

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2017/0393

IN THE MATTER OF AN APPLICATION FOR AN ADMINISTRATIVE ORDER

BETWEEN:

PAUL GREENIDGE

Claimant

and

[1] JERRY SEALES

[2] ATTORNEY GENERAL

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Ruggles Ferguson for the Claimant

Mrs. Karen Reid Ballantyne, Solicitor General with her Ms. Dominique Lovell for the Defendants

2021: April 26;
November 18.

JUDGMENT

[1] **ACTIE, J.:** This is a claim by the claimant, Mr. Paul Greenidge, for an administrative order impugning the decisions of former Magistrate, His Honour Mr. Jerry Seales. Mr. Greenidge seeks, among other reliefs, declarations that: (1) the learned

Magistrate was biased against him; (2) the decisions of the Learned Magistrate to revoke his bail and remand him to her Majesty's Prison were arbitrary, unreasonable and irrational; (3) the order of the Learned Magistrate's compelling him to surrender his driver's licence as a condition of bail was ultra vires and unlawful.

- [2] Counsel for the defendants contends that the nature of the reliefs sought by Mr. Greenidge falls under the scope of an application for judicial review. In the premises, the preliminary issue is whether Mr. Greenidge's claim was an application for judicial review for which leave is required.

Claimant's case

- [3] On 12th January 2015, Mr. Greenidge was the owner and driver of a Toyota bus registration number H5108 which was involved in a motor vehicular accident at Upper Lucas Street, St. George's, Grenada. Subsequent to the accident, Mr. Greenidge was charged with the offence of reckless driving contrary to section 56(1) of the Road Traffic Act¹. He was summoned to appear before the Magistrate of the southern district on Friday, 28th August 2015 for hearing of the complaint. When the matter came up before the learned Magistrate, Mr. Greenidge was represented by Herricia Willis, an attorney-at-law. However, subsequent to the hearing, the parties parted ways.

- [4] Mr. Greenidge gave his version of what transpired in proceedings before the Magistrate and avers that:

(1) Prior to his representation by Ms. Willis, he missed two court dates (3rd November 2016 and 16th February 2017) and on the next occasion (28th March 2017), he was brought to court on a bench warrant.

(2) While in court he explained to the magistrate that he had not intentionally missed court but was confused as to the first date and was

¹ Cap 289A of the 2010 Continuous Revised Edition of the Laws of Grenada.

unaware of the second date. After the hearing, the learned Magistrate placed him on bail with one surety.

- (3) Thereafter, he retained Francis Paul, an attorney-at-law, to represent him.
- (4) On 6th July 2017, he and his attorney, Francis Paul attended the hearing before the Magistrate. Mr. Paul requested an adjournment of the matter to obtain information about the proceedings, the notes of evidence and to recall one witness, Inspector Andrew to be cross-examined.
- (5) However, the Magistrate responded to Mr. Paul's request stating that the matter has been going on for almost two years and it was time for it to be brought to an end.
- (6) The Magistrate also stated that he was represented by counsel and should not get two bites of the cherry. The magistrate informed Mr. Paul that he would consider the request but Mr. Greenidge would be remanded.
- (7) When Mr. Paul inquired why Mr. Greenidge was being remanded, the Magistrate averred that Mr. Greenidge was taking the matter as a joke since the Magistrate had previously made an unless order requiring Mr. Greenidge to give evidence on the same date (6th July 2017).
- (8) The learned Magistrate told Mr. Paul that Mr. Greenidge was wasting the court's time and that he heard the witnesses and they appeared to be truthful.
- (9) On 10th July 2017, the matter was returned to court and Mr. Greenidge was placed on \$ 2,500.00 cash bail. Additionally, he was required to surrender his driver's licence and passport and to report to the St. David's police station three days each week.

- [5] By affidavit filed on 2nd March 2018, Cherella St. Paul, Clerk in Magistrate Court No. 3 in the Southern Magisterial District, St. George's for the Defendants, deposed that the above facts and evidence by Mr. Greenidge were agreed and adopted as the record of the proceedings before the learned Magistrate.
- [6] As stated earlier the preliminary issue is whether Mr. Greenidge's fixed date claim is an application for judicial review and can continue this action continue without first obtaining leave of the court. In light of that issue, it would be useful to reproduce the reliefs Mr. Greenidge seeks in his fixed date claim since much of the discussion turns on whether Mr. Greenidge, having regard to the reliefs sought in the claim,
- [7] On 2nd October 2017, Mr. Greenidge filed his fixed date claim seeking the following reliefs, namely:
- (1) A declaration that the manner in which the Learned Magistrate made the decision on 6th July 2017 to withdraw bail that he himself had previously fixed and remand Mr. Greenidge to prison until 10th July 2017 was arbitrary, unreasonable and irrational;
 - (2) A declaration that the order made by the learned Magistrate on 10th July 2018 that Mr. Greenidge surrender his driver's licence as a condition for bail was ultra vires and unlawful;
 - (3) A declaration that the comment of the learned Magistrate that he considered the witnesses in the traffic matter to be speaking the truth even before hearing Mr. Greenidge displayed bias against him;
 - (4) An order transferring case # 2155/15 before another Magistrate for hearing;
 - (5) Damages, such further or other relief as this honourable court deems just and Costs.

Discussion

Defendants' preliminary objection on the issue of leave for judicial review.

- [8] The defendants did not file a defence however, in skeletal arguments filed on 8th June 2020, counsel raised the issue as to whether the fixed date claim is in fact an application for judicial review. Mrs Karen Reid-Ballantyne, Solicitor General, citing the learning from Privy Council in **Honourable Attorney General and Anor. v Isaac**² submits that judicial review is defined as the jurisdiction of superior courts to review laws, decisions, acts and omissions of public authorities in order to ensure that they act within their given powers. In so doing, the court performs a supervisory function. There is no concern with the merits of the actions of public authorities. Instead, the court examines whether the public body exceeded its authority or whether it acted properly.
- [9] The jurisdiction of judicial review is always invoked at the instance of a person who is aggrieved by an act or omission of a public body. However, the Solicitor General argues that the mere fact that an action is of a public law nature or is against a public authority does not make such an action an application for judicial review. In respect of the grounds for judicial review, the Solicitor General relies on the learning from Lord Diplock in the established authority of **Council of Civil Service Unions and Ors. v Minister for the Civil Service**³ which counsel summarizes as illegality, irrationality and procedural impropriety.
- [10] The Solicitor General invites the court to examine the remedies sought by Mr. Greenidge which, in her view, are prerogative remedies. Firstly, in relation to the first declaration sought by Mr. Greenidge is clearly inviting the court to review the manner in which the learned Magistrate made the decision to withdraw bail and remand him to prison. Counsel submits that, in short, Mr. Greenidge is asking the court to review the Magistrate's decision which is exactly what judicial review contemplates. Secondly, the first declaration prays that the court inquire whether

² [2018] 4 LRC 345 at para. 33.

³ [1985] AC 374 at pages 410-411.

the decision was arbitrary, unreasonable and irrational which are similar to the grounds stated in **Council of Civil Service Unions**.

[11] Additionally, The Hon. Solicitor General argues that the second declaration sought by Mr. Greenidge seeks to challenge the scope of the learned Magistrate's power, that is, whether the Magistrate had the power or authority to compel Mr. Greenidge to surrender his driver's licence. Again, the Solicitor General states that this is what an application for judicial review contemplates as the second declaration sought falls under the established judicial review ground of "*illegality*". This ground is concerned with whether a decision maker in making his decision has acted within his authority. Mrs Karen Reid Ballantyne submits that the substance of the claim is outside the category of an application for declaratory relief but falls under a judicial review application. It is clear that Mr. Greenidge is asking the court to review the decisions of the learned Magistrate on the grounds of "*irrationality*", "*unreasonableness*" and "*illegality*". Therefore, based on the learning from **AG v Isaac** and **Council of Civil Service Unions**, the fixed date claim is in fact an application for judicial review.

[12] With respect to issue of leave, Mrs Reid Ballantyne states that CPR 56.3(1) provides that a litigant who is desirous of applying for judicial review must first obtain leave. She relies on the Court of Appeal authority in **General Aviation Services Ltd. and another v The Director of the Eastern Caribbean Civil Aviation Authority and another**⁴, where Mitchell JA commented on the special and specific requirement of judicial review proceedings and the need for a litigant to first obtain the leave of the court before commencing such proceedings. Therefore, given the above authorities, Mr. Greenidge must obtain leave of the court to commence these proceedings which he has neither applied nor obtained.

⁴ [2012] ECSCJ No. 279 at para. 8.

Analysis

[13] The court is in agreement with the Solicitor General's' arguments that the claim is in fact an application for judicial review for which leave is required for reasons set out below. A fair reading of the first declaration sought by Mr. Greenidge in his fixed date claim reveals that he seeks to challenge the manner in which the learned Magistrate withdrew his bail and remanded him to prison was arbitrary and unreasonable. Further, the second declaration sought seeks to review whether the Magistrate's decision to compel Mr. Greenidge to surrender his driver's licence as a condition for bail was ultra vires and unlawful clearly fall under the scope of a judicial review application. The third declaration seeks to challenge whether the Magistrate's comment on the credibility of witnesses for the prosecution was a display of bias against Mr. Greenidge.

[14] The reliefs sought by Mr. Greenidge are not mere declarations or public law remedies. In the court's view, they seek to challenge the scope of the Magistrate's decisions and further challenge whether those decisions were unreasonable, irrational, illegal and unlawful. The learning from Lady Black in **AG v Isaac** is instructive:

"Having said that, the Court of Appeal must be right in saying that an in-depth analysis of the nature of the claim will not normally be necessary, because generally the nature of the remedies actually sought will identify whether the application is for judicial review. Furthermore, in those cases where more rigorous scrutiny is required, going behind the form of the application and probing its substance, an analysis of what remedies the claimant is, in reality, pursuing will still play an important part in the exercise. The court will have to approach its task having firmly in mind the list set out in CPR 56.1(3), because that list of the principal judicial review remedies serves to indicate the shape of the concept of judicial review within CPR 56, and there is, in truth, little else to assist in the quest⁵."

(My emphasis)

[15] In light of the above learning, the court is satisfied that the nature of the remedies seek to review the decisions of the Magistrate's in the proceedings at the traffic

⁵ AG v Isaac at para. 35.

court. The reliefs sought are remedies which are sought under an application for judicial review.

- [16] The learning from Barrow J, as he then was, in **Malcom Caplan and Anor v Michael Du Boulay and Ors.**⁶ is apt:

“In those cases where a litigant seeks public law remedies by ordinary action instead of by judicial review and he is stopped from continuing by ordinary action, the courts have held it to be an abuse of the process of the court. It is not that the courts have held that they do not have the jurisdiction to grant the relief sought. The substantive jurisdiction reposes fully in the courts; it is that procedurally and as a matter of policy it is undesirable to allow the issue to be determined in proceedings commenced by the wrong procedure. In the instant case I find that the relief sought against the Government is incidental or collateral to private law rights that the plaintiffs are asserting and that it was not only proper but also beneficial that such relief be sought in the same proceedings as those in which the private law claims against the defendants are to be determined⁷.”
(My emphasis)

- [17] CPR Part 56 deals with claims brought under an originating motion or for declarations or judicial review. CPR 56.3 (1) prescribes that “a person wishing to apply for judicial review must first obtain leave of the court”. The claimant having failed to apply for leave and therefore the claim fails.
- [18] Mrs Karen Reid Ballantyne, Solicitor General, also raised the issue that Mr. Greenidge ought to have engaged CPR. 58.1, which prescribes that: “**this part deals with applications to the court to review a decision of a magistrate about bail.**” Notwithstanding the above decision, the court will consider the contention raised by the defendant under Part 58, for completeness.

⁶ Saint Lucia Civil Suit No. 29 of 1999.

⁷ Ibid at para. 18.

Declarations against the decisions of the Learned Magistrate

Revocation of bail and remand to prison

- [19] Mr. Ruggles Fergusson, counsel for Mr. Greenidge submits that bail should only be rescinded if there was evidence which showed a reasonable probability that a person would not appear for his trial or that he would interfere with witnessed or prevent him from committing similar offences while awaiting trial. Counsel submits that there was no evidence of this and there was no logical or rationale connection between the desire of the Magistrate to move the matter forward and rescinding Mr. Greenidge's bail and remanding him to prison. In the premises, counsel submits that the magistrate's actions were arbitrary, unreasonable, irrational and an abuse of power.
- [20] Conversely, the Solicitor General submits that there were two separate orders of bail, which are in issue in the claim at bar. First, is the order by the Magistrate made on 6th July 2017 revoking Mr. Greenidge's bail previously set and to remand him to prison. The second order made by the Magistrate was made on 10th July 2017, wherein bail was set at the sum of \$2,500.00 with one surety, among other conditions to surrender all travel documents and driver's licences and to report to the St. David's police station on Mondays, Wednesdays and Fridays between the hours of 6:00 am to 6:00 pm. Counsel submits that under the principles of *res judicata* it is an abuse of process for a claim to be brought which raises issues that should have been brought and determined in earlier proceedings.
- [21] The facts in this claim are not in dispute. The main issue arising from this claim is whether the Magistrate's decision to revoke bail and to remand Mr. Greenidge to Her Majesty's prison was arbitrary, unreasonable and irrational. In considering this the court will determine whether the magistrate failed to take relevant matters into account, considered irrelevant matters or whether the decision is patently wrong given the circumstances of the case before him.

- [22] It is clear from the evidence that Mr. Greenidge was absent on two occasions and was only brought to court by way of a bench warrant. The court is of the view that Mr. Greenidge's explanation that he missed the two previous court dates because he was confused by the first date and was not aware of the second date was not reasonable or good explanation. A reasonably prudent defendant who is charged with a criminal offence would have inquired from the police or the Magistrate's court office as to date of his hearing. It was therefore within Mr. Greenidge's to seek clarification from police or the said court office body.
- [23] It is trite that one of the general factors in considering whether or not to grant bail is whether the defendant's appearance can be secured for trial⁸. The fact that Mr. Greenidge missed two previous court dates without a good or reasonable explanation was a relevant factor which, in the court's view, was open for the Magistrate to consider when determining whether or not Mr. Greenidge was to continue on bail or whether bail ought to be revoked in the circumstances. The court is of the view that the Magistrate acted well within the scope of his power and authority given the above facts and evidence:
- [24] It is also the evidence that on 28th March 2017, the prosecution's witnesses gave evidence and were cross-examined by Mr. Greenidge's Counsel, Ms. Willis. When the matter came up for further hearing on 6th July 2017, Mr. Greenidge appeared with new Counsel, Mr. Paul, who requested the Magistrate's notes and to recall one witness for the prosecution. Further, it is the evidence that the magistrate opined that he would need time to consider the request. The mere fact that the Magistrate in light of those circumstances, exercised his discretion to revoke Mr. Greenidge's bail and remand him to prison pending the adjourned date of 10th July 2017 in and of itself is not unreasonable. Additionally, it is noted that the period on remand was five days which, in the court's view, was not manifestly inordinate in the circumstances.

⁸ R v Rose [1895-99] All ER Rep 350 at 351.

[25] Therefore, given the totality of the above facts and evidence, including the fact that Mr. Greenidge missed two previous court dates without reasonable explanation, the court is not of the view that the decisions of the magistrate to revoke the bail previously set and to remand Mr. Greenidge to prison until the adjourned date were unreasonable, arbitrary or irrational.

Decision to compel Mr. Greenidge to surrender driver's licence

[26] On 10th July 2017, Mr. Greenidge again appeared before the court and was granted bail by the Magistrate. One of the conditions of bail was an order for Mr. Greenidge to surrender his driver's licence. Mr. Fergusson, counsel for Mr. Greenidge, submits that such a condition was unlawful and relies on the section 56(1) of the Road Traffic Act⁹. However, the court notes that section 56(1) of the Act relied on by counsel primarily deals with the offence of reckless driving. The relevant section, in the court's view, is **Section 56(3)** of the Act which prescribes:

(3) When a person is convicted of an offence under this section—

(a) on the first conviction he or she may be disqualified by the court from holding or obtaining a driving licence for such period not exceeding six months from the date of the conviction as the court may order;

(b) on the second conviction he or she shall be disqualified by the court from holding or obtaining a driving licence for such period being not less than six months and not more than three years from the date of the conviction as the court orders;

(c) on the third or subsequent conviction he or she shall be disqualified by the court from holding or obtaining a driving licence for such period being not less than five years from the date of the conviction as the court orders.

⁹ Cap 289A of the 2010 Continuous Revised Edition of the Laws of Grenada.

[27] The court notes that there is nothing in section 56 which precludes a magistrate from ordering the surrendering of a driver's licence as condition of bail. Mr. Greenidge has not provided any authority to show that such a condition of bail was unlawful or illegal. The section empowers the court to disqualify persons from holding driver's licences for specific periods *after* conviction of an offence. Bail is concerned with the securing of a person's attendance to court for trial. It is the evidence that Mr. Greenidge, who was a bus driver at the material time, was charged with the offence of reckless driving contrary to the Road Traffic Act. Therefore, the court is of the view that the Magistrate was entitled to consider the nature of the offence and the facts before him when considering what conditions of bail, if any, were to be imposed on Mr. Greenidge. The court is of view that the condition of bail was not unreasonable given the circumstances of the case. It was open to the Magistrate to place such a condition of bail.

Bias

[28] Counsel for Mr. Greenidge states that the issue is whether Mr. Greenidge is entitled to a declaration that the Magistrate's comment that he considered the witness in the traffic matter to be speaking the truth, even before hearing Mr. Greenidge was a display of bias against Mr. Greenidge. Mr Ferguson, counsel submits that the test for bias is set out in **Porter v McGill**¹⁰ and was recognised by the Court of Appeal in **Alcedo Tyson v The Queen**¹¹ is whether a fair-minded informed observer, having considered the facts, would conclude that there is a real possibility of bias. Counsel states that a fair-minded observer sitting in court would have formed the view that the Magistrate had already made up his mind of the Mr. Greenidge's guilt and was biased against him. Counsel also relies on the case of **Linton v Hyman**¹².

[29] The Magistrate as an arbiter of fact is entitled to consider the credibility of every witness in his/her court both for the prosecution and the defence. The mere fact that the Magistrate made a comment on the credibility of the prosecution's witnesses

¹⁰ [2002] 2 A.C 357.

¹¹ BVIHCRA2013/0008.

¹² ANUHC2006/0038 at para. 82.

before hearing Mr. Greenidge's evidence in and of itself is not a display of bias. The Magistrate, in his comment, did not make any pronouncement on Mr. Greenidge's guilt, his case or evidence. The Magistrate's comment, in the court's view, cannot be argued that it is not within his ambit to assess the creditability of the witnesses for the prosecution. However, such a comment ought to be reserved for delivery of the ruling. While it is agreed that such a comment was ill placed, the court is not of the view that this amounted to prejudging the defendant's evidence or his guilt. Accordingly, Mr. Greenidge's prayer for a declaration that the Magistrate's displayed bias against him when the Magistrate commented that the prosecution's witnesses were speaking the truth is refused.

Conclusion

[30] In summary, it is ordered that:

- (1) The fixed date claim filed on 2nd October 2017 without first obtaining leave and for the other reasons given above stands dismissed and the declarations and reliefs sought, including damages are refused.
- (2) There shall be no order as to costs as the court is not satisfied that the fixed date claim was brought unreasonably pursuant to CPR 56.13(6).

Agnes Actie
High Court Judge

By the Court

Registrar