

EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2010/0787

BETWEEN:

COLVILLE WALCOTT

Claimant

and

[1] THE LICENCING AUTHORITY
[2] THE LA CLERY MINI-BUS ASSOCIATION
[3] THE HONOURABLE ATTORNEY GENERAL

Defendants

Appearances:

Mr. Deale Lee for the Claimant

Mrs. Brenda Portland-Reynolds, Solicitor for the First and Third Defendants

Mr. Alvin St. Clair for the Second Defendant

2018: 12th December

JUDGMENT

[1] **ROSLYN WILKINSON, J.:** Mr. Colville Walcott (Mr. Walcott) filed his application for leave to file judicial review proceedings on the 20th of August 2010. Therein he indicated that the relief being sought was:

- (i) An order that his application for a route permit renewal be determined by the Licensing Authority ("the Authority").
- (ii) An order that the La Clery Mini Bus Association (the Association) submit a recommendation to the Authority per the **Motor Vehicles and Road Traffic Regulations 1995** ("the 1995 Regulations")
- (iii) A declaration that any recommendation submitted by the Association in relation to Mr. Walcott's route permit renewal, must relate only to Mr. Walcott's good standing and adherence to the provisions and requirements of the **1995 Regulations**.

- (iv) A declaration that membership of the Association recognized by the Saint Lucia Transport Board ("the Board") is not a requirement and/or condition for the renewal of a mini-bus route permit under the provisions of the **1995 Regulations**.
 - (v) A claim for loss of income and damages for the period during which Mr. Walcott was unable to operate the La Clery route as a result of the refusal to grant the renewal of the route permit by the Authority.
- [2] Rather unfortunately, the application for leave to file judicial review proceedings did not come on for hearing until the 10th of November 2011 some fifteen (15) months after the application was filed. Institutional memory suggests that this was during a period when there was great difficulty in finding and providing the civil court with a courtroom.
- [3] On the 10th of November 2011, Mr. Dwight Lay who appeared for the Authority and the Attorney General, informed the Court that they had no objection to the application for leave to file judicial review proceedings and so leave was granted with the usual conditions, fixing a date by which the judicial review claim ought to be filed and fixing a date for the first case management conference.
- [4] On the 15th of November 2011, Mr. Walcott filed his fixed date claim form together with affidavit in support. Therein he sought the following relief:
- (i) An order of mandamus that Mr. Walcott's application for a route permit renewal be determined by the Authority.
 - (ii) An order of mandamus that the Association submit a recommendation to the Authority in accordance with the **1995 Regulations**.
 - (iii) A declaration that any recommendation submitted by the Association in relation to Mr. Walcott's route permit renewal must only refer to Mr. Walcott's good standing and adherence to the provisions and requirements of the **1995 Regulations**.
 - (iv) A declaration that membership of an association recognized by the Board is not a

requirement and/or condition for the renewal of a mini-bus route permit under the provisions of the **1995 Regulations**.

- (v) A claim for loss of income and damages for statutory breaches of **1995 Regulations** 80(1) and 80(2) by the Authority and **1995 Regulations** 81(2) and 81(3) by the Association, resulting in Mr. Walcott's inability to operate his minibus along the La Clery Route stemming from the refusal to grant a renewal of Mr. Walcott's route permit and refusal to make any lawful recommendation for renewal respectively.
- (vi) Costs.
- (vii) Any other relief this Honourable Court may deem fit and just.

[5] The matter went through case management conference and pre-trial review and then proceeded to having a date fixed for trial. On the trial day, there were no trial bundles and skeletal submissions filed by either party notwithstanding an order to do so eight (8) months prior. There was no application for an extension of time to comply with the Court's order for trial bundles and skeletal submissions. The Court indicated that it was then minded to strike-out the claim.

[6] Newly appointed Counsel for Mr. Walcott indicated that he had just come to the matter and that Mr. Walcott had previously tried all means available to him to prosecute his claim and he had relied on his previous Counsel, Mr. Tonjaka Hinkson to actively pursue his claim. Mr. Hinkson left the jurisdiction and as a consequence Mr. Walcott was not able to comply with the Court's orders.

[7] Counsel for Mr. Walcott sought leave to discontinue the suit against the Association. Leave was granted to discontinue with costs to be agreed and if not agreed to be assessed.

[8] Both Counsels indicated that there was no intention to cross-examine either Mr. Walcott or

the other witnesses. It was proposed and agreed that the Court could proceed on written submissions and a trial bundle would be filed.

The issues

The issues raised were:

- (i) Whether the Authority and the Attorney General were the proper parties to the suit.
- (ii) Whether Mr. Walcott had an alternative remedy to that of judicial review in light of his claim for damages for breach of statutory duties.
- (iii) Whether Mr. Walcott could file his suit seeking relief different to that sought in his application for leave.

The evidence

The Claimant's evidence

[9] The evidence was largely uncontested save that the witnesses for the Authority and the Attorney General asked that Mr. Walcott be put to strict proof of his loss and damage.

[10] Mr. Walcott was a mini-bus driver by profession of several years and driver of a mini-bus registered as M 963. For approximately 10 years prior to the claim, Mr. Walcott as a holder of a La Clery bus route permit, had provided bus service along the La Clery mini-bus route. Mr. Walcott's route permit for the period February 6th 2008 to February 6th 2010 was due to expire.

[11] Between the periods 12th February 2010 to March 1st 2010, by way of three (3) payments (\$160.00, \$200.00 and \$400.00) Mr. Walcott paid \$760.00 to the Association. The payment represented fees associated with continued membership of the Association.

[12] On 11th February 2010, Mr. Walcott submitted his application dated 9th February 2010, for renewal of his route permit in the manner to which he was accustomed together with prescribed supporting documents to the Association for processing.

According to Mr. Walcott, the Association gave him the impression that his application would be submitted to the Authority on his behalf once its recommendation was affixed.

- [13] The Court observed that the application for renewal of the route permit was a document appearing to fall under the Ministry of Communications, Works, Transport and Public Utilities ("The Ministry"). It provided for the applicant's name, address, telephone number, for description of route the applicant was applying for, bus licence number, number of passengers bus could accommodate, a question on whether the applicant had completed a defensive driving course, question on whether the applicant had been convicted of any offences (to this question Mr. Walcott had responded that he had been convicted of the offence of failing to comply), a question as to which association did the applicant belong, and there was a section titled "RECOMMENDATION OF ROUTE ASSOCIATION" under that section stated:

"The La Clery Association does not recommend that a permit be issued to Mr. Walcott unless he becomes a member of the Association. See Attached Letter."

- [14] Up to the 9th of March 2010, approximately one (1) month after submission of the application, the Association had not made the recommendation on Mr. Walcott's application for renewal of his route permit and it was not submitted to the Licensing Authority. As a result of the Association's inaction, Mr. Walcott decided to disassociate himself from the Association and did so by letter of 9th March 2010.
- [15] The National Committee on Public Transportation (NCPOT) which had received Mr. Walcott's application from the Association informed Mr. Walcott that his letter of disassociation was effective immediately and therefore his application could not be submitted.

- [16] On the 8th of April 2010, Mr. Walcott sent a letter to the Association requesting that he be reinstated as a member. On the 20th of April 2010, the Association's president Mr. David John responded saying that;
- (a) The Association accepted his letter of retraction of his letter of dis-association, and
 - (b) That he had to reapply for membership to be reinstated. The letter was copied to the National Committee on Public Transportation and the Ministry. There was a fee of five hundred dollars (\$500.00) for reinstatement of membership.
- [17] On the advice of his Counsel, Mr. Walcott retrieved his application and supporting documents from the Association and it was at this time that he discovered that the Association had recommended that his application be refused until he was reinstated as a member with the Association.
- [18] Mr. Walcott was advised by his Counsel that an application for renewal of a route permit need not be submitted to the Association because there was nothing in the **Motor Vehicles and Road Traffic Act 2003** ("the **Act**") and or the **1995 Regulations** that prohibited him from submitting his application directly to the Authority.
- [19] Up to time of filing suit, the only reason known to Mr. Walcott for the Association's refusal to submit his application for the route permit to the Authority was his decision to dis-associate himself from the Association although he had paid all necessary fees for membership.
- [20] Mr. Walcott also believed that the Association refused to give him a recommendation because he refused to pay a further \$500.00 in order to be reinstated as a member of the Association.
- [21] On the 17th of May 2010, Mr. Walcott's Counsel Mr. Hinkson, wrote to Mrs. Alison Jean, Permanent Secretary in the Ministry. According to Mr. Walcott, the purpose

of the letter was to engage the Authority in some form of discourse with regards to the refusal to accept his application for renewal and the lawfulness of the refusal to renew his route permit on the sole basis that he was not a member of the Association. He was also interested in the reason for refusal on the basis that his letter of dis-association took precedent over both his letter of reinstatement and the fact that all his fees due to the Association had been paid.

[22] Eight (8) days later, on the 25th of May 2010, Mr. Walcott's Counsel issued a letter addressed to Mrs. Annette Augustine, Chief Transport Officer in the Ministry. By the letter, an application for renewal of Mr. Walcott's route permit was submitted. Mrs. Augustine assured Mr. Walcott's Counsel in a meeting on the same day that the application would be considered forthwith and a decision would be made. Mr. Walcott was also informed that so as not to confuse the present application with the prior one, that his application would be deemed to have been received on 25th May 2010.

[23] On the 5th of June 2010, Mr. Walcott's Counsel received a letter from Mrs. Augustine informing him that Mr. Walcott's application for renewal of his route permit was acknowledged and received and that the matter had been forwarded to the Attorney General's office for consideration.

[24] Up to the date of filing his suit, 30th August 2010, and now being in excess of three (3) months, Mr. Walcott had heard nothing further from the Authority about his application. He was advised by his Counsel that this was contrary to the law as the application was to be determined within three (3) months. The Authority had exceeded the time limit within which a decision ought to have been made.

[25] According to Mr. Walcott, as a result of the delay in determining his application he was unable to carry-on his occupation as a bus driver on La Clery route and this caused him to suffer significant financial hardship and losses. The La Clery bus route was a particularly busy route. He was forced to make ends meet by taking odd

jobs and private bus trips whenever he could get them. He was not a member of the Saint Lucia Taxi Association and so private trips were few and far apart. He suffered significant financial losses over the period of the six (6) months prior to his suit. He defaulted on his loan with Scotia Bank, he was unable to pay his utility bills, and he was unable to fulfill a maintenance order in favour of his children and this led to him being arrested on more than one (1) occasion. He claimed damages, costs and interest on any damages that he might be awarded.

[26] Mr. Walcott said that he was a very popular bus driver and one who most people knew and they recognized his bus when they saw it. He had a large client base and regular customers who used his bus because of the quality of service that he offered and their familiarity with him. He had developed a significant amount of goodwill associated with his business. However, as a result of the Authority's failure to act, he would have to rebuild his business over time, a task he saw as being incredibly daunting and arduous. According to Mr. Walcott, his life had fallen apart as a result of the lack of a decision on his application.

[27] Mr. Walcott says that he makes a claim for damages because of breach of the Authority's statutory duty under regulations 80(1) and (2) which called upon the Authority to deliver a decision within three (3) months, and a claim for breach of the Association's statutory duty under regulations 81(2) and (3).

The Defendants' evidence

[28] Evidence was received from 2 witnesses for the Authority and the Attorney-General. They were Mrs. Alison Jean, the Permanent Secretary since 2009, in the Ministry and Mr. Ivor Daniel, Deputy Permanent Secretary since 2009, in the said Ministry. Both affidavits contained legal submissions. In this regard Court refers to CPR 2000 rule 30.3 and pays no attention to the legal submissions contained in the affidavits.

[29] Mrs. Jean was aware of the matters complained of by Mr. Walcott as against the Association and the Authority.

- [30] Counsel for the Authority and the Attorney-General, Senior Crown Counsel, Mrs. Brender Portland-Reynolds had drawn it to her attention that Mr. Walcott had made changes to his claim in regards to the relief sought. His claim for damages for statutory breach was not part of his application for leave. This was a new claim and in this regard she asked that Mr. Walcott be put to strict proof of his losses.
- [31] Mrs. Jean admitted to receiving the letter of 17th May 2010, but observed that it was rather a letter of complaint about the Association. She said that on an application for route permit that there was to be made a recommendation by the Board to the Minister. Therefore, the authority for renewal of a route permit did not rest with the Authority but rather with the Board.
- [32] Mrs. Jean was informed by Mr. Ivor Daniel that the Board had favourably considered Mr. Walcott's application in October 2010, and made a recommendation to the Minister pursuant to section 54 of the **Act**.
- [33] In March 2012, the permit was issued by the Minister and this was communicated to Mr. Walcott on 6th March 2012 by Mrs. Augustine, Chief Transport Officer of the Ministry. Mrs. Jean was subsequently informed by Mrs. Augustine that on 7th March 2010, when Mr. Walcott was advised of the outcome of his application, he stated that as a result of the pending judicial review proceedings, he needed to seek the advice of his Counsel before accepting the route permit renewal.
- [34] Mr. Ivor Daniel repeated much of what Mrs. Jean said. Mr. Daniel admitted to being aware of (a) receipt of the letter dated 25th May 2010, (b) renewal of the route permit and communication of same to Mr. Walcott, (c) Mr. Walcott indicating that he had to obtain legal advice before he would proceed to collect the route permit, (d) Mrs. Augustine being informed by Mr. Walcott that his mini-bus was not in a roadworthy condition and therefore a route permit would not assist him, and (e) on 13th June

2012, Mr. Walcott returned to the Ministry and requested the approved route permit and he was issued with the route permit.

- [35] Mr. Daniel added that he noticed that Mr. Walcott had not shown any evidence of how he tried to mitigate his loss.

The law

- [36] The **Civil Procedure Rules 2000** (section 56.3) provides:

- “(1) A person wishing to apply for judicial review must first obtain leave.
- (2) An application for leave may be made without notice.
- (3) The application must state –
 - (a) ...
 - (b) ...
 - (c) ...
 - (d) ...
 - (e) Whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued.”

- [37] The **Motor Vehicle and Road Traffic Act 2003** provides:

“4. Establishment and Constitution of Licensing Authority

There is hereby established a Licensing Authority which shall comprise a person designated by Cabinet, or, if no such designation is made, the Permanent Secretary.

5. Functions of the Licensing Authority

The Licensing Authority is responsible for the administration of the registration, licensing and permit systems established under this Act.

50. Responsible Authority

- (1) Subject to this Act, the responsibility for traffic control on any road belongs to the Minister, who shall consult with the Saint Lucia Road Transport Board.

54. Public omnibus route permit

- (1) Upon application in the prescribed manner and on payment of the prescribed fee, the Minister shall issue a public omnibus route permit to a registered owner of an omnibus who is recommended by the Board for such public omnibus route permit.

- (2) The public omnibus route permit authorises the operator of the public omnibus identified in it to provide transport to the public for the prescribed omnibus fare determined under this section.

- (3) The Minister shall on the recommendation of the Board, include in the public omnibus route permit any conditions considered necessary, including restrictions on

- (a) The places in which the public omnibus may be parked for soliciting fares;
 - (b) The route which the public omnibus may ply; and
 - (c) The places in which the public omnibus may pick up or set down passengers.
- (4) A public omnibus route permit is, unless cancelled, valid for 2 years and is renewable on payment of the prescribed fee, on a date coinciding with the date on which it was first issued and the provisions of this section apply, with the necessary modifications, in respect of an application for renewal.” (My emphasis)

[38] While the **Act** provided for the making of regulations and a number have been made dealing with matters such as fees, ticketable offences, bus fares and other matters, there continues to be used with the **Act** on the matter of procedure for many road connected matter not covered by the newer regulations under the **Act**, the **Motor Vehicles and Road Traffic Regulations 1995**.

[39] According to Mr. Walcott’s evidence, he contemplated his application under the **1995 Regulations**. They provide:

“Determination of application

80. (1) Subject to regulation 71, where a person has satisfied all the requirements of regulations 68 and 69, the Licensing Authority must determine the application within three months of the receipt of such application.

(2) Where the Licensing Authority refuses such application, the reason for such refusal must be made known to the applicant.

81 (1)”

Findings and Analysis

[40] Reference was made by Mrs. Jean and Mr. Daniel to a supplemental affidavit filed by Mr. Walcott on 5th March 2012. Unfortunately, this affidavit never made it into the trial bundles. The Court gathers that it addressed matters of Mr. Walcott’s loss and damage.

[41] With the claim discontinued against the Association much of the relief sought by Mr. Walcott falls away. Only 2 items remain. The order that the Authority determine Mr.

Walcott's application and the claim for damages for breach of statutory duty by the Authority.

- [42] By the time the suit came on for hearing Mr. Walcott was in possession of his route permit. So there remains only the issue of damages for breach of statutory duty by the Authority and the Attorney General.
- [43] So were the Authority and the Attorney General proper parties to the suit? It is settled law that judicial review proceedings can only be conducted against the decision maker. - see **HCVAP2009/021 Quorum Island (BVI) Limited v. Virgin Islands Environmental Council and the Minister of Planning**.
- [44] This then brings the Court to an examination of the **Act** and **1995 Regulations** to find the proper party. They make different provisions as to who is to address an application for a bus route.
- [45] By the **1995 Regulations** the Authority pursuant to regulation 80(1) was the body vested with the power and authority to determine route applications.
- [46] By the **Act** passed in 2003, the Board is to make a recommendation to the Minister on an application for a route permit. According to **Collins English Dictionary**¹, "recommend" means to advise as to the best course or choice, to counsel. Therefore, it appears to the Court, that the Minister is free to accept or decline a recommendation for a route permit.
- [47] Clearly the Board and Authority hold very different functions and so cannot continue to subsist to address the same application. Only one can prevail.

¹ 2nd Edition

- [48] It appears to the Court that since all regulations are subordinate legislation, then the position in the **Act**, would be the correct position and procedure on an application process for a route permit. The position in the **Regulations** can no longer hold.
- [50] That being so, then pursuant to section 54, on a recommendation or advice from the Board, the ultimate decision maker is the Minister who can either accept or decline the Board's recommendation.
- [51] The Court having arrived at the decision that the Minister was the decision maker, then Mr. Walcott's claim for judicial review against the Authority and the Attorney General must fail.
- [52] The Court having arrived at the decision that Mr. Walcott has brought the suit against the incorrect parties, it cannot go any further in addressing the remaining issues.
- [53] Court's order:
- (i) Mr. Walcott's claim is dismissed.
 - (ii) No order for costs.

ROSALYN WILKINSON
High Court Judge

BY THE COURT

REGISTRAR