

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2014/0302

IN THE MATTER of the decision of his Lordship the Honourable Brian Cottle sitting as an appellant tribunal as constituted by section 16 of the Architects (Registration) Act to dismiss the appeal of Jerome Jenkins against a decision of the Architects' Registration Board denying the application of the said Jerome Jenkins to be registered as an Architect under the provisions of the Architects (Registration) Act.

IN THE MATTER of section 16 of the Architects (Registration) Act

IN THE MATTER of CPR 60.8 (1)

IN THE MATTER of an Application for Leave for Judicial Review

BETWEEN

JEROME JENKINS

Applicant

And

HIS LORDSHIP THE HONOURABLE BRIAN COTTLE

(IN HIS CAPACITY AS AN APPELLANT TRIBUNAL

CONSTITUTED BY S16 OF THE ARCHITECTS'

(REGISTRATION) ACT

Respondent

2015: January 30

DECISION

Appearances:

Dr. David Dorsette for the Applicant

Ms. Alicia Aska of the Attorney General's Chambers for the Respondent

- [1] **HENRY, J.** Jerome Jenkins (the applicant) of Friar's Hill Road, is an architect and holds a Bachelors degree in Architectural Studies from the University of Technology, Kingston Jamaica. By letter dated July 27th, 2009, the Architects' Registration Board (the Board) denied his application to be registered as an architect under the Architects (Registration) Act. On the 6th May 2010, he filed an appeal against the decision of the Architect's Registration Board. The appeal was dismissed by Cottle, J on the 2nd May 2014.
- [2] The applicant now seeks an order that he be granted leave to file a claim for Judicial Review against the decision of Justice Cottle, (the Respondent), for the following relief:
- a) A Prerogative Writ of Certiorari be issued quashing the decision of the Respondent to dismiss the Applicant's appeal of a decision of the Architects' Registration Board dismissing the Applicant's application for registration as an architect pursuant to the provisions of the Architects (Registration) Act (the Act).
 - b) The Respondent do pay the costs associated with the application.
 - c) Any other relief that the court deems fit.
- [3] The applicant asserts as the grounds of the application that:
- (i) CPR 60.8(1) provides that "Unless an enactment otherwise provides, the appeal is by way of rehearing"
 - (ii) The Respondent dismissed the appeal, holding that he would only interfere with the decision for reasons of irregularity, illegality of procedural impropriety.
 - (iii) The Respondent misunderstood his role and reviewed the decision rather than acting as an appellate tribunal.
- [4] The applicant swore an affidavit in support of the application on May 27th, 2014 in which he averred that the respondent ought to have expressed his own opinion as to whether the applicant's academic qualifications are satisfactory to be registered by the Board. The judgment reads like a judgment on a judicial review and the respondent erred and misconceived his function as an appellate tribunal pursuant to s16 of the Act.
- [5] The threshold issue before the court is whether the decision of a Judge of the High Court is amenable to Judicial Review.
- [6] The applicant submits that section 16 of the Act establishes an appellate tribunal whose decision is amenable to judicial review because it is exercising a statutory power. He refers the court to the cases of **Leech v Deputy Governor of Parkhurst Prison** [1988] AC 533 and **Mohit v Director of Public Prosecutions of Mauritius** [2006] UKPC 20. Further, when a person, including a judge, acts in a statutory appellate capacity, such a person is amenable to judicial review. He cites the case of **Regina Law Society v Master of the Rolls** [2005] EWHC 146 (Admin) which involved a claim for judicial review against the Master of the Rolls when he sat as a statutory appellate tribunal. He concludes that the respondent, when exercising his jurisdiction as a statutory appellate tribunal pursuant to section 16 of the Architects Registration Act, was exercising a jurisdiction different from that when sitting as a judge in the High Court. He relies heavily on the case of **R v Visitors to Lincoln's Inn, Ex parte Calder** [1994] QB 1.
- [7] It is submitted on behalf of the respondent that the words used in section 16 of the Act invoke the jurisdiction of the High Court; that reference to the "Rules of Court" in the section refer to the Civil

Procedure Rules (CPR) which govern the practice and procedure in the civil division of the court. Counsel notes that the entire procedure utilized by the applicant in this matter is in accordance with the Rules of Court, and the use of those words can only apply to the judicial proceedings in the High Court. Therefore when the respondent dealt with the matter, he did so as a High Court Judge and not as an appellate tribunal. Consequently, since the proceedings before the respondent were judicial in nature, this court has no jurisdiction to grant leave to the applicant since the High Court has no power to judicially review its own decisions.

- [8] A claim for judicial review is a claim by which the court is asked to review the lawfulness of an enactment, or a decision, action, or failure to act in the exercise of a public function. Such a claim includes the remedies of certiorari, mandamus and prohibition¹. However, it is well settled that decisions of the High Court, and the Court of Appeal are not amenable to judicial review². Lord Hoffman in **Forbes v The Attorney General of Jamaica**³ succinctly stated the position when he stated:

"Judicial review is the procedure by which the Supreme Court ensures that inferior courts and administrators act lawfully and within their powers. It is not a mechanism by which one judge of the Supreme Court can quash the decision of another."

- [9] The applicant's position is that a judge sitting pursuant to section 16 of the Act sits as a domestic tribunal; that he is acting as an appellate tribunal and as such, any appellate tribunal of a domestic body is amenable to judicial review. Section 16, it is submitted, merely identifies who constitutes the appellate tribunal. Therefore, when the respondent exercised the jurisdiction pursuant to section 16 of the Act, he exercised a different jurisdiction from a judge in the High Court, and his decision is amenable to judicial review.

[10] **The Jurisdiction of the High Court Judge**

Section 6 (1)(i) of the Eastern Caribbean Supreme Court Act provides:

"6. (1) There shall be vested in the High Court all jurisdiction which was vested in the former Supreme Court by the Supreme Court Act or by any Act of Parliament or any other law for the time being in force in Antigua and Barbuda and such jurisdiction shall include-

- (i) The jurisdiction which was vested in or capable of being exercised by all or any one or more of the judges of the former Supreme Court sitting in Court or Chambers or elsewhere when acting as judges or a judge pursuant to any Order in Council, Act, or any other law for the time being in force in Antigua and Barbuda."

- [11] The interpretation of section 16 is crucial to the resolution of this issue. Therefore it is set out in full below:

"16. An appeal against any decision made by the Board shall lie to a judge in Chambers, and every such appeal shall be made within such time and in such form and shall be heard in such manner as may be prescribed by rules of court."

¹ Part 56, CPR

² Re Rascal Communications [1981] AC 374 at 392.

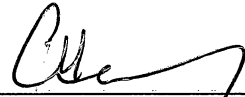
³ [2009] UKPC 13

- [12] In his written submissions, the applicant states that “the jurisdiction of the appellate tribunal established by section 16 of the Act is not a jurisdiction that is transferred or transferable to the High Court. It is a jurisdiction that at all times remains within the remit of the appellate body constituted to consider appeals from decisions of the Architects Registration Board.”⁴
- [13] However, the words “An appeal against any decision made by the Board shall lie to a judge *in Chambers*, . . .” transported such appeals into the High Court and firmly placed them under the jurisdiction of the High Court, to be exercised by a judge sitting in chambers. It gave a person dissatisfied with a decision of the Board a right to appeal to the High Court. Section 16 did not create a tribunal outside of the High Court system and then “borrowed” a judge to chair it. The remaining words of the section buttresses the first part by providing that the time within which the appeal shall be made along with the form and manner of the appeal are to be as prescribed by rules of court. The Rules of Court or the Civil Procedure Rules (CPR), govern the practice and procedure to be followed in the Civil Division of the High Court. The section therefore, placed the whole appeal process, including the procedure and rules under the jurisdiction of the High Court. There is no doubt that the judge hearing such an appeal is acting in his judicial capacity. When the respondent heard and decided the appeal pursuant to section 16, he was sitting as a judge of the High Court in Chambers and exercising the jurisdiction of the High Court in accordance with the Eastern Caribbean Supreme Court Act.
- [14] The applicant admits that section 60 of the CPR governs the appeal. This part deals with appeals to the High Court from a tribunal or person under any enactment. It does not ordinarily govern appeals to tribunals which are not a part of the High Court. The procedure set out in Part 60 is a court process. The jurisdiction being exercised is that of the High Court.
- [15] The case of **R v Visitors to Lincoln’s Inn, Ex parte Calder** is clearly distinguishable from the matter before the court. In that case, the court was called upon to determine the capacity in which judges of the High Court sit when they sit as visitors to the Inns of Court to determine appeals against orders by which barristers are to be disbarred or suspended from practice by their Inns. It was noted that the procedure of appeals to the visitors is governed, not by the CPR, but by rules made by the visitors, currently known as the Hearings before the Visitors Rules. Sir Donald Nicholls, V. –C. was at pains to point out in his judgment that “when sitting as *visitors* to the Inns of Court the judges are not sitting as judges. They are exercising a different jurisdiction; they are sitting as visitors. That situation is substantially different from an appeal to the High Court under section 16 of the Act.
- [16] Similarly, the case of **R v Master of the Rolls** is also distinguishable. There a foreign lawyer appealed from a decision of the Adjudication Panel of the Law Society to impose conditions on his registration to the Master of the Rolls, under schedule 14 of the Courts and Legal Services Act 1990. Dissatisfied with the decision of the Master of the Rolls, the Law Society applied for judicial review of the decision. Thomas LJ stated in the opening paragraphs that it is accepted that the court has jurisdiction to hear the application. He noted that the Master of the Rolls took no part in the proceedings which in effect had been conducted as an appeal from the decision on the narrow point of the construction of the section in issue. In any event, the appeal process set up by paragraph 14 to Schedule 14 differs from that contained in section 16 of the Act. Here again the

⁴ The applicant’s Submissions paragraph 18, page 6

distinction lies in the language of paragraph 14 of Schedule 14 when compared with section 16 of the Act. Schedule 14 did not transport the proceedings into the High Court..

- [17] Accordingly, the court is of the view that a judge sitting in chambers to hear an appeal from the Architects Registration Board pursuant to section 16 of the Act is exercising a judicial function. His decision is therefore not amenable to judicial review.
- [18] Accordingly, the application for leave to make a claim for judicial review is hereby denied.



CLARE HENRY
High Court Judge
Antigua & Barbuda