] The Court trusts that Counsel would excuse the Court, in the interest of time, for not repeating the facts set out in detail in their written submissions which was helpful to the Court in resolving this application.

**Jacqueline Josiah-Graham
High Court Judge**

BY THE COURT

REGISTRAR