

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CLAIM NO. SVGHCV 2014/0025

**IN THE MATTER OF AN APPLICATION BY JOHN WEST MANAGING DIRECTOR OF
TMM (ST. VINCENT) LTD T/A TMM YACHT CHARTERS FOR LEAVE FOR JUDICIAL
REVIEW**

AND

**IN THE MATTER OF AN APPLICATION BY JOHN WEST THE MANAGING
DIRECTOR OF TMM (ST. VINCENT) LTD T/A TMM YACHT CHARTERS FOR
JUDICIAL REVIEW OF A SEVERANCE PAYMENT ORDER MADE BY THE HEARING
OFFICER OF THE LABOUR COMMISSION ON 4TH JULY 2013**

Appearances:

Ms. Heidi Badenock for the Applicant
Ms. Michelle Davidson for the Respondent

2014: March 11th

JUDGMENT

COMBIE MARTYR, J. (Ag):

- [1] The Applicant is seeking leave to file a claim for judicial review for an Order of Certiorari to remove it into this Honourable Court and to quash the order or decision for severance payment made on 4th July 2013 in favour of Ausborne Frederick, an employee of the Company TMM (ST. VINCENT) LTD T/A TMM YACHT CHARTERS, by the Hearing Officer appointed under the Protection of Employment Act Cap 212 Revised Edition of the Laws of Saint Vincent and the Grenadines, (Decision/Order).
- [2] The Decision was made pursuant to Sections 35 et seq of the Protection of Employment Act Cap 212 Revised Edition of the Laws of Saint Vincent and the Grenadines (the Act).

THE FACTS

The Applicant

- [3] The case for the Applicant made pursuant to CPR Part 56.3, was set out in a Notice of Application filed on the 6th February 2014 in which the details of relief sought were as follows:
- i) Leave to apply for judicial review of the decision dated 4th July 2013 of the Hearing Officer in the Department of Labour, *“that the Managing Director of TMM Yacht Charter must pay the sum of \$16, 153.84 to Mr. Ausborne Frederick via the Labour Commissioner on or before Friday 26th July 2013”* and an Order for Certiorari to remove it into this Honourable Court and to quash the same.
 - ii) An interim order to stay the Decision until the application for judicial review has been heard and determined on its merits.
 - iii) An order for the rehearing of the matter.
 - iv) Costs in the cause.
- [4] The Grounds of the Application were Procedural Impropriety, Illegality and Irrationality as set out in the Notice of Application filed and were presented in the oral submissions of Counsel on behalf of the Applicant.
- [5] The Notice was supported by the Affidavit evidence of **John West** Managing Director of the Company filed on the 6th February 2014 and exhibits thereto which set out the facts leading to the decision of the Hearing Officer and the Applicant’s inability to file his appeal in time having been severely disadvantaged by the delayed notice and subsequent late receipt of the Order.

The Respondent

- [6] The response of the Respondent in opposition to a grant of leave to the Applicant, was presented in the Affidavit evidence of (1) **Fitzroy Jones** Labour Commissioner (2) **Marissa Young** Senior Clerk Labour Department, (3) **Ausborne Frederick** (the Employee) (4) **Cecil John** Hearing Officer and exhibits thereto filed on the 18th February 2014.
- [7] The facts as presented by the Respondent can be summarized as follows:
- (i) A complaint was lodged with the Labour Department by the Employee against the Company regarding his unfair dismissal and non payment of severance;
 - (ii) The Employee was suspended without pay from 25th November 2012;

- (iii) The Notice of Hearing was received by the Company two days before the hearing despite being asked by Ms. Young from the Labour Department to collect same sometime before then;
- (iv) A request by the Applicant for an adjournment of the hearing due to the unavailability of his Legal Representative was denied which was considered to be a 'slender reason' and the hearing proceeded in the absence of the Applicant and his Legal Representative;
- (v) The practice of the Labour Department is for parties to a dispute to be informed of correspondence (notices, letters, decisions, orders) to be collected by the parties and hand delivery of correspondence is only done in the most extraordinary circumstances;
- (vi) This being one such case, the Decision was hand delivered to the Applicant one week before the expiration of time to appeal which appeal was subsequently lodged out of time;
- (vii) The allegations of delay made by the Applicant are due to the fault of the Applicant and not due to any actions on the part of the Hearing Officer, Labour Commissioner or the Labour Department, they having taken all steps necessary to ensure early receipt by the Applicant of the Notice and Decision;
- (viii) The Company having not complied with the Order of the Hearing Officer and the time for appeal had expired, on reliance of the finality of the Decision, in October 2013, claim 231/2013 was filed on behalf of the Employee seeking to register and enforce the Order;
- (ix) Applicant had filed this Application for leave more than 6 months after the Decision, which delay has resulted in the filing of enforcement proceedings.

ORAL SUBMISSIONS FOR THE PARTIES

The Applicant:

- [8] Counsel for the Applicant submitted that the Applicant was relying on the Notice, Affidavit and exhibits filed on the 6th February 2014. Counsel sought to expound on the grounds of Procedural Irregularity, Illegality and Irrationality as set out therein.
- [9] With respect to Procedural Impropriety, Counsel asserted the following breaches:
 - (i) The Respondent failed to observe the basic rules of natural justice and or fairness and/or failed to act with procedural fairness in not giving the Applicant sufficient notice, giving only

two days before the hearing. As such the Applicant was unable to gather the necessary documentation and other evidence and obtain legal representation and/or advice to prepare properly and adequately for the hearing so as to fairly put forward his case.

- (ii) The Respondent in refusing to grant an adjournment to the Applicant due to the unavailability of the Applicant's Legal Representative, deprived the Applicant of a right to a fair hearing and to put forward his case, as the hearing proceeded in the absence of the Applicant and his representative.
- (iii) The Respondent failed to serve/deliver/give the Decision "forthwith" as provided in Section 38 (3) of the Act and the Decision hand delivered 15 days after it was made impeded the Applicant from complying with the statutory time to appeal as required under the Act.

[10] With respect to Illegality, Counsel asserted the following:

- (i) The Applicant is an employee of the Company and the Order was made against the Managing Director of the Company who is an employee of the Company and not the Company, who is the employer of the Employee;
- (ii) The Respondent acted ultra vires and/or in excess of his jurisdiction and/or the Order made was in excess of his powers in that the Order was made against the Managing Director of TMM Yacht Charters and not the employer Company TMM (St. Vincent) Ltd T/A TMM Yacht Charters (the Company).
- (iii) The Act relates to employers and complaints by employees against employers;
- (iv) The Decision should have stated the words "The Employer TMM (St. Vincent) Ltd T/A TMM Yacht Charters must pay... and not the Managing Director of TMM Yacht Charters must pay..."

[11] With respect to Irrationality, Counsel asserted the following:

- (i) The Respondent failed to understand the law on severance under the Act in that the Act provided for suspension of the Employee by the Company pending a decision in a matter relating to his involvement in dishonest conduct concerning property belonging to the Company;
- (ii) The Employee was not dismissed by the Applicant and employment not terminated. As provided under Section 19 of the Act in particular 19 (2) (c), the employer was within its rights to suspend the Employee having regard to the circumstances of an investigation into alleged misconduct of the Employee

- supported by a signed confession of the dishonest conduct from the Employee's alleged partner one Carlton Culzac;
- (iii) As a consequence, the Company would have been within its rights to dismiss the Employee but instead suspended the Employee without pay.
 - (iv) The Respondent erred in his Decision in stating that suspension without pay was tantamount to a dismissal.
- [12] With respect to "Delay" as set out in CPR Part 56.5 and in making the application for leave for judicial review more than six months after the Decision was made and the factors that the Court must have regard to, Counsel submitted that the delay does not rest solely on the shoulders of the Applicant.
- [13] Counsel asserted that the practice of the Labour Department for parties to collect Notices and Decisions is not one that should be associated with a body that performs a judicial function and that one would expect that it would carry out its functions in a manner in keeping with the proper execution of justice. Parties should be expected to be served with Notices and Decisions delivered as is legislated, so as to avoid delay in the receipt of same.
- [14] Section 38 (1) of the Act states that the Hearing Officer will issue Notice of Hearing... and not that parties will collect the Notice. According to Counsel her interpretation is that the onus is placed on the Hearing Officer to provide the Notice whether by personal service or notification of the hearing date, but service of the Notice would be the appropriate manner. A telephone call without more and with no explanation of its content was insufficient.
- [15] The appeal to the Tribunal was an alternative remedy but not pursued within the statutory time due to the late receipt of the Decision. Counsel considered that the delay of more than six months before making the application for leave was not unreasonable delay.
- [16] With respect to CPR 56.5 (2) (a), Counsel submitted that it is in the interest of good administration that Notice of the Hearing should be given by delivery to or service on interested parties, and also to the Decision or Order. Counsel posited that the Court in granting leave to the Applicant will assist with good administration and that a pro active Labour Department going forward would set procedure to be followed.
- [17] With respect to CPR 56.5 (2) (b), according to Counsel the Order was made against the Managing Director of the Company and as such failure to comply with it will result in enforcement proceedings against him which has already been filed. This Counsel says will prejudice the rights of John West who is the current Managing Director of the Company and against whom the Order was made and not the Company.

The Respondent

[18] Counsel for the Respondent restated the facts as set out in the Affidavit evidence of Fitzroy Jones Labour Commissioner, Marissa Young Senior clerk Labour Department, Ausborne Frederick and (4) Cecil John Hearing Officer and exhibits filed on the 18th February 2014, as already set out at paragraphs 6-7 hereof.

[19] Counsel submitted that the test to be applied for granting leave for judicial review is as stated in the Privy Council case of **SHARMA v BROWNE ANTOINE AND OTHERS** (2006) 69 WIR 379:

“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.... It is not enough that a case is potentially arguable; an applicant cannot plead potential arguability to grant of leave to issue proceedings upon a speculative basis which it is hoped the interlocutory processes of the court may strengthen”.

[20] With respect to Procedural Impropriety, Counsel highlighted the difference in opinion as it relates to the procedure to be followed pursuant to the Act and the established practice and procedure of the Labour Department not to hand deliver correspondence. Counsel does not agree that that practice caused the delays in receipt of the Notice and Order and interpreted the word ‘forthwith’ in Section 38 (3) of the Act as ‘within a reasonable time’ and considered seven days sufficient time for the Applicant to appeal.

[21] According to Counsel this cannot be considered procedural impropriety on the part of the Respondent, nor does Counsel accept that a refusal of an adjournment by the Hearing Officer on the basis of the unavailability of the Applicant’s Legal Representative as improper procedure. Counsel cited the case of **R v SECRETARY OF STATE FOR THE HOME DEPARTMENT AND OTHERS EX PARTE TARRANT AND ANOTHER** [1984] 1 AER 799 as authority for saying that the Applicant is not entitled as of right to legal representation. On the other hand Counsel asserts that had the request by the Applicant been on the basis that the Applicant needed a reasonable opportunity to prepare his case for the hearing then the Court in its exercise of discretion would consider that reason in terms of time and delay. Counsel presented the case of **R v THAMES MAGISTRATES’ COURT EX PARTE POLEMIS** [1974] 2 AER 1219 at page 1223 as authority for saying so.

[22] With respect to Illegality and Irrationality, Counsel reiterated that the Decision was against the Company of which John West who had previously represented the Company as its Managing Director. Counsel relied on exhibit JW7 –the Decision

letter bearing the heading: Ausborne Frederick v TMM Yacht Charters and submitted that the Applicant's ground of Illegality on the basis that the Decision was against the Managing Director and not the Company was unfounded. In light of that argued Counsel, the Court ought not to allow such an artificial separation to invalidate the Decision, as the Respondent had to be the Company. In terms of Irrationality, Counsel reiterated the facts as set out in the complaint lodged by the Employee and considered as relevant, the fact that the Employee had been suspended from 25th November 2012 without pay for a period of four months before a complaint was lodged.

[23] Counsel further asserted that another ground for refusing leave is to be found in CPR 56.5 (1) "unreasonable delay" and submitted the following summary as the basis for so asserting:

- (i) Decision became final on the 26th July 2013;
- (ii) Grounds brought by the Applicant would have been grounds which manifested in July 26th 2013 and the Applicant was aware then that the Decision in his opinion was flawed;
- (iii) The Employee had commenced enforcement proceedings against the Company which were filed in October 2013 and served on the Company;
- (iv) Application for leave filed more than six months thereafter.

[24] Counsel cited the case of **R v Herrod ex Parte Leeds County Council [1976] QB 540** referred to in Claim No. BVIHC 2010/0048: **MARY WILLIAMS v ATTORNEY GENERAL** in support of her assertions where a delay in applying for leave to seek an Order for Certiorari and judicial review respectively had statutory time limits of six months and any time beyond that would be considered "unreasonable delay". Counsel however conceded that there is no time limit imposed by the CPR or any enactment for filing an application for judicial review in this jurisdiction.

[25] Counsel cited Claim No. GDAHCV 2011/0052: **ALBERT ST BERNARD v (1) HER WORSHIP KAREN NOEL (2) ATTORNEY GENERAL** as authority for saying that a delay of fourteen months was held to be unreasonable delay, the Applicant having taken steps to enforce the Judgment. Like the St. Bernard case the Applicant was well aware that the flaws and promptness would have dictated that he should have applied for leave promptly and before enforcement proceedings had been taken.

[26] With respect to CPR 56.5 (2) Counsel submitted that the timing of the Application was detrimental to the good administration of justice and that it is prejudicial to the rights of the Employee to grant leave after such a long delay. In support of that submission Counsel argued that the failure to appeal the Decision within the statutory time and then to apply for leave for judicial review displays disregard for the level and standing that the Decision ought to be given. Counsel reiterated the facts as stated by the Employee in his affidavit as well as the delay in relying on the fruits of his labour.

- [27] Counsel asserted that there is no arguable ground for judicial review on the face of the Application filed and the Respondent does not believe that there is any realistic prospect of success, and that in addition to the unreasonable delay in filing this application, leave should not be granted to the Applicant.
- [28] In reply, Counsel for the Applicant referred to paragraphs 17 of the Affidavit of the Applicant and 22 of the Respondent Fitzroy Jones and cited the case of **JOMO THOMAS v (1) THE COMPTROLLER OF CUSTOMS (2) DIRECTOR GENERAL OF FINANCE AND (3) THE ATTORNEY GENERAL**-Claim SVGHCV 331/2008, in support of the submission that in this case the Applicant had been in communication with the Labour Commissioner and although out of time an appeal had been filed against the Decision to which there has been no written response from the Labour Commissioner or the Tribunal. Accordingly the discretionary bars of delay or an alternative remedy do not apply.
- [29] Counsel further pointed out that all the circumstances of this case and the facts as set out therein, demonstrate that the Applicant has an arguable case. Further that the delay was caused by the lapses and fault on the part of the Hearing Officer, which resulted in a Decision being granted against the Managing Director ordering him to pay a certain sum of money as severance to the Employee, is sufficient for the Applicant to meet the requirements of reasonable prospect of success, for leave to be granted to the Applicant.
- [30] In conclusion Counsel submitted that notwithstanding that an Appeal had been filed out of time with no written response or decision from the Tribunal, Section 41 (7) of the Act provides that judicial review is available even though the decision of the Tribunal is final.

LAW AND ANALYSIS

Governing principles

- [31] As indicated to Counsel at the hearing of the Application, the Court is not expected at this stage of the proceedings, to engage in a detailed review of the facts of the case, but that the Court must be satisfied sufficiently to conclude that 'there is a case fit for further investigation at a full interpartes hearing of a substantive application for judicial review": **R V SECRETARY OF STATE FOR THE HOME DEPARTMENT EX PARTE RUKSHANDA BEGUM (1990) COD 107**.
- [32] CPR Part 56 .3 -56.6 provide for Applications and the matters that the Court must consider in determining whether to grant leave for judicial review. The test to be applied for granting leave is as stated in **Sharma v Browne Antoine and Others** (2006) 69 WIR 379 at paragraph 19 and in addition, the Court must be satisfied that the Applicant:

- (i) has a sufficient interest;
- (ii) has 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:
- (iii) that the delay in making the application is not unreasonable

[33] In **KEMPER REINSURANCE COMPANY v THE MINISTER OF FINANCE AND OTHERS (BERMUDA) [1998] UKPC 22** Lord Hoffman who delivered the opinion of the JCPC expressed it this way at paragraph 18:

"In principle, however, judicial review is quite different from an appeal. It is concerned with the legality rather than the merits of the decision, with the jurisdiction of the decision-maker and the fairness of the decision-making process, rather than whether the decision was correct."

So that in determining whether an Applicant for leave to apply for judicial review has presented an arguable ground having a realistic prospect of success, it is only necessary for the Court to ascertain whether the Applicant has presented sufficient material to the Court to assess the nature and gravity of any alleged breach of the legality of the decision-making process.

[34] The facts as disclosed by the Applicant are not in dispute. The Applicant whether personally or in his capacity as Managing Director of the Company has established that he has sufficient interest.

[35] The Applicant has alleged the following breaches: Procedural Impropriety, Illegality and Irrationality and submitted these facts as set out in paragraphs 9-11 in support thereof.

[36] Section 38 of the Act provides that:

- (1) The Hearing Officer *shall, after issue of Notice to all the interested parties* either –
 - (a) hold a hearing conference and attempt to narrow down the issues and then adjudicate on the dispute; or
 - (b) proceed to trial straight away and adjudicate on the dispute.
- (2) The Hearing Officer *shall*, within fourteen days of the closing or hearing, give his decision on the dispute by Order in writing.
- (3) The Hearing Officer *shall forthwith* give to the parties a copy of the Order made by him adjudging a dispute or recording a settlement.

Section 39 of the Act provides that:

Every decision of the Hearing Officer *shall* be final if no notice of Appeal is filed within twenty one days of his decision.

Section 40 of the Act provides that:

Any party to the proceeding before the Hearing Officer *may*, within twenty one days of his decision by the Hearing Officer, appeal against the decision to the Tribunal and

Section 41 (4) of the Act provides that:

The Tribunal *shall* enquire into the matter and report in writing its decision or order to the Minister within twenty one days of receipt of the reference or such longer time as may be necessary having regard to the circumstances of the case.

- [37] On review of the above provisions of the Act in particular section 38 (1) and (3), the Court acknowledges that in pursuance of the power to adjudicate in the dispute, the Hearing Officer may adopt his own procedure and at common law a wide discretion is given to a body or tribunal in order to achieve this objective and execute their duties with efficiency.
- [38] However the principle of natural justice dictates that the power is to be regarded as having been conferred subject to the requirement that persons are entitled to a fair hearing and that the body with the power is to act fairly in administering that duty. Moreover, the principle must be applied, from the issuing of the Notice of Hearing in a timely manner, in consideration of the Applicant's request for an adjournment for legal representation, in the conduct of the hearing and to the giving of the Decision to the Applicant or the parties to the dispute in a timely manner.
- [39] As stated by Lord Reid in the case of **RIDGE v BALDWIN 1963 2 AER:**
"The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected, a proper opportunity to state his case".

The Jamaica Court of Appeal case of **ARIS v CHIN (1972) 19 WIR 459** emphasizes the fact that one is entitled to a full hearing and that on "the question of the sufficiency of notice of the hearing of the particular complaint ... as a concomitant of the right to be heard, is the right to receive sufficient notice of a hearing. Failure to give such a notice is a denial of natural justice".

The meaning of the word '*forthwith*' was considered in the Privy Council case (Appeal No. 48 of 1961) of **ABDUL WAHAB MOHAMMED SAMEEN v PALLIYAGURUGE VITHANAGE SUMANAWATHIE ABEYEWICKREMA AND OTHERS (Ceylon)** and at page 4 of the Judgment it was stated as follows: "In their Lordships opinion it is not right to construe the word '*forthwith*' as meaning 'on the same day. Their Lordships do not propose to attempt to define '*forthwith*'. The use of the word connotes that the notice must be filed as soon as practicable, but what is practicable must depend upon the circumstances of each case'.

- [40] Section 35 (1) of the Act captioned 'Settlement of disputes' provides that:
An *employer or employee* or any person or organization acting on his behalf, who alleges that the *employer or employee* respectively has failed to comply with any provisions of this Act, shall make a complaint in writing in the first instance to the Commissioner.
- [41] On review of that provision of the Act, the complaint lodged by the Employee as disclosed by exhibit **MY1** was against the Company employer *TMM (St. Vincent) Ltd* and the Order of the Hearing Officer under the heading 'DECISION' directs that 'the *Managing Director of TMM Yacht Charters* must pay...' and in that regard the Court is of the view that there is no clear definitive statement in the Decision that the Order for payment was made against the employer company.
- [42] Section 19 of the Act provides that:
- (1) An employer may take disciplinary action other than dismissal against his employee when it is reasonable to do so having regard to the circumstances.
 - (2) For the purposes of this section, '**disciplinary action**' includes-
 - (a) a verbal warning;
 - (b) a written warning;
 - (c) suspension; or
 - (d) demotion
 - (3) In deciding what is reasonable pursuant to subsection (1) the employer shall have regard to the nature of the violation, the terms of the employment contract, the duties of the employee, the nature of the damage incurred and the previous conduct of the employee.
 - (4)
 - (5) Where an employee is of the opinion that the disciplinary action is unreasonable, he may refer the matter to the Commissioner under Part IV.

Part IV Section 35 et seq deals with Disputes and settlement of disputes.

- [43] On review of this provision of the Act, the Court is satisfied that the action taken by the Company in 'suspending' the employee is within the ambit of the Act and considers that sub -section (5) provides the remedy to an aggrieved employee. The Court notes that the Act is silent as to whether suspension is with or without pay, and also for a suspension to become a dismissal for which severance is payable.

DISCRETIONARY BARS

Delay and alternative remedy

[44] CPR 56.5 provides as follows:

- (1) In addition to any time limit imposed by any enactment, the Judge may refuse leave or grant relief in any cause in which the judge considers that there has been unreasonable delay before making the application.
- (2) When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to:
 - (a) be detrimental to good administration or
 - (b) cause substantial hardship to or substantial prejudice to the rights of any person.

[45] Whilst there is no time limit imposed by any enactment by which an application for leave to file a claim for judicial review is to be made as in the case of the English Order 53 Rule 4 which provides a time limit of 3 months, the underlying principle is that an application must be made promptly.

Edwards, JA in the Court of Appeal case from Saint Lucia of **ROLAND BROWNE v THE PUBLIC SERVICE COMMISSION –HCVAP 2010/023** had this to say in that regard “It is immediately noticeable that we have no rule in our CPR which is comparable to the English Order 53, Rule 4. Consequently, the absence of any rigid time limit for invoking the supervisory jurisdiction in Saint Lucia is salutary, subject of course to the Court’s insistence on reasonable promptness in all the circumstances of each particular case and rejection of stale claims”.

[46] The Applicant attributes the delay in filing his appeal within the statutory time to a failure of the Respondent to give him the Decision ‘forthwith’ or within a reasonable time. Further the Applicant attributes the delay of more than six months before making the application for leave, as due to the failure of the Tribunal to provide a written response to his appeal which was filed, the Applicant having pursued the alternative remedy albeit out of time. The Applicant cites the case of **Jomo Thomas v (1) The Comptroller of Customs (2) Director General of Finance and (3) The Attorney General**-Claim SVGHCV 331/2008 supra, as authority for so saying, wherein an application for leave was filed one year after the decisions complained of by Jomo Thomas and no written response to his appeal was given.

The case of **Roland Browne v The Public Service Commission –HCVAP 2010/023** supra in which the Appellant, Mr. Roland Browne sought leave of the Court to appeal against the decision of the learned judge striking out the Applicant’s claim for judicial review for reasons which included unreasonable

delay in applying for leave to file the claim, he having filed eleven months after he first became aware of the decision. In that case the Court of Appeal case of **Urban Dolor v The Board of Governors, Sir Arthur Lewis Community College**, No. 30 of 2009, (unreported) was cited as a case in which seven months had elapsed when application for leave was made. In both cases leave was granted to the Applicant, the Court considering the delay to be not unreasonable.

CONCLUSION

On the facts presented to this Court and having regard to the nature and gravity of the issues to be argued in the substantive application for judicial review, this Court is satisfied that the Applicant has an arguable ground for judicial review with a realistic prospect of success.

This Court does not consider that the delay in making the application for leave for judicial review, whether due to action or inaction of either party to be unreasonable in the circumstances or that granting of leave would be likely to be detrimental to good administration or cause substantial hardship to or substantial prejudice to the rights of any person.

IT IS ORDERED:

1. That leave is granted to the Applicant to file and serve a claim for judicial review within fourteen (14) days of the date of this Order.
2. The grant of leave shall operate as a stay on the proceedings for enforcement of the Order in Claim No. 231 of 2013 filed on the 11th October, pending the determination of the claim for judicial review.

Cynthia Combie Martyr
High Court Judge (Ag)