

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

GRENADA

CLAIM NO: GDAHCV 2020/0384

BETWEEN:

[1] ALSTON ALEXANDER

[2] MARCIA WATSON

Applicants

and

[1] CHIEF MAGISTRATE TAMARA GILL

[2] DIRECTOR OF PUBLIC PROSECUTIONS

[3] THE COMMISSIONER OF POLICE

Respondents

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances: (Via Zoom)

Mr. Francis Paul for the 1st Claimants

Mr. Benjamin Hood for the 2nd Claimant

Mr. Darshan Ramdhani, QC for the 1st and 2nd Defendants

Ms. Dia Forrester, Attorney General, for the 3rd Defendant

2021: August 4.

RULING

- [1] **ACTIE, J:** The applicants seek leave of the court to file administrative orders against the defendants for the order made by Chief Magistrate Gill on 19th August 2020 committing the applicants to stand trial on 17 criminal charges.

Background

- [2] The first applicant, Alston Alexander, a Superintendent of Police in the Royal Grenada Police Force together with the second applicant, Marcia Watson, operate

a business registered as Alexander Fowl Farm. The applicants supplied the Royal Grenada Police Force with chicken parts from 2005 until 2015. Sometime in 2015, it was alleged that the applicants delivered to the Royal Grenada Police Force less chicken than the weight placed on invoices. A warrant of arrest signed by a justice of the peace under Section 12 of the Magistrates Act Cap 17 was obtained to search the applicants' premises. Both applicants were charged with seventeen (17) offences constituting charges for defrauding the Government of Grenada and money laundering. A Preliminary Inquiry which started in 2016 was completed on 19th August 2020 and both applicants were committed for trial on all charges.

The Application for leave

[3] The applicants seek the following reliefs:

- (1) A declaration that the search conducted at the premises of the applicants at Telescope in the parish of Saint Andrew in the State of Grenada by the servants and /or agents of the 3rd respondent on the 3rd day of April 2015 was unconstitutional, arbitrary and unlawful, being not authorized by law.
- (2) A declaration that the removal of the property of the applicants from their premises by the servants and /or agents of the 3rd respondent on the 3rd day of April 2015 was unconstitutional arbitrary and unlawful, being not authorised by law.
- (3) A declaration that the complaints laid against the applicants by the 3rd defendant was unlawful, unfair and unconstitutional, being contrary to the applicants' right to due process guaranteed by the Constitution of Grenada.
- (4) A declaration that the decision of the 1st respondent to commit the applicants to trial at the High Court after the preliminary inquiry into the criminal complaints was contrary to criminal practice and the Law, in general.

- (5) A declaration that the 1st respondent wrongly dismissed the no case submission made on behalf of the applicants at the end of the preliminary inquiry.
- (6) An order of Certiorari quashing the criminal complaints laid in the name of the 3rd respondent against the applicants.
- (7) An order of Certiorari quashing the decision of the 1st respondent to commit the applicants to be tried by jury on account of the preliminary inquiry held before the 1st respondent into the criminal complaints laid against the applicants.
- (8) An order of prohibition preventing the 2nd respondent from proffering an indictment against the applicants pursuant to the committal of the applicants after the conclusion of the preliminary inquiry held before the 1st respondent into the criminal complaints laid against the applicants
- (9) An Order that this Honourable Court, grant any order that may be deemed necessary or appropriate emanating from the record of proceedings of the preliminary inquiry

[4] The Attorney General on behalf of the respondents challenged the application on three grounds, namely (i) whether there is any basis in law to grant leave to pursue declarations in relation to the search warrant; (ii) whether there is any basis in law for leave to be granted to pursue declarations relating to the charges laid against the applicants; (iii) whether there is any basis in law for leave related to no case submissions. The respondents in support rely on the authorities in **Nicholas**

Tranquille the Commissioner of Police¹ and Sharma v Brown- Antoine and Others².

- [5] Before proceeding into the application, I wish to express my regrets for the delay with the decision. The parties were directed to email electronic copies of submissions which, if emailed, were not brought to the attention of the court timeously due to the physical challenges in the court office.

The test for leave for Judicial Review

- [6] **CPR 56. 3 (1)** provides for leave for judicial review. The well-known test for granting leave for judicial review was espoused by the Privy Council in **Sharma v Browne Antoine and Others³**

"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.....

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.

"... 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."

- [7] The starting point in this application before this court is that the applicants are seeking leave for judicial review against the decision of the magistrate in exercising her juridical duties in committing the applicants to stand trial at the end of preliminary inquiry. A decision to prosecute is ordinarily susceptible to judicial review. However,

¹ BVIHCV 2015/0083.

² [2006] UKPC 57.

³ (2006) 69 WIR 379

judicial review of a prosecutorial decision, although available in principle, is a highly exceptional remedy. The Privy Council in **Matalulu and Another v DPP**⁴, held that judicial review of the exercise of prosecutorial discretion was to be exercised sparingly and is reviewable but only on grounds of flagrant impropriety in the exercise of the discretion.

- [8] In **Sharma v Browne-Antoine and Others**, the Judicial Committee of the Privy Council dealt with an appeal concerning an application for judicial review by the then Chief Justice of Trinidad and Tobago of a decision to prosecute him for attempting to pervert the course of justice. The Board ruled that it was not appropriate for the accused to challenge the decision to prosecute him in judicial review proceedings and that his allegations in that decision was best resolved by the criminal court trying the charges. The Board stated⁵ ***“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”.***

Should leave be granted

- [9] The applicants have the burden to first demonstrate that they have an arguable case, and that the magistrate’s prosecutorial discretion consisted of some flagrant impropriety.

Search Warrant

- [10] The applicants’ grounds for leave for judicial review under this head can be subsumed under two points, namely, (1) The search warrant signed by the Justice

⁴ 1999) FJCA 15

⁵ At paragraph 34.

of the Peace is void and (2) The Commissioner of Police through his agent deliberately raided the applicant's property at a period which they knew or ought to have known that the 1st Applicant was out of the jurisdiction.

- [11] The applicants are in essence challenging the validity of the search warrant issued and executed in 2015. The applicants allege that the warrant was not authorized by law, being clearly in contravention of the requirements that the warrant must be approved by a judicial officer.
- [12] The respondents contend that there is no proof that any of the evidence recovered on the warrant played any part on the committal. The respondents further submit that the applicants are seeking to challenge a warrant issued in 2015 in excess of five years. The respondents rely on the authority in **Shawn Henry v The Attorney General of the British Virgin Islands and another**⁶ to defeat the application on the ground of unreasonable delay.
- [13] It is settled law that an application for judicial review can be refused on the ground of unreasonable delay (**Rule 56.5 (1)**). The applicants fail to give any plausible reasons for bringing an application for leave for judicial review challenging a warrant issued in excess of five years. The applicants alleged that the warrant was issued when the Commissioner of Police had reasonable knowledge that the first applicant was out of state. The applicants did not provide any evidence to support their assertions.
- [14] Secondly, the applicants challenge the search warrant signed by a Justice of the Peace and not a judicial officer but has failed to prove that the matter proceeded on evidence obtained from the search warrant. Ellis J in **Shankiell Myland v Commissioner of Police & Ors. et al**⁷ concerning the issuance of a search warrant by a Justice of the Peace stated:

⁶ 2020/0170.

⁷ GDAHCV2012/0045

"While a Justice of the Peace may issue a search warrant instead of the magistrate, section 98 of the Criminal Procedure Code provides that this can only be done where the magistrate is absent or where it is otherwise not practicable to make immediate application to a magistrate⁸."

- [15] The court is of the view that the challenge now made by the applicants was information known to them or could have been known from 2015. An application made in excess of five years is unreasonable and amounts to an abuse of process.

No Case Submission

- [16] The applicants contend that the magistrate wrongly dismissed the no case submissions made at the end of the preliminary inquiry. In the court's view, the magistrate's decision to overrule a no case submission is based on her assessment of the facts and law. It is not for a court on judicial review to determine whether the Magistrate's assessment at the preliminary inquiry was erroneous unless the order is challenged on procedural irregularities that affects the validity of the final order.
- [17] The magistrate at a preliminary inquiry is exercising summary jurisdiction in committal proceedings. The fact that a no case submission was overruled at a preliminary hearing does not preclude the applicants from raising a similar challenge at the criminal trial. It is A further no case submission can be made in the criminal proceedings and up to court of appeal, if necessary.

Caveat Emptor

- [18] The applicants relying on the common law principle of "Caveat Emptor" allege that the responsibility lies on the buyer of goods to examine the item sold. The applicants contend that the Police failed or refused to weigh and/or confirmed the weight of the goods supplied and are accordingly estopped from raising any allegation against the quantity of goods misstated or misrepresented by the applicants.
- [19] The respondents in response submit that Caveat Emptor, even if it applies to criminal proceedings, does not arise where a vendor represents to the buyer that

⁸ Ibid at para. 32

the goods are of a certain quality or weight. Such a case would instead be false representation. The respondents rely on the decision **Kathleen Noel v Courts (Grenada) Limited**⁹.

- [20] The court is of the considered view that the applicants' challenge to misdescription of goods supplied and Caveat Emptor are issues best suited at the criminal trial. The Privy Council in **Sharma v Browne-Antoine** said "A criminal judge would we think be better placed to manage the different potential issues,whether there is evidence fit to be left to the jury (both matters for him at separate stages of any trial) and, if the case gets that far, how the evidence should be left to the jury¹⁰."
- [21] The magistrate's role in a preliminary inquiry is only inquisitorial and is not determinative of the facts of the case. The application on the ground of Caveat Emptor fails as this is an issue best to be determined at trial and not in judicial review proceedings.

Duplicity

- [22] The applicants allege that the charges are bad for duplicity. The respondents in response aver that the prosecution laid complaints for continuous offences spanning various periods and is therefore permissible to lay several charges. The respondents rely on the decision in **Barton v DPP and R v Smith**¹¹.
- [23] Duplicity is a matter of form and not evidence¹². There is no statutory deadline which determines when an amendment should be granted. Such a challenge is not an issue to be determined in a judicial review proceeding as an amendment can be pursued at the criminal trial stage. An indictment, if deemed duplicitous, can be amended at any point even on appeal¹³. It is within the remit of the High Court Judge

⁹ GDAHCV2004/0039

¹⁰ [2006] UKPC 57 at para. 34

¹¹ [2006] EWCA Crim, 530]

¹² R v Greenfield (1973) 57 Cr App R 849

¹³ DPP V Stewart (1982) 35 WIR 296 PC.

to further consider any challenge to the indictment and to reduce or augment the indictment, if satisfied that the charges are indeed duplicitous.

Abuse of Process

[24] **CPR 56.3(3)(e)** requires that an applicant seeking leave for judicial review must state 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 applicants have not complied with this requirement.

[25] First, to seek constitutional relief where there is a parallel legal remedy is an abuse of the court's process unless it is satisfied that an alternative available legal redress would not be adequate. Lord Nicholls, in **Attorney General of Trinidad and Tobago v Ramanoop**¹⁴, said

“...where there is a parallel remedy constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course. As a general rule there must be some feature which, at least arguably, indicates that the means of legal redress otherwise available would not be adequate. To seek constitutional relief in the absence of such a feature would be a misuse, or abuse, of the court's process. A typical, but by no means exclusive, example of a special feature would be a case where there has been an arbitrary use of state power.”

[26] The Privy Council affirming the Court of Appeal decision in **Brandt v Commissioner of Police**¹⁵ held “*it is normal in any criminal trial to consider all relevant and applicable authorities in relation to admissibility of evidence.*” However, the test is not whether the administrative proceedings are “best suited” to address the legal issues but rather whether the parallel criminal proceedings provide “adequate” means of legal redress. In addition, in this case, it may be that there are factual issues to be resolved in the criminal trial. Whether this is so is entirely a matter to be decided in the criminal trial.

¹⁴ [2006] 1 AC 328 at para 25.

¹⁵ 2021 UKPC 12

[27] The test in relation to committal proceedings in judicial review proceedings is ‘whether or not a real substantial error leading to demonstrable injustice had occurred’. The applicants in the court’s view have not succeeded in so doing in none of the grounds advanced. The appropriate forum for determining the correctness of the prosecution of the criminal charge is the court in which the prosecution was commenced. Applying the principles espoused in the **Brandt** case, this court is of the considered view that the judge in the criminal trial would be better placed to deal with the challenges raised in the application. Accordingly, the application for leave for judicial review stands dismissed.

Order

[28] For the forgoing reasons, the application for judicial review is refused with no order as to costs.

Agnes Actie
High Court Judge

By The Court

Registrar