

**In the Matter of Sections 49 and 50 of
the Constitution of St. Christopher
and Nevis**

**And in the Matter of an Application for
Declaratory, Injunctive and Other
Relief pursuant to Section 18 & 96 of
the Constitution of St. Christopher
and Nevis**

**And in the matter of an Application for
judicial review of the decision of the
Constituency Boundaries
Commission made on 16th January
2015 to submit a report to the
Governor General pursuant to Section
50 of the Constitution**

BETWEEN:

- 1. HON. MARK BRANTLEY** (in his personal capacity and in his capacity as a representative of the Concerned Citizens Movement)
- 2. DR. HON. TIMOTHY HARRIS** (in his personal capacity and in his capacity as a representative of the Peoples Labour Party).
- 3. HON. SAM CONDOR** (in his personal capacity and in his capacity as a representative of the Peoples Labour Party).
- 4. HON. SHAWN RICHARDS** (in his personal capacity and in his capacity as a representative of the People's Action Movement)

Applicants

AND

1. CONSTITUENCY BOUNDARIES COMMISSION

(being Mr. R.A. Peter Jenkins, Hon. Asim Martin, Marcella Liburd, Hon. Vance Amory,
and Hon. Vincent Byron)

1st Defendant

2. THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND NEVIS

(as representative of His Excellency the Governor General)

2nd Defendant

Before: The Hon. Mr. Justice Trevor M. Ward, QC

Appearances:-

Mr. Christopher Hamel-Smith SC and Mr. Douglas L. Mendes SC instructed by
Ms. Talibah Byron for the Claimants.

Mr. Eamon Courtenay SC, Ms. Iliana Smith and Mr. Jerome Rajcoomar instructed by Ms. Sherry-Ann Liburd-Charles for the First Defendant.
Ms. Simone Bullen-Thompson, Solicitor General, for the Second Defendant.

2020: July 30, August 05

JUDGMENT

- [1] **WARD, J.:** On 19th January 2015, the claimants filed an application for leave to apply for judicial review and for interim injunctive relief. The claimants sought certain reliefs, including an order quashing the report of the Constituencies Boundaries Commission and an injunction prohibiting the Governor-General from making a proclamation giving effect to the CBC report. That matter was litigated all the way to the Privy Council which gave an oral judgment on 12th February, 2015 and a written judgment dated 11th May, 2015¹. For present purposes, the relevance of this judgment is in relation to the observations of their Lordships at paragraphs' 32-34 to which I shall return.
- [2] Subsequently, the Claimants' application for leave to apply for judicial review was granted on 2nd October, 2015. On 19th October, 2015, the claimants filed the fixed date claim and originating motion. On 20th October, 2015 the claimants filed and served an application to amend their claim by adding to the relief sought and to the grounds on which the relief is sought.
- [3] The additional reliefs sought to be added to the Fixed Date Claim and Originating Motion are:
- "9. An order of certiorari quashing the said proclamation;
10. A declaration that the said Proclamation is invalid, null and void and of no effect."
- [4] The Claimants seek to add the following grounds on which the relief is sought:

¹ Brantley et al v Constituency Boundaries Commission [2015] UKPC 21

“xx) The Proclamation was made and published for the improper purpose of depriving the Claimants of the right to apply to the High Court to challenge the decision and report of the Commission;

xxi) In publishing the proclamation on the 20th January, 2015, the Governor General (acting by the Attorney General) failed to take into account a relevant consideration, namely the validity of the injunction granted on the 16th January 2015, pending its discharge;

xxii) The Governor General (acting through the Attorney General) published the proclamation on 20th January 2015 in defiance of the said injunction and in an attempt to render it ineffective, and accordingly for an improper purpose.”

[5] The grounds of the application to amend, state that “since the initial commencement of these proceedings on 16th January, 2015, the Privy Council has rendered judgment clarifying some of the issues in the case and the amendments are designed to accord with these pronouncements.”

[6] The pronouncements referred to were in the following terms:

“32. In the Board’s view there is at least a strongly arguable case that a deliberate attempt by one branch of government, in the control of a governing party, to prevent individuals from obtaining access to the High Court for a constitutional adjudication under section 96 would be unconstitutional as it would deny the protection of the law contrary to section 3(a). In such circumstances, it is strongly arguable that section 2 would nullify the impugned proclamation and section 50(7) would not apply. In any event, on the ordinary principles of judicial review, it is arguable that the making of the proclamation would be open to challenge, notwithstanding the ouster clause, if the power to do so were exercised for an improper purpose: *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 and *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147.

33. Turning to the second issue, it is well established in the common law that the court can give interim injunctive relief against a minister in an official capacity or a government department and make a finding of contempt if he or it breaches an injunction: *M v Home Office* [1994] 1 AC 377. In that case, Lord Woolf, who gave the leading judgment, was of the view that a finding of contempt, without other sanction, would be sufficient to ensure compliance. He stated (at p 425A), “The very fact of making such a finding would vindicate the requirements of justice”. A judge proceeds on the *prima facie* assumption that a public body would not deliberately flout an order of the court: *R (JM) v Croydon London Borough Council* (Practice Note) [2010] 1 WLR 1658, at para 12 per Collins J. Even if a minister considers on advice that a judge should not have made an

order, the order is to be treated as valid and one which is to be obeyed until it is set aside: *M v Home Office* (above), 423G per Lord Woolf.

34. If a minister acts in breach of an injunction, for example in the belief that it is invalid or that it has come too late to prohibit his actions, the legality of the act, which the order prohibited, may be open to challenge by judicial review on the basis that the minister in so acting has failed to take into account a relevant consideration, namely the validity of the court order pending its discharge. If a minister were to go further and knowingly exercise his powers in defiance of the injunction and in an attempt to render it ineffective, it would be clearly arguable that he had used his powers for an improper purpose: *Padfield* (above). On the factual hypothesis on which the Board is considering these other constitutional questions, the making of the impugned proclamation by its publication on 20th January 2015 may be amenable to a quashing order under normal principles of judicial review.

35. Where, as here, the interlocutory injunction was granted in the context of a constitutional challenge, the constitutional arguments, which the Board has set out in para. 32 above, may provide another basis for invalidating the impugned proclamation.”

- [7] The affidavit in support of the application furnishes an explanation for the need to amend. It states that after leave to apply for judicial review was granted on 2nd October, 2015 and during the course of the preparation of the Fixed Date Claim and further evidence, a thorough review of the evidence already filed and the opinion of their Lordships was undertaken. It was only then appreciated that the proposed amendments were necessary.
- [8] Learned Senior Counsel for the Claimants, Mr. Douglas Mendes, submitted that the claimants were entitled, as of right, to make the amendments because the application was made before the first case management conference. **CPR 20.1** is invoked in support of this proposition.
- [9] Alternatively, Mr. Mendes submitted that should the leave of the court be necessary, there is sufficient justification for acceding to the application having regard to the observations of the Privy Council quoted above, which reflect the arguments and propositions before the Board that form the Claimant’s case; the issues raised in the amendments are already live issues raised in the constitutional relief claim so the amendments merely seek to “square the circle” by bringing the judicial review relief in line with the constitutional relief claimed; and

that no additional evidence is to be filed as the amendments rely on evidence previously filed. The amendment to the fixed date claim by the addition of grounds is achieved by way of incorporating into the supporting affidavit of Shawn Richards the amended application for leave to apply for judicial review.

- [10] Mr. Eamon Courtenay SC, on behalf of the 1st defendant took issue only with the claimant's contention that they were entitled as of right to make the amendments. He submitted that **CPR 56.11** applies in this case and the court's leave is necessary. Learned Senior Counsel submitted that the test for the grant of leave to amend is the same as if it were an application for leave to apply for Judicial Review, in that the claimant must show that they have an arguable case with a realistic prospect of success and that no discretionary bar exists.
- [11] Mr. Courtenay, however, conceded that the claimants had an arguable case with a realistic prospect of success; that the amendments would occasion no prejudice and that there are no discretionary bars such as delay.
- [12] Solicitor-General, Ms. Simone Bullen-Thompson, on behalf of the Attorney-General, agreed with Mr. Courtenay that leave was required and that the claimants had an arguable case with a realistic prospect of success. Ms. Bullen-Thompson was of a different mind, however, as it relates to the question of prejudice to the 2nd defendant and the existence of a discretionary bar.
- [13] Ms. Bullen-Thompson submitted that the rule which is applicable to this matter as it relates to amendments is **CPR 56.11(1)**. She submitted that Part 56 does not indicate that Rule 20, which deals with changes to statements of case, applies to administrative proceedings. Part 56.11 provides a specific regime outlining how administrative matters should be dealt with. Thus an amendment can only be made with the leave of the court at the first hearing. Were it not so, submitted Ms. Bullen-Thompson, the claimant could circumvent the permission stage without any scrutiny to ensure that the proposed amended grounds met the **Sharma v. Browne Antoine**² test.

² (2006) 69 W.I.R. 679

- [14] Further, submitted Ms. Bullen-Thompson, there has been considerable delay in bringing the application to amend: leave to apply for Judicial Review was sought on 19th January, 2015; the Privy Council's decision which has prompted this application was rendered orally on 12th February, 2015 and its written decision delivered on 11th May, 2015. Ms. Bullen-Thompson submitted that this 5-month delay between the judgment of the Privy Council and the application to amend has not been explained and constitutes a bar to relief being granted.
- [15] Yet further, submitted Ms. Bullen-Thompson, in this case the individuals who comprised the Commission at the relevant time are long gone and are not obliged to assist the 2nd defendant. This factor is prejudicial to the 2nd defendant.

Issue

- [16] The issue on this application is narrow: whether the Claimants may make the amendments as of right or whether the leave of the court is required. Put another way, as it relates to amendments, does **CPR 20.1** apply to applications for an administrative order or is **CPR 56.11(2)(c)(ii)** the governing provision. If **CPR 20.1** applies, then the question whether leave is required, depends on whether a date had been fixed for the first hearing prior to the amendments being made. If, on the other hand, leave is required, the question is whether the claimants have met the threshold for the court to exercise its discretion in their favour.

Discussion

- [17] **CPR 20** governs amendments to statements of case. **CPR 20.1** provides that a statement of case may be amended once without the leave of the court, at any time before the date fixed for the first case management conference has passed. Therefore once that date has passed, there can be no amendment to the statement of case without the leave of the court. See **Commodo Holdings Limited v Renaissance Ventures Limited and Joseph Katz**³. Indeed, it has been held that it is of no moment that the case management conference was adjourned and no directions given; what triggers the need or otherwise to obtain

³ BVIHCVAP2014/0032

the permission of the court is the arrival of the date of the first case management conference: **George Allert et al v Joshua Matheson et al.**⁴

[18] **CPR 56.11** so far as relevant, provides:

“ (1) At the first hearing the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and the provisions of Parts 25 to 27 of these Rules apply.

(2) In particular the judge may –

(a) ...

(b)...

(c) allow the claimant to –

(i)...

(ii) amend any claim for an administrative order..”

[19] In **Attorney General of Saint Lucia v Darrel Montrope**⁵ the Court of Appeal examined the interplay between **CPR 20.1** and **CPR 56.11** in the context of an application for an administrative order. The respondent was the Cabinet Secretary for the Government of Saint Lucia up until January 2017 when he was removed from his post by a decision of the Governor General and transferred to the office of Permanent Secretary in the Department of Labour. Consequently, Mr. Montrope filed an originating motion against the Attorney General and the Public Service Commission alleging that his transfer was unconstitutional and unlawful. In response the Appellant filed an application under **CPR 9.7** and **CPR 9.7A** challenging the court’s jurisdiction to hear the claim and seeking an order that the originating motion be struck out. A notice of hearing for 21st September 2017 was issued by the court office. On that occasion the judge gave directions on the application to strike and adjourned the hearing to a subsequent date. Subsequent to the hearing of 21st September, the respondent, without seeking the leave of the court, amended and refiled his originating motion. On the adjourned date the

⁴ GDAHCVAP2014/0007

⁵ SLUHCVP2019/0021

appellant took a preliminary objection to the respondent's amendments, arguing that under **CPR 20.1** Mr. Montrope could only amend his statement of case once without leave, at any time before the date on which the matter is fixed for case management and since the statement of case was amended after the date fixed for case management, leave was required to amend and no such leave had been granted. The judge dismissed the preliminary objection and held that the notice of hearing issued by the court was not a notice of first hearing and therefore that leave to amend the originating motion was not required because no date had been fixed for the case management conference in the matter. The appellant appealed.

[20] At the heart of the appeal lay the question whether the respondent required the leave of the court to amend his originating motion, and, if so, whether such leave ought properly to have been granted.

[21] Pereira C.J. examined the provisions of the **CPR** which were considered relevant to the issue, namely **CPR.20.1**, **CPR 27.2** and **CPR 56.11**.

[22] The court considered that the starting point for resolving the first hearing issue was **CPR 20** which deals with amendments to statements of case or pleadings. The court next addressed the question whether a date for the first case management conference had been fixed by the court office and continued:

“[21] Mr. Montrope's claim, being for relief under the Constitution of Saint Lucia, is a claim within the category of claims seeking administrative orders and accordingly, falls to be considered as a fixed date claim filed pursuant to Part 56. In fixed date claims, there is no formal case management conference like in ordinary claims. Rather, there is a 'first hearing' which is typically the date on which the parties will appear in the High Court before the judge for the first time. In that regard, it is necessary to consider whether the first hearing is the case management conference for fixed date claims.

[22] On this point, Part 27 of the CPR, which deals with the procedures by which the court will manage cases, is relevant. CPR 27.2 specifically outlines the procedures the court must follow upon the filing of a fixed date claim. CPR 27.2(1) expressly states that when a fixed date claim is issued, the court must fix a date for the first hearing of the claim. Indeed, it is the practice that the first notice issued by the court office upon the filing of a fixed date claim is the notice of first hearing. CPR 27.2(2) further provides in clear terms that, at the first hearing, 'in addition to any other

powers that the court may have, the court shall have all the powers of a case management conference'. CPR 27.2(3) permits the court to treat the first hearing as the trial of the claim if it is not defended or if it considers that the claim can be dealt with summarily. It is apparent that the aim of CPR 27.2 is to provide an occasion on which fixed date claims may be case managed for trial (if the claim is defended or cannot be dealt with summarily) in a manner akin to a case management conference for ordinary claims.

[23] Further support for that interpretation is found in CPR 56.11 which provides that at the first hearing the judge must give any directions that may be required to ensure the expeditious and just trial of the claim. Under CPR 56.11, the provisions Parts 25 to 27, which concern the scope of the court's case management powers and the procedure to be followed in the exercise thereof apply. To my mind the provisions of rules 27.2 and 56.11 when read together lead to the ineluctable conclusion that the first hearing is the case management conference for fixed date claims and indeed a claim falling, as here, under CPR Part 56."

- [23] Having reviewed the evidence and determined that the hearing on 21st September 2017 was indeed the first hearing, the learned Chief Justice concluded:

"It follows that a date had in fact been fixed by the court office for the first hearing or the first case management conference of this matter and CPR 20.1 would therefore have been engaged. Accordingly, in my view Mr. Montrope required the court's leave to properly amend his pleadings, as the date fixed for the first case management conference had already passed by the time he amended his originating motion." (Para 27)

- [24] Two important takeaways emerge from the foregoing. First, the first hearing serves as the case management conference for fixed date claims. Secondly, **CPR 20.1** applies even to cases where the claimant is seeking an administrative order under Part 56.

- [25] I am therefore unable to accept the submission that **CPR 20.1** is inapplicable once the application is for an administrative order; in which case, it is said, CPR 56.11 alone applies. To my mind this rule is concerned with the court's case management powers *at the first hearing*. I do not read it as excluding the operation of **CPR 20.1** as it relates to amendments made *before* the first hearing. I see no warrant for excluding its reach from applications for an administrative order.

Conclusions

- [26] In the case at bar, the question is whether a date was fixed for the first hearing. On 2nd October, 2015, leave was granted to the claimants to apply for Judicial Review. The fixed date claim and originating motion were filed on 19th October, 2015. On 20th October, 2015 the claimants filed and served an application to amend their claim by adding to the relief sought and to the grounds on which the relief is sought. It has not been asserted by the defendants that the court had fixed a date for the first hearing of the claim prior to the amendments made on 20th October, 2015.
- [27] It seems that there was a hearing on 9th November, 2015 when the learned judge, who then had conduct of the case, considered that the application to amend should properly be made at the first hearing of the fixed date claim. But even if that occasion could be considered the first hearing, the amendments made by the claimants preceded it.
- [28] I am therefore satisfied that the claimants made the amendments at a time when no date had been fixed for the first hearing. It follows that the leave of the court was not required and the amendments are properly made.
- [29] Even on the footing that leave is required, I am persuaded that it is right and in the interest of justice that I should exercise my discretion in favour of granting leave to amend. The defendants concede that the claimants' have an arguable case with a realistic prospect of success. No one suggests that they are taken by surprise by the nature of the amendments sought. Additionally, the issues raised in the amendments are already live issues raised in the constitutional relief claim and do not alter the nature of the case which the defendants are called to answer. No additional evidence is to be filed as the amendments rely on evidence previously filed. I accept Mr. Mendes' submission that the amendments merely seek to "square the circle" by bringing the judicial review relief in line with the constitutional relief claimed;
- [30] I do not accept that any prejudice as claimed by the 2nd defendant is attributable to the timing of the application to amend, for, as Mr. Mendes rightly argues, even if the application had been made earlier, the circumstances relating to the former

commissioners would have been the same since they would have already demitted office.

- [31] On the issue of delay, in the circumstances of this case I consider that it would have been prudent for the claimants to await the Privy Council's written judgment which was rendered on 11th May, 2015. While I consider that it should not have taken the claimants 5 months to realize that the amendments were necessary, nonetheless, I do not think that to grant leave in the face of a period of 5 months delay in making the amendments, would be likely to be detrimental to good administration or cause substantial hardship or prejudice to the rights of anyone for the reasons articulated above.
- [32] I consider that the interests of justice require that leave be granted for the amendments to be made.
- [33] In the premises, I would, in any event, have acceded to the application to amend in terms of the draft Order.
- [34] The matter will proceed hereafter in accordance with the directions contained in the order of 17th July, 2020.

Trevor M. Ward, QC
High Court Judge

By the Court

Registrar