

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
(Civil)**

Claim No. DOMHCV 2010/0035

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF CERTIORARI PART 56.1(3) OF CPR 2000

BETWEEN:- NOELIVIA CARBON ANDREW

Claimant

-and-

TIYANI BEHANZI (*Magistrate of District G*)

THE ATTORNEY GENERAL OF DOMINICA

Defendants

Appearances:

Mrs. Dawn Yearwood-Stewart, counsel for the claimant/applicant

Mrs. Wynante Adrien-Roberts, counsel for the defendant/respondent

2010: 18th March
1st June

RULING:

[1] STEPHENSON-BROOKS J.: This is an application for leave to apply for Judicial Review by Noelivia Carbon Andrew for an order of Certiorari quashing the decision of Magistrate Tiyani Behanzin in Magisterial matter **Police -v- Magellan Bernard Alexander**, where the Learned Magistrate ordered the Claimant to pay the sum of EC\$10,000.00 upon forfeiture of bail and in default she is to serve 2 years in Prison.

[2] Mrs Andrew on the 9th day of May, 2009 stood as surety for her son who was before the court on a charge of Grievous Bodily Harm.

- [3] In breach of his bail conditions the Defendant failed to attend Court. After some adjournments and taking sworn evidence from the Applicant and her daughter and hearing submissions from Counsel, Mrs. Dawn Yearwood-Stewart and the Prosecutor, the Magistrate made the order that the Applicant is seeking to have reviewed and quashed.
- [4] The Applicant promptly made an application for leave to apply for Judicial Review and this matter first came up before me on the 18th March, 2010 and after some submissions made in the Court the parties were ordered to file written submissions in support of their positions in the matter. Those Submissions were to be filed on or before the 1st day of April, 2010.
- [5] Written submissions were filed on behalf of the Applicant but none on behalf of the Respondents. Due to an administrative hiccup in the Registry the file was not presented to me for ruling until Friday 7th May, 2010. I now make my ruling in the matter.
- [6] The Application is based on the following grounds:
- (1) That the Learned Magistrate failed to apply the principles regarding estreatment of bail when he ordered the Applicant to pay the said sum;
 - (2) That the decision to order forfeiture of part of the bail sum is “Wednesbury unreasonable” having regard to the evidence adduced before the learned Magistrate;
 - (3) That the Learned Magistrate’s order for the Applicant to be jailed for 2 years for the non payment of the estreated sum (*part of the recognisance*) was unlawful;
 - (4) That the Learned Magistrate did not enquire into the means of the Applicant to determine whether she can pay the bail sum or part thereof.
- [7] It is important to note that the Applicant submits that the only consideration given by the learned Magistrate in determining his decision was his statement “how many pounds can pay \$10,000.00 about £2,000.00” and that this was unreasonable within the “Wednesbury unreasonable test”.
- [8] I do not propose to make a decision on whether the Learned Magistrate’s decision should be quashed or not. I am required at this stage to decide whether or not leave should be granted for judicial review.

[9] The question to be considered at this stage is whether or not leave should be granted. The general rule is that leave will usually be granted where the applicant discloses an arguable case having realistic prospect of success. There are many authorities in support of that rule and reference is made to **Sharma -v- Browne Antoine [2007] 1 WLR 780 at 787** where the Privy Council set out the test as follows:

“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 alternative remedy.”

[10] It should be noted that the Court at this stage has not had the benefit of detailed inter parties argument.

[11] The Applicant submits that there is a good and realistic prospect of success and in support of her submission she has submitted the following authorities which support her case that the learned magistrate’s decision ought to be quashed on the basis that his decision is “Wednesbury unreasonable” having regard to the evidence, which Counsel contends makes the Magistrate’s decision irrational and capable of intervention by the Court by way of Judicial Review:

- i. **In the matter of an application by Prame Dasrath for leave to apply for an order Certiorari (unreported)** Civil Suit no 143 of 1987 (St Vincent & The Grenadines);
- ii. **R-v-Uxbridge Justices, exparte Heward Mills** (1983) 1 All E R 530;
- iii. **Theodore Gittens -v- Attorney General & Clyde Nicholas** (Magistrate) (unreported) Civil Suite No 1534 of 1994 (Barbados)
- iv. **Ceballo -v- The Magistrate** Vol 16 West Indian Reports 421

[12] The authorities cited by Counsel do indicate that the applicant in this matter does have a triable issue with a strong possibility of success.

[13] In her brief oral submissions the Learned Solicitor General on behalf of the Respondents spoke of two issues, the first being that there was an alternative remedy available to the Applicant that she could appeal the Learned Judge’s ruling in the matter and the Court ought not grant the leave sought in such

circumstances. At first blush this is a very attractive argument however having regard to the **Prame Dasrath Case** out of St Vincent (*Op Cite*) I respectfully adopt the decision and reasoning of Justice Satrohan Singh when he says:

“A Court ought not to refuse Certiorari because of alternative remedies other than appeal unless it is clearly satisfied that those other remedies are more appropriate and, where the alternative remedy is the statutory right of appeal, if the applicant claims to be aggrieved by a decision made without jurisdiction or in excess of jurisdiction or in breach of the rules of natural Justice the fact that he has not taken advantage of such statutory right is irrelevant.”

[14] I accept and adopt the reasoning of Mr. Justice Singh and likewise rule that in the exercise of my Judicial discretion that the fact that there is an alternative remedy available to the applicant, that of appeal that is no bar to her being entitled to an order of Certiorari and would therefore hold that it is not a bar to her obtaining leave.

[15] With regard to the issue of what parties are to be before the Court, I respectfully follow the ruling of the High Court in the case cited by Counsel for the Applicant **Glenworth O.N. Emanuel-v-Attorney General of Dominica (Unreported)** and likewise hold that where the Magistrate is acting in his official capacity the Attorney General ought to be joined by virtue of the provision State Proceedings Act 7:80 of the Laws of Dominica.

[16] I am convinced by the Applicant's arguments in this matter as set out in their application, affidavit and written submissions and accordingly grant the application as prayed. Leave is therefore granted to the Applicant to apply for Judicial Review herein.

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Birnie Stephenson-Brooks
High Court Judge